

Chapter Seventeen

THE DEADLIEST SEASON

THE LAST FIFTY YEARS HAVE SEEN LARGE CHANGES IN THE popular view of winter. Cold weather used to be like the mountains themselves; it was something to be avoided, and winter visits to the heights of the Presidential Range were only undertaken by necessity or by impulses that were viewed as borderline eccentricity.

Frederick Strickland reached the summit of Mount Washington in the course of his snow-racked outing in 1849, but he'd been advised not to do it and he did not survive. The old records do not tell of much high-elevation activity until mention of a forward-looking party that tried to climb the Tuckerman Ravine headwall in 1884. They failed.

Two men did reach the summit on December 7, 1885, and they made the climb in the service of a legal dispute of the highest order: ownership of the summit. One of the proprietors of the Tip-Top House disputed the real estate title and a deputy sheriff climbed the mountain to serve papers announcing that the property was under attachment by court order. The summit hotels were unoccupied, but custom dictated that a copy of the papers be physically attached to the property. The sheriff was accompanied on the climb by



In January 1984, Hugh Herr and Jeffrey Batzer climbed a gully in Huntington Ravine, then pushed on for the summit of Mount Washington in the face of rapidly worsening weather and lost their way. A large-scale search was set in motion. This group from the all-volunteer Mountain Rescue Service is huddling at the 7-Mile marker on the summer auto road. These men could go no farther and they made their way down safely. Albert Dow was with another team and was killed in an avalanche this same afternoon. Herr and Batzer were found in Great Gulf and survived.

Benjamin Osgood, the keeper of the Glen House who made the trail to the summit of Mount Madison that still bears his name.

Necessity was the mother of that climb, many years would pass before the idea of winter climbing as sport took hold, and when Joe Dodge kept the AMC cabins in Pinkham Notch open for the winter of 1927, the centers of civilization in southern New England still regarded them as an outpost on a distant horizon. Nevertheless, Joe accommodated 512 guests that winter and served 1,096 meals, and the sale of supplies and sundries totaled \$67.15. Wheeled traffic was infrequent and a summertime picture from 1928 shows why: the highway grade up the south side of the notch looked as if it was paved with boulders. It was not plowed for the first several years of his winter occupancy and it was still a lonely place when plows did come to the notch;

Joe's son Brooks remembers that in the 1930s and even in the '40s, whole evenings would pass when he wouldn't hear a single car go by.

Useful winter seasons really arrived after World War II, when the civilian market was flooded with cold-weather equipment developed for the military. Since then, winter equipment has advanced with exponential strides and now there are stores near the Presidential Range where an enthusiast can walk out with \$4,000 worth of clothing in addition to a wealth of hardware. Parking lots take the story from there.

On New Year's Day of 1998 I drove "around the mountains"—up through Pinkham Notch, around the north end of the range through Randolph, down the west side to Twin Mountain, around the south end through Crawford Notch, and back up to Pinkham. I stopped at every parking lot that served trails giving access to 4,000-foot peaks and counted cars. The weather had been brutal and the previous night brought temperatures below zero in the valleys and equally threatening conditions on the heights. A generation earlier I would have been surprised to find any cars at all in these parking lots, but on this day I counted 231 vehicles.

I did it again in 1999. The weather was the same, below zero every night for a week in the valleys with several sieges of very high wind, and this New Year's Day the upper elevations were buried in storm clouds. I made the same stops and counted 289 cars. As in the 1998 inventory, I did not include vehicles with the kind of trailer used for off-road vehicles, but I did count a dog sled with 28-paw drive.

Another new age had already arrived. One summer day in 1988 an accident report was brought down from the Carter-Moriah Range on the eastern side of Pinkham Notch. The terrain up there can be difficult and the day was raw and wet, so a full-scale rescue was laid on. The trouble was discovered to be a hiker who was very much reduced by alcohol, and the evacuation took most of the night. Accidents are accidents, the rescue team was thinking, and a bad fall can happen to the best of us, that's why we always answer the call. But this fellow could not have gotten drunk by accident and his rescue put many people at hazard themselves. So he was cited for reckless conduct and ordered to pay a considerable fine.

This kind of situation is now covered by two statutes. The first one was New Hampshire RSA 576:3 Reckless Conduct, which provides that, "A person is guilty of a misdemeanor if he recklessly engages in conduct which

places or may place another in danger of serious bodily injury." This was enacted in the early 1970s, and the commentary attached to the statute explained, "In dealing with conduct that endangers but does not harm others (this) fills an undesirable gap in New Hampshire statutes. If actual harm occurs, then a criminal assault will have taken place. Since, when a person acts recklessly, he disregards a risk he knows of and acts with an indifference to the injury he may cause to others, he is just as culpable when the risk does not eventuate in the injury as when it does. Without a statute of this sort, however, a person whose behavior menaces in this way could be prosecuted only if the harm actually occurs."

RSA 576:3 was later amplified by RSA 631:3, which included the addition proviso that, "If you engage in reckless activity, you may face criminal prosecution. If you fail to heed warnings of authorized personnel, in addition to being criminally prosecuted, you may be required to pay the entire cost of your search or rescue."

The rapidly increasing number of hikers in the mountains combined with increasingly sophisticated rescue equipment, and costs became a serious factor: the New Hampshire Department of Fish and Game alone goes on more than 150 rescue missions a year and spends about \$150,000 in their support. The matter of cost recovery came up again and again, but the provisions included in those RSA statutes were rarely invoked in mountain emergencies. Then in December 1999, New Hampshire Fish and Game officials announced that they would take a stricter attitude in billing hikers who required aid.

Several questions arose. Who would define reckless behavior and what standards would be applied? If insurance against such claims was available, as is widely done in Europe, would this become a variant of the cell-phone effect? Would it embolden hikers to take more risks than they usually would?

Few seasons provided as many landmarks on this cultural map as the winter of 1994, when four lethal emergencies developed on the Presidential Range. Just one of them enlisted the help of 204 search and rescue personnel including 32 from the Forest Service, 32 from the AMC, 120 from Fish and Game and other organizations, and 20 volunteers, with the services of Thiokol snow tractors, an ambulance, and a helicopter. The father of one of the victims brought suit against the United States of America for failing to protect visitors in the national forest against hazard.

DEREK TINKHAM

JANUARY 1994

Joe Dodge's legacy is a cluster of buildings at the Appalachian Mountain Club headquarters in Pinkham Notch. The "pack room" is a popular spot, the place climbers gather when they're about to start on a climb, or just returning from one. Thursday evening, January 15, 1994, a young man was holding forth at considerable length on his plans, a four-day traverse along the skyline ridge of the Presidential Range. Another hiker was forcibly struck by how easily he dominated the room and the people there, and how his companion sat by, silent and enthralled.

The speaker was Jeremy Haas, the listener was Derek Tinkham; both were college students. Derek had plans. He loved the mountains, he went climbing up here whenever he could, he meant to go on to work as a guide, and he'd gotten a job with the rescue team in Yosemite for the coming summer. His long-time friend Jennifer Taylor often drove him up to the mountains to start a trip and picked him up when it was done.

Their route usually took them through North Conway, twenty miles south of Mount Washington, and Derek would always stop at International Mountain Equipment, a major source of serious gear, advice, and companionship. Jennifer noticed that Derek would let only one person wait on him; no matter how small the transaction or how many unoccupied people were behind the counter, he always waited until a short, compact fellow was free. Finally Jennifer asked her friend why he always waited for that person. Derek explained that the person he waited for was Rick Wilcox, that he was a great mountaineer, that he'd climbed Mount Everest. Derek admired him tremendously and wanted the kind of life Rick had. Jennifer understood.

What they could learn from Rick Wilcox should also be understood, because it's the key to everything that followed. Rick started with the neighborhood mountains of New England and worked his way up. Now he's made eleven trips to the Himalayas and he knows how very small are the margins which determine not just whether a summit is reached, but whether a climber returns at all.

A Himalayan summit day begins years earlier, when the leader applies for permission to make the try. The planning, the money-raising, the risk to

business and family relations, the long trek to base camp, the push higher and higher up the flanks, all increase the pressure to make those last few hundred yards to the summit. That's what we're taught to do; our culture is obsessed with success and climbers are our surrogates, they're the ones who keep pushing upwards.

For Rick Wilcox and his climbing mates, the weather had gone bad just a few hundred yards below the summit of Makalu, fifth highest in the world. They turned around without hesitation. Six days of dizzyingly steep snow climbing protect the summit ridge of Cho Oyo, then there's a very long knife edge and, just below the summit, a small rock wall with a drop of 10,000 feet at the climber's heels. Rick's partner was Mark Richey and he led the first move onto that wall and when he began to drive in the first piton he sensed the brittle quality of the rock. He looked at Rick and, with hardly a word, they turned around. The summit was right there, and they turned around and headed for home, half a world away.

On his fifth Himalayan expedition, the summit of Everest was so still that Rick sat there for an hour. From the beginning, he'd had the feeling that finally, on this trip, it was his turn. The clouds came in that afternoon and Rick's partner kept track of his own descent by noting the curious markers at the top of the world. There are frozen bodies on the summit pitches of Everest, climbers who did not plan as well or who kept pushing when the signs were bad. It's too difficult to take dead climbers down, so they stay there forever and wiser climbers use them as guides.

The hike Jeremy had planned for himself and Derek began Friday afternoon, but, like a Himalayan expedition, the important decisions had been made much earlier. Jennifer had urged Derek to take along a small mountaineering tent, but Jeremy wanted to travel light, so they took bivy bags instead, weather-resistant coverings for their sleeping bags. Jeremy also left his over-mitts at home; he wanted the added dexterity of gloves.

Something else had already been decided, probably years earlier: Jeremy had a tendency to keep pushing. He'd led a climb for the University of New Hampshire Outing Club, and when they returned many of the group complained that he'd kept charging ahead and was not sensitive to their needs. He was told he could not be a trip leader anymore and he resigned from the club. Over the Christmas break he took Chris Rose on a Presidential Range traverse and *Chris got so cold that his toes were frozen. The trip Jeremy planned*

for himself and Derek was the same route as the one that had claimed his friend's toes two years earlier.

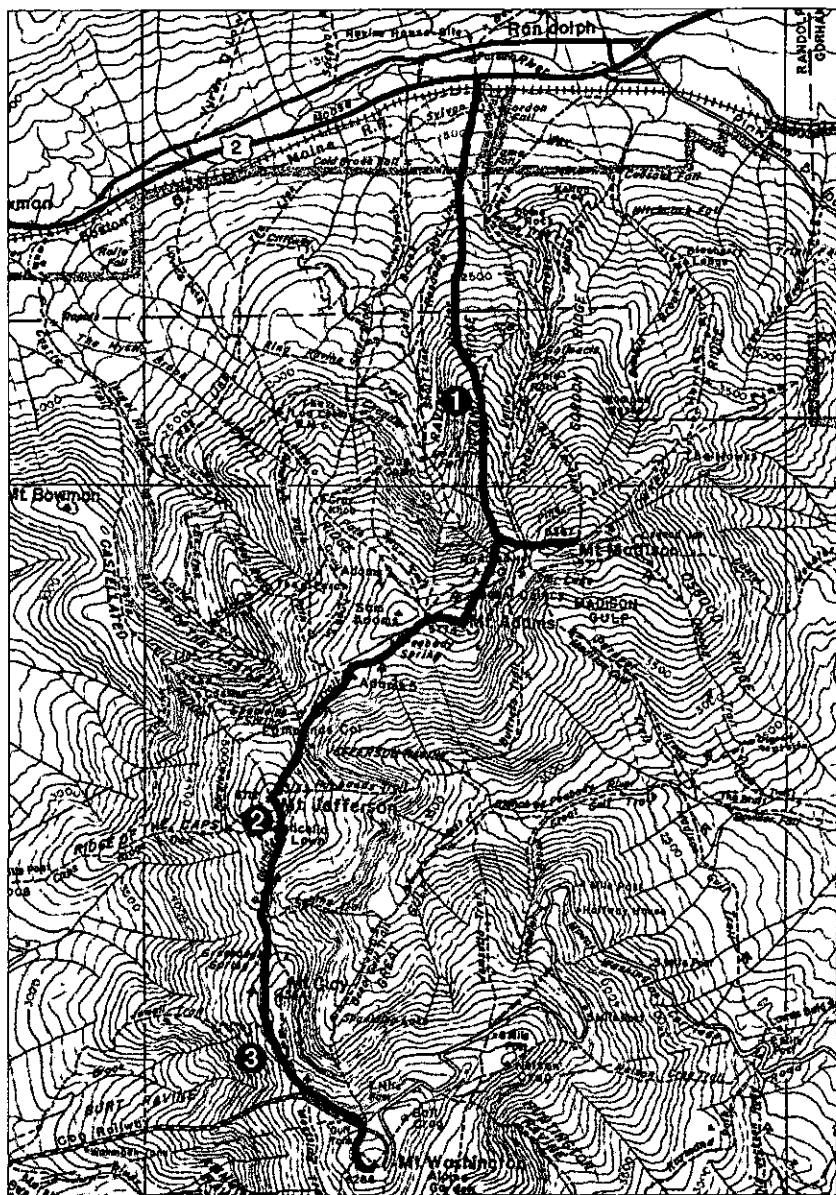
The pack-up room where Jeremy held forth at Pinkham Notch was built many years after we set out to rescue Raymond Davis, but other elements have not changed. The weather observatory on Mount Washington is 4,288 feet upslope from the AMC buildings, detailed reports and predictions for the upper elevations are always posted by the AMC, and climbers check them as a reflex before starting up. High winds and extreme cold were predicted for that weekend. Jeremy and Derek started for the base of the Air Line Trail, a popular route departing from Randolph and rising to skyline on the northern end of the Presidential Range.

The trees grew smaller and more dense as they neared timberline. There are openings here, certified as overnight campsites by years of native wisdom. The two climbers stopped in one and settled into their bivy bags; "bivy" means bivouac. As they slept, the weather above timberline, severe enough when they started, grew worse.

The summit observatory recorded -6° at midnight and -23° at 8:00 A.M.; the wind moved into the west and at 8:00 A.M. it was steady in the 40 mph range, not high by local standards, but a west wind rakes straight across the skyline teeth of the 6.5-mile ridge Jeremy and Derek would traverse. They climbed to the top of Madison, then Adams, second-highest peak in the Northeast. It was close to noon now, and they'd been making quite good time.

This section of trail leads down to Edmands Col, a mile of easy going. Derek was having trouble, but Jeremy would go on ahead, wait for him to catch up, then go ahead again. Derek was going slower and slower and he was becoming unsteady on his feet, signs that betray the onset of hypothermia. Edmands Col lies between Adams and Jefferson and the mild descent took many times longer than it would in summer. Hypothermia is not just cold hands and feet; it comes when the cold has bitten right through and the core temperature begins to drop. The body circles up the metabolic wagons to make a last stand against death, blood is concentrated in the viscera, the mind becomes sluggish and the limbs erratic.

At this point, there were three refuges nearby, all below timberline: The Perch is a three-sided shelter, the old cabin at Crag Camp had just been replaced with a snug and completely weatherproof building, and Gray Knob



1. Derek Tinkham climbed with Jeremy Haas up Air Line Trail and spent night in Spruce Shelter
2. Up on Air Line to climb Mount Madison, then across Gulfside Trail to Mount Jefferson; Tinkham died on the summit of Jefferson
3. Haas crossed Gulfside Trail to summit of Mount Washington

had also been rebuilt and had a caretaker, heat, lights, and radio contact to the valley. The two hikers discussed a retreat to one of them, but decided to continue upward toward the summit of Jefferson. Jeremy's original plan was to go on to Clay Col, a mile and a half away up Jefferson and down the other side; he remembered an ice cave there during a previous trip and his idea was to use it for the second night of this trip.

In the prevailing weather conditions, this was a plan of breath-taking stupidity. Ice caves are ephemeral, what Jeremy had seen two years earlier might not be there at all this year. Even if it was, Clay Col would be a furious torrent of arctic wind and an ice cave was not what they needed. As bad as it was in Edmands Col, it could only be worse in Clay Col, higher and nearer the Mount Washington weather vortex. The two climbers were getting weaker, the storm was getting stronger.

Afterward, Jeremy said the decision to push on was a mutual one. But veteran climbers know that, since Jeremy was the stronger and more experienced of the two, his job was to get Derek down to shelter, any shelter. As Rick Wilcox puts it, "When you climb solo, you only have to worry about yourself, but when you climb with another person, it's your responsibility to look out for him." In fairness to Jeremy, he was suffering from the same extreme conditions and that might have affected his judgment.

When they got to the summit of Jefferson, Derek collapsed. Having left a tent at home, Jeremy tried to get him into a sleeping bag, then left for the summit of Mount Washington more than three miles away. It was 4:30 P.M., darkness would soon overtake him, the summit temperature had dropped to -27° , and the wind was in the 80s with a peak gust of 96 mph. Jeremy lost his gloves and, having left his heavy over-mitts at home, his hands were too cold to let him get at the food and the flashlight he had in his pack. He kept his hands under his armpits as he staggered and crawled along the ridge toward Mount Washington.

Conditions like this do not match normal experience. One year I went up to the summit for Thanksgiving dinner with the observatory crew; the weather was moderate and the climb enjoyable, but the day after the feast the wind rose to 150 mph; the day after that the recording pen went off the chart at 162. In lulls, the observers would climb the inside of the tower to the instrument deck to clear ice from the sensors. I'd go up to help and found

a curious situation: Facing the wind made it difficult to exhale, back to the wind made it difficult to get a breath in. Strictly speaking, it was physics, but it felt like drowning in an ocean of air. Purposive effort hardly worked at all, and years later when I saw news footage of people getting hit by police water cannons I thought of that storm on Mount Washington.

Supper on the Saturday of Jeremy and Derek's trip was a noisy meal in the observatory. There was the hammer of an 80-mph wind and cracking sounds from the building itself: the concrete and the embedded steel reinforcing rods contract at different rates. Ken Rancourt and Ralph Patterson were on duty and they were used to this, but now Ken suddenly looked intent; he'd heard a different, more rhythmic banging in the midst of the uproar. He and Ralph traced the sound to a door on the north side of the building: Someone was out there.

A few minutes later Jeremy Haas was inside. He was barely able to talk, but as Ralph checked for the most obvious signs of damage he asked Jeremy if he was alone. Jeremy indicated that he'd left his partner near the summit of Jefferson. The wind peaked at 103 that night and between midnight and 4:00 A.M. the temperature held steady at -40° .

Some newspaper reports described Jeremy's fierce traverse as "heroic." Others had worked out a different calculus of risk and they did not share that view. Prominent in the latter group are the ones who tried to rescue Derek Tinkham.

By 9:00 P.M. the observatory crew had called the valley to report the on-rushing emergency, and the message reached the Mountain Rescue Service. Joe Lentini answered, then he and co-leader Nick Yardley put the "A Team" on standby. The first decision had already been made: The combination of darkness and brutal conditions made a rescue attempt that night impossible. It's a difficult but accepted calculation; at a certain point, many lives cannot be risked in a try to save one. At 5:00 A.M., the team left for the base of Caps Ridge Trail, the shortest route up Jefferson.

Conditions were extraordinarily harsh as the eleven team members started up. "We looked," one thought, "like an advertisement for every high-tech equipment company you ever heard of." Even so, Joe Lentini was keeping a sharp eye out for signs of frostbite or falter among his crew. Caps Ridge takes its name from a line of three rocky outbursts heaping up above

timberline like the bony spines on the back of some prehistoric monster. Summertime hikers have to hold on up here, and in winter it's immeasurably tougher: The caps are clad in ice, with wind-blown snow in the sheltered parts of the jagged skyline. There's dwarf spruce under the drifts and impossible to see, and when the climbers stepped in the wrong place they'd fall through up to their ribs.

Up past the last cap, Tiger Burns advised Joe Lentini that his feet were getting cold. Knowing that it would only get worse and that a disabled team member higher up would vastly increase their problems, he descended to a sheltered place to wait for the others to return. He was still above timberline, but he was ready.

Tiger's outfit was typical of the MRS team that day: He had many layers of specialized clothing under his weatherproof outer shell. He had insulated bib-pants and parka with a heat-reflective Mylar lining, a balaclava helmet, a pile-lined Gore-Tex hat under the hood, and a scarf and flaps snugging up the spaces around his face. He had polypropylene liner gloves, expedition-weight wool gloves, extra-heavy expedition mitts with overshells, and chemical heaters for hands and feet. In his pack, Tiger had two sets of back-ups for his gloves and mitts, two more hats, another scarf, extra chemical heat packs, and a bivy bag. Unlike most of the climbers, he was not wearing goggles. Instead, as his exhaled breath froze in his balaclava he pinched the woolen fabric into narrow slits over his eyes.

Tiger's big problem was his cocoa. He zipped himself inside the bivy bag, loosened his boots, set the chemical heaters to work on his feet, and reached for his Thermos. Hot as it was, though, and nestled under all the other insulating gear in his pack, the stopper had frozen tight.

Up above, the trail led onto an alpine zone of ice and rough broken rock, with the 1,000-foot summit pyramid of Jefferson rising above it. It was just here that the wind hit the MRS team, a blast so severe that they could communicate only by putting their heads right together and yelling. At 10:00 A.M., Al Comeau spotted a bit of color up near the peak of the mountain.

It was Derek's bivy bag. It was just below the summit and Derek was lying there half out of his sleeping bag. He was wearing a medium-weight parka and it was only partly zipped; his other clothes were barely sufficient for a good-weather winter climb, and his hands were up at his face as if trying to

keep away the calamity that fell on him at dusk the day before. There were two packs with sleeping bags nearby, on top of an insulated sleeping pad. Troubling things had happened here, but there was no time for reflection now.

As the team started down, the wind hit them straight in the face. It was -32° , the wind was peaking in the high 80s, and they were barely keeping ahead of it in clothing like the outfit Rick Wilcox had on the top of Everest. In conditions like this, you don't go where you want to go, you go where the wind and terrain let you go, whether your feet and burden like it or not.

Suddenly Maury McKinney pulled up lame. He understood life in high places; in Nepal he'd turned back short of the summit in a winter attempt on 26,504-foot Annapurna. Here on Jefferson he broke through into a hole and the whole of his weight drove his heel down. At first he thought the Achilles tendon had torn, but a brief test showed that the damage was higher up in his calf. In this moment, the rescue party's situation became critical. This kind of injury worsens quickly and in these conditions they could neither leave him behind nor slow to his pace, so they'd have to carry him and leave Derek's body behind.

Then Andy Orsini's eyes froze shut. He and Maury had planned a climb that day, but when they saw the weather they decided to watch the NFL play-offs instead. As it turned out, they made a climb anyway. So Bob Parrot helped Andy cover up completely and Maury leaned against his other side, partly to guide him, partly to relieve his own bad leg. This battered troika made its way down through the ice and rock for several hundred yards until Maury was able to reach in through Andy's wrappings to rub his eyes and melt the ice.

Down below, Tiger Burns was still trying to get at his cocoa. He bashed the top against a rock to loosen it, but only dented the cup. He burrowed into his bivy bag for awhile, then reached out to bang on the Thermos again, but he only succeeded in tearing the handle off. The exercise did warm up his hands so he took off his gloves for a better grip but still no luck; it only made his hands cold again.

When the team reached him, they took their first rest in eight hours of continuous maximum effort. Several times they'd considered leaving the body and saving themselves, but then they thought of Derek's family and how they'd feel if their son was still up there, alone with the storm, and they

kept going. Once in the woods, they talked amongst themselves about what had happened. "Bottom line," said Mike Pelchat, "I would never ditch a partner like that."

Later, there was time for reflection. Like many members of the recovery groups, Andy Orsini had instinctively shut out the human qualities of the job in order to get on with it. By Tuesday, this insulation had turned to anger. He had the newspaper account and read that, when asked if he had any regrets, Jeremy had said, "Yes, I wish I'd brought mittens instead of gloves." Andy was so appalled that he called the newspaper reporter to verify the remark. "It's something I have to live with," said Al Comeau, "seeing Derek there . . . He was a victim of Jeremy's state of mind and over-ambitiousness. That one really bothered me."

MONROE COUPER AND ERIK LATTEY FEBRUARY 1994

That winter, Jim Dowd had also been bothered. He was caretaker of the Harvard cabin below Mount Washington's Huntington Ravine and about two miles up from the highway in Pinkham Notch, and it seemed as if practically every climber who came through said he'd read an article about ice climbing in Pinnacle Gully up in the ravine. It was in *Climbing* magazine and it was written by an eager but inexperienced teenager who'd gotten into trouble up there with his friend. The two boys thought the experience was kind of neat and people kept telling Jim they thought it was a great story.

Talk like this made Jim feel a little sick and he'd made a point not to read the article; when he was eleven years old, his father had died while climbing the next ridge. One of the reasons Jim was working up here was a sense that he'd like to give something back, and he didn't like to hear about people rushing into ill-advised risks.

While that issue of *Climbing* was current, Monroe Couper and Erik Lattey were planning their own climb in Huntington Ravine. They were friends in New Jersey, both had young families, and both were just getting started in winter climbing. Now they headed for New Hampshire and signed in at the AMC headquarters at 1:30 on Friday afternoon, February 25. The weather

forecast for the next day was favorable: high temperatures in the teens, winds on the summit increasing to 40-60 mph. They wouldn't be going to the summit, so it looked good.

Huntington Ravine has always been place of risk. Monroe and Erik planned to climb Pinnacle Gully, which is just to the right of Odell's Gully, the site of Jessie Whitehead's troubles sixty-one years earlier. They left the Harvard cabin in good season, then they returned—they'd forgotten their climbing rope. Having retrieved their rope, Monroe and Erik started back up toward Pinnacle at about noon. The weather forecast, however, had been wrong; conditions higher up were deteriorating rapidly. Bill Aughton was the director of Search and Rescue at the AMC camp in Pinkham Notch and he was guiding a trip across the Presidentials that day. He was so struck by the unexpectedly bad weather that he took a picture looking ahead to Mount Washington, then turned his group around.

A climber at the bottom of Huntington Ravine spotted Monroe and Erik in upper Pinnacle Gully at 5:00 P.M. They were not moving well. Guides allow three hours for Pinnacle; Monroe and Erik had been up there for five. The usual turn-around time is 2:30 or 3:00, they were two and a half hours past that and still going up, toward the approaching night.

Going up in ice climbing must be understood conditionally: while one climber is moving, the other stays in a fixed position to tend the rope and belays, the safety margin. Thus, either Monroe or Erik had been almost motionless for half of their time in Pinnacle, absorbing the cold. The overnight lodgers at the Harvard cabin were settling in, tending to their gear and making their various preparations for supper, when someone noticed two packs in a corner which didn't belong to anyone there.

The top of Pinnacle eases over onto the Alpine Garden, well above timberline. This place is a summer delight, table-flat and almost a mile wide, and spread with tiny flowers, dense moss, and delicate sedges. One of the several unique plants that lives here has its growth cells at the base of its stalk instead of the tip, the better to withstand the brutal winter.

This was brutal winter, and as Monroe and Erik felt their way out of the top of Pinnacle, they found only wind-scoured ice and rock. Just above them on the summit, the wind averaged 90-mph between nine and eleven that evening, gusting to 108 at 9:50; by midnight, the temperature had fallen to -24°. A maximum rescue effort was being organized in the valley.



The Alpine Garden spreads just below the summit ridge of Mount Washington. In the fair weather of summer enthusiasts come from all over the world to study the tiny flowering plants that have found a way to survive there. Winter conditions are often beyond the endurance of the strongest person and many have died in the vicinity.

At 6:00 A.M., thirty-three climbers gathered at the AMC headquarters; the plan was to send teams up several climbing gullies of Huntington Ravine and also comb the adjacent area, the most likely places to find the missing pair.

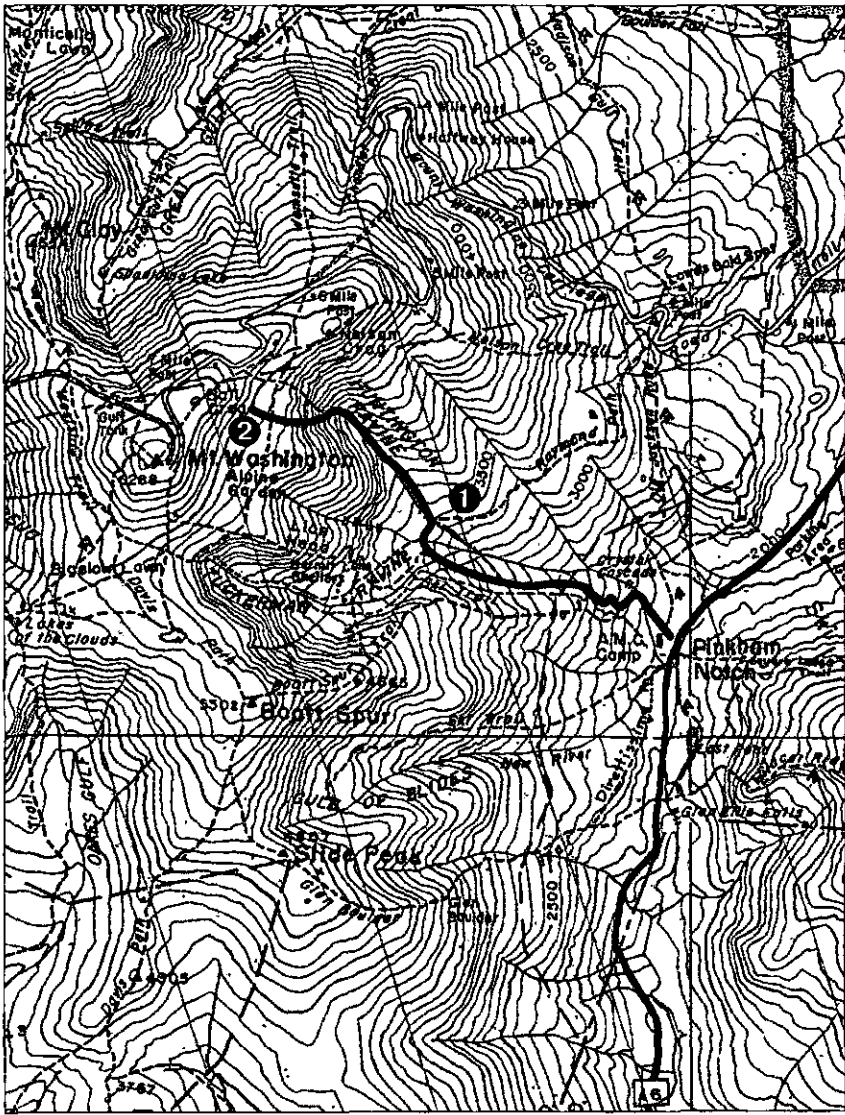
The plan was quickly modified. The climbers were getting into their routes soon after 9:00 A.M., it was -16° at the observatory on the ridge above them, and the wind averaged over 100 mph from 7:00A.M. until noon with a peak gust of 127 at 9:45. Tiger Burns was working his way up Escape Gully with two partners and he suddenly found himself in midair, blown out like a heavily dressed pennant in the arctic wind, with only one elbow looped through a webbing strap to keep him from a very long fall. Nick Yardley and his partners were the only ones to get above timberline, and that only briefly—they had to crawl down.

After all the teams were back down on the wooded plateau near the Harvard cabin, it occurred to Jim Dowd that Monroe and Erik might have gotten into Raymond Cataract. It's a broad basin between Huntington Ravine and Tuckerman Ravine with a remarkably even contour, no steeper than a hiking trail, and funneling into an outlet nearby. Jim was thinking that Monroe and Erik might have made a snow cave in Raymond Cataract. They might still be there, probably unhappy, but safe.

Jim and Chad Lewis started up into the Cataract. Snow drifts in heavily here and it almost avalanched on them. Jim had a grim sort of chuckle: Al Dow had died in an avalanche near here during another winter search mission and there's a plaque honoring him on a rescue cache in Huntington Ravine. Jim was thinking that if this slope let go they could just add "d" to the name on the plaque to remember himself.

Their hopes lifted when they found boot tracks, but they turned out to be from Nick Yardley and his partner, descending. Other than that, there was only a fuel bottle and a pot lid, found in the floor of the ravine. They were on top of the snow, so they couldn't have been there long; they'd probably been blown loose from someone higher up. Jim and Chad made a last visual check up Pinnacle and saw nothing. Then they looked at each other and said, at almost the same moment, "They're still on the climb." Privately Jim thought, "Damn, we missed the boat. We were looking in the escape routes." He imagined the climbers thinking, "We need to get out of here and the direction we're going is up." First lessons in climbing teach people to climb, not escape. Monroe and Erik had kept pushing upward.

When Jim got back to the cabin that evening, there were the usual number of recreational climbers in for the night, but the usual banter was missing. "Everyone was looking at me with these big eyes, like, 'What happened to



1. Monroe Couper and Erik Lattey went up Tuckerman Ravine Trail and across Huntington Ravine cut-off to spend the night in Harvard Cabin
2. Up Odell Gulley, they collapse and die on Alpine Garden

those guys?" Jim had gone through their packs earlier to see if he could get an idea of what they had with them by seeing what they'd left behind. He'd also found two steaks, so now, after the long day of work trying to find the missing climbers, he cooked their steaks for his own supper.

Early Monday morning the teams started up again. The summit temperature was steady between -13° and -15° at 5:00 A.M. the wind peaked at 128 mph, just after 8:00 A.M. it touched 124. Ben Miller was with a group climbing Odell Gully. Ben had the longest association with Mount Washington: his father worked up there for thirty-nine years. Himself a climber of long experience, Ben knew the mountain and its habits as if it were his backyard.

Ben's group reached the intersection of Odell with Alpine Garden and found a cleavage plane—lying flat, Ben felt that if he put his head up, the wind would simply peel him off the snow. Working his way up over the crest, he saw others on the Garden fighting through the wind, their ropes bowed out into taut arcs. Rick Wilcox and Doug Madera went up the ridge above the right wall of the ravine. This place has no difficulties for a summer hiker, but when Rick wasn't totally braced against his crampons and ice axe the wind would send him sprawling along the ground. There was a 2,000-foot drop thirty feet away.

As soon as Al Comeau came over the crest of South Gully he saw someone there in the sun. As with Derek Tinkham, Al was the first one to reach the victim, but now he faced the moment all rescue climbers dread—it was someone he knew. Al recognized Monroe Couper, a climbing student he'd had the winter before, a musician of unusual talent and sensitivity, a person Al remembered with great affection. Not seeing Erik Lattey, Al went back down the top section of Pinnacle to see if he'd gotten stuck there.

A few minutes later, Brian Abrams saw a huddled knot of color in the lee of some rocks and, thinking it was another member of the rescue team, he made his way over through the fierce blast of weather and lay down close beside a man in a blue outfit; it's a mountaineer's way of getting a bit of shelter in extreme conditions above timberline. The man was leaning toward an open pack and his gloves were off; apparently he was getting something to eat. He didn't seem aware of Brian's presence, then the rescuer realized that the man providing his shelter was dead.

Al Comeau did not find any sign of Erik Lattey near the top of Pinnacle Gully and when he got back to the plateau he found Brian Abrams and some

other members of the rescue team and they took stock of the situation. They realized that Monroe had died in the act of trying to make something hot for himself and his friend. Erik was nearby, lying face down in the rocks with his arms outstretched, heading toward Monroe. It looked as if he'd tried to find an escape route Saturday evening, then gone back for his partner.

This was a tough one. Members of the climbing community had little sympathy for Jeremy Haas, but Monroe and Erik had tried to do things right, they'd taken climbing lessons from the best in the business, and in their last moments they were trying to take care of each other.

The bodies were finally recovered on Tuesday. Then, after three days of almost continuous effort, the teams gathered for a debriefing down at AMC headquarters. An official from the Forest Service offered to arrange psychological counseling for anyone who felt the need, but there were no takers. The consensus was that they'd rather have the Forest Service arrange steaks and beer. This was, after all, volunteer work.

CHERYL WEINGARTEN

MAY 1994

Tuckerman Ravine is a sort of twin to Huntington Ravine, a left-hand punch into the side of Mount Washington by the same primordial giant that made Huntington with his right. The surrounding topography is a little different, though; it has the effect of an immense snow fence, and the drifts pile into Tuckerman all winter long. By spring, snow has banked up against the headwall 150 feet deep, and skiers come from all over America to hike up from the highway and test nerve and technique on some of the steepest skiing anywhere on the planet. "Going over the Lip," making the vertiginous plunge from the higher snowfields down into the bowl, is a major rite of passage. In fact, going up over The Lip can be as scary as most people would want. It's not like climbing a slope in any familiar sense—it's more like climbing a thousand-foot ladder. There's always a line of steps kicked into the snow at the right side of the headwall, and as the slope steepens the surface of the snow gets closer and closer to the front of the bended knees. Darwin is in charge of safety here; skiers usually stop climbing up at the point dictated by thoughts of skiing down.

Darwin was not with me the first time I skied down over the Lip. I'd climbed an alternate route to take the mail to the crew at the summit observatory; not only that, but fog came in on the way down. There are several major choices of route: Gulf of Slides and Raymond Cataract both end at the same place in the valley and are far more accommodating to nerve and technique. I planned to ski down with someone from the observatory, trusting him to navigate on my youthful and somewhat tremulous behalf.

Being above timberline, on snow, in fog, is like being inside a milk bottle: It's a whiteout with no visual references at all. At best you're lost; at worst you totter with vertigo and nausea. As we skied down, my increasing speed told me the slope was steepening, and even though years of hiking had taught me the terrain in mapmaker's detail, it was fair-weather mapmaking. I asked where we were and heard, "The Lip is right down there." In this case, the whiteout was my friend, and I made my rite of passage over the Lip mainly because I couldn't see well enough to be scared.

Not everyone skis, and a good spring day will also bring out hikers who enjoy the cushiony surface underfoot, the bright sun, and the spectacle. On May 1, 1994, Cheryl Weingarten and her friends Julie Parsons, Anna Shapiro, and Nick Nardi, arrived at the foot of the trail in Pinkham Notch and started up toward the ravine. They were all students at Tufts University near Boston and the plan had taken shape at a concert, and there was not very much experience in the group; Nick had the most, he'd climbed Mount Washington twice before and he'd done some other hikes in the White Mountains and some in the Alleghenies. This day they were wearing clothes suitable for an unthreatening spring day on Mount Washington, but they had no crampons or any other equipment that would help them on high-angle climbing.

Matthew Swartz and a friend were starting up, too. They were good skiers and well-versed in ravine days, and they'd come over from the University of Vermont. The next day Matthew posted a report on the Internet. It began, "Tuckerman's 5/1 We hiked thru some rain to get to HoJo's in 1 hour 15 minutes. Trail in decent shape, some snow etc but no creeks opening yet. Rain stopped at HoJo's and we went on, many people turned back. . . . Maybe 30-50 people in the bowl all day. We climbed the Lip and up into the snowfields, there was still quite a bit (of snow) up there. The connector over the Lip into the bowl was pretty solid with crevasses opening on both sides. Water is running pretty good over the rocks now. Saw two people lose it in

the Connector and do endos over the falls and cartwheel over the crevasses all the way to the bottom of the bowl. They were extremely shaken and a bit bruised but very lucky to be alive. The Connector (the Lip) should be carefully navigated, unless it loosens up a bit." That is, the top of the headwall was not corn snow, it was frozen snow.

Nick Nardi and his three friends were right in Matthew Swartz's tracks coming up from Pinkham, then Anna Shapiro stayed in the ravine to ski and the others headed for the summit. The weather was not enjoyable; fog was right down on the ground and they could see only fifty or one hundred feet and, as Matthew Swartz noted, this is why so few skiers had decided to come up from Howard Johnson's. Nick and Cheryl and Julie kept going up the ladder of steps that skiers had kicked into the snow at the right side of the ravine.

Trouble was already with them, though; fog had come in, and they couldn't see the larger picture. Caution is largely determined by vision—out of sight, out of mind. They reached the summit and Nick signed the register at what he called "the mall," and then they started down the same way they'd come up.

Conditions were dreary. At 3:00 P.M. the summit weather observatory recorded fog with light to moderate rain and intermittent ice pellets in the air. Nevertheless, the three friends had fun sliding down in the soft snow of the upper, milder terrain. They were on my youthful track exactly, but they didn't have my guide; with no horizon and no shadows, slope and detail disappeared in a wash of gray. They paused near the signs marking a trail junction above the ravine and briefly debated which way to go. Nick had one idea, Cheryl and Julie had another. There wasn't much difference—a little more to the left or a little more to the right—and they decided to take the women's inclination.

As the season advances, the snowpack in Tuckerman Ravine turns to ice and behaves exactly like a glacier; it pulls away from the rocks on the headwall and crevasses open up in the surface, and the ice becomes slightly plastic and follows gravity downhill. Robert Underhill was a notable AMC activist and this glacial effect had always interested him, so late in the snow season of 1939 he surveyed a line straight across the floor of the ravine and set a line of stakes there. He surveyed the stakes again in July and found that in the twenty days of his experiment the center of the snowpack moved thirteen feet farther downslope than the edges, true glacial behavior.

As the spring days grow warmer a tremendous amount of snow melts above the ravine and runs out over a flat rock at one side of the Lip, then plunges down the headwall behind the icy snow that's pulling away from the rocky headwall.

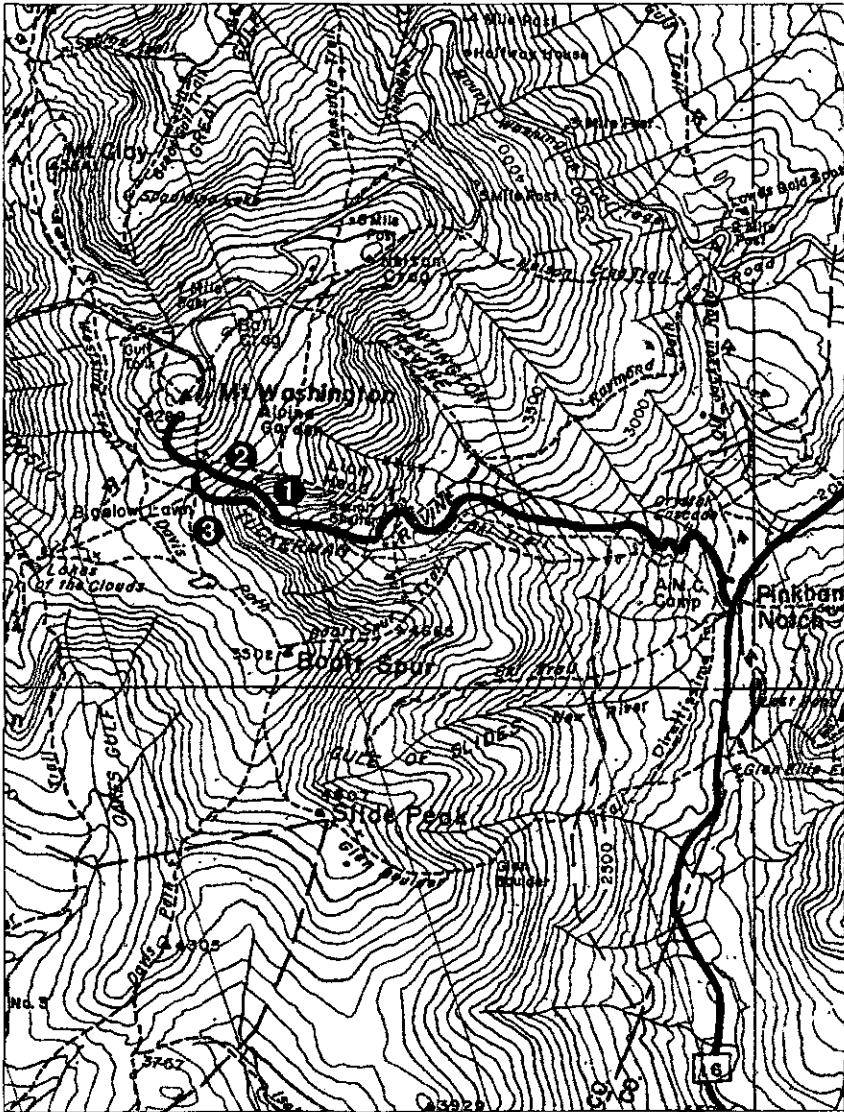
Julie was in the lead as the three friends hopped and slid, then she and Cheryl dropped onto their backsides and began to slide down the slope feet first. The angle gets so steep so fast here that it passes beyond reason and suddenly Julie slid onto the beginning of the waterfall. With a lunge, she got hold of a bit of dwarf spruce and stopped herself. Then Cheryl slid past her and out of sight.

With extraordinary courage and presence of mind, Julie held onto her tiny bit of safety. Nick had not been sliding and he was thirty or forty feet higher up the slope when he heard her screaming. He got down to where he could see her and realized that she was unable to move, she was frozen with fear. He called down and tried to reassure her; he told her to give him one step and it was a long time before she was able to do that. Then he coaxed her again, he told her to give him another step, then another step. This way, Julie pushed and crawled her way back up the dizzying slope to where he was.

Neither of them knew where they were on the headwall and they didn't know where Cheryl was, only that she was farther down. Nick thought that if they went to their left, looking uphill, they could meet up with her by going "around the cliff," as he put it later. As they tried to collect their wits they heard voices off to one side. They called, made contact, and crossed the fog-shrouded slope toward the voices. They found skiers who said they were heading down themselves, and the skiers led the way through the fog.

Not really knowing where they were, Julie and Nick probably hadn't realized that the footstep ladder they'd come up was right beside them when Julie pulled herself off the ledge. It was right there, just a few steps away on the other side of the Lip. Though forbiddingly steep, it was still the easiest way down. The skiers they now joined were heading for the Chute, so scary, so vertiginous a run that many veteran ravine skiers have never attempted it and have no plans to do so. Incredibly, Julie and Nick got themselves down this drop of ice and rock and snow that many climbers would hesitate to attempt without full equipment.

They didn't find Cheryl when they got to the floor of the ravine, and they didn't know where she was. Cheryl had grown up as the kind of girl who was



1. Cheryl Weingarten goes up Tuckerman Ravine Trail and up snow slope in ravine to summit
2. Slides over Lip into crevasse and on the headwall
3. Julie Parsons and Nick Nardi descend headwall by the Chute

ready for anything. She was bright and active and very popular, and she had an endless zest for life; she'd been studying in France and only recently she'd survived a head-on crash in Morocco. Knowing Cheryl's eager enthusiasms, her parents sometimes worried about her.

Now they got a call from the White Mountains. Brad Ray was the veteran forest service supervisor for Tuckerman Ravine and by Sunday evening he'd pieced together the sometimes contradictory details and realized what had happened: Cheryl had gone over the waterfall below the flat rock and been carried down behind the snowpack.

After Nick and Julie had made their way down The Chute, they'd gone to the Forest Service shelter and found Chris Joosen, who was posted there as the Forest Service technician, more popularly known as the snow ranger. He didn't remember seeing them earlier in the day and this struck him as unusual; he always tried to remember the faces of people who talked to him. There were only a few people in the ravine that day because of the weather, and he didn't remember seeing this party. It occurred to him that if he had, he would have advised them not to go on up into the ravine with the summer hiking gear they had. Now Nick Nardi told him that one of their friends was missing—she'd slid down the slope above the bowl and they couldn't find her.

Chris got as much information as he could from Nick and Julie, and he realized that they did not have a clear idea of where they'd been on the slope, only that Cheryl Weingarten had slid down out of sight. Brad Ray was the senior snow ranger in the ravine, a man with thirty years experience there, and he'd already gone down the trail to Pinkham and on to his home in Gorham. Chris called him and Brad directed him to begin a search-and-rescue mission with Lewis Baldwin, the other member of the crew at the AMC Hermit Lake Shelter.

The two of them started up toward the headwall, checking the holes and crevasses as they went, and it was almost dark by the time they had climbed up to the crevasse below the waterfall. They rigged their ropes there and Lewis belayed Chris over to the edge of the crevasse. The day had been warm and rainy and there was a tremendous volume of water coming down, so Chris was already soaked by the spray when he was still twenty feet from the edge. Even more troublesome, the roaring was so loud that he and Lewis

could barely hear each other when they shouted. Chris shouted down into the crevasse and he got no response.

Then they climbed up above the waterfall and Lewis put Chris on belay again and he worked his way down toward the crevasse. Then he saw sliding marks in the icy snow and they looked as if they'd been made by a person sliding feet first on their backside. Still on belay, Chris worked his way down beside the tracks to about eight feet from the point where they disappeared over the edge into the waterfall. Their line would carry the person who made them straight into the edge of the crevasse.

They couldn't do anything more, so they went back down the headwall, checking other crevasses as they went. Back at the Forest Service shelter, they called Brad Ray again and talked the situation over. Brad told them that the volume of water was too large for any useful work, they'd have to wait until early morning, when the volume would be much smaller and someone with immersion gear could be lowered into the crevasse. Then Brad called the Weingartens and told them that the situation was very serious.

By now a call had also gone to Rick Wilcox in North Conway. He talked the situation over with other lead people in the rescue network and they agreed with Brad Ray's decision, they knew that by the time a group was in position to do anything up in the ravine it would be very late in the evening, extremely dangerous for the rescuers, and almost certainly too late for Cheryl Weingarten.

By 6:00 A.M. the next day, a combined team of Forest Service, Fish and Game, AMC crew, Mountain Rescue Service, and Androscoggin Valley Search and Rescue had gathered at Pinkham. They had a wetsuit and scuba equipment in addition to their more usual ropes and security devices, and when they reached the top of the headwall they found the situation they expected: the temperature on the upper slopes of Mount Washington had fallen to 17° overnight and the chill had slowed the melting and greatly reduced the volume of water. They rigged 300 feet of ropes and anchors, then Jeff Gray of Fish and Game put on immersion gear and was lowered into the crevasse. When he was about sixty feet down he found Cheryl Weingarten.

They brought her to the surface and carefully wrapped her in thermal barriers and secured her in a Stokes litter and belayed her down the headwall. Even though it was clear that she'd suffered terrible injuries and was partly

frozen, they took the million-to-one chance and Mike Pelchat began cardiovascular resuscitation with oxygen. They continued with this as they carried her out of the ravine, put her onto a snow tractor at the Forest Service shelter, and went on down to the highway. The combined rescue forces devoted 204 man hours in their attempt to help Cheryl and more than fifty radio and telephone calls had gone through the communication center at AMC headquarters, but when Dr. Sterns met them in the valley he determined that Cheryl's neck was broken and she was dead.

That waterfall forms every spring and a trace of it usually remains in summer, just to the left of the hiking trail as it rounds up over the top of the headwall. Habitues of the ravine call that place Schiller's Rock to remember Dr. Paul Schiller, a skier who died after sliding over the waterfall and into the crevasse forty-five years earlier to the month, week, day, and hour.

IN APRIL OF 1997, LEONARD WEINGARTEN FILED *WEINGARTEN v. United States of America*. He claimed damages for the wrongful death of his daughter and for the loss of her society and comfort.

There were sixteen charges in the first claim, among them that the "Forest Service by and through its employees was charged with the duty to preserve and protect the area of the White Mountain National Forest and the safety of persons lawfully on the property under its management." And "the defendant breached its duty to the plaintiff's decedent by failing to warn through posting of signs, orally, or in some other manner of inherent dangers on its property which (it) knew or should have known existed; in failing to post warning signs, barriers and/or fences around an eroded area of said property which was dangerous and which reasonably could be foreseen to be a site where injury or death could occur." And "The defendant's failure to warn of the existence of or to barricade the entrance to said chasm was a substantial factor in causing plaintiff's decedent to fall into said chasm." And "the foregoing resulted solely through the culpable conduct of defendant and with no negligence on the part of plaintiff's decedent contributing thereto."

The federal government based its defense on several grounds. One was found in the doctrine of sovereign immunity, a position that descends from the elder days of royal rule: "The United States, as sovereign, is immune from

suit unless it has expressly consented to be sued." This led into questions of the court's subject matter jurisdiction.

The defense also argued matters of liability found in New Hampshire's recreational-use statutes. "An owner, occupant, or lessee of land, including the state or any political subdivision, who without charge permits any person to use land for recreational purposes or as a spectator of recreational activity, shall not be liable for personal injury or property damage in the absence of intentionally caused injury or damage." And "An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, trapping, camping, water sports, winter sports or OHRV—hiking, sightseeing, or removal of fuelwood, or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes."

More specific entries are found in the sixteen-page declaration of Brad Ray, who at that time had served as a snow ranger in the ravine for more than thirty-eight years. "As lead Snow Ranger, I have responsibility for managing Tuckerman Ravine consistent with the policy goals of the U.S. Forest Service. As Lead Snow Ranger, the Forest Service leaves me with authority to accomplish that responsibility by using my professional judgement and discretion. Nothing in the statutes, regulations, or Forest Service policies dictate particular actions that I must follow in the handling of hazards, warning the public of those hazards, or managing public safety issues in the Ravine. The *Forest Service Handbook* . . . provides more detailed guidance on things that I, or any other Forest Service official, should take into consideration in managing the Forest's trails. It does not set forth specific steps or actions that I am mandated to take. . . . Nothing in the Trail Management Handbook mandates specific actions that I, or any other Forest Service official, was required to take in the handling of a safety hazard such as the waterfall crevasse.

"In particular, the Forest Plan establishes that the Pinkham Notch Scenic Area is to be managed as a semi-primitive, non-motorized recreational opportunity spectrum class area—a predominantly natural environment—to be managed with minimum on-site controls. For such an area, although restrictions on the use of the area may exist, they are to be subtle restrictions.

"With regard to the Backcountry Undeveloped Areas, which would include Tuckerman Ravine, the management emphasis generally will be placed

on protecting the natural resources first and the quality of the human experience second. Thus, in managing the Pinkham Notch Scenic Area as a semi-primitive, non-motorized area, we are to emphasize protection of resources in a manner such that this protection takes priority over the quality of the human experience in using the area.

"Thus, in managing Tuckerman Ravine, I and other Forest Service personnel are to balance issues of public safety associated with the use of the Ravine against the policy goals of protecting or maintaining the Ravine in its natural condition, maintaining a recreational opportunity that has minimum on-site controls, and making the Ravine available for multiple public uses.

"Over the years, and long before Ms. Weingarten slid into the crevasse, I have been concerned about the dangers presented by the waterfall crevasse when it opens up each Spring. For that reason, even prior to 1994, once the waterfall crevasse opens, the Snow Rangers have listed the presence of crevasses on the Avalanche Bulletin and have specifically noted its existence in other literature. But in addition to providing such warnings, prior to 1994, we considered whether we should take steps regarding the waterfall crevasse. In the end, however, for a variety of reasons, I concluded that the best approach to safeguarding the public in a manner consistent with the Forest Service's policy goal for the Pinkham Notch Scenic Area and Tuckerman Ravine has been to continue to provide warnings about the crevasse through the Avalanche Bulletin and other literature, as well as through personal contact with the public. These decisions were ones that, in accordance with Forest Service policies, were within my discretion and exercise of judgement.

"Among the options that we considered, and rejected, prior to Ms. Weingarten's death, was to provide some warning at the site of the waterfall by erecting crossed bamboo poles. Crossed bamboo poles are a well-established means of signaling trail closure or danger to skiers. However, I ultimately concluded that taking such a step would not be effective, would be dangerous, and would lead to a situation potentially contrary to the policy goals of the Forest Service. For example, at that time of the year, snow often melts in the Ravine at a rate of three to four feet every one to two days. Bamboo poles are eight feet long and usually are planted with at least four feet sticking out above the snow. With snow melting at the rate it does, the bamboo poles usually would fall down at least every other day. To maintain the warning, I would have to direct a team of two individuals, diverting them from other

responsibilities, to reset the bamboo poles at least every other day. I determined that, in view of the limited benefit likely to be gained from the poles, I could not afford to divert those other snow rangers from their other tasks.

“Moreover, another consideration in my judgement was that it would be dangerous to send those rangers repeatedly to that location to reset the poles. Because of the snow melt and the river, one of the risks in that area is of undermined snow. As one team member belayed down to reset the poles, that individual would be at risk of falling through the snow and over the Headwall. I determined that I was unwilling to expose the rangers to this risk in view of the very limited benefit I expected from the poles. A significant factor in my decision against using poles to mark the crevasse was that I was convinced that it would not be effective. On those rare occasions that I have tried crossed bamboo poles in the area above the waterfall, I have seen individuals go right up to the poles, putting themselves at great risk because of the undermined snow. When questioned, it became clear that they did not know what crossed bamboo poles meant, instead indicating that they thought the poles marked the trail location.

“In addition, although we have considered erecting a fence above the waterfall, any fence would be directly contrary to the policy goal of maintaining the Ravine in its natural state. For example, during late April and early May, the snowpack above the waterfall is often 20 feet deep. For a fence to remain standing, especially given the pressures and movements of the snowpack, it would have to be drilled into rockface. That means, to be visible and effective, any fence would have to be at least 24 feet tall, so that it would stick out above the snow. Moreover, to withstand the pressures of the snowpack and the winds found at the top of the Ravine, the fence would have to be constructed of essentially girder-like material. In the Summer and Fall, that would mean that the Ravine would be marred with a 24-foot tall girder-like fence. Because the existence of such a structure would obviously contravene the Forest Service’s stated policy goals for the Ravine, I rejected it.

“For similar reasons, I rejected the idea of placing signs above the waterfall, warning of the crevasse’s presence below. For example, to be readable from a safe distance, a sign would have to be quite large, again marring the pristine landscape with its presence. Placing a reasonably sized sign itself at a safe distance from the edge of the Headwall would mean that it would be very easy to miss the sign in the large expanse above the Headwall. As a

result, to be effective, I considered that we would have to place multiple signs around the perimeter of the Headwall-waterfall area. Again, I considered that this would be contrary to the goal of maintaining the Ravine in its natural condition.

“Finally, in considering any of these means of marking the crevasse site, I considered the fact that there are many other locations within the Ravine that are equally dangerous to users of the Ravine. I concluded that, if I marked or barricaded this particular location, I would start the Forest Service down the road of needing to mark or barricade those other dangerous locations as well. *If the Forest Service marked or barricaded all those locations, Tuckerman Ravine would be a sea of signs and fences, giving its multiple dangers and risks. Because the policy goal for the Ravine is to maintain it in its natural state, I concluded against marking or barricading the crevasse.*

“Another available option was to close the areas above the Headwall to any use once the crevasses open. In 1994, and now, there comes a time each Spring when I close the Lip and the Tuckerman Ravine Trail in the Lip area to all use. I use my professional judgement and discretion to determine when to close the Lip and that section of the Tuckerman Ravine Tail, taking into consideration the historic uses of the Ravine, the feasibility of enforcing the enclosure, and the policy goal of promoting self-reliance by users, providing recreational opportunities, and using minimal on-site controls. As a result, I do not close the Lip until, in my professional judgement, I conclude that a good skier or hiker can no longer safely negotiate the Lip, going up or down. At this time, the hiking trail, which traverses above and close to the Lip, is considered too dangerous, as a fall on the steep snow will result in a slide into rocks or crevasses. . . . Because, in my judgment, a good skier or hiker could still safely negotiate the Lip, I had not closed the Lip on May 1, 1994.

“As a result, to further the Forest Service’s policy goal of minimizing man-made intrusions or changes to the natural environment of Tuckerman Ravine, I developed a general policy of not marking natural hazards that routinely exist or appeared annually, especially in the upper areas of the Ravine. Thus we do not mark the waterfall crevasse, protruding rocks, or high-water trail crossings. These hazards are obvious, and readily apparent to the users of the Ravine. In addition, in determining what, if anything, we should mark, we take into consideration the location of the hazards and, therefore, the users most likely to encounter them. Users who go over the Headwall into

the Lip area tend to be more experienced individuals who try to be prepared and knowledgeable about the risks they will encounter.”

Judge Paul Barbadoro heard the case in February 1999, and several points in his twenty-page ruling bear on the larger question of the public in the wilderness. One of the clauses chosen to support his motion mandates that the Forest Service, “conduct all management activities with full recognition of the appearance of the forest, realizing the importance to society of a natural landscape distinct from the man-made environment otherwise dominant in the East.” The judge also noted that “the Forest Service is free to engage in a balancing of competing policy interests,” and cited a ruling that the “Park Service is not obliged to put public safety concerns above the policy of preserving the historic accuracy of a landmark.”

Noting Brad Ray’s decision not to erect crossed poles because of the danger to his staff and the limited effectiveness and the risk to visitors who often approach the poles, the judge wrote that, “It is precisely this type of policy balancing that Congress intended to protect. That Plaintiff disagrees with the Forest Service’s ultimate decision is of no import to the discretionary function analysis.”

Citing a precedent in a Park Service judgment, the judge wrote that, “Faced with limited resources and unlimited natural hazards, the [National Park Service] must make public policy determination of which dangers are obvious and which dangers merit the special focus of a warning brochure or pamphlet. The Forest Service cannot possibly warn the public of every danger associated with skiing and hiking in the Ravine. To do so would not only cut into limited financial resources, but could also have a limited public safety benefit—too many warning brochures and pamphlets would invariably reduce the impact of the individual warnings to the public.”

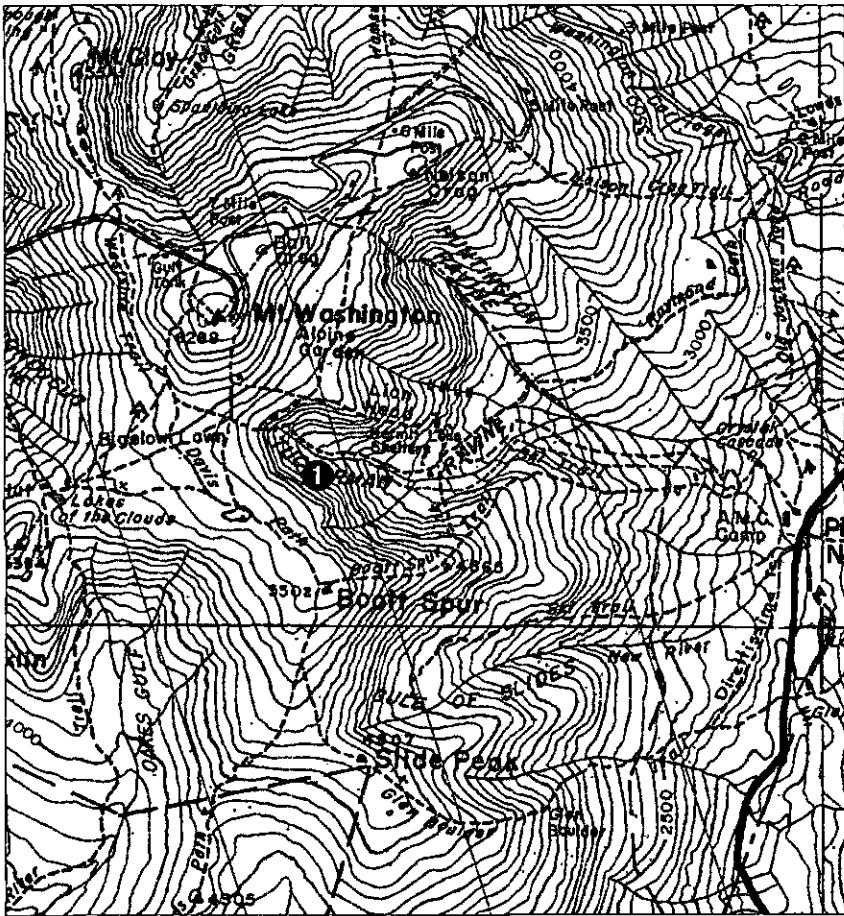
In concluding, Judge Barbadoro wrote, “I find that the defendant’s decision not to barricade or post warnings of the waterfall crevasse was a discretionary act susceptible to policy judgements and, therefore, was the type of discretionary government action Congress intended to protect. Accordingly, I find that this court lacks jurisdiction to hear Plaintiff’s claims as they are based on acts or omissions of the government which fall within the discretionary function exception to the Federal Tort Claims Act. Thus, I grant Defendant’s motion to dismiss and dismiss Plaintiff’s claims for lack of subject matter jurisdiction.”

SARAH NICHOLSON

JUNE 1994

The last Mount Washington death of the 1994 winter was in June. As the sun climbs toward summer it loosens the ice that forms on the ledges lining the ravine at the level of Schiller's Rock. It's on just such lovely days that the greatest number of skiers come up, and long practice has endowed a citizen's early warning system: when the telltale crack is heard, the cry "ICE!" goes up. Sound carries well in this vast acoustic focus, everyone hears the call, and everyone looks up the slope.

On June 4, Sarah Nicholson looked up and saw a car-sized block of ice sliding and bounding down toward her. Gravity is also on the side of the skier, and a quick escape left or right downslope almost always avoids the danger of falling ice. But this block was breaking into fragments, and it wasn't clear which way led most quickly to safety. It's a familiar sidewalk dilemma: step left or right to avoid the collision? Sarah's moment of hesitation broke the heart of her friends, and brought the list of mortality on the Presidential Range to 115.



1. Sarah Nicholson was killed by falling ice on the south side of Tuckerman Ravine

