

STALKING: EFFECTIVE STRATEGIES FOR PROSECUTORS

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INTRODUCTION

Stalking affects 6.6 million people in the United States each year.¹ Every day, stalking victims recount the fear and distress they have experienced as a result of this crime² in courtrooms throughout the country. Far too often, these victims' reports—to family, friends, and allied criminal justice providers—are taken seriously only when the stalkers escalate their behaviors and cause significant property damage, physical harm, or death to their victims. Unfortunately, the considerable gap between the real impact of stalking and the public's understanding of stalking has only widened, while advances in technology have coincided with stalkers' increased efforts to manipulate the system and avoid accountability.

Allied criminal justice professionals and others with expertise in detecting and responding to stalking crimes understand the intense anxiety suffered by stalking victims³ and the link between stalking and other violent crimes, including arson,⁴ burglary,⁵ physical assault,⁶ and homicide.⁷ Unfortunately, despite growing public awareness of the prevalence of stalking and the dangerousness posed by stalkers, there remains a lack of information and knowledge of how to identify and respond to stalking techniques that are growing with technological advances and emboldened perpetrators.⁸ Further, victims still report that the criminal justice system minimizes –or deprioritizes– stalking-related crimes when they are reported. Prosecutors and other allied professionals can employ several strategies to improve their response to these crimes. This article includes three key strategies for successful investigations and prosecutions.⁹

I. RECOGNIZE THE DANGER STALKERS POSE TO THEIR VICTIMS

Stalking frequently accompanies other intimate partner violence¹⁰ and, under certain circumstances, the combination indicates a heightened risk of lethality.¹¹ In one 2002 study, researchers noted:

Both intimate partner assault and stalking are strongly associated with lethal and near-lethal violence against women, especially when these two perpetrator behaviors occur together and the perpetrator is a former intimate. Not all stalking and threatening behaviors pose an equal threat. Following and spying on the woman, threatening messages on the victim's car, and threats to harm the children were associated with a two, four, and nine times, respectively, greater likelihood of attempted/actual femicide.¹²

Even when cases do not result in serious physical assaults or homicide, there are often serious psychological impacts on the victim that can last a lifetime. This impact can be further exacerbated if law enforcement, prosecutors, or other allied criminal justice professionals ignore or minimize the crime.

Prosecutors can educate themselves, their colleagues, and other members of the system, including judges, by identifying and familiarizing themselves with articles and studies addressing stalking and its effects. These studies can be attached to motions and serve as support for arguments in bail hearings, sentencings, or in determining whether to impose no-contact orders.

II. WORK WITH EXPERTS TO UNDERSTAND AND RESPOND TO STALKING

Laws against stalking exist in all fifty states and the District of Columbia;¹³ in some circumstances, the behavior may also violate federal law.¹⁴ One in four victims report being stalked through the use of some form of technology such as e-mail or instant messaging. Ten percent of victims report being monitored with global positioning systems (GPS), and eight percent report being monitored through video or digital cameras or listening devices.¹⁵ Stalkers use devices such as Spoof Cards¹⁶ to create a false telephone number from which to call the victim or even make it appear the victim is calling the stalker. Similarly, spoof e-mail can be used to send harassing e-mails from a false e-mail account. Computer spyware can be used to view the victim's e-mail, files, and history to further stalking behavior. Phones can also be turned on remotely by new technology and become a listening device for the stalker.

All of this technology requires increased training for police and prosecutors and increased vigilance. The use of technology to stalk is effective at masking stalkers' identities or their means of stalking and may cause the victim additional emotional distress. The inability of prosecutors and other allied professionals to recognize or understand advanced technology assists stalkers by making victims appear paranoid or untruthful. Stalkers count on this to further their aim, creating more frustration, torment, and terror in their victims. Many state police agencies and the FBI have highly trained experts on staff and the latest technological resources to assist local law enforcement in difficult investigations. Focused training, coordination, and the seeking of assistance from experts in stalking—including the Stalking Resource Center—can help arm prosecutors and other allied professionals with the skills and knowledge they need to be more successful.

III. COLLABORATE AND COORDINATE WITH OTHER ALLIED CRIMINAL JUSTICE PROFESSIONALS

Advocates: Stalking victims may experience distress from both the actual crime as well as the reactions of others to their reports. Stalking may also include a component of intimate partner violence. It is critical that prosecutors ensure that victims are connected with community advocates and other support personnel advocates provide critical support to help victims heal and continue to participate in the prosecution of their stalkers.

Law enforcement: It is also important for prosecutors to ensure that they and other allied professionals are communicating and coordinating with local, state, or federal law enforcement. Similar to crimes of intimate partner violence, stalking is often comprised of many related or connected incidents. Prosecutors and law enforcement should ask about other incidents in which the perpetrator is involved or suspected to be involved. Allied professionals should ask the victim to aid the investigation by keeping track of suspicious occurrences and maintaining any physical evidence, both real and electronic.

Prosecutors should be prepared to introduce evidence of the prior relationship when there is one and explain the meaning behind the linked incidents. If there is not enough evidence for a stalking charge, consider lesser charges of harassment, trespass, invasion of privacy, animal cruelty, violation of a protective order, or other crimes that may form the basis of a stalking charge if further behavior occurs. This evidence is also relevant at sentencing to ensure adequate punishment and monitoring is imposed that considers victim safety, as well as the safety of the victim's family and friends.

Because stalking requires a series of incidents that can cross jurisdictional borders, greater coordination and collaboration among law enforcement agencies and allied professionals can dramatically improve the criminal justice system's response to these victims with a focus on the offender's behavior. Education and training for police, prosecutors, judges, allied professionals, and the public can also improve our ability to prosecute stalkers. Traditional Coordinated Community Response Teams, consisting of police, prosecutors, advocates, and medical personnel, are a great place to begin training on stalking. Victims intersect the system at various points, whether with police or when seeking support from advocates or counselors or even a visit to a health professional. If all of these partners are trained to recognize certain behaviors as potentially related to stalking, they can provide the victim with the necessary resources and contacts to make sure the case is handled appropriately.

CONCLUSION

Stalkers represent some of the most recalcitrant criminals. They create and exploit vulnerabilities in their victims and rely on technology and their ability to manipulate the justice system in order to conceal their crimes and cast doubt on their victim. By recognizing the dangers posed by stalkers and their crimes, working with experts to understand stalkers' tactics as well as current technology, and collaborating, coordinating, and communicating with partners, allied professionals can close the gaps into which too many stalkers escape.

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ENDNOTES

¹ According to the National Intimate Partner and Sexual Violence Survey: 2010 Summary Report, "1 in 6 women and 1 in 19 men in the U.S. have experienced stalking at some point in their lives in which they felt very fearful or believed that they or someone close to them would be harmed or killed.

² Chesterfield Victim Talks About Alleged Stalking Nightmare, reported by Shelby Brown (CBS 6 Richmond Jan. 19, 2012), available at <http://www.wtvr.com/news/wtvr-local-woman-shares-story-of-alleged-stalking-20120119,0,5623446.story?track=rss>.

³ For a good discussion of the effects of stalking on victims, see D. Hall, Victims of Stalking, in *The Psychology of Stalking, Clinical and Forensic Perspectives* 115-36 (JR Melody, ed., Academic 1998); M. Pathe and P. Mullen, The Impact of Stalkers on Their Victims, 170 *British J. of Psychiatry* 12-17 (1997); see also T. Logan. & R. Walker, Civil protective order outcomes: Violations and perceptions of effectiveness, 24 *Journal of Interpersonal Violence*, 675-92 (2009).

⁴ See e.g., Carly M. Price, Suspect in Phoenix Accused in Arson, *az.central.com*, Dec. 28, 2011, <http://www.azcentral.com/community/nephoenix/articles/2011/12/28/20111228suspect-phoenix-stalking-case-accused-arson-abrk.html>.

⁵ See e.g, Bonnie L. Cook, Montco underwear thief, stalker arrested, *philly.com*, Jan. 22, 2012, http://articles.philly.com/2012-01-22/news/30653006_1_preliminary-hearing-underwear-police-in-montgomery-county.

⁶ *Supra* note 3.

⁷ Judith McFarlane, Jacquelyn C. Campbell & Kathy Watson, Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety, 20 *Behav. Sci. & L.* 51-68 (2002).

⁸ Michele C. Black, et al., National Intimate Partner and Sexual Violence Survey, 2010 Summary Report, (Nat'l Ctr. for Injury Prevention and Control), 2010 at 30.

⁹ AEquitas Attorney Advisors are available to provide technical assistance related to the prosecution of stalking cases.

¹⁰ Katrina Baum et al., Stalking Victimization in the United States, Bureau of Justice Statistics: Special Report (National Institute of Justice) Jan. 13, 2009 (concluding Three out of four stalking victims are stalked by someone they know, 30% of victims being stalked by a current or former intimate partner. Only 10% of stalking victims are stalked by a stranger).

¹¹ Judith McFarlane, Jacquelyn C. Campbell & Kathy Watson, Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety, 20 *Behav. Sci. & L.* 51-68 (2002). For a lethality assessment tool and supporting resources information see Danger Assessment, <http://www.dangerassessment.org/>.

¹² McFarlane, *supra* note 12 at 66; see also, J. C. Campbell et al., Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study, 93 *Am. J. of Pub. Health* 1089-97 (2003); see also Jacquelyn C. Campbell, Nancy Glass, Phyllis W. Sharps, Kathryn Laughon & Tina Bloom, Intimate Partner Homicide: Review and Implications of Research and Policy, 8 *Trauma Violence & Abuse* 246-69 (2007).

¹³ The Stalking Resource Center at the National Center for Victims of Crime, Stalking Facts, http://ncvc.org/src/main.aspx?dbID=DB_statistics195#what (last visited Jan. 24, 2012). A statutory compilation of each law is available upon request at www.AEquitasResource.org.

¹⁴ See 18 U.S.C. § 2261A.

¹⁵ Braum, *supra* note 11.

¹⁶ For a description of Spoof cards, see Caller Identification Information in Successor or Replacement Technologies, 2011 WL 2491520, n. 23 (Fed. Comm'n June 22, 2011).

This project was supported by Grant No. 2009-TA-AX-K024 awarded by the U.S. Department of Justice, Office on Violence Against Women (OVW). The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of OVW.