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# **Stalking Laws and Implementation Practices**

## **A National Review for Policymakers and Practitioners (Executive Summary)**

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## Notes

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## Abstract

In 1990, California enacted the first criminal law specifically directed at stalking. Since that time there has been considerable research on the dynamics of stalking, including, for example, who stalks and why stalkers stalk. However, little research has been conducted on the stalking laws themselves and how they have been implemented. The present research was conducted to fill that knowledge gap. The research examined state and federal anti-stalking laws, court decisions, social science and medical research on stalking and stalkers, and anti-stalking actions by law enforcement, prosecutor, and victim service agencies around the country. Although the researchers initially contemplated evaluating the effectiveness of the new stalking laws, that was deemed not feasible. Instead, developing a "best practices" catalogue became the study's second focus.

This report presents the findings of the multi-layered research. Key findings include these:

- *Stalking is pervasive and injurious.* It affects between 2 million and 6 million victims annually, depending on the definition of stalking used. Official recognition of stalking actions falls far below this number. This failure is significant because stalking often has serious, injurious effects on its victims.
- *Implementation of the new stalking laws is still limited.* Most law enforcement and prosecution agencies lack policies for responding to stalking complaints and do not have personnel with expertise in stalking cases. Such expertise is important because stalking is a different type of crime . It combines elements of assault, threat, harassment, intimidation, and invasion of privacy. It

occurs repeatedly and often must be investigated prospectively (by gathering evidence as stalking behaviors continue to occur after the initial complaint).

- *A number of agencies have established special stalking units or assigned specialized staff to handle stalking cases.* These efforts both demonstrate the importance of stalking case expertise and provide a model for other jurisdictions to emulate.

This report first presents findings from a review of the prior research on stalking and some original information gathering; this combination resulted in a reassessment of the significance of stalking as a policy issue for criminal justice. The review also examines stalking's definitions, prevalence, and impact on victims. Next comes an examination of criminal law, namely, the enactment of stalking laws and their reception in the courts. The report then discusses how stalking laws have been implemented, based on (1) surveys of law enforcement, prosecutor, and victim service agencies, and (2) field work with agencies having specialized anti-stalking units. The empirical findings from the field work together with a review of training and other materials used by these agencies combine to produce a "best practices" synthesis. The report concludes with recommendations for legislators, agency administrators, funders, and researchers.

Below is the Executive Summary, however, the full report and appendices are available in PDF format [.]

## **Executive Summary**

### **Stalking Case Example**

The victim worked as an office manager for a medical office. In her leisure time she became an avid participation in the sport of paint ball. She and her stalker played on the same team. She was 30 and he was 17. After a year elapsed, she began receiving telephone calls, ostensibly to discuss paint ball, which soon turned to his confiding personal problems, including suicidal depression. Within six months a campaign of harassment began, including incessant telephone calls to her apartment at all hours of the day and night. He began to appear uninvited at her apartment door, again at all hours. Actual burglaries followed. Eventually death threats were made against the victim and her daughter. There was one attempt made to force her car off the road. The victim testified no reports were initially made to the authorities because of his threats, his parents' pleas, and her concern for his welfare. Eventually, she began to complain to the police and finally swore out a warrant for stalking. At a preliminary hearing, he was released on condition that he not contact the victim.

To escape his harassment, she moved from her apartment to a new location where she shared a house with another woman. He then began appearing at her place of employment. Following his arrest for violation of his release condition, he was incarcerated. From jail, he began to make new threatening telephone calls. At a bail hearing, he was released into the custody of his attorney and ordered to enter a hospital for treatment and to have no contact with the victim. Upon release from the psychiatric treatment facility, he renewed telephoning the victim at work and at home. He even began to call her housemate when the victim took her phone off the hook. Three days later the

roommate was killed and her homicide remains unsolved. In a search of his residence following this death, a police investigation found two compositions by him stating that he despised the victim because of what she had done to him and that he wanted to destroy her without killing her. The defendant was convicted of two counts of aggravated stalking on two separate dates. *Daker v. State*, 533 S.E.2d 393 (Georgia Court of Appeals 2000).

## Introduction

In 1990, California enacted the first criminal law specifically directed at stalking. Since that time there has been considerable research on the dynamics of stalking, including, for example, who stalks and why stalkers stalk. However, little research has been conducted on the stalking laws themselves and how they have been implemented. The present research was conducted to fill that knowledge gap. The research examined state and federal anti-stalking laws, court decisions, social science and medical research on stalking and stalkers, and anti-stalking actions among by law enforcement, prosecutor, and victim service agencies around the country. Although the researchers initially contemplated evaluating the effectiveness of the new stalking laws, that was deemed not feasible. Instead, developing a "best practices" catalogue became the study's second focus.

This report presents the findings of the multi-layered research. Key findings include these:

- *Stalking is pervasive and injurious.* It affects between 2 million and 6 million victims annually, depending on the definition of stalking used. Official recognition of stalking actions falls far below this number. This failure is significant because stalking often has serious, injurious effects on its victims.
- *Implementation of the new stalking laws is still limited.* Most law enforcement and prosecution agencies lack policies for responding to stalking complaints and do not have personnel with expertise in stalking cases. Such expertise is important because stalking is a different type of crime. It combines elements of assault, threat, harassment, intimidation, and invasion of privacy. It occurs repeatedly and often must be investigated prospectively (by gathering evidence as stalking behaviors continue to occur after the initial complaint).
- *A number of agencies have established special stalking units or assigned specialized staff to handle stalking cases.* These efforts both demonstrate the importance of stalking case expertise and provide a model for other jurisdictions to emulate.

This report first presents findings from a review of the prior research on stalking and some original information gathering; this combination resulted in a reassessment of the significance of stalking as a policy issue for criminal justice. The review also examines stalking's definitions, prevalence, and impact on victims. Next comes an examination of criminal law, namely, the enactment of stalking laws and their reception in the courts. The report then discusses how stalking laws have been implemented, based on (1) surveys of law enforcement, prosecutor, and victim service agencies, and (2) field work with agencies having specialized anti-stalking units. The empirical findings from the field work together with a review of training and other materials used by these agencies combine to produce a "best practices" synthesis. The report concludes with recommendations for legislators, agency administrators, funders, and researchers.

## What Is Known About Stalking: Prior Research in Perspective

### What Is Stalking?

Stalking is a crime of terror. It is one part threat and one part waiting for the threat to be carried out. The stalking victim has no way to resolve the threat and terror that she feels. (Most reported cases involve male stalkers and female victims.)

Confusion about what constitutes stalking is common. "Stalking" in everyday usage refers to predatory behavior, such as a lion stalking a zebra or a hunter stalking a lion. The criminal law requires that the stalking victim be both aware of and frightened by the predatory behavior. Most state penal codes define stalking as involving the following three elements:

- A pattern of willful or intentional harassing, annoying, or alarming conduct, such as repeat messages, following, vandalism, and other unwanted behaviors
- Infliction of credible explicit or implicit threats against a victim's safety or that of her family
- Actual and reasonable victim fear of the stalker resulting from this behavior <sup>1</sup>

Stalking behaviors have different motivations and take differing shapes. One researcher summarized the current thought by categorizing stalking into four different types:

- Courtship (e.g., letters, calls, and personal meetings expressing love and saying "we can work things out," along with flowers or other gifts)
- Vandalizing
- Symbolic violence (e.g., breaking into home, vandalism, property theft, or leaving penal code provision number for murder on victim's pager)
- Physical violence. <sup>2</sup>

Separating these three crime elements is not always simple. Many, if not most, stalking threats are implicit rather than explicit. They take their threatening character from the stalking context, i.e., the past history between the stalker and victim, as well as from the stalking behavior itself. The victim's fear comes from the special understanding of what the stalking behavior implies in light of the known past (e.g., stalker had won medals as a military sharpshooter, thus adding emphasis to his display of rifle bullets to the victim).

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<sup>1</sup>Actual victim fear is the most problematic of these three definitional elements. A few states omit this component of stalking in their anti-stalking laws, while others provide for two crime levels of stalking, only the more serious of which contains fear as a crime element.

<sup>2</sup>Jennifer Dunn, "Courting Disaster: Intimate Stalking, Victimization, and the Law," (n.d.), unpublished paper on file with Sacramento County (California) District Attorney's Office.

## How Important Is Stalking?

Stalking's prevalence and impact on victims make it a significant policy issue. The crime is far more common than most people, including criminal justice professionals, believe. Further, the victim's stress and psychological, emotional, physical, and financial injuries can be debilitating. Those two points make stalking an important policy issue for the criminal justice system, for agencies providing services to victims of crime, and for advocates concerned about violence against women.

### *Prevalence of Stalking*

Official recognition of stalking prevalence lags far behind that indicated by victimization studies. The victimization studies also present a clearer picture of who is being stalked than was previously available from anecdotal reports.

### *Victim Studies*

Recent research in the United States and Great Britain shows an incidence of stalking far beyond that previously thought, with as many as 2 million cases annually in the U.S. alone. The National Violence Against Women Survey, based on telephone interviews in 1995 with 8,000 men and 8,000 women, estimated that over 1 million women and 370,000 men had been stalked in the previous year. The study also estimated that over 10 million men and women had been stalked at least once in their lifetime.<sup>3</sup> Other studies suggest an even higher number of stalking victims. A study by the Louisiana Office of Public Health found that 15 percent of Louisiana women interviewed had been stalked at least once in their lifetime, nearly twice the rate found in the national survey.<sup>4</sup> A study of stalking of college women found that 13.1 percent of the women interviewed perceived that they had been stalked during the school year in which the survey was conducted.<sup>5</sup> Most significantly, using computer technology to reduce victim embarrassment at reporting crime, the 1998 British Crime Survey found between 550,000 and 900,000 persons stalked in the preceding year, or 2.9 percent of the British population.<sup>6</sup> Application of a lesser, "no victim fear" definition of stalking (in which the stalker nevertheless *seeks* to instill fear) also used by both the U.S. and British surveys expands the number of estimated stalking cases to 6 million annually.

### *Official Statistics*

Official statistics do not match these estimates, suggesting a significant undercounting problem. Most states do not report stalking crimes at all or limit their statistics to stalking as a variant of

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<sup>3</sup>Patricia Tjaden and Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, NATIONAL INSTITUTE OF JUSTICE/CENTERS FOR DISEASE CONTROL AND PREVENTION: RESEARCH IN BRIEF 3 (April 1998).

<sup>4</sup>Prevalence and Health Consequences of Stalking in Louisiana, 1998-1999, 49 MORBIDITY AND MORTALITY WEEKLY, REPORT 653 (2000).

<sup>5</sup>Bonnie S. Fisher, Francis T. Cullen & Michael G. Turner, *The Sexual Victimization of College Women* (2000).

<sup>6</sup>Tracey Budd & Joanna Mattinson, *The Extent and Nature of Stalking: Findings from the British Crime Survey 9*, 13-14 (2000) (Home Office Research Study 210); Home Office Research, Development, and Statistics Directorate, *Research Findings No. 129: Stalking Findings from the 1998 British Crime Survey* (2000).

domestic violence. A few states tally civil protection orders against stalking. Extrapolating from even the highest of these official data sources does not come close to the victimization survey estimates.

### *Who Is Stalked*

Research also shows that stalking victims and perpetrators come from all populations—all races, ages, and socioeconomic classes. One population unusually subject to stalking is battered women separated from their batterers. Indeed, it is homicide and stalking against that group that led to many states' stalking laws.

Prior research, anecdotal reports from practitioners, and court opinions in stalking cases suggest that relationships between stalkers and victims can be categorized as follows:

- No prior relationship
- Acquaintance relationship
- Dating relationship
- Prior marriage/intimate relationship.

A rough estimate suggests that stalking involving prior spouses and dating relationships makes up slightly more than two-thirds of all stalking. Acquaintance stalking constitutes 20 percent of stalking; stranger stalking is relatively uncommon, making up less than 5 percent of all stalking cases. The remainder of the cases involve unknown relationships or false allegations of stalking.

### *Stalking's Effects on Victims*

Not surprisingly, the impact of stalking on its victims varies according to the type and duration of stalking behavior. Respondents to the National Violence Against Women Survey identified several stalking behaviors:

- Surveillance (e.g., following, driving by the home, calling employers) to send a "message"), spying, standing outside the victim's house (82 percent)
- Making unwanted phone calls (61 percent)
- Sending unwanted letters or gifts (33 percent)
- Destruction of property (33 percent)
- Threatening to kill a family pet (9 percent).

Two examples of stalking behavior follow.

- In *People v. Allen*, the defendant and victim had had a two- or three-year dating relationship that had ended. On January 12, 1992, defendant threatened victim with two screwdrivers while she was walking to a friend's house. On March 8, 1992, defendant entered victim's apartment while she was taking a shower and hit her, creating a gash over her eyebrow. He then fled. Later the same evening, victim saw defendant outside her mother's house where she had gone. He loudly stated that he had torn up victim's clothing and apartment and threatened to throw a Molotov cocktail at her mother's house. When victim returned to her apartment that evening it was indeed severely vandalized, -holes in the walls, sink pulled out of the wall, and faucets pulled out of the sink. The sliding door to her bedroom was broken, as were her bedroom set and dresser. All her clothes were gone. On July 24, victim was at a friend's house resting. She woke up at 1 pm to find defendant beating on her; her face was swollen and her eye protruding. On October 25, 1992, victim's mother saw defendant outside her home, riding a bicycle. He came and went four times. Defendant then threatened to kill both the victim and her mother, pointing a handgun at the mother. Defendant was arrested for stalking and terroristic threats.<sup>7</sup>
- In *State v. Cartwright*, the defendant and victim began having marital problems in August 1997 after defendant accused victim of having affairs with coworkers and friends. Defendant's accusations and threats were followed by apologies, reducing victim's fears. After accusing victim of an affair with her girlfriend, defendant spray-painted victim's van with the word "fag." Victim fled to her parents' house and obtained a court order of protection. Defendant began parking across the street from the house in his truck, in which he also slept at night. Soon thereafter he entered the house and stole some of victim's jewelry. He next stole a cellular phone out of victim's van; he was arrested for theft and violation of the court order. Defendant later made reports to the Division of Family Services and to the victim's employer that the victim was selling company secrets. After victim filed for a divorce, defendant apologized, offering gifts and excuses (that his medication was at fault). The accusations began anew when another girlfriend slept over. Once, after victim let defendant shower in the house, she found listening devices in the kitchen, her bedroom, and the spare bedroom. Another recording device was found later in the garage, taped into victim's phone. Still more recording devices were found even later. In October, defendant began following victim to work, calling her on her cell phone, and stopping his car in the middle of the road outside her workplace and screaming, "I love you." Defendant also moved into a building near victim's house to allow him to "go outside and scream I love you, Laura." Defendant next threatened to buy guns when victim refused to give him access to his gun collection at the marital household. At a child visitation exchange, defendant posted a note on victim's car saying, "I am the ax murderer. If you fuck with me one more time, I will kill you." At Christmas victim found defendant in her basement and called 911. Police discovered he had been there listening to her through the heating vents. Later victim found her nightgown shredded with a knife in the basement. Defendant was arrested for stalking.<sup>8</sup>

One-third of the National Violence Against Women Survey respondents said they were stalked for a year, 10 percent for more than five years. Victims who had been intimate partners with their stalkers were far more likely to have been victims of domestic violence than women in the general

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<sup>7</sup>*People v. Allen*, 40 Cal. Rptr.2d 7 (Cal. App. Ct. 1995).

<sup>8</sup>*State v. Cartwright*, 17 S.W.3d 149 (Mo. Ct. App. 2000).

population. This survey also found evidence of significant impacts on the mental health of victims. One-third of the female victims and one-fifth of the male victims sought psychological counseling. These victims were far more concerned than other victims about their personal safety (42 percent vs. 24 percent) and more likely to carry something with which to defend themselves (45 percent vs. 29 percent). Over a quarter of stalking victims reported time lost from work due to the stalking (average time lost was 11 days); 7 percent said they had never returned to work. Other self-protection measures taken by stalking victims included purchasing a gun (17 percent), changing address (11 percent), moving out of town (11 percent), and varying their driving habits (5 percent).

## The Criminal Law Response

### State Stalking Laws

In response to stalking, several types of anti-stalking laws have been adopted. These include, criminal laws, civil laws authorizing orders of protection against stalking, related criminal laws (e.g., harassment), and related criminal procedure laws. Courts have generally upheld the constitutionality of those laws and have often interpreted the laws in ways that fill in gaps in the laws' language.

#### *Criminal Stalking Laws*

All 50 states and the District of Columbia have enacted criminal laws directed at stalking, the last being New York in 1999. Federal law also makes interstate stalking a crime; this is especially important for cyberstalking, which necessarily involves an interstate commerce instrument, the Internet. Stalking laws in several states lack "teeth." In only 12 states is stalking always a felony. In 25 states, stalking may be a felony, depending upon circumstances. In the other 13 states, only a repeat stalking offense is a felony. The problem of insufficient penalties is compounded in most states by a failure to coordinate stalking laws with related laws such as harassment, terroristic threats, and invasion of privacy. A further problem is many laws' absence of explicit language specifying that stalking can be committed while the stalker is incarcerated.

#### **Exhibit 1. Criminal Stalking Laws: Felony\* or Misdemeanor Penalties**

**Table 1. Exhibit 1. Criminal Stalking Laws: Felony\* or Misdemeanor Penalties**

State	Felony-1st Offense	Felony or Misdemeanor-1st Offense	Misdemeanor-1st Offense	Felony-2nd Offense	Felony-3rd Offense
AL	X				
AK		X			
AR	X				
AZ	X				
CA		X			

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State	Felony-1st Offense	Felony or Misdemeanor-1st Offense	Misdemeanor-1st Offense	Felony-2nd Offense	Felony-3rd Offense
CO	X				
CT		X			
DE	X				
DC			X	X	
FL		X			
GA		X		X	
HI			X	X	
ID			X	X	
IL	X				
IN	X				
IA		X			
KS	X				
KY		X			
LA		X		X	
ME			X		X
MD	X				
MA	X				
MI		X		X	
MN		X			
MS			X	X	
MO		X		X	
MT			X	X	
NE			X	X	
NV		X		X	
NH			X	X	
NJ		X		X	
NM		X		X	
NY		X			
NC			X	X	
ND		X		X	
OH		X		X	

Stalking Laws and Implementation Practices

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State	Felony-1st Offense	Felony or Misdemeanor-1st Offense	Misdemeanor-1st Offense	Felony-2nd Offense	Felony-3rd Offense
OK		X		X	
OR			X	X	
PA		X		X	
RI			X	X	
SC		X		X	
SD		X		X	
TN			X	X	
TX	X				
UT		X		X	
VT	X				
VA			X		X
WA		X		X	
WV			X		X
WI		X		X	
WY		X		X	
US	X				

As used in the Model Penal Code and federal law, "felony" here means any offense for which the authorized sentence includes a term of incarceration of at least one year and a day.

**Civil Stalking Laws**

A significant number of states have no civil law protections to complement state criminal laws that make stalking a crime. While all states provide civil protection orders against domestic violence, only 29 states now authorize protective orders against stalking. In 24 of those states, violating a protective order is a crime (a felony in 9 states), and in two states it constitutes criminal contempt of court. Repeat stalking in violation of a protective court order may increase the offense level of the criminal offense to aggravated stalking (a felony) or may itself be a felony (as is the case in five states). Other civil law protections provided by only a few states include authorizing civil commitment upon completion of a prison sentence where stalking results from serious mental illness. Another civil stalking law requires statewide registration of stalking orders, often using the same mechanism as that used by the state registry used for domestic violence orders.

**Related Criminal Laws**

Other criminal laws supplement the stalking laws in cases that do not fit the statutory definition of stalking but in which victims' privacy and safety is are still threatened. Related crimes include harassment, terroristic threats, and invasion of privacy. Stalking is not the same as a terroristic threat. In stalking, both the threat and victim fear result from a *series* of acts, and the threat is for a future act. With a terroristic threat, a single act can constitute the threat, the threat must be one of imminent behavior, and the perpetrator, in most states, must have the capacity to act on the threat. Harassment laws include simple harassment (25 states) and telephone harassment or threats (43 states). Letter threat laws have been enacted in 20 states. The federal government has also enacted laws criminalizing interstate threats or harassment using the mail or electronic communications (including telephone).

### **Criminal Procedure Laws**

Only a few states' laws provide criminal procedure provisions that enhance the enforcement of the state for stalking laws to the degree that such laws exist with respect to comparable to those for domestic violence. In only 10 states where stalking can be a misdemeanor does state law authorize warrantless arrest for stalking, similar to that authorized for misdemeanor domestic violence (50 states). In the 11 states where stalking is always a felony, warrantless arrest is, of course, authorized where probable cause exists. State laws also fail to provide for mandatory training on stalking for law enforcement officers except in two states. In contrast, 30 states have laws requiring law enforcement training on domestic violence.

### **Court Decisions**

Stalking laws have generated over 200 reported cases. Issues similar to those raised in stalking cases have been seen in over 300 cases involving harassment and threat laws. Courts construing stalking statutes have often drawn upon cases involving similar offenses, especially those criminalizing harassment and threats. These laws not only deal with related behavior, they also use almost identical terms and phrases (e.g., "annoy" and "repeatedly"). This review identified 548 state and federal stalking and related cases.

### ***Constitutional Challenges***

In the few instances where state stalking or related laws have been struck down as unconstitutional, the statute typically did not require specific intent, either to create fear or to perform the acts that resulted in victim fear. Double jeopardy (in the law's application) was another common challenge, most often where there had been a previous finding of contempt of court. Harassment laws that lack any "fighting words" restriction were most vulnerable to constitutional challenge. Telephone harassment and threat laws (directed at invasions of privacy) were not required to have such a limitation because such laws commonly focus on the caller's intent to harass or threaten, rather than on the victim's response to those messages. Harassment and threat laws also apply to situations where a third-party intermediary to the communication is the one who informs the victim of the threat or harassing communication.

### *Statutory Construction*

In interpreting the scope of stalking laws, courts commonly must (1) deal with defining the type of criminal intent needed to commit stalking and (2) address cyberstalking. Statutory interpretation of threat laws has led some courts to equate victim's reasonable fear with reckless behavior of the offender. Hence, specific intent to create fear is not required under this interpretation, merely a general intent to do acts constituting reckless behavior, such that intent can be legally imputed ("should have known" analysis). By and large, most stalking statutes are written sufficiently broadly (e.g., "pattern of behavior") to cover cyberstalking. In a few instances, however, the language so specifically describes stalking that a court cannot under the generally accepted rules of statutory construction add cyberstalking to the statutory definition.

### **Continuing Legislative Action**

State legislators are continually amending their anti-stalking laws, usually to increase penalties for stalking, although a few states have amended their laws because of court rulings. In toto, 37 state legislative bodies enacted stalking-related laws in the period 1998-2000.

It should also be noted that many laws directed at helping victims of domestic violence may also be applicable to stalking. For example, laws providing for full faith and credit to out-of-state protective orders may apply either to orders prohibiting stalking as an element of domestic violence or to anti-stalking orders themselves. Similarly, laws providing for address confidentiality for domestic violence victims may be used by stalking victims if the stalker is a former domestic partner.

It is striking, however, that only a few enactments were directed at the inadequacy of stalking penalties provided. Further, few state legislators enacted laws on stalking-related civil protection orders and their enforcement, arrests without warrants, or training requirements for law enforcement and prosecution. Perhaps not surprisingly, since it was the first state to enact a stalking law, California has the broadest set of anti-stalking laws, including felony penalties, warrantless arrest, civil orders of protection, and stalking training availability. California has also stressed stalking laws' implementation, especially through its use of federal STOP<sup>9</sup> funds under the Violence Against Women Act.

Where stalking laws have been passed but not implemented, any defects the laws may possess have no chance to surface, so advocates tend to press more for implementation than amendments. In states where stalking laws were passed in reaction to specific incidents, there may be an inclination to think the "problem" is fixed. Advocates for legislative action may well find it difficult to convince legislators otherwise in the absence either of new horror stories or of empirical data showing that the problem has not been fixed.

### **Implementation of Stalking Laws**

The second goal of this research was to assess how the stalking laws are being implemented in the 50 states. To do so, the research first surveyed law enforcement and prosecution agencies to

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<sup>9</sup>Services, Training, Officers, and Prosecution (STOP).

identify what anti-stalking actions they had implemented. A separate survey of STOP funding offices sought to identify additional anti-stalking initiatives, including those providing victim services. Second, as a surrogate for effectiveness, the research looked at how well the stalking laws have been implemented. While it would have been preferable to directly measure the effects of the new stalking laws, that could not be done because of these factors:

- Absence of any legislative consensus on what a stalking law should be like and what behaviors it should criminalize
- Lack of uniformity in implementing stalking laws across and within states
- Absence of agreement on quantitative performance measures for evaluating stalking laws' effectiveness.

Instead, the research documented "best practices" among aggressive anti-stalking practitioners. Field studies were conducted in eight sites: three prosecutor offices, three law enforcement agencies, one combined enforcement and prosecution unit, and one victim services agency.

### **National Surveys of Law enforcement and Prosecution Offices**

To determine how thoroughly the new anti-stalking laws have been implemented, the research conducted two national surveys, in 1998 and in 2000, of law enforcement agencies (204 agencies) and prosecutors (222 offices) in cities and counties of greater than 250,000 population. The surveys asked what special efforts the agencies had undertaken against stalking, including special units, training, or written policies and procedures. The 1998 survey had a response rate of over 80 percent.<sup>10</sup> Its' principal findings include the following:

- All but seven of the law enforcement agencies assign stalking cases to their detective unit, to a specialized unit (usually the domestic violence unit), or to a combination of crimes-against-persons and domestic violence investigators. Only one law enforcement agency had a specialized stalking unit.
- Most prosecution offices assign stalking cases to the domestic violence unit.
- Stalking training for law enforcement recruits is typically part of domestic violence training. Over one-third of the law enforcement respondents provide no in-service stalking training to their officers. Slightly more than half reported that in-service training on stalking is provided to all detectives or to special unit detectives.
- Most prosecutor offices (82 percent) provide some training on stalking, but over one-third limit their in-service training to special unit prosecutors.
- Fifty-seven percent of law enforcement agencies and 50 percent of prosecutor offices have written policies and procedures for handling stalking cases, most often as part of their domestic violence protocols.

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<sup>10</sup>One hundred-sixty nine law enforcement agencies (of 204) responded to the survey, as did 173 prosecutors (of 222).

The 2000 survey had a slightly higher response rate (82 percent).<sup>11</sup> Because many different agencies responded to the two surveys, direct comparisons between the two surveys' findings can be misleading. Nonetheless, taken at face value, the 2000 survey of practitioners showed only a slight increase in specialization and little change in training. The conclusion that comes from these surveys is twofold:

- There is increased awareness among law enforcement and prosecutors of the significance of stalking crimes. To some degree, prosecutors have been better able than law enforcement agencies to develop staff expertise with stalking cases.
- Much more needs to be done by law enforcement and prosecutors. Only a small number of agencies have staff dedicated to stalking case investigation and prosecution. Training on stalking issues is badly lacking. A significant number of agencies equate stalking with domestic violence, failing to recognize that acquaintance and stranger stalking is common.

A telephone survey of STOP state funding offices was conducted to identify agencies receiving grants for anti-stalking initiatives. STOP officials in 16 states were able to identify 38 grantees who had initiated anti-stalking projects; subsequent telephone calls verified that these grantees indeed had anti-stalking projects. Seven law enforcement agencies, nine prosecutor offices, and twelve victim services agencies verified anti-stalking projects, e.g., specialized personnel. Ten other projects used their funds to develop stalking training programs or protocol development projects.

### **Best Practices**

In lieu of conducting impact or process evaluations of anti-stalking projects, the research focused on identifying agency "best practices." Field observations, interviews, informal focus groups, and review of training materials were the primary research tools. Conclusions about a best practice consensus also took into account differences in the applicable law and the different types of stalking cases referenced (i.e., what one does with low threat stalking cases differs from actions in high threat cases). Albeit subjective in nature, the major findings from the field work with specialized anti-stalking units can be summarized as follows:

- Special stalking units develop the necessary expertise in identifying, investigating, and prosecuting stalking crimes by working ongoing crimes.
- Special unit staff are highly qualified and motivated, often working unpaid overtime to handle both their caseload and community education and training.
- Failure of other agency personnel to identify stalking behavior is a continuing problem. All special units devote considerable resources to training other criminal justice personnel and educating the community.
- Special units have become highly expert at investigating and prosecuting stalking cases and helping victims. Their many new practices provide models for other agencies to copy and use.

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<sup>11</sup>One hundred fifty-two (of 204) law enforcement and 174 (of 224) prosecutor agencies responded to the 2000 survey.

Unit expertise is critical for several reasons:

- A victim's report of a single incident may not reveal a pattern of stalking. Investigators must probe further to clarify the scope of the problem.
- Most crime investigations deal with past crimes. Stalking is a prospective or future-looking crime. Hence, proof of stalking behaviors must come from future as well as past actions of the stalker.
- The victim's testimony is usually not enough to prove stalking. Corroboration is needed. Yet, because the victim is often alone when stalking occurs, direct corroboration may not be available. Hence, law enforcement is often dependent on the victim for much evidence collection.
- Corroboration is also needed to prove the victim's state of mind, i.e., actual fear. Investigators must develop evidence that, for example, the victim asked others for help in dealing with the stalker, had coworkers screen calls, changed her telephone number, and so on.
- Threat assessment and management to protect victim safety are parallel concerns. During investigation and prosecution, officials must ensure victim safety.
- Stalking cases do not necessarily end upon conviction. Stalkers may continue their stalking behaviors while on probation and even while incarcerated.

The key finding from the field work is the need for specialized units that make possible a different relationship between the victim and the investigator or prosecutor. Stalking cases last a long time and rely on the victim for important evidence gathering. Those factors require a relationship between the agency staff and the victim. Such relationships benefit both parties: the victim knows whom to call when a problem occurs, and the agency obtains increased victim cooperation in evidence gathering and testimony. One agency policy that fosters victim-staff relationships assigns a single investigator or prosecutor to handle all aspects of the case. However, unitary or vertical case assignment means that the investigator or prosecutor must be able to respond to a victim's stalking call at all times. Many incidents may be handled by telephone, but some require an on-scene presence. A second management concern is the unusually high demand for staff overtime to handle victim calls for assistance or evidence collection (e.g., from stakeouts). A third management issue is staff caseloads. Stalking cases are labor-intensive because they last so long. The research also found general agreement among the specialized anti-stalking staff and units about how stalking cases should be handled. They made recommendations on stalking investigation and prosecution, appropriate sentencing and supervision, and techniques for enhanced victim safety.

### *Investigation of Stalking Cases*

The primary issue for investigation of stalking cases is understanding how those cases differ from other types of personal crimes. That understanding begins with examining the key factors that underlie stalking cases: stalker-victim relationship, stalker motivation, psychiatric issues, and how those factors combine to threaten the victim. Victim behavior in stalking cases may seem inconsistent to a naive investigator, but understanding why victims act as they do is critical to an investigation.

**Typologies of Stalking** . Practitioners have worked with academic researchers to develop shorthand typologies for understanding stalking dynamics. The factors that most typologies consider are summarized in the following table.

**Table 2. Stalking Typologies Summary**

Prior Relationship	Motivation	Psychiatric Diagnosis	Other Issues
Past Intimates	Intimacy restoration Revenge/control (jealousy common)	Personality disorder	Motivation changeable over time Prior domestic violence
Acquaintances or Friends	Intimacy seeking Revenge Sexual conquest	Personality disorder Social incompetent Psychotic predator	Danger to third party
Stranger	Intimacy seeking Identity/fame	Psychotic/delusional Erotomania	Danger to third party
Unknown	Attention seeking (false victimization) White knight Other	No pattern reported	

Case investigation may use these typologies in a number of ways. For example, informal intervention without arrest or evidence collection may be most successful with stalkers characterized as "incompetents," i.e., acquaintances or strangers who do not know how to engage in dating behaviors.<sup>12</sup> Incompetents are also least likely to engage in extended stalking, to abuse drugs or alcohol, or to have prior criminal records. They also typically engage in relatively simple stalking (compared to "past intimate" stalkers, who engage in many more types of stalking behavior). Hence, informal intervention may be successful with many incompetent stalkers. By contrast, while predator stalkers have background characteristics similar to incompetents, predators are three times more likely to have a prior criminal record. For those stalkers, formal criminal law intervention is imperative.

**Victim Behaviors** . Stalking investigators often rely on victims for information about prior relationships, third-party witnesses, detailed chronology, any past or pending legal action, etc. The most common innovation is to ask the victim to keep a log of all stalking incidents and to retain any corroborating evidence. Investigators should bear in mind that because stalking investigations are time-consuming, victims may stop reporting stalker contacts or incidents. That does not mean victims are uninterested in having stalkers arrested; they may simply be fatigued.

Investigators also must take victim behavior into account. Research has found that the stress from being stalked may lead victims to attempt to placate the stalker and thus end the stalking. This "compliance" response can include recanting, asking that the case be dismissed, visiting the stalker

<sup>12</sup>Depending on the specifics of state law, stalking behaviors conducted by incompetents may be more akin to harassment than stalking. The concern in these cases is to intervene before they escalate to more serious behavior.

in jail, going places with the stalker, and continuing to have sex with the stalker.<sup>13</sup> Obviously, compliance behavior can complicate case outcomes by making it harder to prove that the victim is fearful of the stalker.

**Investigative Guidelines** . Investigation of a stalking complaint should first seek to determine whether the victim is in danger. Doing so requires obtaining the following types of information about the stalker:

- History of violence, especially domestic violence
- Violations of court orders
- Tendency toward emotional outbursts or rage
- Homicidal or suicidal behavior or threats
- Major stress, such as loss of employment
- History of extreme jealousy
- History of mental illness
- Substance abuse problems
- Prior refusal to application for firearm license
- Victim's perceptions of personal safety (and rationale for that assessment)

**Evidence Collection** . The next step in the investigation is collection of evidence that stalking has occurred and determining or proving who the stalker is. Investigators can use techniques from other kinds of investigations, but additional steps, such as personal and mechanical or electronic surveillance, are often necessary. Physical evidence specified in search warrants goes beyond the usual targets to include such items as the following:

- Books and other writings on stalking techniques
- Photos of victim (if non-intimate stalker)
- Photos or diagrams of victim's home or place of work
- Diary or log of stalking kept by stalker
- Personal items belonging to victim
- Keys to victim's home or car

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<sup>13</sup>Jennifer Dunn, *Courting Disaster: Intimate Stalking, Victimization, and the Law* (n.d.) (unpublished paper on file with Sacramento County (Cal.) District Attorney's Office).

- Equipment that might have been used to stalk victim, such as camera or binoculars.

When it is deemed safe to do so, investigators may interview the stalker, telling him that his behaviors are unacceptable. Among other things, such an interview supports the argument that any later acts are "knowingly done," a critical element of the crime in many states. It also gives the alleged stalker an opportunity to "explain" how his actions may have been misinterpreted, thereby often providing critical admissions. Needless to say, in interviewing stalkers it is important to remember their tendency to "deny, minimize, and rationalize" their stalking behaviors."<sup>14</sup>

### *Prosecution*

When a suspect is arrested and the case is referred to the prosecutor, the arresting officer should summarize key elements of the case, including these:

- Stalking behavior (description)
- Why victim is fearful
- What changes the victim made in response to fear (e.g., moved or took self-defense course)
- Evidence of intent to stalk or recklessness regarding victim fear.

The law enforcement summary is especially important in bail hearings, which can occur at a point when the prosecutor usually has not had time to become familiar with the case.

**Bail/Release on Recognizance** . Routine bail should never be granted where the threat of violence has been the basis for arrest. In appropriate cases, preventive detention or referral to psychiatric evaluation may be requested. In other cases, intensive pretrial supervision may be needed, including electronic monitoring. The court should also be asked to issue a no-contact order, specific to the facts of the case, forbidding the suspect from engaging in any stalking behaviors. The prosecutor should also seek to ensure that if bail is denied, the victim will be notified by the jail when the stalker is later released. To support objections to release, the prosecutor may use evidence of the accused's history of violating court orders or probation, threat assessment findings, and testimony from a mental health expert or an experienced detective.

**Additional Information Collection** . Because the victim's story is the heart of the prosecution, it is critical that that story be as complete as possible. Law enforcement investigations may not have gone beyond what was necessary to establish probable cause for arrest. Therefore, prosecutors should re-interview the victim early in the process. Several points should guide the interview:

- The victim may have difficulty remembering every stalking incident, may feel that some incidents are not important, or may believe that the prosecutor will discount the significance of certain events. Patient discussion with the victim can bring those incidents out.

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<sup>14</sup>Paul Mullen, Michele Pathe & Rosemary Purcell, *Stalkers and Their Victims* 282 (2000).

- The victim may be embarrassed or feel partly to blame for the stalker's conduct. Questioning should never minimize the seriousness of the stalking or ask the victim what she did to bring on the stalking.
- The victim may be reluctant to admit her fear. The reason may be cultural or personal. Admitting fear may make the fear more real and may constitute an acknowledgment that the stalker has succeeded in intimidating the victim. Some victims may conceal their fear simply out of self-control.

The initial interview is the first time prosecutors have an opportunity to become directly involved in protecting the victim's safety, which is the paramount issue. Hence, they should consider making a victim advocate or counselor available, or even having such a person present during the interview. The advocate or counselor should discuss safety planning issues and make any necessary referrals to community services. Prosecutors may also, at this point, become involved with the victim's civil court efforts to obtain a stalking protective order.

**Case Filing** . The prosecutor may decide to charge all stalking acts as one crime or charge multiple series of acts as separate crimes. The former approach shows the full extent of the stalking; the latter increases the defendant's sentencing exposure. The prosecutor must also decide what non-stalking charges to file, including felonies (rape, aggravated assault, residential burglary) and misdemeanors (criminal mischief, trespassing). The charges may also include violation of protection orders or probation conditions.

**Proving the Case** . Because stalking statutes typically include reasonable victim fear as an element, stalking is one of a very few crimes where the victim's state of mind is an element of proof. Hence, evidence will be required to prove that the victim was indeed fearful and had a reasonable basis for being afraid. Proof of reasonable fear begins with the victim's testimony, which must also be corroborated by other evidence. This can include records of the victim's calls for help, friends and coworkers' testimony of changed behavior, answering machine tapes, date- and time-stamped pictures of the defendant, and evidence obtained through search warrants.

The victim can also detail the time and effort expended in keeping safe, such as the time involved in filing for civil protection orders and the number of trips required. Such detail is intended to lead the jury to infer that the fear described was a major motivator for such extraordinary efforts. In addition, the prosecutor can call on expert witnesses to explain that stalking has occurred and that the victim was fearful. Thus, a psychiatrist, psychologist, or other treatment expert may be used to prove both the reasonableness of the victim's fear and its reality. Behavior seemingly inconsistent with being a victim can be shown to be a common adaptive response to the stress of being stalked for a long period.

Stalker intent may be the hardest fact to prove. Some state laws require proof of specific intent to stalk and terrorize the victim; others merely require a general intent to do acts that result in terror and fear. One common method for proving general intent is to show that the stalker was informed by the victim, a law enforcement agency, or even the court of both the victim's desire to have the stalking behaviors end and the negative impacts those behaviors have had on the victim.

Finally, although most stalkers do not testify at trial, when they do, adroit cross-examination can make the stalker the best witness for the prosecution. Cross-examination should focus on getting the stalker to acknowledge committing the various behaviors that make up the stalking. In some cases, the prosecution may simply let the stalker talk; his "explanations" may make the jury as fearful as the victim. In other cases, stalker "explanations" should be cut off, since they are often clever and manipulative, and if even one juror accepts the explanation, the result may be a hung jury. One reason defense counsel may permit the stalker to testify is to show that his claimed mental illness negates the necessary specific intent requirement of many states' stalking laws. In that case, prosecutors should press the defendant to acknowledge the length of time over which the stalking occurred and the complexities of the behavior involved (e.g., tracking the victim). The prosecution should also point out on cross-examination that the defendant was otherwise fully functional (e.g., he works, drives without accidents, etc.). This dual approach shows that the planning that went into the stalking is inconsistent with any serious mental defect that could undercut specific intent.

### *Sentencing and Supervision*

In many stalking cases, the threat to the victim is so great that the sentencing recommendation is self-evident: incarceration for as long as possible. Where probation is a viable option because the threat is not as great, the prosecution will want probation conditions that promote victim safety. These may include intensive supervision, electronic monitoring, and no-contact orders, violation of which will result in revocation of probation.

**Prosecutor Follow-Up** . Whether the stalker has been incarcerated or placed on probation, prosecutors will want to maintain periodic contact with the victim to determine whether any new incidents of stalking have occurred. One of the unique features of stalking is that incarceration does not necessarily end it. Inmates may call or send letters to the victim directly or through third parties, or they may ask released inmates to continue their stalking efforts. Furthermore, sentences eventually end. Prosecutor contacts with the victim during the incarceration period reassure the victim that there is someone to go to if the stalking resumes after the stalker's release.

**Probation Specialization** . Where possible, intensive probation supervision should be handled by a probation officer experienced in dealing with stalkers because stalkers are generally a "better" class of criminal, with relatively higher intelligence and education than most offenders. The very nature of stalking, moreover, is one of manipulation. Stalkers use their intelligence and often pleasing personalities to direct the probation supervision in ways that undermine its effectiveness.

### *Victim Safety and Well-Being*

**Victim Safety Management** . The most important question in a stalking case is, "How dangerous is the stalker to the victim?" Protecting the victim is a higher priority than a successful prosecution. Hence, both law enforcement and prosecution will try to assess the degree of danger that exists both at the initial complaint and as the case continues.

Once the threat is assessed, the question arises as to how best to protect the victim. In some cases, a simple intervention or warning interview will suffice; in others, a court injunction or protective

order may be sought. However, in a few cases, obtaining a civil protection order may actually increase the victim's risk level (by further enraging the stalker). Another tactic used by law enforcement is to provide the victim with a home alarm system that triggers law enforcement action. More advanced systems ensure that the 911 dispatcher has access to descriptive information about any suspect and his vehicles.

Victims may also be advised to change their phone numbers, vary routes to work, or rent a post office box for mail. Referral to community service providers will also be made as needed. In extreme cases, victims are helped to relocate their residence, even out of the jurisdiction. In a number of states, laws now permit victims to protect their personal information on driver's licenses and even social security numbers. A number of law enforcement and prosecutor agencies provide victims with an informational booklet that details measures they should take to protect themselves.

**Victim Well-Being: Other Services** . For several reasons, stalking victims also require assistance that is not of a criminal justice nature. First, being stalked is stressful. Victims often need counseling and may even need medical and psychiatric or psychological treatment to deal with past or ongoing stress. Second, the criminal justice process itself is often stressful, especially when the victim must see the stalker in court ("meeting" is precisely the goal of many stalkers) and may have to hear repeated threats or references to past threats. Third, safety precautions may have other unintended consequences that need to be mitigated. For example, informing employers of the stalking may put the victim's job at risk.

## **Recommendations**

This research leads to detailed recommendations regarding legislation, implementation, and research.

### **Legislative Issues**

States should review and update their anti-stalking laws to take advantage of what has been learned in the past decade. This review should begin with comparisons to the *Model Anti-Stalking Code* developed by the National Criminal Justice Association for the National Institute of Justice. Particular attention should be paid to increasing the severity of penalties for stalking and to coordinating stalking laws with related offenses such as harassment, terroristic threats, and invasion of privacy. In addition, enactment of civil laws authorizing court orders of protection is needed in the 21 states without such laws.

### **Implementation Issues**

Relatively few jurisdictions have specifically assigned staff to enforce stalking laws. The immediate need is to expand the number and responsibilities of specialized units handling stalking cases. Policymakers need to understand that stalking cases are more common than they think, are more dangerous than they appreciate, and require specialized staff skills to investigate and prosecute.

In developing specialized stalking units, agency managers must recognize the unique prospective character of stalking cases and their high resource demands. Agencies may seek first to use funds available under the Violence Against Women Act of 2000 (VAWA 2) to test the effectiveness of

new anti-stalking initiatives. The act specifically includes stalking as a program focus area. Technical assistance should be provided to help agency managers develop anti-stalking initiatives. Especially needed is technical assistance on:

- Stalking case identification (first responders often do not recognize an incident as part of a stalking pattern)
- Case management policies and procedures
- Managing specialized staff and units.

Federal, state, and local agencies should provide training to help staff develop expertise in stalking cases and to help them better deal with stalking victims. Federal and state assistance directed at improving anti-stalking efforts should do more to emphasize victim safety and service needs. Funding for victim services agencies is especially important, but often overlooked. Furthermore, community agency collaboration should be encouraged to serve stalking victims better. Community education should be included as part of the responsibilities of agency staff assigned to handling stalking cases.

Little attention has been paid to the role of the judiciary in criminal stalking proceedings, yet judges play a vital role at such important decision points as pretrial release, issuance of protection orders, and sentencing. Judges should receive training on stalking; this training should not be combined with training on domestic violence.

### **Research Issues**

Research on stalking should focus on these topics:

- Improved threat assessment
- Treating stalkers (both medical and behavioral treatment approaches)
- Treating victims (e.g., for stress-related problems)
- Stalking prevalence among special populations (e.g., persons of color).

### **Unfinished Business**

Experience with stalking crimes has created new information about what stalking is and how best to respond to it. Nevertheless, much more needs to be done. The challenge at all levels of government lies in how we respond.

### **Some Other Recent Cases**

The victim and her stalker were living together in a common-law relationship, but they began having difficulties when she became pregnant. Six weeks after the birth of their child, she left him because of his abusive and threatening conduct. They obtained a divorce; the divorce order including

a provision prohibiting him from harassing, threatening, or assaulting her. For four years thereafter, he continued to harass and threaten her. She testified that on more than 20 occasions she came home to find her home broken into with him waiting for her and refusing to leave. On several occasions, he also assaulted her and threatened to kill her. On one occasion, it took four police officers to restrain him. On another occasion, the police took the child from him when he was using the child as a shield. The victim spent six weeks in a shelter for abused women in an effort to avoid him. He then pursued her where she worked and allegedly embarrassed her before her employer. He threatened her with serious harm if she pursued charges. She had to place her son in counseling because of the stalking behavior. Defendant was convicted of aggravated stalking, *Mims v. State*, 2002 Ala. Crim App. 2088 (Court of Criminal Appeals of Alabama 2001).

Victim and her husband separated, after which he began making numerous telephone calls to her at all hours of the day and night. Victim had to buy caller identification to screen out his calls. This continued for four months until he called her at 2:30 A.M. at which time she refused to speak to him. Further calls were made at 3:30 A.M., 6:30 A.M., and 8:15 A.M. to her mother, accusing her of keeping her daughter from talking to him. At 8:25 A.M., he called victim at work and threatened to kill her son.<sup>15</sup> Victim then sought a no-contact order from the court, which was granted. One week later, the stalker-husband called victim and her mother, telling both that he had reported them to the Department of Human Services for abusing their daughter. He also left numerous threatening messages on her answering machine to the effect that she either talked to him or "that's it." The next day, he was scheduled to have a child visitation, but he called and said he did not feel well. Actually, he had driven to another state to buy a gun and ammunition (in violation of the court order). The clerk who sold him the weapon was so upset by his manner that the clerk called the sheriffs' offices in the nearby counties. Police set up a watch and stopped him upon his return to the area. When a search found a pistol and ammunition, he was arrested. Defendant was convicted of stalking in the first degree, *Moses v. State*, 39 S.W.3d 459 (Arkansas Court of Appeals, 2001).

Victim met her stalker at a Al-Anon meeting she was attending because of her marriage to an alcoholic. Initially they were only friends, but eventually they began dating. This lasted for 18 months, ending because she became fearful of his displays of anger. After she told him she no longer wished to see him, he continued to telephone her, leave items in her mailbox, write her letters, and come by her home unannounced. He also continued to see her through such actions as attending the Family Court proceedings related to her divorce action against her former husband. He also visited her parents' home, continued telephone calls, and threatened to "make trouble" for her at work. He was then arrested and convicted of stalking and placed upon one year's probation. A no-contact order was also issued at this time. Exactly one year later, victim attended another Al-Anon meeting, at which her stalker was present. Upon leaving a restaurant after the meeting, she found two letters of poetry in the stalker's handwriting on the windshield of the car she was using. In the following months, she received three more letters from her stalker, a valentine's day card, a birthday card, and a condolence card for her grandmother's death. Each envelope had a "Love" stamp affixed. Defendant was again arrested and convicted of stalking. *State v. Breen*, 767 A.2d 50 (Rhode Island Supreme Court, 2001).

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<sup>15</sup>The husband-stalker was arrested and convicted of a terroristic threat based upon this phone call.