



Institute for Law and Justice

1018 Duke Street
Alexandria, Virginia 22314
Phone: 703-684-5300
Fax: 703-739-5533
<http://www.ilj.org>

**Stalking Laws and Implementation Practices: A
National Review for Policymakers and Practitioners**

Neal Miller

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Overview

Stalking is a crime of terror. It is one part threat and one part waiting for the threat to be carried out. The victim of stalking has no way to resolve the threat and terror she feels. (Most reported cases involve male stalkers and female victims.) Stalking is also far more common than most people believe, including criminal justice professionals. Together, these two points underscore the reality that stalking is 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.

Stalking has, of course, gathered considerable attention from the mass media. However, notwithstanding a sizable literature about stalking as a legal construct and as a medical issue, *systematic* information about this crime and what is being done about it is largely missing. Most significantly, policy analysis of what needs to be done to improve anti-stalking investigation, prosecution, and provision of services to stalking victims is totally absent.

To fill those gaps in knowledge, this study of the status of stalking laws and their implementation in the United States was conducted.¹ The study

- Analyzed stalking and related legislation in the 50 states,
- Reviewed leading court decisions interpreting those laws,
- Conducted a survey of police and prosecutor agencies across the country to determine how the laws are being implemented,
- Undertook field reviews in jurisdictions with innovative, special anti-stalking efforts, and

¹ The study was funded by a grant from the National Institute of Justice to the Institute for Law and Justice (ILJ), grant number 97-WT-VX-0007. While the study has already contributed significantly to the literature on stalking, this report updates and synthesizes ILJ findings. For earlier reports, see Neal Miller, *Stalking as a Focus of the STOP Program*, in URBAN INSTITUTE, 2000 REPORT: EVALUATION OF THE STOP FORMULA GRANTS TO COMBAT VIOLENCE AGAINST WOMEN (2000); *Federal and State Antistalking Legislation*, in VIOLENCE AGAINST WOMEN GRANTS OFFICE, U.S. DEPARTMENT OF JUSTICE, STALKING AND DOMESTIC VIOLENCE: THE THIRD ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT (1998) [hereinafter THIRD ANNUAL REPORT]; *Appendix E: Stalking Resources on the Internet*, in THIRD ANNUAL REPORT; *Appendix F: Selected Bibliography*, in THIRD ANNUAL REPORT. The recently released STALKING AND DOMESTIC VIOLENCE: REPORT TO CONGRESS (2001) includes a review of state legislation 1998-2000, a review of stalking court decisions, a report on a 1998 survey of police and prosecutor initiatives, and an updated bibliography. A preliminary report on this research was published as Neal Miller, *Stalking Investigation, Law, Policy and Prosecution as Problem Solving*, in STALKING CRIMES AND VICTIM PROTECTION: PREVENTION, INTERVENTION, AND THREAT ASSESSMENT (J. Davis ed., 2001) [hereinafter STALKING CRIMES].

- Integrated study findings with the existing research literature on stalkers and their behavior.

The premise for the research was that stalking is a serious crime against persons² and is widely prevalent.³ While there has been significant federal support for state and local agencies to adopt anti-stalking laws⁴ and implement anti-stalking initiatives,⁵ no comprehensive review of the status of such efforts had been done. Thus, there was no way of knowing what additional measures (such as federal assistance to state and local enforcement agencies, or new initiatives by state and local agencies themselves) might be needed to enhance local anti-stalking efforts.

This study of stalking was designed to clarify the status of stalking laws and their implementation needs. Although the original study design included an assessment of the effectiveness of the new laws, that assessment proved to be impractical.⁶ Instead, a review of "best practices" was substituted as a prelude to later process and impact evaluations. The major research tasks included the following:

- Review and analysis of research on stalking, especially that relating to stalking's prevalence and impact on victims
- Review and assessment of state laws relating to stalking and ancillary crimes
- Review and analysis of court decisions interpreting stalking and related laws
- Survey of over 400 law enforcement and prosecutor offices in large jurisdictions asking about status of stalking law implementation in those agencies

² As will be discussed more fully below, stalking is commonly classified as a felony crime, more serious than simple assault, yet less serious than aggravated assault. The crime closest to stalking is threat to seriously injure (often called "terroristic threat"), which is also commonly classified as a felony offense. Virtually all states include stalking among their codes' listing of crimes against persons.

³ See Patricia Tjaden & 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), who estimate that 1 percent of all adult women are stalked each year (1 million annually) and that 8 percent of all women (8 million) have been stalked at least once in their lifetime. Male stalking victims were estimated at 371,000 annually and 2 million lifetime. In comparison, in 1995 the Bureau of Justice Statistics estimated there were 355,000 attempted or completed rapes or other sexual assaults, approximately one-third of the number of stalking victims. LAWRENCE GREENFIELD, *SEX OFFENSES AND OFFENDERS: AN ANALYSIS OF DATA ON RAPE AND SEXUAL ASSAULT 1* (1997).

⁴ See, e.g., NATIONAL CRIMINAL JUSTICE ASSOCIATION, *PROJECT TO DEVELOP A MODEL ANTI-STALKING CODE FOR STATES* (1993) [hereinafter MODEL ANTI-STALKING CODE].

⁵ BUREAU OF JUSTICE ASSISTANCE, *REGIONAL SEMINAR SERIES ON DEVELOPING AND IMPLEMENTING ANTISTALKING CODES* (1996) [hereinafter REGIONAL SEMINAR SERIES]. In addition, the federal Violence Against Women Act of 1994 explicitly includes provision for federal funding assistance for projects directed at stalking, 42 USC § 3796gg.

⁶ See notes 115-116 and accompanying text for a fuller discussion.

- Survey of STOP (Services, Training, Officers, and Prosecutors) state funding agencies asking about stalking projects they may have funded
- Site visits to nearly a dozen prosecutor, law enforcement, and victim services agencies with special stalking units or staff
- Telephone and personal interviews with stalking case-experienced staff from over 50 law enforcement, prosecutor, and victim services agencies around the country
- Review and analysis of stalking training, policies and procedures, and operational manuals used by agencies.

In general, the examination of the status of stalking laws and their implementation in the 50 states found the following:

- Misperceptions of what constitutes stalking are widespread. Public awareness that stalking is a crime is lacking, and many criminal justice personnel also lack an understanding of their states' anti-stalking laws.
- The likely number of stalking cases (over 2 million felony and 4 million misdemeanor cases annually) is far greater than previously estimated. Official statistics greatly undercount stalking incidents.
- Stalking often has a devastating impact on its victims.
- Because stalking cases are very different from other personal injury crimes, they require problem-solving approaches in their investigation and prosecution, and they necessitate extensive agency resource commitments to develop staff expertise and allocate sufficient staff time.
- Every state recognizes that stalking is a crime distinct from other offenses, but many state laws lack adequate penalties. In only 12 states is stalking always a felony. In 25 states, stalking may be a felony, depending on the particular circumstances involved or at the discretion of the prosecutor. In the 13 other states, only a repeat stalking conviction is a felony.
- Criminal procedure laws relating to stalking are often lacking. Warrantless arrest for misdemeanor stalking is authorized in only 10 of the 38 states with misdemeanor stalking laws. Other legislative shortcomings include the absence of required training on stalking for law enforcement and prosecution.
- Civil law parallels to criminal anti-stalking laws are not as widespread. Only 26 states authorize the issuance of civil orders of protection against stalking; all 50 states authorize civil protection orders against stalking as domestic violence.

- Stalking laws have been the focus of considerable litigation. Nearly 200 reported cases were found involving stalking law issues, primarily challenges to their constitutionality or questions of interpretation of the scope of the laws. Similar legal issues were raised in another 300-plus cases involving harassment and threat laws.
- Implementation of the new stalking laws is still limited. Most law enforcement and prosecutor agencies do not place operational priorities on implementing state stalking laws. Specialized staffers for investigating and prosecuting stalking cases are available in only a small number of agencies. Training on stalking is generally lacking, especially for non-domestic violence-related stalking.
- Existing special anti-stalking programs demonstrate the usefulness of developing staff expertise with stalking cases and provide models for other jurisdictions to emulate.

A key qualitative finding of the study was how arduous these cases can be to investigate and prosecute. The relative newness of the laws (first enacted in California in 1990) is only part of the explanation. Stalking cases are unique in many ways, and their investigation and prosecution often require new techniques. Stalking investigators and prosecutors must approach these cases from a problem-solving perspective. Each case can present idiosyncratic challenges requiring problem-solving approaches for identifying who the stalker is, gathering evidence to prove both the identity of the stalker and that a stalking has occurred, and proving those facts to a jury. Methods used with other types of crimes are often inadequate for stalking cases, and new approaches must be developed.

This report explains how the conclusions above were reached and expands on them. Part I of the report introduces the legal definition of stalking. Part II reviews prior research on the prevalence of stalking and its impact on victims. Part III details research findings on the degree to which stalking laws have been enacted and implemented. Those findings are based on a 50-state legislative analysis and a review of related court decisions; a report on two national surveys of law enforcement and prosecutor agencies asking about anti-stalking initiatives; and a review of federal funding of anti-stalking initiatives. Part IV provides a qualitative assessment of how law enforcement and prosecutor agencies are implementing anti-stalking programs. This assessment is based on both field observations and a review of prior research on stalking that has been used by practitioners to shape their activities, including stalker typology and threat assessment studies. In essence, it provides a research-distilled problem-solving-based "how-to" for managers and practitioners, as well as suggestions for trainers. Part V discusses the

policy implications of the research findings for legislators, agency administrators, and other supervisory practitioners responsible for day-to-day investigations and prosecutions.

I. Introduction: What Is Stalking?

Stalking is a crime. It is defined by statutes and by court decisions interpreting those statutes.⁷ Nonetheless, because the term "stalking" has other meanings that predate the creation of the crime of stalking, it is necessary to distinguish between stalking as a crime and stalking as other non-criminal activity (with which stalking crime is often confused). Failures to distinguish between the two can have significant consequences for how stalking laws are enforced.

A. Common Misperceptions of Stalking

When asked about "stalking,"

- A prosecutor described a recent homicide case in which an investigator found a diary kept by the suspect that described how he had followed the victim for nearly a year without the victim's knowledge.
- A STOP grants coordinator described how college men targeted specific vulnerable women to invite to a fraternity party at which they would be given date-rape drugs in their drinks.
- A police sergeant stated that proof of stalking includes a showing that the suspect has both threatened the victim and has taken action on his threats against the victim.
- An attorney filed a civil action based in part on the state anti-stalking law that claimed web sites' use of "cookies" to monitor site use is a "surveillance-like" scheme akin to stalking.

None of these four statements accurately describes the crime of stalking. They do, however, illustrate common beliefs about what constitutes stalking. As the statements suggest, stalking in common parlance (and even among criminal justice professionals) is predatory behavior.⁸ For example, the lion

⁷ A few states do not provide detailed statutory definitions of what are termed "common law" crimes. These may include murder, rape, and assault and battery. *See, e.g.*, 17-a ME. REV. STAT. §§ 201-205 (homicide); COL. REV. STAT. c 18-3-201 *et seq.* (assault). Common law crimes are inherited from the English common law that was in place in the 13 colonies before the Revolutionary War. Stalking is not a common law crime and must be defined by statute. Before stalking laws were enacted, stalking behavior was often characterized as "psychological rape." *See* K.S. Kurney & Joel Best, *Stalking Strangers and Lovers: Changing Media Typifications of a New Crime Problem*, in *IMAGES OF ISSUES: TYPIFYING CONTEMPORARY SOCIAL PROBLEMS* 33-57 (Joel Best ed., 2d ed.) (1995).

⁸ *But see*, Joyce Hargreaves, *Stalking Behavior*, in *OFFENDER PROFILING SERIES—PROFILING RAPE AND MURDER* 1, 3 (David V. Canter & Laurence Alison, eds. 2001) (defining stalking as involving an act of pursuit and

stalks its prey or the hunter stalks the lion. However, stalking in criminal law requires more than simple hunting or trailing of another person as one might stalk an animal.⁹

One key difference between "stalking" as used in hunting and as used in criminal law is the victim's awareness of the stalking behavior. From this perspective, behavioral scientists and mental health professionals have focused on stalking as behavior that inflicts unwanted intrusions and communications on another.¹⁰ The concern of mental health professionals with stalking is that stalking often reflects serious psychological problems that require treatment.¹¹ However, a treatment perspective would not necessarily require victim awareness to be part of a stalking diagnosis, since the need for treatment comes from the behavior of the stalker alone. Thus, Meloy and Gothard use the phrase "obsessional following" as interchangeable with stalking, with the implication that although such following suggests a need for treatment, that need exists regardless of any overt intrusions on the victim.¹² Of course, it may be that the degree of need for treatment is generally correlated with the degree of victim awareness of the stalking, or that the mental health system is unlikely to know about the stalking behavior without a victim complaint. (Stalkers who are obsessed with another person are not likely to refer themselves to treatment.)

stealth). Consider also such uses of the term "stalking" in D.C. JESSE BURKHARDT, *FREIGHT WEATHER: THE ART OF STALKING TRAINS* (2001); EUELL GIBBONS & RAYMOND W. ROSE, *STALKING THE BEAUTIFUL HERBS* (1989).

⁹ See PAUL MULLEN, MICHELE PATHE & ROSEMARY PURCELL, *STALKERS AND THEIR VICTIMS 1* (2000) [hereinafter referred to as MULLEN *et al.*], who begin their book, "Until a little more than a decade ago the word 'stalking' was attached, almost exclusively, to the activities of hunters... To stalk and be stalked today have acquired radically different and even more sinister resonances." Compare Lorraine Sheridan, *What is Stalking? The Match Between Legislation and Public Perception*, in Australian Institute of Criminology, *Stalking: Criminal Justice Responses Conference*, December 7, 2000 (available at www.aic.gov.au/conferences/stalking/index.html) (hereinafter referred to as AIC Conference Papers), who found that laws that omit any references to stalker intent or actual victim fear most match public perceptions of what constitutes stalking.

¹⁰ *Id.* at 7. See, e.g., Brian Spitzberg & Jill Rhea, *Obsessive Relational Intrusion and Sexual Coercion Victimization*, 14 J. INTERPERSONAL VIOLENCE 3, 6-9 (1999); Brian Spitzberg, *et al.*, *Exploring the Interactional Phenomenon of Stalking and Obsessive Relational Intrusion*, 11 COMMUNICATION REPORT 33, 34 (Winter 1998).

¹¹ The term "treatment" as used here refers to a wide variety of interventions, depending on the degree of stalker pathology exhibited. It is not limited to traditional "medical" or psychological/psychiatric modalities. It specifically includes "behavior modification" techniques directed at teaching the stalker to avoid specific behaviors that constitute stalking. However, there is little research on "what works" in treating stalking of any kind, much less the gamut of behaviors that stalkers as a whole demonstrate.

¹² J. Reid Meloy & Shayna Gothard, *A demographic and clinical comparison of obsessional followers and offenders with mental disorders*, 152 AMER. J. OF PSYCHIATRY 258 (1995).

But victim awareness does not necessarily elevate obsessional following to the level of a criminal act. Simple unwanted intrusions upon another may or may not constitute harassment, depending on the applicable state law, and in most states such intrusions do not constitute criminal stalking. It is also true that not all stalking can be considered obsessional behavior.

B. Stalking in the Criminal Law

The crime of stalking involves much more than predatory behavior, although that is typically one element of criminal stalking. The motivations for the stalking, including obsessional causes, are not at all relevant to defining the crime of stalking. Instead, most state penal codes define stalking as involving the following three elements:

- A pattern of willful or intentional harassing or annoying/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 that behavior.¹³

This lengthy definition may be simplified to the three key prosecutorial elements that present the greatest difficulties of proof:

- The defendant's multiple acts were willful or intentional.
- Threats were expressed by those acts.
- Victim fear resulted.

Willful/Intentional Behavior

State stalking laws in all jurisdictions require the prosecution to show that the stalking behavior was intentional. That is, the stalker meant to perform the acts that constituted the stalking.¹⁴ In most

¹³ See generally, THIRD ANNUAL REPORT, *supra* note 1; MODEL ANTI-STALKING CODE, *supra* note 4.

¹⁴ A general intent requirement is found in the stalking laws of 22 states and the District of Columbia. These states include Alaska, Arizona, Arkansas, Colorado, District of Columbia, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New York, North Dakota, Oklahoma, Oregon, and Tennessee. Full statutory cites are provided *infra*, notes 76-77. See generally Comment,

states, the prosecution must also prove that the stalker intended to threaten the victim and to cause fear.¹⁵ Court decisions in several states have reduced the prosecutorial burden of proving intent to threaten and cause fear by holding that the defendant's actions were such that he "knew or should have known" that his actions would provoke perceptions of a threat and fear.¹⁶

Threat

A threat under most states' stalking laws¹⁷ may be either explicit or implicit.¹⁸ In either instance, stalking threats do not require any immediacy; the execution of the threats can lie in the indefinite future. Implicit threats differ from explicit threats in not conveying a threat by their very words. Instead, the threat is inferred by the victim based on what the stalker says and does, taking into account any special

California's Antistalking Statute: The Pivotal Role of Intent, 28 GOLDEN GATE L. REV. 221 (1998) (discussing general versus specific intent).

¹⁵ Laws in 29 states and the District of Columbia provide a specific intent requirement. These states include Alabama, Arkansas, California, Connecticut, District of Columbia, Florida, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. (Full statutory notes are provided *infra*, notes 76-77.) In a few of these jurisdictions, the specific intent requirement is limited to "aggravated" or serious stalking, while simple stalking has only a general intent to commit the acts that constituted stalking. This review is limited to a "facial" analysis of the 50 states' laws, without regard to how the courts have interpreted or are likely to interpret the stalking laws. This is a significant qualification since many of the stalking laws use ambiguous language. Compare this analysis with that in Federal and State Antistalking Legislation, in THIRD ANNUAL REPORT, *supra* note 1 at 23, 28-32. (Thirty-five jurisdictions have an intent or "knowing" provision.)

¹⁶ The use of an objective or "reasonable person" test has progressed furthest in Australia. See Gregor Urbas, Australian Responses to Stalking, in AIC Conference Papers, *supra* note 9 at 6.

¹⁷ Originally most states with a threat requirement limited that threat to one involving the death of the victim. Many states have since amended their laws to include lesser threats of serious injury. See e.g., CAL. PENAL CODE § 649.6. As of 2000, 23 jurisdictions had criminalized stalking involving threats to the victim's "safety" or similar term. These include Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Michigan, Mississippi, Montana, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Vermont, Washington, and Wyoming. Even among those states with stricter threat requirements, the phrase "bodily harm" or its equivalent is used by five states (Florida, Illinois, Iowa, Minnesota, and New Jersey). Again, the level of threat required varies in several states according to whether aggravated or simple stalking is charged. In Idaho and North Dakota, the laws have no threat requirement and stalking is a misdemeanor offense. Full statutory cites are provided *infra*, notes 76-77.

¹⁸ In 18 states (Alabama, Arizona, California, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, New Hampshire, New Jersey, Pennsylvania, South Dakota, Utah, and Washington), the stalking laws state that a threat may be implicitly made. Another 13 states use language such as "course of conduct" that in conjunction with specific intent and victim fear requirements can be read to include implicit threats. These include Alaska, Georgia, Hawaii, Maryland, Louisiana, Nebraska, New Mexico, New York, Ohio, Rhode Island, South Carolina, Texas, and Wyoming. The THIRD ANNUAL REPORT, *supra* note 1 at 23, 28-32, identified only 12 states with language in their stalking laws citing implicit threats. Full statutory cites are provided *infra*, notes 76-77.

knowledge that the victim has of the stalker, such as a prior history of violence. Threats must also meet a "reasonable person" standard to exclude oversensitive reactions from the law's reach.

Fear

Stalker threat and victim fear in response to that threat are easy to separate where the stalking threat is explicit.¹⁹ But most stalking cases do not involve explicit threats. In cases where the threat is implicit in the stalker's actions, threat and fear can be difficult to separate. Proof of one often also means proving the other, per the reasonable person standard. In these cases, it is the context in which the harassing or stalking behavior occurs that provides the link between that behavior and victim fear. For example, sending flowers as a gift may be stalking behavior, depending on what actions have preceded the gift. In some cases, the threat against the victim may be obvious even where only implicit (as where the stalker places a nylon sex doll with a rope tied around its neck in the victim's bed). In other cases, more background information is needed, e.g., where the stalker uses the phrase "love forever" and in the same letter refers to his prowess as a rifle sharpshooter. The requirement in most jurisdictions for actual fear means that unless the victim is aware of being followed, simple predatory behavior does not constitute the crime of stalking.

¹⁹ Nineteen jurisdictions' laws do not require victim fear of death or serious injury or substantial emotional distress as an element of the crime of stalking. Those jurisdictions are Arkansas, Colorado, District of Columbia, Hawaii, Idaho, Illinois, Kentucky, Maine, Maryland, Massachusetts, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Virginia, and West Virginia. In those jurisdictions, the victim's state of mind may still be at issue where the statute refers to victim annoyance or harassment, a less significant level of injury. (Full statutory cites are provided *infra*, notes 76-77.) The THIRD ANNUAL REPORT, *supra* note 1 at 23, 28-32, identified 17 states in 1997 that had a standard of fear that was not as high as that of death or serious physical injury.

Fear as an element of the crime of stalking is largely a North American construct. Urbas, *supra* note 16, reports that victim fear is not a statutory element of stalking in most Australian laws. However, intent to cause fear is a statutory element in most of the Australian states. See EMMA OLGIVIE, STALKING: LEGISLATIVE, POLICING AND PROSECUTION PATTERNS IN AUSTRALIA 61-71 (2000) (reprinting the relevant statutes). Similarly, Marejke Malsch, Stalking in the Netherlands, in AIC Conference Papers, *supra* note 9, reports that the stalking laws of Ireland, Norway, Belgium, and Denmark do not contain a victim fear requirement. The Protection from Harassment Act of 1997, applicable to England and Wales, also does not contain an actual fear requirement. But closer to home, the Canadian stalking law does require victim fear as an element of the crime, CANADIAN CRIMINAL CODE § 264. Olgivie suggests that the fear requirement difference between the United States and Australian versions of stalking laws lies in the former's antecedents in stranger stalking, while the latter's focus has been on stalking as a variant of domestic violence. *Id.* at 56.

C. Examples of Stalking Crimes

There is no typical stalking case. Suspect behaviors vary widely. The only constant is that multiple acts form a pattern of behaviors that together constitute stalking. Some examples of stalking cases follow.²⁰

Example 1

A woman was dating a man who was a fellow student at a university in San Diego. After three months together, she felt he was trying to isolate her from her friends and family, and he seemed controlling and demanding (common in domestic violence cases). Soon after she told him their relationship was over, she found her car tires slashed and a brick thrown through the windshield. The vandalism was followed by threatening phone calls and messages on her pager citing the California penal code section for murder—187. The woman went into hiding from him. A couple of months later, she was asleep in bed with her daughter when she was awakened by a loud popping noise—the man striking her in the mouth with a ball peen hammer. He fled the scene but was arrested days later. While awaiting trial, he asked a cellmate to hire a "hit man" to kill the woman. Upon being told of this by an informant, the prosecutor's investigators staged a "murder." A makeup artist was hired to prepare the woman to appear as if she had been shot in the head. Polaroid photos were then taken of her, apparently assassinated. An undercover investigator went to the jail and visited the stalker, who after seeing the photo, acknowledged that the murder was what he wanted. The prosecutors filed charges in San Diego, and the man was convicted of stalking, burglary, assault with a deadly weapon, torture, and soliciting for murder. He received a prison sentence of 13 years to life.

Example 2

The victim, an 18-year-old female, sang in her church choir. She was seen performing with the choir by a total stranger, who began to stalk her. Among other things, he sent pornographic pictures and videos to her home. With the pornography, he would add a message saying, "This is you and this is me." He also called her at home, making threats and playing the soundtrack from a pornographic

²⁰ Case information was provided by stalking prosecutors in the district attorneys' offices of San Diego and Los Angeles counties.

movie. When he was arrested, he explained his actions as motivated by his being a "student of human nature." He said he simply wanted to see how she would react to his presents, and he would sit in the back of the church to see how she was holding up to his actions. The defendant was convicted of stalking and sentenced to 16 months in prison.

Example 3

A man became fixated on a woman who refused to engage in a romantic relationship with him. After several years, the man began to impersonate the woman on the Internet. He placed several sexually graphic want ads on Internet bulletin boards and began to correspond with men, while still pretending to be the woman. He then solicited the men to rape the woman, claiming to enjoy rough sex and rape fantasies. As part of the solicitation, he provided the men with the woman's address, phone number, and other personal information. When the woman learned of these events from one of the men so solicited, she went to local police and was told there was nothing they could do. Eventually, the Federal Bureau of Investigation (FBI) referred her to the Los Angeles District Attorney's Stalking and Threat Assessment Team (STAT). After extensive investigation by STAT that included issuance of search warrants to Internet service providers to track the source of the Web postings, a felony stalking complaint was issued. The man eventually pled guilty and received a six-year sentence to state prison.

Example 4

For years a woman had been the subject of domestic violence. When the violence escalated, she called 911; the police responded but did not arrest the batterer. When the batterer began to threaten her children, the victim obtained an order of protection that required the batterer to leave the household. The issuance of the order seemed to incense the batterer, who began a campaign of harassment against the victim, including following her for four weeks. At trial, he was quoted as saying to her by telephone, "I am across the street watching you, and I'm going to kill you." No calls to the police were ever made. One day, while she was driving home from work, a car tried to run her off the road in the mountains. She stopped and began talking to witnesses of the incident. The batterer approached her in disguise and attacked and killed her. A copy of the protection order was found in his

car. The batterer was convicted of first degree murder and sentenced by the jury to death, partly on the basis that he had been lying in wait, a statutory aggravating factor.²¹

D. Summary

The term "stalking" is used in a variety of ways, many of which have little to do with the criminal law's use of the term. The resultant potential for confusion is rarely recognized. Even professionals in the field of stalking do not always distinguish between the term "stalking" in common usage and as a criminal law term. For example, the threat assessment literature often uses the phrase "celebrity stalking," while at the same time noting that such "stalkers" do not usually provide the victim with advance notice of a planned attack.²²

In the criminal law context, however, the term "stalking" refers to

- Willful behavior that
- Threatens the safety of a victim and
- Results in victim fear.

Not every state's laws fit this tri-part definition. Further, states vary in their specification of what each crime element requires. Nonetheless, there is general agreement nationally that this definition of stalking is appropriate and useful as a research construct.²³

²¹ *People v. Poynton*, GA038353 (Cal. Supr. Ct. L.A. County 2001). *See generally*, Dalondo Moultrie, *Jury Urges Death for Man Who Killed Wife*, LOS ANGELES TIMES, March 8, 2001, at B3; Twila Decker, *Jury Finds Man Guilty of Killing Wife*, LOS ANGELES TIMES, Feb. 28, 2001, at B3.

²² *See e.g.*, J.Reid Meloy, *Stalking and Violence*, in *STALKING AND PSYCHOSEXUAL OBSESSION* (J. Boon & L. Sheridan eds., 2001).

²³ *See e.g.*, Tjaden & Thoennes, *supra* note 3.

II. Stalking Matters: Prior Research on the Prevalence of Stalking and Its Impact on Victims

The significance of stalking²⁴ lies in how often it occurs and in its deep impact on victims. Given its recent addition to the criminal codes, it is not surprising that research has just begun to address these issues. As the review below suggests, the number of such studies is growing.

A. Stalking Prevalence and Populations

Research Findings: Stalking Prevalence

Anecdotal and convenience or limited sample estimates of the incidence of stalking²⁵ have now been replaced by more systematic surveys directed at stalking frequencies in the population. The most important of these is the National Violence Against Women Survey, which conducted telephone interviews with a randomly selected sample of 8,000 women and 8,000 men. The study estimated that over 1 million women and 370,000 men were stalked in the year prior to the interviews. Put another way, about 1 percent of all women and 0.4 percent of all men had been stalked in the 12-month period under examination. Although no estimates of statistical sampling error were provided by the study itself, application of statistical tests for "rare" events to the survey findings results in an estimate that 750,000 to 1.25 million women and 200,000 to 600,000 men are stalked annually. The study estimated that over 10 million men and women had been stalked at least once in their lifetime. Using a broad definition of stalking that includes cases where victim fear was not as great, estimates of the number of persons stalked annually increase to 6 million women and 1.4 million men; lifetime stalking incidence rises to 12.1 million women and 3.7 million men.²⁶

²⁴ The absence of research has not reduced policymakers' concern for stalking remedies. Anecdotal media reports of stalking that end in homicide have been the impetus for enactment of stalking laws in several states, including California and Minnesota. See Doris Marie Hall, *Outside Looking In: Stalkers and Their Victims* 22 (1997) (unpublished Ph.D. dissertation, Claremont Graduate School), and *The Victims of Stalking*, in *THE PSYCHOLOGY OF STALKING: CLINICAL AND FORENSIC PERSPECTIVES* 115 (J. Reid Meloy ed. 1998). See also, Note, *Minnesota's Anti-Stalking Statute: A Durable Tool to Protect Victims from Terroristic Behavior*, 12 *LAW & INEQUITIES* J. 613, 633-34 (1994) (cited in *State v. Orsello*, 554 N.W.2d 70 (Minn. 1996)).

²⁵ See, e.g., Suzanne Cavenaugh, Report for Congress on Stalking: Recent Developments 2 (1996) (unpublished Congressional Research Service report on file)(citing as evidence of the number of stalking cases Senator Biden's estimate at hearings on antistalking legislation that there are 200,000 stalking cases annually).

²⁶ Thaden & Thoennes, *supra* note 3 at 3-4. See *infra* notes 192-193 and accompanying text for discussion of how this lesser definition of stalking matches state stalking laws' coverage.

The National Survey estimates, although subject to caveats based on response rate and questionnaire issues,²⁷ are probably low. A more recent study using a similar methodology was conducted by the Louisiana Office of Public Health. The study found that 15 percent of Louisiana women interviewed reported being stalked at least once in their lifetime, or nearly twice the numbers reported by the National Survey, using a similarly high "fear" criterion.²⁸ Even that estimate may be low since women aged 18-24 were underrepresented in the sample surveyed, and another study of stalking of college women suggests that may bias results to minimize the actual incidence of stalking.²⁹ That third survey used telephone interviewing to gather data on six campuses. The survey found that 13.1 percent of the female college students perceived that they had been stalked during the school year in which the survey was conducted.³⁰ Lifetime estimates of stalking exposure were not derived, perhaps in part because of the relatively young age of the respondents.

²⁷ It is unclear what the survey response rate actually was. The report claims a "household participation rate" of 72 percent for females and 69 percent for men, with interview completion rates of 97 and 98 percent for women and men respectively. Recalculation of the participation rates by excluding double counting of noneligible respondents in both the numerator and denominator shows the actual participation rate for women to be 67 percent and slightly greater than half for men. Both are still quite good. However, neither number takes into account unanswered phone calls to potentially eligible households. According to the separately published report on the survey methodology, PATRICIA TJADEN & JOHN M. BOYLE, NATIONAL VIOLENCE AGAINST WOMEN SURVEY: METHODOLOGY REPORT 58 (1999) (draft), about one-quarter of all phone calls made were not answered after five separate calls. These households must be counted in determining the actual response rate, since these households may differ significantly from those households where someone was home to answer the calls. In toto, of 31,000 calls to non-business telephone numbers, 1,555 were to non-interviewables due to deafness, health, etc.; 11,789 were callbacks not resulting in an answer; 4,608 were to persons who refused to talk with the survey interviewers; 4,829 reached households where there was no adult; and 351 were terminations. This amounts to a 38 percent response rate, leaving aside the question of non-assigned numbers (the use of the term "callbacks" does not suggest nonworking-numbers). Given the inherent biases of any telephone survey, the survey findings cannot be called definitive on this basis alone. One other potential flaw with this National Survey was its screening question to identify stalking victims. The question asked whether "anyone had ever done (acts such as following, unsolicited calls, etc) on more than one occasion." This language is potentially ambiguous, since a person responding to a telephone interview might hear the question as also including two persons engaging once in stalking-like behavior, rather than being limited to the intended one person repeating his or her acts.

²⁸ *Prevalence and Health Consequences of Stalking—Louisiana, 1998-1999*, 49 MORBIDITY AND MORTALITY WKLY. REP. 653 (2000) (hereinafter LOUISIANA REPORT). In several ways, the estimates of stalking based on this survey are similarly a minimal figure. For example, the definition of stalking used by the survey required that the stalking occur for at least one month. There is no such requirement in law, where stalking can occur over the course of an afternoon as long as there were two or more distinct acts. *See infra*.

²⁹ See also Hall, *supra* note 24 at 150 and 126, who found that stalking victims age 18-25 made up nearly one-fourth of all stalking victims in her sample.

³⁰ BONNIE S. FISHER, FRANCIS T. CULLEN & MICHAEL G. TURNER, THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN (2000). The definition of stalking used here rested solely on the interviewees' perceptions of being the subject of stalking-like behavior. No effort was reportedly made to judge the seriousness of the interviewees'

Another estimate of stalking prevalence comes from the British Crime Survey conducted in 1998 using face-to-face interviews combined with a computer-assisted, self-administered procedure (the interviewer hands a laptop computer to the interviewee, who then fills out the form). The survey found that between 550,000 and 900,000 persons were stalked in the year preceding the survey. This amounted to 2.9 percent of the British population, a figure more than double that of the National Violence Against Women Survey in the United States. Limiting the definition of stalking to behavior inducing fear of violence reduces the proportion of stalking victims to 1.9 percent of the British population,³¹ still nearly 50 percent greater than the National Survey estimate for the United States. While it is possible that the differing estimates are due to differing populations, the more likely explanation is that the differing methodologies are the cause. The use of laptops was introduced by the British Crime Survey to reduce interviewee embarrassment at having to discuss highly personal questions, especially sexual assault and domestic violence. Moreover, the computer program requires that the interviewee complete all questions before the program can be terminated. Both factors lead to increased reporting.

The British Crime Survey, the Louisiana health study, and the campus stalking survey all indicate that the National Violence Against Women Survey may understate stalking's incidence by as much as a factor of two. However surprising that survey's estimate (over 1 million stalking cases annually) may

reports of concern for their safety; many states laws require this fear to be of serious injury or danger. This defect affects many other studies of stalking among college women. See, e.g., T.K. Logan, Carl Leukfeld & Bob Walker, *Stalking as a Variant of Intimate Violence: Implications from a Young Adult Sample*, 15 VIOLENCE AND VICTIMS 91, 91-97 (2000). See also Elizabeth E. Mustaine & Richard Tewksbury, *A Routine Activity Theory Explanation of Women's Stalking Victimization*, 5 VIOLENCE AGAINST WOMEN 43 (1999) (reporting 15 percent of college women said they had been stalked in past six months). On the other hand, the Fisher survey's failure to define the terms "obsessive" and "repeatedly" (rather than using the common statutory definition of "two or more") may have led to underreporting of stalking. One other study of note is Beth Bjerregaard, *An Empirical Study of Stalking Victimization*, 15 VIOLENCE & VICTIMS 389, 401 (2000), which found that 6 percent of the sample of college students were being stalked at the time of the study.

³¹ 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). The Home Office survey findings show consistently higher crime rates than do United States surveys. Thus, the British survey found that both females and males reported identical rates of domestic violence, 4.2 percent, while the National Violence Against Women survey found 1.8 percent for females and 1.1 percent for males. Whether these differences are due to different methods of surveying or in populations cannot be determined. See also Rosemary Purcell, Michele Pathe & Paul Mullen, *The Incidence and Nature of Stalking Victimization*, in AIC Conference Papers, *supra* note 9, who also found a rate of stalking victimization about 50 percent higher than the United States surveys show.

have been, the true figure is probably over 2 million felony-level stalking cases annually. The higher figure takes into account both the wide range in the survey's estimates (1.4 to 7.4 million victims, depending on the definition of stalking used) and the findings of the three other studies. It does not, however, include "lesser" stalking cases where victim fear does not result, nor does it include stalking against juveniles.³²

Research Findings: Victim Populations

The research also shows that stalking occurs among all populations, rather than being largely limited to specific subgroups. Thus, the National Survey found no difference between white and minority women in their prevalence of stalking victimization, nor was there a statistically significant difference between Hispanic and non-Hispanic women.³³ Hall adds to these findings in her report on 145 stalking victims who volunteered to answer questions about their experiences. Her findings show that persons of all ages and employment may be victims of stalking. Five of the victims were under age 18, while two were over age 70; 20 percent were age 41-50, while nearly one-fourth were ages 18-25. These stalking victims also varied widely in their jobs; they were professionals (31 percent), managers (20 percent), technical workers (17 percent), sales workers (16 percent), students (12 percent), retired persons (3 percent), and homemakers (3 percent).³⁴ Pathe and Mullen's study of Australian stalking victims found a similar pattern of diversity. Among their sample of 100 victims, the age of the stalking victims ranged from nine to 66 years, with most being in their mid to late 30s. At the outset of the stalking, 36 percent of the victims were employed as professionals, in such fields as medicine, law, or education.³⁵

One population is, however, unusually subject to being stalked: battered women who have separated from their batterer. Indeed, as noted elsewhere, it is homicide and stalking against that group that motivated many states' stalking laws. One of the few studies to examine the incidence of stalking

³² Although most stalking research omits juvenile victims, such an omission is contrary to both law and other research suggesting that stalking of juveniles is not uncommon. See Denise M. Emer, *Obsessive Behavior and Relational Violence in Juvenile Populations: Stalking Case Analysis and Legal Implications*, in STALKING CRIMES, *supra* note 1 at 33.

³³ Tjaden & Thoennes, *supra* note 3 at 4-5. While the survey also found no important differences among male stalking victims, the small numbers involved here make any such findings problematic. See *supra* note 27.

³⁴ Hall, *supra* note 24 at 150-152.

among these women, conducted by Mechanic and colleagues, found that 13 to 29 percent (depending on the definition of stalking used) of their sample of 144 battered women reported being stalked in the six months immediately following separation.³⁶ Another study, by Tjaden and Thoennes, found that 16.5 percent of all domestic violence calls involved allegations of stalking.³⁷ The more important question, however, is what proportion of stalking involves domestic violence. The National Violence Against Women Survey found that slightly more than half (54 percent) of all stalking is done by current or former intimates or dating partners. That cluster included 59 percent of female stalking victims and 32 percent of male stalking victims. If, however, dating partners who had not cohabited are excluded, the proportion of stalking cases involving domestic violence is reduced to 40-45 percent.³⁸

Official Statistics

Official statistics do not in any way match these estimates, even though both the national and Louisiana surveys reported that stalking complaints are typically made to law enforcement.³⁹ The state reporting the most stalking criminal cases is Florida, which in 1999 reported 704 stalking cases, a drop from 920 in 1998.⁴⁰ Most states either do not report stalking crimes at all or exclude them from their annual crime statistics reporting, although some stalking crimes are captured in domestic violence crime statistics.⁴¹ An example of the latter is New Jersey, which in 1997 reported 345 domestic violence-related stalking offense.⁴² In 1997, North Dakota reported the greatest number (per capita) of stalking cases of any state.⁴³ Even so, its rate, if applied nationally, would equate to only 22,805 stalking cases.

³⁵ Michele Pathe & Paul Mullen, *The Impact of Stalkers on Their Victims*, 170 BRIT. J. PSYCHIATRY 12, 13 (1997).

³⁶ Mindy B. Mechanic, Terri L. Weaver & Patricia A. Resick, *Intimate Partner Violence and Stalking Behavior: Exploration of Patterns and Correlates in a Sample of Acutely Battered Women*, 15 VIOLENCE AND VICTIMS 55 (2000).

³⁷ Patricia Tjaden & Nancy Thoennes, *The Role of Stalking in Domestic Violence Crime Reports Generated by the Colorado Springs Police Department* (report for the National Institute of Justice, December 1999), 15 VIOLENCE AND VICTIMS 427 (2000).

³⁸ Tjaden & Thoennes, *supra* note 3 at 6.

³⁹ Tjaden & Thoennes, *supra* note 3 at 9, report that 55 percent of women and 49 percent of men filed police reports. The LOUISIANA REPORT, *supra* note 28, found that 67 percent of the women reported the stalking to the police.

⁴⁰ FLORIDA DEPARTMENT OF LAW ENFORCEMENT, CRIME IN FLORIDA: JANUARY-DECEMBER 1999, 1 (2000).

⁴¹ The Violence Against Women Act of 1994 requires the Department of Justice to include stalking as part of the National Incident Based Reporting System, 42 U.S.C. § 14038, but this has not had much effect on state and local crime reporting.

⁴² NEW JERSEY STATE POLICE, DOMESTIC VIOLENCE OFFENSE REPORT: 1997, 3 (n.d.).

⁴³ OFFICE OF ATTORNEY GENERAL, BUREAU OF CRIMINAL INVESTIGATION, DOMESTIC VIOLENCE IN NORTH DAKOTA: 1997 (1999). In 1995, the state reported 82 stalking offenses.

One of the few states to report civil stalking filings (for orders of protection) is Oregon. That state's Judicial Department reported that in 1999 there were 1,404 filings for stalking orders of protection.⁴⁴ Extrapolating from that number to the U.S. population as a whole translates into 115,409 stalking cases nationwide. However one counts, the official statistics for stalking fall far below the actual number of such cases.

B. Stalking Behaviors: Their Scope and Duration

To understand how victims react to stalking, it is necessary to understand the variety, persistence, and repetition of stalking behaviors. Understanding those factors also permits inferences about victims' responses to be drawn, based on the reasonable person standard used in many state stalking laws.

The illustrations of stalking previously presented exemplify, but do not delimit, the range of behaviors that a stalking victim may be exposed to. Anecdotal reports of stalking cases are widespread, and few studies provide statistical summaries of the frequency with which different stalking behaviors occur.

Anecdotal reports come from a variety of sources. One excellent but rarely used source is published court decisions in stalking cases. Personal accounts of stalking are also available and provide an additional, important perspective.

Court Opinions

The examples below are taken from court opinions affirming convictions in stalking cases.⁴⁵ Because the nature of a relationship can affect the specific stalking behaviors engaged in, the examples are listed according to the type of prior relationship between the stalker and the victim.

⁴⁴ OREGON JUDICIAL DEPARTMENT, CIRCUIT COURT STALKING FILINGS BY COUNTY: 1999 (Administrative Office of the Oregon Courts) (data provided by Maureen McKnight, Legal Aid Services of Oregon, February 2000). The large number of stalking orders in Oregon is consistent with the Australian experience where Inez Dussuyer, *Is Stalking Legislation Effective in Protecting Victims?*, in AIC Conference Papers, *supra* note 9, reports that in Victoria, Australia, there are 50 orders of protection sought for every stalking case prosecuted.

⁴⁵ The descriptions of stalking behaviors here culled from the court opinions use only the courts' description of what the witness testimony claimed occurred. As the opinions often note, an appeals court review must look at the evidence from the perspective of the prosecution, that is, was there sufficient evidence that the jury might have believed to sustain a conviction? A jury's general verdict of conviction does not mean that it believed all

No Prior Relationship

- In *State v. Marsala*, defendant met victim in 1992 when he gave her a ride home one night. He then began stopping by her apartment uninvited and parking his car in front of her house. This went on until June 1993 when he was incarcerated. From prison he sent her letters that frightened her ("...I will strike back if you hurt me and you...know how really dangerous I am."). In March 1994, the defendant entered a facility where the victim had just been admitted two hours earlier; despite staff requests that he leave, he remained for 10 minutes, insisting on seeing the victim. He continued for some time to appear in front of the facility for long periods of time, including twice setting up chairs on the sidewalk in front. From April 1 to June 25, 1994, he made numerous harassing telephone calls to victim's mother to talk about the victim. The defendant was arrested for stalking on April 25 and June 28, 1994, after repeated warnings from victim's attorney to cease stalking her.⁴⁶
- In *People v. Nakajima*, victim worked as a cashier in a store where she served defendant; once, when she was returning his credit card, he grabbed her hand. On several occasions after that he followed her throughout the store. On October 24, 1995, defendant followed her during her drive home from her elementary school teaching position. He did so again the following day, cutting across two lanes of traffic when she made a turn and staying no more than two car lengths away while traveling at speeds up to 60 miles per hour. That evening, victim saw defendant's car in the parking lot as she left her cashier job to go home. Police were summoned and the officers warned defendant that his actions would constitute a crime if continued. On November 4, victim saw defendant stopping her parents' car to talk with her father. A second warning about stalking was given to the defendant by the State's Attorney's Office, to which defendant responded by letter on November 7 that he would cease his conduct immediately. On November 18, 1995, victim saw defendant cruising the parking lot where she worked as a cashier, then parking a few spots away from her car. Defendant was charged with stalking.⁴⁷

the evidence it heard. A defendant is still able to contend specific stalking behaviors alleged at trial did not occur, while at the same time being unable to deny that stalking occurred. In all these cases, the convictions were upheld.

⁴⁶ *State v. Marsala*, 688 A.2d 336 (Conn. Appl. Ct. 1997). Another minimal acquaintance case is *Crenshaw v. State*, 515 S.E.2d 642 (Ga. Ct. App. 1999), where the victim had attended second grade with the defendant's son. Defendant began stalking victim when she was age 14 and continued his stalking behaviors when she was divorced and returned home to her parents' house.

⁴⁷ *People v. Nakajima*, 691 N.E.2d 153 (Ill. App. Ct. 1998). Another casual acquaintance stalking case is *Troncalli v. Jones*, 5114 S.E.2d 478 (Ga. Ct. App. 1999) (civil suit for stalking), where defendant began stalking by twice brushing victim's breasts at a party at a mutual friend's house. Defendant then followed victim in her car when she left the party. Other stalking incidents followed.

Dating Relationship

- 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, 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. 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 resting at a friend's house. She woke up at 1 p.m. to find defendant beating on her; her face was swollen and her eye was protruding. On October 25, 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.⁴⁸

Prior Marriage

- In *State v. Colbry*, defendant had been abusing the victim (his wife) before they separated in August 1993. During September, defendant telephoned victim three or more times daily at home and at work. He threatened to fight for custody of their child and "to take [her] for everything [she] had." He also threatened a man with whom he suspected she was having an affair. Toward the end of September, defendant assaulted victim, but the police did not file charges. On October 10, defendant again assaulted victim. In response, she obtained a protection order. As she left the courthouse, her car was pursued by defendant at high speed. Victim drove to the state police barracks. While she was telling her story, defendant drove up to the officer and threatened to kill victim's male passenger. He next went to victim's home and entered, screaming at victim and threatening to kill her male friend. For weeks thereafter, defendant appeared at victim's work site and followed her home. In December, defendant used his key to enter the couple's residence without permission and in violation of the no-contact order. In January 1994, defendant was convicted of assault for the October incident. In March, he was convicted of trespass for the December incident. Both convictions were accompanied by no-contact orders. Defendant continued to telephone victim and threaten to kill her male friend, with whom she was now living. In June, police monitoring of victim's telephone recorded defendant again threatening to kill or injure victim's male friend. Defendant was arrested for stalking.⁴⁹

⁴⁸ *People v. Allen*, 40 Cal. Rptr.2d 7 (Cal. Ct. App. 1995).

⁴⁹ *Peterson, Larson, Colbry v. State*, 930 P.2d 414 (Alk. Ct. App. 1996).

- In *People v. Borrelli*, a woman (victim) obtained a restraining order after separating from her husband (defendant) in July 1995. When defendant appeared unannounced at the victims' parents' house instead of her home as planned on September 21, to pick up their children, he threatened to kill both her and her parents. A few hours later he appeared at her home, angry because the children had fallen asleep. He stomped on her foot and kicked her before leaving. On December 2, defendant appeared at a hair salon and called victim names because she had not been home when he came by to pick up the children. When she returned home to pack clothing for the children to go with defendant, he rear-ended her car while she was still parked in front of her house. She locked the car doors and defendant came up to the car, banging on the door and threatening to kill her. When he returned that evening with the children, he moved as if to grab her neck. For that he was arrested. In April 1996, defendant telephoned and again threatened to kill victim. The next day at 6 a.m. he again called with a threat to kill her. On May 1, victim moved without telling defendant of her new address; child custody exchanges were made at the local police department. On May 7, defendant appeared at victim's place of work, entering her office and calling her names. In December, defendant crashed his car into the front doors of the building where victim worked, saying he was making a statement to his girlfriend, who worked in the building.⁵⁰
- In *State v. Cartwright*, the defendant in August 1997 began accusing the victim of having affairs with coworkers and friends (another common occurrence in many domestic violence cases). 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 her employer that she was selling company secrets. After victim filed for a divorce, defendant apologized, offering gifts and excuses (claiming his medication was at fault). The accusations began anew when another girlfriend slept over. Once, after victim was talked into letting defendant shower in the house, she found three 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 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

⁵⁰ *People v. Borrelli*, 91 Cal. Rptr.2d 851 (Cal. Ct. App. 2000).

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. She 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.⁵¹

- In *State v. Hoxie*, defendant and victim were separated after eight years of marriage, and a divorce action was initiated in January 1994. Defendant was reported to have come by the school that victim was attending or by her home on a daily basis for the next two months. Many days, he would make 40 to 80 calls. During that period, victim changed her number six times. On some occasions, defendant assaulted victim. Three times in April, defendant appeared at victim's school, questioning her about her activities and friends. On May 22, defendant appeared nude in the victim's driveway, exposing himself to their two daughters. Police responded and escorted him from the property. On May 29, victim returned to her house, where defendant questioned her about her activities that day. An argument ensued, and victim and the daughters fled inside. Defendant beat on the house door until it was dented, and he threatened to kill victim. The victim's phone box was disconnected so that she could not call 911. On June 2, a court no-contact order was issued against defendant. Two days later defendant drove alongside victim's car and screamed at victim. On June 6, defendant called victim's house and warned her male friend to stay away. After leaving the house, the friend found that the tires on his car had been slashed. On June 10, defendant sought to obtain a key to the house from one of the daughters while she was at the local YWCA. On June 12, he came three times to the neighborhood pool where victim and the children were swimming. Defendant assaulted victim and said he would have her killed if she had him removed from the pool. Defendant followed victim to a restaurant on June 29 and later that night telephoned her to say he would not return their daughter from a weekend visitation. Defendant then tried to have victim's school scholarship taken away for misconduct and threatened the scholarship agency "if they did nothing." In July, victim's car tires were slashed on eight occasions. Throughout the summer, defendant left cards and notes at victim's home and place of employment expressing his love for her. Defendant would also follow victim at the school lunchroom. Finally, on October 23, defendant would not remove his truck from victim's driveway; an argument ensued, and he again seriously assaulted her. Defendant was charged with stalking, violation of court orders, and telephone harassment.⁵²

⁵¹ *State v. Cartwright*, 17 S.W.3d 149 (Mo. Ct. App. 2000). As these cases illustrate, child visitation requirements present unique complications for victims of domestic violence stalking. See also, for example, *Commonwealth v. Alphas*, 762 N.E.2d 575 (Mass. 1999), where the defendant began videotaping all his contacts with his divorced wife-victim. One other interesting aspect of that case was the defendant's bragging of using a scanner to hear his ex-wife's phone calls.

⁵² *State v. Hoxie*, 963 S.W.2d 737 (Tenn. 1998).

Acquaintance Relationship

- In *Fly v. State*, defendant and victim were coworkers and had one dinner date in November 1991. In the next few months, defendant left the victim increasingly invasive messages and presents, including a burglar alarm left on her doorstep with the message that breaking into her home would be easy. It then became apparent that defendant had access to victim's computer at work, and investigation showed that he worked for a company subcontractor. Defendant was fired from his position and blamed victim. Defendant continued sending letters to victim and to her relatives, friends, and a former employer, detailing his love for her. In January 1993, defendant left the victim two \$100 bills and letters. One letter stated, "I hope you don't have to die or nearly die to realize that I really cared about you...." The letters he continued sending showed he was watching her house, going through her trash to obtain addresses of her boyfriends, and following her. Additional letters showed that defendant was taping her phone calls. The messages continued and expanded again to include her friends, coworkers, and minister, as well as the dean of her law school. Defendant was then convicted of wiretapping and placed on probation with a no-contact condition. On June 12, 1994, defendant left a message from the horror movie *Fright Night*. Defendant was again arrested. From jail, defendant sent the victim's minister a message strongly stating his contempt for the victim. Defendant's probation was reinstated on condition that he leave the state. Three months later he left her a telephone message. Within a week he left a cassette tape on the hood of her car during the night. Defendant was arrested for stalking but continued to send messages from jail to victim and her parents.⁵³
- In *State v. Jackson*, the victim was a male physician treating a female defendant for Lyme disease. After a while, defendant began to address the victim by his first name, rather than by his title, Doctor. On one occasion, victim found a rose placed on his wife's car, which he was using. A week later, roses were delivered to him at the hospital, signed only with "guess who." About the same time, victim began to receive strange telephone calls at his office, such as the sound of a "raspberry" and the phone hanging up. Other calls involved music playing lyrics, such as "I'll be watching you" and "we'll be together forever or else." Although victim terminated the doctor-patient relationship, the frequency of these calls increased and began to include calls to him while he was eating dinner with his family. At home, his wife began to receive calls followed by either a raspberry or silence several times a week and even several times a day. His wife then began receiving anonymous letters charging victim with adultery. Victim also began receiving odd letters, such as one anonymous note saying his wife was watching the parking lot to see if he left with anyone. A letter was sent to the president of the hospital that charged victim with unprofessional behavior. Defendant then began to intimidate victim in the hospital parking lot. On one occasion, defendant attempted to block victim's egress from the lot. On another occasion, when defendant

⁵³ *Fly v. State*, 494 S.E.2d 93 (Ga. App. Ct. 1997).

took his child to a gym for karate lessons, defendant was seen at the front desk staring at victim and his child. Victim then left and defendant followed, continuing to stare at him and his son.⁵⁴

Victim Reports

Information about stalkers also comes from personal reports published by or about stalking victims. For example, one well-known story is that of Kathleen Baty. In 1982, her stalking began with a phone call from a high school classmate whom she had not seen in years. The phone calls continued, and she soon noticed a pickup truck circling the house. Police were called and found a loaded rifle in the truck. Defendant was held for 48-hour psychiatric evaluation and released. The calls resumed, and defendant was soon rearrested outside victim's parents' home, again carrying a rifle. On this occasion, defendant was sent to a mental facility for six months and received three years' probation. After he completed probation, defendant was arrested again, this time for trying to break into victim's home. He received a 60-day jail sentence and three more years on probation. In summer 1989, victim met the defendant again by chance; she ordered a pizza and he was the deliveryman. In November of that year the stalking resumed. The next spring, victim got married and defendant went missing. Soon, he appeared in victim's kitchen, holding a knife and planning to take her to a mountain cabin for a couple of weeks until she began to love him. Fortunately, the phone rang and the victim was able to communicate to her mother what was happening. Police were summoned and arrested defendant. Defendant was sentenced to eight years in prison.⁵⁵

Research Reports

In general, the research supports these anecdotes as illustrating both the scope of stalking behaviors and their duration and frequency. The National Violence Against Women Survey, for example, found that 82 percent of the women stalked reported that their stalkers followed them, spied on them, or stood outside her house. Sixty-one percent said they had received unwanted phone calls, 33 percent received unwanted letters or gifts, and 29 percent had property vandalized. The survey also

⁵⁴ *State v. Jackson*, 742 A.2d 812 (Conn. App. Ct. 2000).

⁵⁵ Larry Stagner, *Stalked*, 56 WOMEN'S DAY 49 (March 3, 1993). See also Howard Kohn, *The Stalker*, 180 REDBOOK 106 (April 1993); *One Woman's Nightmare*, 24 ESSENCE 72 (October 1993); Moore, *When A Stalker*

found that 9 percent of the stalked women reported threats to kill the family pet,⁵⁶ a finding not seen in the stories above. The survey respondents were also unlikely to experience extended stalking, lasting more than one year; only one-third of those stalked were stalked for a period greater than one year. Only 10 percent of those stalked were stalked for more than five years.⁵⁷ Finally, the survey found that stalking victims who had previously been intimate partners with their stalker were significantly more likely to have been victims of domestic violence than were women in the general population; 81 percent of intimate stalking victims had been assaulted by their spouse in the past compared to a 20 percent lifetime experience of domestic violence among all women who have been married or lived with a man.⁵⁸ The Louisiana survey also found a high level of prior assaults against stalking victims, 32 percent.⁵⁹

Other research on stalking supports both the National Survey's findings and the stories above. Nicastro, Cousins, and Spitzberg, for example, in summarizing eight studies on stalking list the following behaviors as characteristic of stalking: frequent telephone calls, personal contact at home or work, driving by home, repeated following or watching, appearing at work or school, sending or leaving letters or objects, contacting third parties, damaging property, breaking and entering, and threatening violence to the victim or others.⁶⁰ In a review of criminal case files in the San Diego City Attorney's Office, these researchers also found that 45 percent of the stalking cases involved physical assaults of one sort or another.⁶¹ Hall also found a high incidence of assaultive behaviors among other stalking actions. She found that 38 percent of her victim sample reported being hit or beaten and 22 percent reported a sexual assault. The most common stalking behaviors reported by these victims included making unwanted telephone calls (87 percent), surveillance at home (84 percent), following (80 percent),

Stops at Nothing, 225 COSMOPOLITAN 224, 224-28 (December 1998); Francine Maroukian, *Stalked: One Woman's Terrifying Tale*, 194 REDBOOK 99 (April 2000).

⁵⁶ Tjaden & Thoennes, *supra* note 3 at 7.

⁵⁷ *Id.* at 11. One other interesting finding was that intimate stalking lasted on average twice as long as non-intimate stalking, 2.2 versus 1.1 years. Tjaden & Thoennes, *supra* note 3 at 12. Care must be taken with all these findings because of the very small numbers involved. See discussion *supra*, note 27.

⁵⁸ Tjaden & Thoennes, *supra* note 3 at 8. Similarly, 31 percent of stalked former intimates had experienced sexual assault by their former intimate compared to 5 percent in general population.

⁵⁹ LOUISIANA REPORT, *supra* note 28.

⁶⁰ Alana M. Nicastro, Amber V. Cousins & Brian H. Spitzberg, *The Tactical Face of Stalking*, 28 J. CRIM. JUST. 69, 71 (2000).

⁶¹ *Id.* at 75. FISHER *et al*, *supra* note 30 at 28, report that 15 percent of their college campus victims said the stalker either assaulted or threatened to assault them. In 10 percent of the incidents, the stalker forced or attempted sexual contact.

driving by home (77 percent), appearing at workplace (54 percent), and sending letters (50 percent). Some unusual activities included spreading gossip (48 percent) and sending packages with materials such as urine, blood, or dead animals (3 percent). One victim also reported an arson.⁶²

A number of researchers have developed typologies of stalking behavior. One especially interesting study is Dunn's review of stalking case files and interviews of stalking victims in a major California jurisdiction. She classifies stalking behaviors as falling into four categories:

- Courtship (e.g., letters, calls and personal meetings expressing love and saying "we can work things out," gifts and flowers)
- Surveillance (e.g., following, driving by home, calling employers) to send a "message"
- Symbolic violence (e.g., breaking into home, vandalism, property theft, leaving penal code provision number for murder on victim's pager)
- Physical violence.⁶³

In sum, both the anecdotal reports drawn from court decisions and personal stories agree on the scope of stalking behaviors and their duration.

C. Stalking's Impact on Victims

Relatively little research has focused on the impact stalking has on its victims, although homicide—the most serious impact of stalking—led to policy attention to stalking. But non-homicide-stalking victims are also often dramatically impacted. Information about such impacts comes from a variety of sources. These include information from the victims themselves, especially victim interviews, their courtroom testimony, and victim surveys asking about impacts.

Victim Reports

A statutory element of the crime of stalking in most states is victim fear. Hence, it is not surprising that many court rulings in stalking cases cite reports of victim fear. But the term "fear" does

⁶² Hall, *supra* note 24 at 150 and 132.

⁶³ Jennifer Dunn, *Courting Disaster: Intimate Stalking, Victimization, and the Law* (n.d.) (unpublished paper on file with Sacramento County (Cal.) District Attorney's Office).

not really convey the complexities of how victims respond to stalkers. Thus, we need to know more about other internalized reactions and about victim responses that involve lifestyle changes.

In all the court cases cited above, victims reported being physically frightened. In the last of these cases, *Jackson*, the victim stated,

Well, it's affected my life...tremendously. It's like living in a prison. I mean, these things continue. The willfulness of it all. The continued lying-in-wait. Everywhere I go—there would be—I have incidents of phone calls, letters, letters to neighbors—I mean, it's just awful. I mean none of it—I mean, I've done nothing wrong. Here I am as a doctor trying to help a patient and this is...what occurred. And it is horrible. I live every day still in fear that something's going to happen to me. Fear that...my children are going to be left alone if someday—you know—I'd drive up and meet her and she—or she's just there and...does bodily harm to me. I mean it's just awful. Nothing is changed. We still do the alarm, we still do the binoculars. At night...you hear sounds and—normal sounds of the neighborhood and here I am running to the window...trying to look out or going out and seeing...what's occurring. It's just horrible. It's a horrible way to live in fear of your life...every day I wake up I'm in fear of my safety.⁶⁴

Dunn quotes another stalking victim, who told her,

There's no advice I can give a person on how to deal with the fear. How do you, you know, there's nothing I could say that's gonna make sense, especially when you have a child. I mean I, the nights I had to put the knife under her bed, the nights, when what am I going to do? Cause if he was coming in, he had to get through me, to get to her. I mean, totally, I bet you, 70 to 80 nights like that, when he was coming over. And there's nothing, there's no advice I could ever give a person to deal with, there's no way to deal with it. It's the most powerful fear there is...I'd never felt that kind of fear before. The only fear I'd ever felt before was the kind you feel when a person jumps out in front of you and you almost like, hit him, that roller coaster kind of fear, but walking around with that feeling that you get right at that moment, if you can imagine that feeling again, where you almost hit someone, never leaving...if you could

⁶⁴ *Id.* In *Nakajima*, *supra* note 48, victim testified that she was "absolutely terrified." The court decision stated that she did not know what defendant intended or why he was following her. According to the victim, she "wanted to get to a safe place" and "didn't know if he would try to harm [her] in any way." In *Hoxie*, a neighbor testified that victim asked her to raise her children should defendant kill her. In *Troncalli*, the victim "developed shingles, experienced nausea and vomiting, became frightened and depressed, and sought psychological counseling." In *State v. Schwab*, 695 N.E.2d 801, 806 (Ohio App. Ct. 1997), victim reported that she no longer drives places or walks in her parents' neighborhood by herself, that she had purchased a cellular phone in case defendant "caught up with her," and that she is afraid for herself and her children. In *Johnson v. State*, 648 N.E.2d 666 (Ind. Ct. App. 1995), victim had moved four times in Ohio and then moved to a shelter in Indianapolis, all in an effort to hide from her ex-boyfriend stalker.

imagine walking around that way, for months after months after months and it never leaving, the fear, whatever the thing that has made you afraid doesn't leave....

Kasting, who reports on extensive interviews with stalking victims, points out that the impact of stalking by a former intimate partner can be affected by continuing emotional ties between the stalker and the victim, as well as by social pressures to make the former relationship "work." For example, one of her interviews was with a woman whose family supported the stalker's efforts since their religious beliefs favored the sanctity of marriage. These external forces may worsen stalking's impact by undercutting social support and understanding for the victims, increasing their isolation from society.⁶⁵ Kasting's interviews also underscore how the justice system's response to stalking can ameliorate or exacerbate the negative effects of stalking on the victim's mental health and well-being.

- Interviewee 1 reported that her stalker was an acquaintance who first tried to gain control over her by implicating her in an armed robbery. He was convicted and sent to prison for the offense, but he continued to stalk her and on five occasions assaulted her; he was not convicted of assault, instead being returned to prison as a parole violator. Upon being released again, he abducted her and sexually assaulted her. The initial police response to reports of the abduction were minimal until a superior officer was reached. The sex crime detective assigned to the case after the arrest provided her with considerable assistance, including obtaining a name change and help in relocating to another jurisdiction. That detective continues to keep in contact four years later. At the same time, the detective also provided her with personal in-court support while she was waiting to testify in the criminal matter. Other police officials were less helpful, e.g., although they helped her sell her car anonymously, the sale was for only a small fraction of its worth. Eventually the police were helpful in helping her obtain a new driver's license and social security number. However, the latter took two years, during which she could not work and had to rely on welfare.
- Interviewee 2 was a former victim of domestic abuse who was assaulted after leaving the relationship. She reported, "I had to fight with the [prosecutor] to get her to even, like the police laid the charges, but the [prosecutor] said there wasn't enough evidence to charge, yet the police hadn't given her the whole file. So I really had to check up on the information she had, and that she was getting from the police. I was asking her if she had gotten the doctor's report and she said she didn't have them and that she didn't think they would be beneficial...." She further observed that "the whole legal system, the court system, etc., they don't work together enough. I guess they aren't severe enough...there's not enough repercussions for [the stalkers].... It's not made open

⁶⁵ Colleen Ann Kasting, *Being Stalked: Is Anyone Listening? An Exploration of Women's Voices* (n.d.) (unpublished M.A. Dissertation, University of Victoria).

enough in the newspapers.... That would be more validation...so that he can't walk with his head quite as high."

- Interviewee 3 was asked, "Did the police put you through hell?" She responded simply, "Yeah, and so we moved away." She also reported, "I went through the court system and it was an absolute disaster. I had no support from anybody and to be quite honest, I would never go through that again. Never.... I went through the five prosecutors and by the time I got to trial they didn't even have the evidence." She later said that after the conviction, "I still couldn't get on with my life...every time I go to town.... Just last summer, I ran into him...waving away at me...I just fell apart. She added, "I still feel like a victim. The only financial compensation I got was from workman's compensation. To me, money is the only thing that will compensate me. For one thing, it will get me out of this house...there was a long, long time when I couldn't even come home to the house. This is where he tried to kill me. This is where it all went on." She concluded, "I think the court system caused me health problems [nervous breakdown]. It was a big letdown to be told he was going to get a jail sentence and then he didn't."
- Interviewee 4 reported, "I still have to deal with the court system on an ongoing basis for the children's access to their father. Probation officers are the worst. They put me at more risk than anyone else.... [They] try to facilitate or mediate for custody access. They're not paying attention to what women are saying. And when I'm standing in front of one who's asking me to put myself at risk because they don't think the risk is great enough or they are telling me that the way I'm keeping myself safe is too extreme for them...."

D. Victimization Responses

Considerable research has also been done on victim responses to stalking. For example, the National Violence Against Women Survey found evidence of significant mental health impacts. Thirty percent of the women and 20 percent of the men victims said they had sought psychological counseling due to being stalked. These victims were also more likely than others to be concerned about personal safety (42 versus 24 percent) and to carry something on their person to defend themselves (45 versus 29 percent). Over a quarter of the stalking victims reported loss of time 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 driving habits (5 percent).⁶⁶ The Louisiana stalking survey reported similar findings. Thirty-six percent of the stalking victims said they had moved their household as a result of the stalking, and 11 percent purchased a gun. Fifty-five percent said that they had experienced stress that interfered with their regular activities for a period of at least one month.⁶⁷ With their survey of college students, Mustaine and Tewksbury found that stalking victims also reported significant changes in behavior to lessen their vulnerability, including carrying mace and carrying a pocketknife.⁶⁸

Mullen and colleagues have done extensive research on stalking impact in Australia. Their 1997 survey of 100 stalking victims found that stalking resulted in significant activity changes for its victims, including the following:

- Major lifestyle changes or modification of daily activity for 94 percent of victims
- Curtailment of social activities for 70 percent of victims
- Decrease or cessation of work or school attendance for 50 percent of victims (due either to absenteeism or stalker invasion of work or school site)
- Relocation of residence for 40 percent of victims
- Change of workplace or school for 34 percent of victims.⁶⁹

The researchers also found important psychological problems resulting from the stalking, including these:

- Increased anxiety and arousal for 80 percent of victims
- Chronic sleep disturbance for 75 percent of victims
- Recurring thoughts or flashbacks to the stalking, resulting in distress for 55 percent of victims (often triggered by ordinary events such as a ringing telephone or doorbell)
- Appetite disturbance for 50 percent of victims

⁶⁶ Tjaden and Thoennes, *supra* note 3 at 11-12. Again, care must be taken with all of these detailed findings because of the very small numbers involved. See discussion *supra*, note 27. Nonetheless, the central finding about the seriously negative impact of stalking on its victims is not subject to such qualification. See generally, Keith E. Davis & Irene Hanson Frieze, *Research on Stalking: What Do We Know and Where Do We Go?* 15 VIOLENCE & VICTIMS 473, 479 (2000).

⁶⁷ LOUISIANA REPORT *supra* note 28.

⁶⁸ Mustaine & Tewksbury, *supra* note 30 at 56-57.

⁶⁹ Pathe & Mullen, *supra* note 35.

- Excessive tiredness, weakness, or headaches for 50 percent of victims
- Numbing of responses to others, including feeling of detachment for 38 percent of victims
- Nausea before going to places associated with the stalking for 33 percent of victims
- Increased alcohol or cigarette use for 25 percent of victims
- Contemplation of suicide for 25 percent of victims.⁷⁰

The researchers' analysis of these findings suggested that most of the stalking victims experienced at least one major symptom associated with Post-Traumatic Stress Disorder (PTSD). The authors explain that this is not surprising because "stalking possesses many of the features that may produce chronic stress reactions and related psychological sequelae."⁷¹ Those features include persistent, repetitive trauma; loss of control; state of persistent threat with associated symptoms that may far outlive the actual duration of the harassment; and loss of social supports normally available for crime victims because of mistrust and fear generated by the stalking itself. While many factors affected the specifics of the stalking impact on the victims, there was not one victim who did not experience some level of harm "that in some cases amounted to profound deterioration in functioning."

These findings were replicated by Nicastro and her colleagues and by Hall. Nicastro's sample of 55 prosecution cases in San Diego showed that the most common impacts from the stalking were fear (80 percent), feeling threatened (43 percent), nervous reaction (33 percent), and anger (29 percent). A smaller number reported physical illness (11 percent), depression (9 percent), and a sense of helplessness (7 percent).⁷² Similarly, Hall found that 87 percent of her sample of 145 victims said their personalities had changed as a result of the stalking, a figure greater for the female than the male victims. Specifically, 41 percent felt paranoid, 52 percent easily frightened, and 27 percent more aggressive. The percentages of those saying they had been generally friendly (89%) and outgoing (78%) before the stalking dropped significantly, to 53 percent (friendly) and 41 percent (outgoing).⁷³

⁷⁰ *Id.*

⁷¹ MULLEN *et al*, *supra* note 9 at 59.

⁷² Nicastro *et al*, *supra* note 63 at 75.

⁷³ Hall, *supra* note 24 at 152.

Finally, Blaauw and colleagues studied stalking's impact on victims in the Netherlands and found that even a year or more after the cessation of stalking, there was no significant reduction in the psychiatric symptoms associated with the stalking.⁷⁴

Although the anecdotal reports provide a powerful, if limited, descriptive view of stalking's impact on the victims, the research cited above provides a much clearer view of the variety of impacts caused by stalking.

F. Summary

There have been only a handful of studies of the incidence of stalking. Taking into account methodological differences among these studies, a best-guess estimate of the incidence of stalking is probably about two million victimizations annually. If one uses a looser definition of stalking to include cases where victim fear is relatively minor, the number of stalking cases occurring annually grows by another 2 to 4 million. While these numbers far exceed estimates based on official records, the difference is simply a matter of failure of victim reporting and poor agency record keeping.

Whether one reviews the prior research or the anecdotal reports found in court decisions, or simply talks to victims of stalking, the inescapable conclusion is that stalking has a devastating impact on victims. This might not matter if stalking were a rare occurrence, but it is not. Literally millions of Americans have been victims of stalking, and millions more will be stalked unless something is done to prevent such acts. Stalking is important to its victims and should be important for policymakers.

⁷⁴ E. Blaauw, F. W. Winkel & E. Arensman, *The Toll of Stalking: The Relationships Between Features of Stalking and Psychopathology of Victims*, in AIC Conference Papers, *supra* note 9.

III. Responding to the Problem: State Stalking Laws and Their Implementation

State lawmakers have responded to the problem of stalking by enacting anti-stalking laws. Questions arise, however, about the scope of those laws and how well they are being implemented. The research sought answers to both these questions by reviewing

- Statutory anti-stalking enactments and interpretative court rulings and
- Local anti-stalking initiatives, with special attention to the federal role in supporting these initiatives.

Part IV of this report continues the research examination of local anti-stalking initiatives by examining the effectiveness of the new stalking laws from a best practices perspective.

A. Legislation and Court Rulings

Enactment of criminal laws is just the first step in using the justice system to combat stalking. Court rulings must interpret possible ambiguities in the laws and limit the law where it might impinge on First Amendment or other constitutional guarantees. Amendment of the stalking law may then occur as a result of court rulings or as experience shows that the stalking law needs modifications. This review of the status of stalking laws examined all three issues: enactment, court review, and amendment.

Legislation

The legislative review examined state laws relating to both the crime of stalking and such related crimes as violation of civil protection orders against stalking, harassment, terroristic threats, and invasion of privacy. These latter code provisions are included because they also reflect the varying degrees to which state legislative bodies perceive stalking as serious. They also reflect the degree to which consideration is given to countervailing issues, such as the constitutional right of free speech and other constitutional doctrines found applicable by the courts. The legislative review covers these topics:

- Stalking criminal laws
- Stalking civil laws
- Related criminal laws

- Criminal procedure laws, e.g., warrantless arrest for stalking and requirements for stalking training.

Stalking Criminal Laws. As of November 1999, all 50 states' legislatures, the District of Columbia, and the federal government had enacted laws making stalking a crime. The laws vary significantly in the specific behaviors outlawed and the penalties provided for violation. In brief, the 50 states' laws treat stalking as a felony offense; however, many states do not necessarily make a first stalking offense a felony. In 37 states, a conviction for a first stalking offense *can be* a felony; in 12 of those states, *any* first stalking offense is a felony. In the other 25 states with felony stalking laws, only the most serious stalking offenses and repeat stalking are felonies; simple stalking (without a weapon, for example) is a misdemeanor.⁷⁵ In the 13 states (and the District of Columbia) where a first stalking offense is always a misdemeanor, repeat stalking is treated as a felony.⁷⁶ The federal interstate stalking

⁷⁵ First offense stalking felony laws include ALA. CODE §§ 13A-6-90, 91; ALASKA STAT. § 11.41.260 (weapon, minor, or order violation); ARIZ. REV. STAT. § 13-2923; ARK. CODE § 5-71-229; CAL. PENAL CODE § 646.9 (discretionary charging with prosecutor); COLO. REV. STAT. § 18-9-111 (4), (5); CONN. GEN. STAT. § 53a-181c (order violation or minor); DEL. CODE tit. 11 § 1312A; FLA. STAT. § 784.048 (threat or order violation); GA. CODE § 16-5-91 (order violation); 720 ILCS 5/12-7.3, 7.4; IND. CODE § 35-45-10-5; IOWA CODE § 708.11 (order violation, weapon, or minor); KAN. STAT. § 21-3438; KY. REV. STAT. §§ 508.130, .140, .150 (order violation or weapon); LA. REV. STAT. § 14:40.2 (B)(3) (order violation); MD. CODE art. 27 § 124 (five-year misdemeanor); MASS. GEN. LAWS ch. 265 § 43; MICH. STAT. § 28.643(9)(3) (threat or order violation); MINN. STAT. § 609.749 (5); MO. REV. STAT. § 565.225 (5); NEV. REV. STAT. § 200.575 (2)(a), (3)(a); N.J. STAT. § 2C:12-10 (c), (e) (order violation or while under supervision); N.M. STAT. §§ 30-3A-3, 3.1 (order violation, weapon, or minor); N.Y. PENAL L. § 120.40-§ 120.60; N.D. CENT. CODE § 12.1-17-07.1 (6)(a)(2) (order violation); OHIO REV. CODE § 2903.211 (B)(2) (made threat, weapon use, history of violence with victim, order violation, damage to property of victim, trespass); OKLA. STAT. tit. 21 § 1173 (order violation); 18 PA. CONS. STAT. § 2709 (c)(2)(ii); S.C. CODE §§ 16-3-1720 (B), 1730 (order violation or violence); S.D. CODIFIED LAWS § 22-19A-2 (order violation); UTAH CODE § 76-5-106.5 (5) (weapon); VT. STAT. tit. 13 § 1061-63; WASH. REV. CODE § 9A.46.110 (5)(b) (order violation, weapon or special victim); WISC. STAT. § 940.32 (3) (with bodily injury); WYO. STAT. § 6-2-506 (e) (bodily injury or order violation)

⁷⁶ Laws authorizing felony penalties for a second misdemeanor stalking offense include HAW. REV. STAT. § 711-1106.4 (where stalking accompanied by order violation); IDAHO CODE § 18-7905 (c); MISS. CODE § 97-3-107 (3); MONT. CODE § 45-5-220 (3); NEB. REV. STAT. § 28-311.03, .04; N.H. REV. STAT. § 633:3-a (VI)(a); N.C. GEN. STAT. § 14-277.3 (b); OR. REV. STAT. § 163.732; R.I. GEN. LAWS § 11-59-2 (6); TENN. CODE § 39-17-315 (b)(2); TEX. PENAL CODE § 42.072 (c). States that provide felony penalties for a second misdemeanor stalking conviction where felony penalties are available for the most serious stalking cases include Alaska, Connecticut, Georgia, Hawaii (if second violation violates court order or release conditions), Indiana, Iowa, Louisiana (within seven years), Michigan, Missouri, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Washington, Wisconsin, and Wyoming. Laws providing felony penalties for a third stalking conviction include ME. REV. STAT. tit 17-A § 210-A (3), 1252 (2)(C) (general incarceration sentencing provisions); VA. CODE § 18.2-60.3 (B); W.VA. CODE § 61-2-9a (d). See also IOWA CODE § 708.11 (3)(a), providing for felony penalties for a third simple stalking conviction. The District of Columbia provides for increasing penalties for both second and subsequent stalking convictions, D.C. CODE § 22-504.

law also provides for felony penalties.⁷⁷ Exhibit 1 details the differences in stalking penalties among the states.

Exhibit 1. Stalking Criminal Laws: Felony or Misdemeanor Penalties, 2001

State	Felony for First Offense	Felony or Misdemeanor for First Offense	Misdemeanor for First Offense	Felony for Second Offense	Felony for Third Offense
AL	4				
AK		4			
AR	4				
AZ	4				
CA		4			
CO	4				
CT		4			
DE	4				
DC			4	4	
FL		4			
GA		4		4	
HI			4	4	
ID			4	4	
IL	4				
IN	4				
IA		4			
KS	4				
KY		4			
LA		4		4	
ME			4		4
MD	4				
MA	4				
MI		4		4	
MN		4			
MS			4	4	
MO		4		4	

⁷⁷ 18 U.S.C. § 2261A.

State	Felony for First Offense	Felony or Misdemeanor for First Offense	Misdemeanor for First Offense	Felony for Second Offense	Felony for Third Offense
MT			4	4	
NE			4	4	
NV		4		4	
NH			4	4	
NJ		4		4	
NM		4		4	
NY		4			
NC			4	4	
ND		4		4	
OH		4		4	
OK		4		4	
OR			4	4	
PA		4		4	
RI			4	4	
SC		4		4	
SD		4		4	
TN			4	4	
TX	4				
UT		4		4	
VT	4				
VA			4		4
WA		4		4	
WV			4		4
WI		4		4	
WY		4		4	
US	4				

Several states have provisions that severely restrict their applicability. In North Carolina, for example, stalking refers only to instances where the stalker follows or is in the physical presence of the

victim.⁷⁸ This excludes long-range stalking such as sending letters or leaving gifts. In Hawaii and Illinois, the stalking law is similarly restricted to instances where the stalker pursues or follows or conducts surveillance.⁷⁹ Connecticut law forbids only stalking involving following or lying in wait.⁸⁰ In West Virginia, the stalking statute applies only to situations where there is or was a personal or social relationship or such a relationship is being sought.⁸¹ This definition would exclude all cases where revenge was the motive for the stalking and there had been no personal relationship between the stalker and the victim. In all these states, other provisions of state criminal law may be applicable, however, such as telephone harassment.

Stalking Civil Laws. Twenty-nine states authorize civil protection orders against stalking, in addition to laws in every state providing for orders against domestic violence.⁸² Violation of a stalking protective order is a crime in 24 of those states and may be criminal contempt of court in two other states.⁸³ In only nine states can a violation of the stalking order be treated as a felony;⁸⁴ in many other

⁷⁸ N.C. GEN. STAT. § 14-277.3.

⁷⁹ HAW. REV. STAT. § 711-1106.5; 720 ILCS 5/12-7.3. Similarly, Maryland law defines stalking in terms of approaching or pursuing the victim, MD. CODE art. 27 § 124. Wisconsin defines stalking as "repeatedly maintaining a visual or physical proximity" to the victim. WISC. STAT. § 940.32 (I)(a).

⁸⁰ CONN. GEN. STAT. § 53a-181d, 181e.

⁸¹ W. VA. CODE § 61-2-9a.

⁸² State laws authorizing stalking protection orders include ARIZ. REV. STAT. § 12-1809 (harassment); CAL. FAM. CODE § 6320, CIV. PROC. CODE §§ 527, 527.6 (workplace violence order); COLO. REV. STAT. §§ 13-14-102, 18-1-1001 (criminal order of protection); FLA. STAT. § 784.046; GA. CODE § 16-5-94; HAW. REV. STAT. § 604-10.5; IDAHO CODE § 18-7905 (by implication); IOWA CODE § 708.12 (1) (criminal no-contact); ME. REV. STAT. tit. 5 § 4655; MD. CTS. & JUD. PROC. §§ 3-1503, 1504, 3-8201 (peace order); MICH. STAT. § 27A.2950(1); MINN. STAT. § 609.748; MO. REV. STAT. § 455.020, .040, .050; MONT. CODE § 40-15-220 (4); NEB. REV. STAT. 28-311.09; NEV. REV. STAT. § 200.591; N.H. REV. STAT. § 633:3-a (III-a); N.J. REV. STAT. §§ 2C:12-10.1 (after guilty plea or finding), 10.2 (child or developmentally disabled); N.D. CENT. CODE § 12.1-31.2-01 (disorderly conduct order); OHIO REV. CODE § 2903.214; OKLA. STAT. tit. 22 § 60.2 (A); OR. REV. STAT. § 30.866, 163.735, .738; R.I. GEN. LAWS § 11-59-3 (setting penalties for order violation); S.C. CODE §§ 16-3-1750-1790; S.D. CODIFIED LAWS § 22-19A-8; VA. CODE § 19.2-152.8-.10.; WASH. REV. CODE § 10.14.040-.200 (anti-harassment); WIS. STAT. §§ 813.12, .125; WYO. STAT. §§ 7-3-507-511. *See also* GA. CODE § 34-1-7 (workplace order of protection issued to employer on behalf of employee); VA. CODE § 18.2-60.3 (D) (criminal no-contact order authorized after plea or finding of guilty); W. VA. CODE § 61-2-9a (h)(i) (criminal no-contact order authorized after plea or finding of guilty).

⁸³ Arizona and Michigan are among the states that authorize anti-stalking orders but do not explicitly authorize criminal penalties for violation of an anti-stalking protective order. Presumably, criminal contempt is an alternative criminal penalty in these states. (*See, e.g.,* ARIZ. REV. STAT. § 12-1809.)

⁸⁴ Felony penalties for violating a stalking court order are provided by CAL. FAM. CODE § 6320, CAL. CIV. PROC. CODE §§ 527, 527.6; GA. CODE § 16-5-91; NEV. REV. STAT. § 200.591 (5)(b)(permanent order); N.D. CENT. CODE § 12.1-17-07.1 (6)(a)(2); OHIO REV. CODE § 2919.17 (B)(2)(b) (with two prior order violations or stalking convictions); OR. REV. STAT. § 163.732 (2)(b); R.I. GEN. LAWS § 11-59-3; WASH. REV. CODE § 9A.46.110 (5)(b); WYO. STAT. § 6-2-506 (e)(iv).

states, however, repeat stalking in violation of a court order increases the crime level to aggravated stalking, which is a felony. In addition, repeat violations of a stalking order can be a felony in five states.⁸⁵ Only 10 states have legislation providing for the entry of stalking protective orders into a special statewide registry.⁸⁶ However, 36 states also have registries for domestic violence protective orders; such orders typically include anti-stalking provisions or stay-away orders.⁸⁷

Related Criminal Laws. Stalking is one of several related crimes that infringe upon a victim's privacy and safety. Related crimes include harassment, terroristic threats, and invasion of privacy. The most serious of those offenses is the terroristic threat against the victim's person; terroristic threat laws are found in 35 states and the District of Columbia.⁸⁸ Stalking differs from a terroristic threat in that in stalking, both the threat and the 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; that threat must be one of imminent

⁸⁵ See IDAHO CODE § 18-7905 (c); MO. REV. STAT. § 455.085.1 (7), (8); MONT. CODE § 45-5-626 (third violation is felony); N.H. REV. STAT. § 633:3-a (VI)(a) (second offense); VA. CODE § 18.2-60.3 (B) (third offense).

⁸⁶ See CAL. CIV. PROC. CODE § 527.6 (n), CAL. FAM. CODE § 6380 (b); COLO. REV. STAT. § 18-6-803.7 (2); FLA. STAT. § 784.046 (8)(b) MICH. COMP. L. § 600.2950a (7); MINN. STAT. ANN. § 609.748 Subd. 7; MO. REV. STAT. § 455.040(3); 22 OKL. STAT. § 60.5; OR. REV. STAT. § 163.741; VA. CODE § 19.2-152.10(E); WASH. REV. CODE § 10.14.110. See also ARIZ. REV. STAT. § 12-1809 (K) (authorizing county level registry); NEV. REV. STAT. § 200.597 (local dissemination); OHIO REV. STAT. § 2903.214(F) (local registry).

⁸⁷ These include ALASKA STAT. § 18.65.540; ARIZ. REV. STAT. § 13-3602(L) (local registry); ARK. CODE § 12-12-215(a); CAL. FAMILY CODE § 6380; COLO. REV. STAT. § 18-6-803.7; CONN. GEN. STAT. § 46b-38c(c); DEL. CODE tit. 10 § 1046(b); FLA. STAT. §§ 784.046(8)(b), 741.30(7)(b), 943.05(2)(e); IDAHO CODE § 39-6311(2)(b); IND. CODE § 5-2-9-5; 725 ILCS 5/112A-28, 750 ILCS 60/302; KY. REV. STAT. §§ 403.737, 403.770; ME. REV. STAT. tit. 19 § 16 § 632(4-B); MD. CODE art. 27 § 7A; MASS. GEN. LAWS ch. 209A § 5 (referring to Acts 1992, Ch. 188, establishing registry); MICH. STAT. § 27A.2950(10); MO. REV. STAT. § 455.040(3); NEV. REV. STAT. § 179A.350; N.H. REV. STAT. § 173-B:5(IX); N.J. STAT. §§ 2C:25-28(n), 29 (c) (state police notification); N.Y. EXEC. LAW § 221-a; N.C. GEN. STAT. § 50B-3(d); N.D. CENT. CODE § 12-60-23; OHIO REV. CODE § 3113.31 (F)(2) (local registry); OR. REV. STAT. § 107.720; 23 PA. CONS. STAT. §§ 6105(E), 6109 (B); R.I. GEN. LAWS § 12-29-8.1; TENN. CODE § 36-3-609; TEX. FAM. CODE § 85.042(a), GOV'T CODE §§ 411.042 (b)(5); UTAH CODE §§ 30-6-8, 53-5-209; VT. CODE tit. 15 § 1107(b); VA. CODE § 16.1-279.1(B); WASH. REV. CODE §§ 26.50.100, .160; W. VA. CODE § 48-2A-12; WIS. STAT. § 813.12(6)(b), (c); WYO. STAT. § 35-21-110.

⁸⁸ State laws criminalizing threats include ALA. CODE § [new], 2000 Acts , Act 807; ARIZ. REV. STAT. § 13-1202; ARK. CODE § 5-13-301; CAL. PENAL CODE § 422; COLO. REV. STAT. §§ 18-3-206 (menacing), 18-9-106(1)(b) (disorderly conduct); CONN. GEN. STAT. §§ 53a-62, 181 (d); DEL. CODE tit. 11 § 621; D.C. CODE § 22-504(a); FLA. STAT. §§ 836.05 (verbal threats), 836.10 (written threats); GA. CODE § 16-11-37; HAW. REV. STAT. § 707-716; 720 ILCS 5/12-6; IND. CODE § 35-45-2-1; KAN. STAT. § 21-3419; KY. REV. STAT. §§ 508.050, 525.060 (1)(a); LA. REV. STAT. § 14:40.1; ME. REV. STAT. tit. 17-A §§ 209, 210; MD. CODE art. 27 § 562; MASS. GEN. LAWS ch. 275 § 1 *et seq.* (maintaining peace); MINN. STAT. § 609.27; MO. REV. STAT. § 574.010.1(c); MONT. CODE § 45-5-203; NEB. REV. STAT. § 28.311.01; N.H. REV. STAT. § 631:4; N.J. STAT. § 2C:12-3; N.Y. PENAL LAW § 120.14(1); N.C. GEN. STAT. § 14-277.1; N.D. CENT. CODE § 12.1-17-04; OHIO REV. CODE §§ 2903.21, .22; OKLA. STAT. tit. 21 § 1362; OR. REV. STAT. § 166.155; 18 PA. CONS. STAT. § 2706; TEX. PENAL CODE. § 22.07; UTAH CODE § 76-5-107; VT. STAT. tit. 13 §§ 1026, 1701; WASH. REV. CODE § 9A.46.020; WIS. STAT. § 943.30. In many states, threats may

behavior and include the capacity to act on the threat. Harassment laws include simple harassment (25 states)⁸⁹ and telephone harassment or threats (43 states).⁹⁰ Letter threat laws have been enacted in 20 states.⁹¹ The federal government has also enacted laws criminalizing interstate threats or harassment using the mail or electronic communications (including telephone).⁹²

Criminal Procedure Laws. In only 10 states where stalking can be a misdemeanor offense does state law authorize warrantless arrest for stalking, similar to that authorized for misdemeanor domestic violence.⁹³ In the 11 states where stalking is always a felony, warrantless arrest is, of course,

alternatively be punished as common law assault. *See, e.g.*, 18 PA. CONS. STAT. § 2701(a)(3); TENN. CODE § 39-13-101(a)(2).

⁸⁹ Harassment laws include ALA. CODE § 13A-11-8; ALASKA STAT. § 11.61.120(a)(1); ARIZ. REV. STAT. § 13-2921; ARK. CODE § 5-71-208; COLO. REV. STAT. § 18-9-111(1); CONN. GEN. STAT. § 53a-182b; DEL. CODE tit. 11 §§ 1311, 12; HAW. REV. STAT. § 711-1106; IOWA CODE § 708.7; ME. REV. STAT. tit. 17-A § 506-A; MD. CODE art. 27 § 123; MASS. GEN. LAWS ch. 265 art. 43A; MINN. STAT. §§ 609.27, 749; MO. REV. STAT. § 565.090; NEV. REV. STAT. § 200.571; N.H. REV. STAT. § 644:4; N.J. STAT. § 2C:33-4; N.M. STAT. § 30-3A-2; N.Y. PENAL LAW § 240.25, .30; ND CENT. CODE § 12.1-31-01(1)(e), (g), (h); OR. REV. STAT. § 166.065; 18 PA. CONS. STAT. § 2709 (A); S.C. CODE §§ 16-3-1700, 1710; TEX. PENAL CODE § 42.07; WASH. REV. STAT. § 9A.46.020; WIS. STAT. § 947.013. The Missouri law cited here also includes specific reference to harassment by means of electronic communication.

⁹⁰ Telephone threat or harassment laws include ALA. CODE § 13A-11-8; ALASKA STAT. § 11.61.120(a)(2)-(4); ARIZ. REV. STAT. § 13-2916; ARK. CODE § 5-71-209; CAL. PENAL CODE § 653m; COLO. REV. STAT. § 18-9-111(1)(e)-(g); CONN. GEN. STAT. §§ 53a-182b, 183; FLA. STAT. § 365.16; GA. CODE § 46-5-21; IDAHO CODE § 18-6710; 720 ILCS 5/12-6; IND. CODE § 35-45-2-2; IOWA CODE § 708.7; KAN. STAT. § 21-4113; KY. REV. STAT. § 525.080; LA. REV. STAT. § 14:285; ME. REV. STAT. tit. 17-A § 506; MD. CODE art. 27 § 555A; MASS. GEN. LAWS ch. 269 § 14A; MICH. STAT. § 28.808; MINN. STAT. §§ 609.79, 749(2)(a)(4), (2)(a)(5); MO. REV. STAT. § 565.090; MONT. CODE § 45-8-213; NEV. REV. STAT. § 201.255; N.M. STAT. § 30-20-12; N.Y. PENAL LAW § 240.30; N.C. GEN. STAT. §§ 14-196, 14-277.1; N.D. CENT. CODE § 12.1-17-07; OHIO REV. CODE §§ 2917.21, 4931.31, 4931.99 (penalty provision); OKLA. STAT. tit. 21 § 1172; OR. REV. STAT. §§ 166.065 (1)(c), 166.090; 18 PA. CONS. STAT. § 5504; S.C. CODE § 16-17-430; S.D. CODIFIED LAWS § 49-31-31; TENN. CODE § 39-17-308; TEX. PENAL CODE § 42.07; UTAH CODE § 76-9-201; VT. STAT. tit. 13 § 1027; VA. CODE § 18.2-427; WASH. REV. CODE § 9.61.230; W. VA. CODE § 61-8-16; WIS. STAT. § 947.012; WYO. STAT. § 6-6-103.

⁹¹ Letter threat laws include ARK. CODE § 5-71-209 (a)(1); CONN. GEN. STAT. §§ 53a-182b, 183 (a)(2); FLA. STAT. § 836.10; 720 ILCS 5/12-6; IND. CODE § 35-45-2-2 (a)(2); IOWA CODE § 708.7 (1)(a)(1); KY. REV. STAT. § 525.080; MD. CODE art. 27 § 561; MICH. STAT. § 28.622; MISS. CODE § 97-3-85; MO. REV. STAT. § 565.090; NEV. REV. STAT. § 207.180; N.Y. PENAL CODE § 240.30(1); N.C. GEN. STAT. §§ 14-277.1(a)(2), 394; OKLA. STAT. tit. 21 § 1304; OR. REV. STAT. § 166.065(1)(c); TENN. CODE § 39-17-308(a)(1); TEX. PENAL CODE § 42.07; VA. CODE § 18.2-60; WIS. STAT. § 943.30.

⁹² These laws include 18 U.S.C. § 115(a)(1)(B); 18 U.S.C. § 875(c); 18 U.S.C. § 876; 47 U.S.C. § 223.

⁹³ These include FLA. STAT. § 484.048; IDAHO CODE § 19-603; IOWA CODE § 708.11; 17-A ME. REV. STAT. § 15; MD. CODE art. 27 § 594B; MO. REV. STAT. § 565.225; N.H. REV. STAT. § 633:3-a (V); OHIO REV. CODE § 2935.03; 18 PA. CONSOL. STAT. § 2711; VA. CODE § 19.2-81.3. *See also* IND. CODE § 35-33-1-1(a)(7). Although the California law permits a stalking case to be charged as a misdemeanor at the discretion of the prosecutor, CAL. PENAL CODE § 646.9, stalking is a felony for purposes of warrantless arrest.

authorized where probable cause exists. In Mississippi, warrantless arrest for misdemeanor stalking is authorized where the stalking is against a spouse or ex-spouse.⁹⁴

Legislation in only two states (Minnesota and Nevada) requires law enforcement training in stalking.⁹⁵ In comparison, 30 states require law enforcement training on domestic violence;⁹⁶ however, this requirement may be administratively interpreted to include stalking.

Court Decisions

Although it has been only slightly more than a decade since the first stalking law was enacted, the passage of such laws in all 50 states has sparked considerable litigation over their constitutionality and scope. In ruling on stalking litigation, courts have often drawn on cases involving similar penal statutes, those criminalizing harassment, and those involving threats.⁹⁷ These laws not only deal with related behavior, but they also use almost identical terms and phrases (e.g., annoy, repeatedly) that may be the subject of legal attack by defendants. Thus, analysis of stalking laws must examine all three types of criminal laws and their cousins, telephone threats and harassment. Similarly, electronic stalking, harassment, and threats must also be included; notwithstanding the relative paucity of such cases to date, their numbers are likely to increase.

⁹⁴ MISS. CODE. § 97-3-7(3), (4)(c). Other states that authorize warrantless arrests based on probable cause in domestic violence cases may by implication authorize similar arrests where stalking is committed in the context of a relationship covered by the state's domestic violence law.

⁹⁵ MINN. STAT. § 626.8451(1a), NEV. REV. STAT. § 289.600. *See also* CAL. PENAL CODE § 13519.05 (voluntary training program required); FLA. STAT. § 943.17(5) (violent crime training required).

⁹⁶ Police entry-level training on domestic violence is required by ALASKA STAT. §§ 18.65.240, 18.65.510; CAL. PENAL CODE § 13519; CONN. GEN. STAT. §§ 7-294g(a), 46b-38b(f); D.C. CODE § 16-1034; FLA. STAT. § 943.171; GA. CODE § 35-1-10; IDAHO CODE § 39-6316; 50 ILCS 705/7 (a); IOWA CODE § 80B.11 (2); KY. REV. STAT. § 403.784; MASS. GEN. LAWS ch. 6 § 116A; MICH. STAT. § 4.450(9) (c), 28.1274(3); MINN. STAT. § 629.341 (subd. 5); MO. REV. STAT. § 590.105.1 (7)(8)(9); NEB. REV. STAT. § 42-927; NEV. REV. STAT. § 481.054 (1)(m), (2)(e), (stalking training), 5(b); N.J. STAT. § 2C:25-20; N.Y. EXEC. LAW §§ 642 (5), 214b; OHIO REV. CODE §§ 109.744, .77 (B)(3); OKLA. STAT. tit. 70 § 3311 (D)(2) (family intervention training); OR. REV. STAT. § 181.642 (2); 23 PA. CONS. STAT. § 6105 (a); R.I. GEN. LAWS § 12-29-6 (a); S.D. CODIFIED LAWS §§ 23-3-39.5, 42.1; TEX OCC. CODE § 1701.253 (b)(1)(B)(iv); UTAH CODE § 77-36-2.3; VA. CODE § 9-170(38); WASH. REV. CODE § 10.99.030 (2)-(4); W. VA. CODE §§ 48-2A-9 (i), 48-2C-17; WIS. STAT. § 165.85 (4)(b)(1); WYO. STAT. § 7-20-105.

⁹⁷ Related criminal laws include intimidation and extortion; both of these include threats as punishment for past or future acts. Excluded from this review are criminal law cases that involve these related laws but where the facts of the case show behavior totally unrelated to stalking. *See, e.g., Coates v. City of Cincinnati*, 402 U.S. 611 (1971) (public disturbance of the peace) and *State v. Kansas*, 629 P.2d 748 (Ka. Ct. App. 1981) (hate crime threats, in this case cross burning).

This review identified 530 state cases and 18 federal cases involving stalking and related crimes.⁹⁸ (See Appendix 4 for a complete listing of cases, along with a brief description of each case's holding and citation.) Among them were a total of 198 stalking cases, including three federal cases. The stalking cases predominantly involved constitutional issues (134 cases in 34 states, the United States, and the District of Columbia), typically vagueness and overbreadth challenges and a few double jeopardy challenges. The review also looked at the relationship between the stalker and his or her victim (almost all the reported cases involved male stalkers).

Among the stalking-related cases were 58 cases of harassment and 117 cases involving threats. Among these decisions were 41 harassment and 42 threat cases involving constitutional challenges. There were 44 harassment and 66 threat cases involving statutory construction issues (many harassment cases involved both types of issues).

Other types of cases covered by this review include 20 telephone threats, 85 telephone harassment cases, nine letter threat or harassment cases, and six electronic threat or harassment cases. In addition, there are 53 cases involving protection orders, many of which also involved stalking charges related to an order violation. Three cases involved civil suits for damages based on civil stalking or some other basis for claiming invasion of privacy. Among these cases there were 87 constitutional law decisions and 53 cases involving statutory decisions. Six cases involved jurisdictional or other constitutional challenges to federal laws.

The review did not include all relevant reported cases, although a significant effort was made to identify all such cases. The most significant omission is the exclusion of most threat and harassment decisions issued prior to 1970; it was assumed that the older cases are largely repetitive of more recent decisions (and these latter decisions have the further advantage of being informed by recent United States Supreme Court decisions). Also excluded from the review were reported decisions that involved solely evidentiary issues⁹⁹ where no constitutional or statutory interpretation issues were decided.¹⁰⁰

⁹⁸ These cases were selected for review on these bases: (1) they involved an important legal question that has implications for interpretation of the stalking law or (2) the case facts involved a situation akin to stalking and questions of sufficiency of the evidence were important to the court decision.

⁹⁹ See, e.g., *Soldona v. State*, 466 S.E.2d 655 (Ga. Ct. App. 1996) (insufficient evidence claim) and *People v. Garrett*, 36 Cal. Rptr.2d 33 (Ct. App. 1994) (evidence admissibility challenge).

Threat and harassment cases that were totally unrepresentative of stalking concerns were excluded; these included, for example, threats and verbal abuse of police officers.¹⁰¹ Also excluded were cases where stalking was not the most serious charge. Finally, the review excluded cases that despite their legal nomenclature as harassment or threats really involved disorderly conduct in a public forum.¹⁰²

Stalker-Victim Relationships. The review first looked at the relationship between the stalker and victim. This review found that the most common type of stalking case among those reported here involved non-intimate, non-dating relationships: 67 of the 158 stalking cases for which information was available. This category included 14 cases involving stranger stalking; the other non-partner cases involved relationships such as mother, neighbors, ex-employees, psychiatrist-patient, judge-litigant, and landlord-tenant. The next most common category involved 51 couples who had had a dating relationship, including several couples who had cohabited before splitting up. In many but not all states, stalking among former dating partners can be classified as domestic violence for such purposes as obtaining a court order of protection. The last category involved victims who were separated or divorced from their spouses; this totaled 40 cases.

Constitutional Law Challenges. While a few state stalking laws have been struck down as unconstitutional, this is a small minority. Where state stalking or related statutes were struck, the law typically lacked an intent requirement, either to create fear or to do those acts that resulted in victim fear.¹⁰³

Double jeopardy claims were another common challenge, most often where there had been a previous finding of contempt of court. Rulings varied according to the factual differences among these

¹⁰⁰ See also *Kirkendoll v. State*, 945 S.W.2d 400 (Ark. Ct. App. 1997) (defendant charged with stalking claimed failure of waiver of right to counsel in pro se defense).

¹⁰¹ See, e.g., *Robinson v. State*, 615 So.2d 112 (Ala. Ct. Crim. App. 1992). Other examples of excluded cases include *People v. Thomas*, 148 Cal. Rptr. 52 (Ct. App. 1978) (threat against witness testifying at future trial) and *People v. Mirmirani*, 178 Cal. Rptr. 172 (1982) (political terrorism threat). See also *State v. Milner*, 571 N.W.2d 7 (Iowa 1997) (arson threat against employees of state unemployment insurance office who had denied defendant claim to benefits) and *State v. Mortimer*, 641 A.2d 257 (NJ 1994) (bias-motivated harassment).

¹⁰² See, e.g., *Seattle v. Camby*, 701 P.2d 499 (Wash. 1985) (en banc) (intoxicated customer of restaurant, on being asked to leave, threatened doorman of restaurant).

¹⁰³ See generally, *Colautti v. Franklin*, 439 U.S. 379, 395 (1979) ("This court has long recognized that the constitutionality of a vague statutory standard is closely related to whether the statute incorporates a requirement of *mens rea*").

cases as to whether the criminal offense and the contempt offense shared common facts to prove their cases.

Harassment laws that lack any "fighting words" restriction were the most vulnerable to constitutional challenge. But telephone harassment laws were not required to have such a limitation because of their focus on punishing invasions of privacy. For much the same reason, telephone harassment and threat laws commonly focus on the intent of the caller to harass or threaten, rather than the victim's response to these messages; a few states do not require actual fear to result. 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. The review of court decisions identified two statutory interpretation issues: the interrelationship between the stalker's reckless behavior and victim's reasonable fear, and cyberstalking. Statutory interpretation of threat laws has led some courts to equate reasonable fear with reckless behavior. Hence, specific intent to create fear is not required under this interpretation, merely a general intent to do the acts constituting reckless behavior, such that intent can be legally imputed ("should have known" analysis). Since a reasonable or prudent person test is used to judge reckless behavior, any resultant fear is also reasonable.

Despite the growing popularity of electronic communication, there are very few reported cases involving these mediums. Media reports of e-mail stalking cases are, however, growing.¹⁰⁴ Although there are a few cases ruling that cyberstalking behavior is not covered by the state telephone harassment law, the basis of such rulings is the explicit limitation in these laws to communication by telephone. Hence, the laws do not permit judicial expansion of the specific statutory language to other forms of communication.

No case was found limiting stalking laws to non-electronic communications. In view of the broad language typically used in stalking laws, the case review did not, therefore, lead to any conclusion calling for amending stalking laws to explicitly include electronic or cyberstalking.

¹⁰⁴ See UNITED STATES DEPARTMENT OF JUSTICE, CYBERSTALKING: A NEW CHALLENGE FOR LAW ENFORCEMENT. A REPORT FROM THE ATTORNEY GENERAL TO THE VICE PRESIDENT (1999) [hereinafter CYBERSTALKING]. See also case example *supra*.

Continuing Legislative Action

State legislators are constantly amending their anti-stalking laws, usually to increase the penalties for stalking, although a few states have had to change their laws as a result of court rulings. In toto, 46 state legislative bodies enacted stalking-related laws in the period 1998-2001 (only Alabama, Alaska, Missouri, Wyoming, and the District of Columbia did not enact stalking-related legislation in that period). In 1998, legislatures in 11 states passed laws amending their stalking and related criminal laws, including two states that passed new stalking injunction laws. In 1999, legislatures in 26 states passed laws relating to stalking. In the legislative year 2000, legislators in 20 states enacted 27 stalking-related laws. As of August 2001, 27 states had passed over 40 separate laws relating to stalking and related crimes. Exhibit 2 provides a state-by-state summary of new stalking laws in this four-year period by type of law. Capsule descriptions of the laws are provided in Appendix 1.

It should also be noted that many laws directed at helping victims of domestic violence may also be applicable where stalking behavior is related to domestic violence. 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 victims of domestic violence may be used by stalking victims where the stalker is a former domestic partner under the state domestic violence law. Hence, this list of new stalking legislation is not all-inclusive.

It is striking, however, that notwithstanding all this activity, only a few of the enactments are directed at the basic problem of the inadequacy of the penalties provided for stalking. Nor have most state legislators directed their attention to related laws, such as civil orders of protection 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 funds under the Violence Against Women Act.

No other state has acted as extensively as California. In some states, it is possible that the failure to implement these laws has limited even the advocates' awareness of the problems posed

by the laws themselves. Where there are no significant efforts being made to implement existing laws, changes in the laws may well have a lower priority than pressing for implementation. In other states, where enactment of a stalking law was in reaction to specific incidents involving stalking, there may be a general inclination to think the problem is fixed. Advocates for legislative action may well find it difficult to convince legislators otherwise in the absence of either new horror stories or empirical data such as is presented here to show that the problem of stalking has not been fixed.

Exhibit 2. 1998-2001 Stalking Legislation by Type of Law and by State

Type of Law	State and Year of Enactment
Stalking crime definition/penalty (24 states)	AZ (1998, 2001), CO (1999), FL (1999), GA (1998), IL (2000), IN (2001), IA (1998), KS (1999), KY (1999), LA (1999, 2001), MS (2000), NE (1998), NV (1999, 2001), NH (2000), NJ (1998, 1999), NY (1999), OH (1998, 1999, 2000), PA (1999), SC (2001), TX (2001), UT (2000), VA (1998, 2001), WA (1999), WV (2001)
Cyberstalking (21 states)	CA (1998), CO (2000), GA (2000), IL (1999, 2001), LA (2001), ME (2001), MI (1999), MN (2000), NH (1999), NJ (2001), NC (1999, 2000), ND (1999), OK (2000), OR (2001), PA (1999), RI (2001), SD (2001), TN (2001), TX (2001), VT (2000), WA (1999)
Harassment crime (11 states)	AZ (1998), HI (1999), IL (1999), ME (2001), MA (2000), MN (2000), MS (2001), NV (2001), OR (1999, 2001), PA (1999), SC (2001)
Civil injunction authority (15 states)	AZ (1998, 2000, 2001), AR (2001), CA (1999, 2000), CO (1999, 2000), GA (2001), HI (1999), IN (2001), ME (2001), NE (1998), NV (2001), OH (1998), UT (2001), VA (1998, 1999, 2001), WA (1999, 2000, 2001), WI (2000)
Criminal protection order (6 states)	CN (1998), GA (1998), IA (1998), RI (1998), SD (2000), UT (1999)
Criminal procedure (10 states)	CA (1999), IA (1998, 1999), LA (1999), ME (2000), MD (2001), MT (2001), NE (1998), NV (1999), NH (1999), VA (1998)
Name/address confidentiality program (5 states)	CA (2000), NH (2000), NJ (2001), VT (2000, 2001), WA (2001)
Offender treatment (2 states)	GA (1998), LA (2001)
Other related crimes (10 states)	DE (2001), ID (1999), IL (2001), IN (2001), KY (2001), OK (1999), PA (1999), SC (2001), TN (2000), TX (2001), WA (2000)
Other laws (11 states)	IL (2001), KS (2001), LA (1999), ME (1999, 2000), NE (1999), NH (1998), NM (2001), RI (2001), SD (1999), UT (2000), VA (1998, 2001)

B. Implementation of State Stalking Laws

Two sources of information were used to determine the extent of anti-stalking efforts. First, ILJ twice conducted a national survey of police and prosecution agencies. The first survey was conducted in late 1998 and early 1999. The second survey took place two years later, 2000-2001. Second, ILJ surveyed STOP-funded agencies to try to identify additional anti-stalking agencies, especially among non-justice system practitioners. Because of time limitations, state agencies disbursing funds under other federal aid programs, most conspicuously the Victims of Crime Act,¹⁰⁵ were not surveyed.

National Surveys of Police and Prosecution Agencies

Two national surveys on stalking were conducted. The first survey of 204 law enforcement agencies and 222 prosecution offices in jurisdictions with a population over 250,000 was conducted by mail in November 1998. The survey briefly asked what special efforts the agencies had undertaken against stalking, including special units, training, or written policies and procedures.¹⁰⁶ The survey had about a 60 percent response rate to the first mailing. A second mailing was sent out to the non-respondents, resulting in a final response rate of over 80 percent.

1998 Survey. The survey found the following:

- All but seven police agencies assign stalking cases to either their detective unit or a specialized unit, usually the domestic violence unit, or to a combination of crimes against persons detectives and domestic violence investigators.¹⁰⁷ A few agencies assign stalking cases to their sex crimes unit. Only one law enforcement agency had a specialized stalking unit.
- Most prosecution offices similarly assign stalking cases to their domestic violence unit. A significant minority (15 percent) split stalking case duties between the domestic violence unit and another unit, usually the general trial unit. Another important pattern was for stalking to be handled by a special unit that is responsible for prosecution of

¹⁰⁵ 42 U.S.C. § 10601 *et seq.*

¹⁰⁶ The short, six-question survey was printed on a single sheet of paper (front and back) and was designed to elicit a high response rate (which it did).

¹⁰⁷ This finding indicates there have been significant changes in the way law enforcement agencies respond to stalking since stalking laws were first adopted. A survey of police agencies conducted in the early 1990s conducted by the Police Executive Research Forum reported that "[d]omestic violence and crimes against persons units are rarely involved" in investigating stalking incidents. MODEL ANTI-STALKING CODE, *supra* note 4 at 39. This change probably reflects the greater emphasis now placed on domestic violence by law enforcement rather than any increase in their perceptions of the seriousness of stalking.

domestic violence, sex crimes, and specialized cases such as child or elder abuse. Seven offices have either a specialized stalking unit or an assistant or deputy prosecutor who specializes in stalking cases.

- Stalking training for police recruits is typically part of domestic violence training. About 13 percent of the agencies had specialized training in stalking that was independent of domestic violence training, although several offered both types of training. Less than 15 percent of the police agencies offered no stalking training to recruits. Significantly, over one-third provided no in-service stalking training to their officers. Slightly more than half reported 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. About 25 percent of the offices provide in-service stalking training to all their attorneys, and 17 percent provide stalking training to new attorneys; most of the latter agencies provide both types of training. Over one-third of the offices limit their in-service training to special unit prosecutors. Ten percent of the prosecution offices said that the only stalking training their attorneys get is from outside training sources.
- Fifty-seven percent of police agencies have written policies and procedures for handling stalking cases, most often as part of their domestic violence protocols. Only 11 agencies have separate stalking protocols. A slightly smaller proportion (50 percent) of prosecutor offices said they had written policies for prosecuting stalking cases. Only six offices have separate stalking protocols, including one office that also had a domestic violence stalking protocol.

The written comments provided by the respondents were very illuminating. They indicated, for example, that prosecutors in several states have significant problems with the statutory "credible threat" requirement. At the same time, other prosecutors in the same states did not report such problems. The reasons for this difference are not clear but may be related to different methods of police/prosecution coordination in stalking cases. The need for training was expressed by many respondents and is implicit in the comments of others.

Among the several comments provided, especially notable was one prosecutor's comment that his state's stalking law required a considerable degree of proof but provided only a misdemeanor penalty for stalking. This disparity between effort and reward meant that his office would rather charge the constituent elements of stalking, including protection order violations, where the aggregate sentencing would far exceed that available under the stalking law, yet the case would be far easier to prove. Many

other prosecutors made similar comments. A second trend in these comments was the increased awareness among law enforcement agencies that non-intimate stalking was different than stalking directed at intimates or former intimates. This seemed to be the reason that nearly a dozen agencies shifted to shared investigative responsibilities between the domestic violence detective unit and other detective units. Conversely, many prosecutor comments suggested that experience in prosecuting intimate stalking cases was very relevant to prosecuting non-intimate stalking cases. Nonetheless, it might also be inferred that many law enforcement and prosecutor agencies do not see that these two types of stalking cases have different dynamics and may require different handling strategies. The likely reason is that the agencies see few non-intimate stalking cases, typically because they are not looking for them.

2000 Survey. A replication of the first national survey was conducted in November 2000. The survey mailing was identical to that in 2000, except that the municipal prosecutor agencies that had reported no responsibility for handling stalking cases were dropped from the survey. One hundred sixty-nine (of 204) law enforcement and 183 (of 224) prosecutor agencies responded to the survey, for a combined response rate of 82 percent. Thirty-five agencies responding in 1998 did not do so in 2000.

In comparison to the 1998-99 findings,

- Law enforcement agencies continue to assign stalking cases to non-stalking specialist units, most commonly the investigative division and secondarily to the domestic violence unit. Only three agencies reported that they rely on patrol officers to investigate stalking cases; however, another 19 agencies report that they split responsibilities in stalking cases between patrol and an investigative unit, with patrol officers usually handling either the preliminary investigation or low threat cases entirely. At the same time, there was increased reliance on having domestic violence unit detectives investigate stalking directed at intimates or former intimates, and on other detectives handling stranger and acquaintance stalking (22 percent of agencies split stalking case responsibilities in 1998 and 25 percent in 2000). In toto, nearly 40 percent of law enforcement agencies assign stalking cases to their domestic violence units, either exclusively or in conjunction with other detectives.
- Between 1998 and 2000, the number of prosecutors with a specialized stalking unit or prosecutor increased to 10 offices. Most continue to assign these cases to their domestic violence unit (70 percent). The number of stalking specialists in the domestic violence units increased, however, from two in 1998 to four in 2000. One other office reported having a stalking specialist prosecutor in another division, making a total of 15

agencies with stalking prosecutors, with a few other smaller offices reporting that their sole domestic violence prosecutor also was trained to handle all stalking cases. This is a significant increase from the seven such offices reporting stalking prosecutors in 1998. Surprisingly, 38 offices said they had no special unit or staff for handling stalking cases, up slightly from two years ago.

- Training on stalking showed slight improvement. Indeed, law enforcement agencies providing no stalking training to recruits actually increased (31 agencies in 2000 without such training versus 23 in 1998¹⁰⁸). There was a slight proportional gain in law enforcement agencies that include stalking training as part of their domestic violence training for recruits, from 71 to 73 percent. The proportion of agencies providing specialized stalking training did not change (13 percent). Prosecutor training actually worsened in some ways. The number of offices reporting no stalking training increased to 36 (21 percent versus 18 percent in 1998). The proportion of offices training new prosecutors on stalking remained constant, 17 percent. Twelve percent of prosecutors trained their staff on stalking issues only when external funds were available to go to conferences and the like, compared to 10 percent in 1998.
- Sixty-two percent of law enforcement agencies reported having policies and procedures related to stalking, most commonly as part of their domestic violence protocols, an increase from 1998 when 57 percent reported having such policies. Fifty-three percent of prosecutors reported having stalking policies and procedures, again a small increase from the 50 percent two years earlier. For both types of agencies, only a small number had stalking policies and procedures separate from their domestic violence protocols (nine law enforcement and seven prosecution agencies).

The 2000 survey also asked about funding of special unit or staff operations. Twenty-two percent of the prosecutors said they had received federal funds for anti-stalking operations; only 5 percent of the law enforcement agencies reported receiving such funds. Prosecutors (27 percent) were also more likely than law enforcement agencies (13 percent) to fund special anti-stalking staff with their own funds. An unanticipated finding from this question is that the number of law enforcement agencies reporting funding special stalking units or staff is much higher than reported directly. Thus, 36 agencies said they had funded special stalking investigative staff, more than twice the number responding to the

¹⁰⁸ A yet unpublished ILJ survey of state Police Officer Standards and Training agencies that regulate recruit training standards showed that in 2000, 35 states required such training. Of these, only six states devoted any significant amount of time to this training (1 hour or more). The remaining POST agencies included stalking as an element of some other training, e.g., domestic violence. The survey findings for in-service training are even more dismal; only 17 states offer in-service stalking training to law enforcement officers in their states. See also Graham Farrell, David Weisburf & Laura Wyckoff, *Survey Results Suggest Need for Stalking Training*, 67 POLICE CHIEF (Oct. 2000 at 163), who report that only 18 percent of police officers surveyed in a large Northeastern city defined stalking in a manner consistent with the state criminal law definition.

survey question about which unit handles stalking cases. Conversely, 108 prosecutor offices indicated that they had funded a stalking prosecutor position, whereas when asked about which unit handled these cases, 143 prosecutors indicated that stalking cases go to a specific unit. It is likely that this difference reflects the near absence of any stalking cases in many of the prosecutors' offices; hence, their statements about which unit handles stalking cases is more theoretical than real. It is also quite likely that some significant proportion of the 108 prosecutor and 36 law enforcement agencies that said they had funded a stalking position were not referring to dedicated staff but to staff that would handle such cases should they occur.

The written comments that the survey respondents provided often reiterated the 1998 survey complaints about the difficulty of meeting the statutory definition of stalking. However, it seemed as if increased experience with the stalking laws had broadened the prosecutors' concerns about their states' laws. Of particular concern were the statutory requirements to prove specific intent, a pattern of conduct linkage to specific intent to cause victim fear, and the level of victim fear required (serious bodily injury). Several prosecutors added their voices to the 1998 complaint that the stalking law penalties are too weak in view of the difficulties of prosecuting the cases. One law enforcement agency added that the resource demands for investigating stalking were too high to justify investigating a misdemeanor offense. Another voiced a similar complaint when referring to prosecutor practices in plea negotiations. Other comments included the need for training law enforcement, prosecution, advocates, and especially the judiciary. Law enforcement was said also to need special training on identifying stalking cases.

In sum, the 2000 survey responses did not show any great increase in either law enforcement agencies' or prosecutor agencies' concern for stalking crime. Indeed, the lack of concern for stalking can best be inferred from the report that only 58 of the 152 law enforcement agencies responding to the survey even had statistics on the incidence of stalking in their jurisdictions. But even where statistics are gathered, that is no guarantee of aggressive responses to stalking. Thus, two major jurisdictions in the same state with populations approximately equal said that the number of stalking complaints received in 2000 went from a low of 22 to a high of 200. A third jurisdiction in the same state with three times the population of the other two jurisdictions reported receiving 260 stalking complaints in 2000.

The bottom-line 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.

Other Research

By and large, the most significant evidence available about local law enforcement actions is the negative evidence stemming from the low official statistics on stalking presented *supra*.¹⁰⁹ Inferences about the lack of official responses to stalking in most jurisdictions are further reinforced by the failure of most federal, state, and local jurisdictions to collect (or require collection of) statistics on stalking, as reported in the 2000 national practitioner survey.

This inference is supported by at least one research study. Tjaden and Thoennes reviewed 1,785 domestic violence complaints taken by police in Colorado Springs, Colorado, from April to September 1998. The review found that 16.5 percent of the police reports indicated on their face that stalking was a part of the domestic violence being complained of. Nonetheless, only one of the 285 complaints alleging stalking facts resulted in the filing of a stalking charge. Instead, police typically filed charges of harassment or violation of a protective order.¹¹⁰

¹⁰⁹ See *supra* notes 37-43 and accompanying text.

¹¹⁰ Tjaden & Thoennes, *supra* note 37 at ii-iii. Since that report was prepared, the department's multi-jurisdictional DVERT team, responsible for handling the most dangerous domestic violence cases, made a policy decision to stress stalking cases and made over 40 stalking arrests in 2000. In 2001, DVERT expects to make about 70 arrests for stalking. Personal communication, Howard Black, DVERT supervisor. DVERT, however, only accepts domestic violence cases involving the most serious threats to the victims; non-domestic violence and lesser threat cases that have a stalking component still may go unrecognized. Moreover, the research study was not designed to look at the incidence of stranger and acquaintance stalking. Since the police department makes few arrests for stalking outside of DVERT, there may also be problems with patrol officers recognizing these latter stalking cases. Farrell *et al.*, *supra* note 109, report that the likelihood of an officer handling a stalking case increases threefold when that officer has previously handled a stalking case. Whether this is because the officer is now more sensitive to stalking cases or there is some other causal factor operating is not clear.

Federal Enforcement Actions

Federal jurisdiction in stalking cases arises from the Interstate Stalking Act of 1996, as amended.¹¹¹ The law makes it a federal offense to cross state lines with the intent to place another person in fear of death or serious bodily injury, or to use the mail or any other method of communicating across state lines for that purpose. Until 2000, the federal law was limited to physical movement cases,¹¹² limiting the number of possible interstate stalking cases. Since 1996 there have been 43 indictments under the act; the recent amendments to the law that took effect only nine months ago have not yet affected the filing rate.¹¹³

STOP Funding: A Survey

The STOP block grant program established by the Violence Against Women Act of 1994 explicitly provides for funding of stalking projects; stalking is one of seven legislative purpose areas specified in the act. Stalking has not been a priority for most of the state offices administering the STOP funds. A review of the financial reporting forms from the state STOP agencies identified only 18 subgrants that had possible stalking projects.

There is good reason, however, to believe that the reports significantly underestimate the number of STOP-funded projects that deal with stalking cases. The reports are based on subgrantee project proposals; project activities are likely to vary considerably once they begin operations and have to meet victim demands. Because stalking cases are, in fact, much more numerous than many subgrantees understood when submitting proposals, they are seeing many more stalking cases than originally estimated. The federal reporting program does not, however, track changes in project design or objectives.

¹¹¹ 18 U.S.C. § 2261A.

¹¹² The interstate-stalking law was amended in 2000. *See* Victims of Trafficking and Violence Prevention Act of 2000, P.L. 106-386, 114 STAT. 1464 (2000). Section 1107 of the Act amended 18 U.S.C. § 2261A to add the latter prohibition.

¹¹³ Personal communication, Margaret Grobun, VAWA Specialist, Executive Office of the United States Attorneys and Assistant United States Attorney, District of Maine. These statistics are based on an informal hand count of interstate stalking indictment cases, since the computerized information system for the Department of Justice may be inaccurate with respect to low-volume cases. The recent VIOLENCE AGAINST WOMEN OFFICE, STALKING AND DOMESTIC VIOLENCE REPORT TO CONGRESS 42 (2001), reported that as of October 2000 there had been 35 prosecutions against 39 stalkers brought by the Department of Justice.

As a supplement to the agency survey, ILJ undertook a limited telephone survey of state STOP offices in about 40 states to

- Verify that stalking was a project component and
- Identify other projects that contain a stalking element, even if not officially reported as such.

All but two of the offices called were cooperative in identifying anti-stalking initiatives. Once a stalking project was identified by state officials, further telephone calls were made to verify that stalking was an important project component. Not all state STOP offices were able to identify stalking funded projects. Hence, the information reported here is not a census of STOP funded stalking projects.

The telephone survey identified a total of 38 STOP-funded projects directed at stalking in 16 states. These include seven projects to improve investigation of stalking, nine projects to improve prosecution of stalking crimes, 12 projects to help victims of stalking, and 10 projects primarily providing training or developing protocols on stalking. Only a few of these projects were already identified in the mail survey of large jurisdiction law enforcement and prosecutor agencies. See Appendix 2 for a complete list.

C. Summary

All 50 states and the District of Columbia have enacted anti-stalking legislation. Although there are great inconsistencies in these laws' definitions of stalking and in their sentencing provisions, the laws provide an important innovation in the criminal law. Unfortunately, many of the laws lack important components, most significantly penalties commensurate with the seriousness of the crime. Furthermore, most local jurisdictions have not established special anti-stalking units and indeed often do not even track stalking incidents to determine their frequency. Nor are law enforcement officers trained to recognize stalking cases when complaints constituting stalking are reported. Thus, in many states, the stalking laws are of little practical value for most stalking victims.

Even greater problems exist with respect to civil stalking laws, specifically those authorizing the issuance of court orders of protection against stalkers. As the Oregon statistics indicate, such orders,

where available, can be widely utilized.¹¹⁴ As of January 2001, 21 states did not authorize issuance of such orders.

That is not to say there are no positive developments. In the past five years, a number of agencies have established specialized anti-stalking units; these include law enforcement, prosecution, and victim advocate/service agencies. The next section of the report discusses the lessons to be learned from these units, especially as they constitute a model anti-stalking program.

¹¹⁴ *Supra* note 45. See also Dussuyer, *supra* note 45.

IV. Evaluating Stalking Laws' Effectiveness: What Works?

This study originally intended to examine the effectiveness of the new anti-stalking laws to determine whether stalkers were being arrested and convicted and whether victims felt safer. As the study progressed, that objective was changed to one of documenting best practices among anti-stalking practitioners. This section of the report explains why the change in research focus was made and how best practices can be used to measure effectiveness at the local level.

A. Determining Effectiveness of Stalking Laws and Programs

The effectiveness of the new stalking laws has not been studied. Although a few law review articles have suggested that the laws are faulty, their conclusions are based primarily on anecdotal reports rather than empirical studies.¹¹⁵ Thus, it would seem that there is a significant need for such a study. Unfortunately, a study of the impact of the anti-stalking laws cannot be directly done for three reasons:

- The absence of any legislative consensus on what a stalking law should be like (and what behaviors it should criminalize)
- The lack of any uniformity in the implementation of stalking laws across and within states
- The absence of agreement on quantitative performance measures that can be used to evaluate stalking laws' effectiveness.

¹¹⁵ See, e.g., Gene Barton, *Taking a Byte Out of Crime: E-Mail, Harassment and the Inefficacy of Existing Law*, 70 WASH. L. REV. 465 (1995); Susan E. Bernstein, *Living Under the Siege: Do Stalking Laws Protect Domestic Violence Victims?* 15 CARDOZO L. REV. 525 (1993); Wayne E. Bradburn, Jr., *Stalking Statutes: An Ineffective Legislative Remedy for Rectifying Perceived Problems With Today's Injunction System*, 19 OHIO N. U. L. REV. 271 (1992); Jennifer L. Bradfield, *Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?* 21 HARV. WOMEN'S L.J. 229 (1998); Nanette Diacovo, *California's Anti-Stalking Statute: Deterrent or False Sense of Security*, 24 S.W.U.L. REV. 389 (1995). See also James T. Tucker, *Stalking the Problems with Stalking Laws: The Effectiveness of Florida Statutes Section 784.048*, 45 FLA. L. REV. 609 (1993) (reporting on a survey of law enforcement agencies that describes their response to the newly enacted stalking law, which was found to be deeply flawed). As the review of state legislation *supra* indicates, many state stalking laws do have significant flaws. This does not exclude the possibility, however, that the better drafted laws have had positive effects. This includes the since-amended Florida law that was the subject of Tucker's research.

In addition, even a qualitative assessment of anti-stalking law implementation cannot be done because performance standards, such as those used in other areas of the criminal law,¹¹⁶ do not exist. The absence of performance standards does, however, present an alternative evaluation strategy.

Stalking Legislation Variations

Evaluation of stalking laws' effectiveness is constrained by the fact that there is no nation-wide anti-stalking law. Instead, there are 52 different laws (50 states, the District of Columbia, and the federal law). Of necessity, evaluation of stalking laws must be at the state level. But conclusions about a single state's laws must be limited to that state's laws. Generalization from one state to another, even if the laws are identical, is inappropriate because laws are not self-executing. Even identical laws have very different implementation patterns that determine how the laws are used and, ultimately, how effective they are.

Implementation Variations

The same qualifications are true within any single state. No state's laws are implemented uniformly across the entire state. Some local jurisdictions enforce the law aggressively, while others hardly enforce it at all. The question, then, is which sites should be selected for an evaluation of the state law. One strategy is to select jurisdictions with aggressive enforcement. The reason is that aggressive enforcement can best inform policymakers of the maximum effectiveness of the new law; failures are to be expected and are usefully studied only when the law's effectiveness is already known and information is needed on why the law is not uniformly effective. Selection of aggressive jurisdictions also increases the probability of there being a sufficient number of cases to allow statistical conclusions to be drawn about important process factors, such as law enforcement–prosecutor coordination. This strategy does not necessarily tell what barriers need to be overcome for broad-scale implementation to occur. It does suggest whether efforts to overcome those barriers would be worthwhile. Generalization of findings from this evaluative approach would, however, require simultaneous studies in several states.

¹¹⁶ *E.g.*, the American Bar Association's volumes, CRIMINAL JUSTICE STANDARDS. *See more generally*, NEAL MILLER & PETER OHLHAUSEN, COMPENDIUM OF STANDARDS FOR INDIGENT DEFENSE SYSTEMS (2000) (presenting a review of nearly two dozen separate sets of standards, including detailed prescription of the activities expected of defense counsel).

Furthermore, the practicality of cross-jurisdictional evaluation of several states' stalking laws is highly problematic. It is impossible to make before-and-after comparisons of the incidence of stalking and of the way the local justice system responded to complaints of stalking behavior before there was a stalking law. Until the stalking law was enacted, there was no "before" counting of either measure.

Performance Measures of Success

The most important barrier to evaluating stalking laws' effectiveness is that there are no agreed-upon measures today of agency performance in dealing with stalking cases. Conventional evaluative measures to test program success or failure include process measures such as

- Incidence of stalking reports,
- Number of arrests,
- Number of stalking cases filed by the prosecutor, and
- Number of civil protection orders ordered by the court,

and outcome-related measures such as

- Number of convictions and
- Incidence of related crimes (e.g., stalking ending in homicide).

These latter evaluative criteria may be supplemented by qualitative reports on victim perceptions of improved quality of life or increased safety.

These measures are incomplete in the stalking context, however. The most important measures, the case "outcome" measures, are difficult to interpret. Even the traditional measure of prosecutor performance, the case "win" ratio, is difficult to use because there are no similar cases that can be used as a baseline. It is impossible to know, for example, whether an 80 percent win rate represents creaming of the simplest cases, while rejecting hard cases, or is the result of in-depth investigations and dedicated prosecution. The nearest types of cases, harassment and threat, require, on average, much less pretrial investigative effort or other case preparation. Most significantly, some stalking cases are not filed, much less prosecuted, because the case was resolved informally or the danger to the victim was so great that other measures had to be taken (this alternative is especially applicable in states with low penalties for stalking).

Other statistics, such as those for stalking-homicides, are similarly difficult to interpret because these are low-probability cases. As such, variations in their numbers are just as likely to be the result of copycat crimes as of any other factor. Even victim reports on quality of life or perceptions of safety have significant threats to their validity beyond the obvious argument against using subjective indicators. The real problem with these reports is the absence of any defined universe from which a sample of victims can be selected. Obviously, stalking victims who are not known to the police or prosecutor are not available to be sampled. Furthermore, even among those who are known, follow-up to find them after their case has been completed is a major task and one that often leaves major gaps in completeness.

Most importantly, impact evaluation requires a base for comparison to understand the meaning of both the process and outcome statistics. But as already noted, time series comparisons are not possible because of the lack of "pre" statistics.¹¹⁷ That leaves only comparisons across jurisdictions. Such comparisons are highly suspect since differences between jurisdictional demographics and agency policies and procedures can easily affect the validity and reliability of any differences in reporting statistics.¹¹⁸

Effectiveness Evaluation Alternative

Efforts to implement the new stalking laws are still few in number, and those that do exist have only a limited life span. There has been no time for practitioners even to know in any detail about what other agencies are doing. There has been no opportunity for them to reach agreement on what they should be doing. This study has, however, is able to describe for the first time what stalking practitioners are doing across the country. As such, the research is able to identify many areas of common agreement among the diverse practitioners about their practices and what they recommend that others emulate. Together, these essentially descriptive case studies can form the basis of future evaluations. In other words, the best practices identified by this research constitute a model anti-

¹¹⁷ It is likely that cases now charged as stalking were previously charged under harassment, threat, or even trespass laws. But there is no way to know the degree to which this occurred.

¹¹⁸ For example, case filing statistics in a jurisdiction with aggressive policing of stalking may undercount the true filing numbers because the prosecutor is able to obtain consecutive misdemeanor penalties in lieu of a low-level felony charge. Over time, law enforcement will also begin to file similar charges (as they learn what the prosecutor's policy is).

stalking initiative against which jurisdictions can be measured. Such a procedure also sets the basis for future research that matches statistical measures of performance with the degree to which the agencies match the ideal model of anti-stalking efforts. Such matching might be used to determine which elements of the model program are most important to anti-stalking efforts' success. Such research is not possible at present, however, because many agencies are still experimenting with their anti-stalking efforts; there is no clear "treatment" being used that would match up with available performance statistics.

B. Implementing Anti-Stalking Programs: Toward a Best Practices Model

The effectiveness evaluation was refocused on identifying best practices among jurisdictions with aggressive anti-stalking initiatives.¹¹⁹ Fieldwork to examine how well stalking laws are being implemented was conducted in eight sites: three prosecutor offices, three law enforcement agencies, one combined law enforcement and prosecution multi-agency unit, and one victim services agency. At each site, researchers interviewed experienced investigators, prosecutors, and advocates in the specialized unit. In addition, several specialized training sessions on stalking intervention and prosecution were visited, allowing for discussions with both the trainers and other stalking-experienced attendees. Additional telephone discussions were held with numerous practitioners during the two national surveys and in response to inquiries from practitioners who had learned about the study from other sources, such as the Internet.¹²⁰

¹¹⁹ Compare, J. HARRIS, AN EVALUATION OF THE USE AND EFFECTIVENESS OF THE PROTECTION FROM HARASSMENT ACT OF 1997 (Home Office Research Study 203) (2000), which also takes a process evaluative approach in select jurisdictions to what is a nationwide anti-stalking law. As used here, "best practices" means that there is general consensus among practitioners that the specific activities described constitute desirable actions. This is, of course, a far different standard than judging best practices on the basis of empirical study.

A somewhat different approach to evaluation was taken by Dussuyer, *supra* note 45. Her evaluation of the effectiveness of stalking laws first used police and magistrate responses to a survey to learn how the criminal justice system has responded to the new stalking law and then asked for their opinions on the law's effectiveness. Recommendations for changes in the law were also obtained. The study's key statistical finding was that judicial intervention was thought to have been a significant factor in 40 percent of all cases where the stalking stopped and that in only 12.7 percent of the cases did stalking not cease. *Id.* at 7.1.

¹²⁰ The Institute for Law and Justice has considerable information posted about stalking, as well as other violent crimes against women, at its website (www.ilj.org/stalking/index.htm).

This section of the report first summarizes the fieldwork findings and then sets out the inferential basis for them through a detailed description of what are the best practices used by the agencies studied and by other agencies from whom training materials and practice manuals were gathered. The detail with which these findings are presented can be used by agency managers, other practitioners, and especially trainers to guide improvements in how stalking cases are handled. For this reason, the findings are presented according to the way in which stalking cases progress through the justice system, from case identification to victim safety planning through correctional custody or supervision.

Findings: Implementation Overview

Research findings from these sites included the following:

- Special stalking units develop the necessary expertise in identifying, investigating, and prosecuting stalking crimes by working ongoing crimes. Staffing of special units is still experimental. Often, a special unit shares jurisdiction over stalking crimes with other agency units, taking only the most serious cases.
- Special unit staff are highly qualified and motivated, often working unpaid overtime to handle both their caseload and community education and training.
- The special units have become highly expert at investigating and prosecuting stalking cases and helping victims. The many new practices they have developed provide models for other agencies to copy.
- Special units are more likely to join with other justice and victim services agencies in a coordinated community response. Such coordination enhances the unit's problem-solving capabilities and provides critical resources for ensuring victim safety and well-being
- Failure of non-special unit agency personnel to identify stalking behavior is a continuing problem. All the special units devote considerable resources to training other criminal justice personnel and to educating the community.

The field review also showed that expertise with stalking cases is critical because such cases often present unique elements. These include the following:

- Stalking cases are hard to identify at the outset. Because stalking involves a course of conduct, complaints to law enforcement about a single incident often do not reveal that

stalking is occurring. Often, responding officers must probe the victim's description of what she is concerned about before the stalking nature of the complaint becomes clear.

- Stalking is a prospective or future-looking crime, while most crime investigations deal with past crimes. Investigation of stalking typically requires collection of evidence of stalking from the point when the victim reports the stalking to law enforcement; in most cases, the victim's report of prior stalking behaviors cannot be confirmed or corroborated by independent sources. Hence, proof of the stalking behaviors must come from future actions of the stalker. This further implies that the victim and the investigators must try to manipulate the stalker in his behaviors to facilitate the collection of evidence.
- The victim's testimony is usually not enough to prove stalking. Corroboration is needed. Yet, because the victim is often alone when the stalking occurs, direct corroboration may not be available. Hence, law enforcement often depends on the victim for evidence collection. This could include taping phone messages or conversations or retaining letters or presents from the stalker.
- Corroboration is also needed to prove the victim's actual fear. Corroboration of her state of mind includes evidence that shows that the victim asked others for help in dealing with the stalker (such as having coworkers screen her calls at work or notifying apartment building personnel about the stalking) or proof of a change in telephone number.
- Threat assessment and management to protect victim safety are parallel concerns. At the same time that the investigation and prosecution are occurring, officials must also ensure victim safety. Thus, threat assessment and management are an integral part of the agencies' stalking response. This task is made especially complicated where the stalking suspect displays signs of mental illness or personality disorder (e.g., pathological jealousy).
- False victimization reports are becoming more and more common, yet such cases may be difficult to distinguish; common indicia of false reports, such as diminishing victim cooperation with the investigation, are not as reliable in stalking cases. Whether the victim is seeking attention or trying to shift the blame, false victim reporters have significant incentives to keep telling their stories. Since all stalking cases are highly dependent on the victim to collect evidence, the lack of corroborative evidence may not become apparent for some time.¹²¹

¹²¹ In addition to the classical unfounded "victim" complaints, there are numerous anecdotal reports of stalkers, especially those who have committed prior domestic violence, filing false stalking reports against the victim. Because the motivations for such false claims are usually apparent (e.g., to muddy the waters at trial), such false claims are usually not difficult to identify.

- Stalking cases cross jurisdictional boundaries, such as when the victim works in one jurisdiction, lives in another, and shops in a third. Hence, agency coordination is especially important. Because stalking is an ongoing crime, steps must be taken to coordinate investigations across jurisdictional lines and to ensure that all agencies are made aware of the existence of the ongoing investigation.
- Stalking cases do not necessarily end upon conviction. Stalkers may continue their stalking behaviors while on probation and even while incarcerated. Conversely, stalking may not be prosecuted if prosecuting the stalker may result in extreme danger to the victim; other, non-criminal law alternatives may be required (e.g., victim moving).

A final research finding takes note of the fact that investigative and prosecutor experience in dealing with these stalking crime features is limited. Most agencies have yet to set policies or procedures for stalking cases. For law enforcement, this results in the need to make up procedures and policies for evidence collection and to adapt methods used in other crime investigations, especially homicide and sexual crimes. However, as noted above, most investigations look at past events, not future actions. Hence, investigators must often create new investigative approaches to stalking.

Findings: Stalking's Differences from Other Crimes

Stalking is often an elusive crime. It starts, stops, starts again, and ends, at least temporarily, again. Similarly, the locations where stalking occurs vary, from home, to business, to shopping mall, to simply passing in a car on the street. While in most instances the identity of the stalker may be known, proving identity, especially in cyberstalking cases, can be difficult. Stalkers' methods may change constantly, from simple following or telephone calls, to leaving "gifts," to wiretapping telephones, to yet more ominous behaviors. Finally, the reactions of the victim may also fluctuate over time, from unawareness or bemusement, to terror, to surrender, and even to aggression. All of these stalking attributes make it an especially difficult crime for criminal justice agencies.

These multiple changes in stalking behavior underscore the essential way in which stalking differs from other crimes: its persistence into the future. Most crime investigations are historical in nature; they attempt to determine what happened.¹²² Because of the difficulties in proving past stalking, investigation

¹²² Although there are a few crimes for which evidence may be collected as the crime is committed, these are almost always non-personal injury crimes. Such forward-looking investigations are, however, common in many economic crime investigations, police "sting" operations, and conspiracy investigations.

and prosecution of stalking rely on prospective evidence collection. It is far easier to collect evidence of stalking when it occurs than it is to obtain evidence that corroborates the victim's testimony about past stalking.

Further, the crime of stalking is more than prohibited behavior. As Hargreave points out, stalking is "[a]n offense that is defined not by the actions of the offender alone, but by the social and environmental context in which the behavior arises."¹²³ Context issues exist in almost all stalking cases.

A third way in which stalking differs from other crimes is the mutual dependence of justice agencies and the victim. In virtually no other crime are the investigation and prosecution so dependent on the victim for evidence collection. Nor are there many other crimes where victim safety is so threatened over such a long period of time. Hence, victim support from justice agencies is a unique responsibility in stalking cases, at least in scope if not in kind.¹²⁴

For all these reasons, criminal justice agencies must adopt a problem-solving approach. Such an approach includes the following elements:

- Identification of stalking cases
- Case investigation and management
- Prosecution and sentencing
- Protection of the victim, even after sentencing and incarceration.

For each area of responsibility—case identification, investigation and management, prosecution, and victim safety—old methodologies must be adapted and innovative approaches implemented. Most significantly, agency management must recognize and encourage a problem-solving approach to stalking crimes. They must recruit and work with community-based advocates who can help the agency, especially in protecting the victim and ensuring her well-being. The review below presents research findings on best practices to provide both prescriptive and descriptive information about what agencies

¹²³ Hargreaves, *supra* note 8 at 3.

¹²⁴ Victim advocates who work with police and prosecutor agencies provide help to victims of many different crimes. However, stalking victims often present a unique set of problems that last for an extended period. While some domestic violence victims present similarly long-lasting demands for aid, such demands are less common among domestic violence victims than among stalking victims.

are or should be doing. This combination of perspectives is intended to encourage and inform problem-solving behavior among anti-stalking practitioners.

Findings: Case Identification

Few victims complain of being "stalked," that is, being a victim of a stalking crime. Instead, they complain to law enforcement about specific behavior that may be as minor as petty vandalism or as serious as implicit death threats. The fact that there is a pattern to the complaints may not even be noted by the victim. Furthermore, few victims even know that there is a crime called stalking.

Thus, the first difficulty that criminal justice agencies face with stalking is identifying potential stalking complaints from among all complaints they receive and doing so as early as possible to minimize victim injury. The key to such identification is in the repeated behavior that constitutes stalking. Policies and procedures must be in place to allow for identification of cases where possible stalking patterns exist. Two primary approaches for this purpose exist.

In San Diego, the City Attorney's Office has developed an interview checklist for first responders to use whenever there are any indications that repeat criminal behavior may be occurring.¹²⁵

The San Diego District Attorney's Office and the Dover (NH) Police Department try to review all police reports to identify cases where there are multiple complaints filed by the same victim or from the same (or nearby) addresses. Both agencies use trained staff to review victim complaints. San Diego uses victim advocates, and Dover uses investigators.¹²⁶

A supplement to "naive" case review is to identify specific cases for monitoring for multiple stalking acts where only a single act has occurred. In Dover, the department puts all cases involving orders of protection into its computerized information system containing warrant information; any officer query after a police stop will tell the officer about outstanding orders against the person stopped, the name of the order protectee, and the locations protected. In Colorado Springs, all cases that are assigned to the special domestic violence investigative team, DVERT, are similarly red-flagged by the

¹²⁵ Personal communication from Gael Strack, Deputy City Attorney, San Diego City Attorney's Office (Domestic Violence Unit supervisor).

¹²⁶ Personal communications.

computer system, to alert patrol officers to inform the DVERT investigators of all police contacts with the suspects or convictees.

The specific types of criminal reports that the complaint reviewers look for include these:

- Assault
- Abduction
- Violation of court order
- Burglary/criminal trespass
- Theft of personal clothing
- Vandalism/destruction of property
- Cruelty to animals (pet mutilation or killing)
- Wiretapping or mail tampering
- False reports to police
- Weapons violations.

Some of these offenses are relatively serious in and of themselves. Others appear to be relatively minor. The more serious stalking-related offenses will, of course, be treated appropriately by law enforcement and prosecutors who are informed of them. However, unless the officer or prosecutor is thinking about the possibility of stalking, the lesser offenses may not be given due attention.

Findings: Patrol Response

Patrol is usually the first criminal justice representative to respond to calls from stalking victims (although only a small proportion of cases are so identified by the victim). In a few jurisdictions, patrol is encouraged to identify stalking cases. In San Diego, the City Attorney's Office has developed a stalking questionnaire to be used by patrol first responders.¹²⁷ The questionnaire is divided into five parts: victim's background, suspect information, relationship information, suspect's conduct, and victim impact. While much of this information will be sought by detectives (or advocates), many of the questions may be used by patrol officers whenever they suspect that they may have a stalking case. For

¹²⁷ Casey Gwinn, Gael Strack, Paul Cooper & Kurt Mechals, Stalking Questionnaire (August 1996) (unpublished manuscript from San Diego City Attorney's Office).

example, one important series of questions that asks about suspect behavior includes violence or threats against others.

In any case where stalking may potentially be involved, patrol officers should document as fully as possible the nature of the complaint and file their report for future reference in case stalking is determined to be occurring. Those steps should be taken even if no arrest was made because no suspect was named or if probable cause to arrest was lacking.¹²⁸

Patrol will also be responsible for responding to 911 calls from stalking victims whose cases are being actively investigated by detectives. Agency policies and procedures should require that the patrol responders inform detectives of what occurred by providing a copy of their written report; personal notification should be encouraged, if not mandated. Copies of the patrol report should also be provided to the victim for inclusion in her own file.

Findings: Investigation Assignment

Once a case is identified as a stalking case, it is usually referred to an investigator for follow-up. For several reasons, investigative responsibility is typically assigned vertically; in other words, the assigned investigator is responsible for that case and that victim. Such an approach ensures that the victim has a single point of contact for the indefinite future, an important concern where cases go on for extended periods. Similarly, patrol officers responding to any new complaints of stalking or related crimes will be told to whom to refer the case (victims are told to inform patrol of the case investigator and case number). An important corollary to this point is to require that all subsequent reports involving the stalking victim be assigned the case number assigned to the original complaint so that important paperwork is not lost.¹²⁹ Concern about file completeness also leads to having a single person responsible for case file management.

The investigative follow-up presents a second opportunity to provide information to the victim about available community services. Although not yet often seen in the stalking context, a number of law enforcement agencies around the country (e.g., Sacramento County Sheriff's Department) have

¹²⁸ See REGIONAL SEMINAR SERIES, *supra* note 5 at 18.

¹²⁹ Chicago Police Department, Department Special Order 92-5, Procedures in Stalking Cases IV (C) (1999).

enlisted victim advocates in "ride-alongs" that bring domestic violence investigators and advocates into a teaming relationship. Several of these agencies (e.g., Colorado Springs, Colorado) handle significant numbers of domestic violence-based stalking cases with these teams. Anecdotal reports of the ride-alongs have been quite favorable.

Findings: Special Unit/Investigator Case Screening

Effective case identification can lead to too many cases to be handled effectively by the stalking unit or specialized investigator. Hence, case screening may be required to identify those cases most in need of the unit's expertise. Any case not assigned to the special stalking unit may nonetheless develop into a more serious stalking case. The Los Angeles Police Department Threat Management Unit requires that the officer assigned to the case monitor the case and personally contact the victim every 30 days for an update on the stalking behavior. If the stalking behavior has ceased for a two-month period, the case is closed.¹³⁰ Many other special stalking units also use periodic victim call-backs to check that the seriousness of the stalking behavior and threat has not escalated.

Findings: Case Investigation

The two most important tasks in case investigation are determining the identity of the stalker and obtaining sufficient evidence to arrest and convict. In both instances, understanding the dynamics of stalking can be critical for the investigation and can also reduce the duration of the stalking and the seriousness of its consequences. Several agencies with anti-stalking units have sought to apply research findings on stalking behaviors to such tasks as investigative strategies and threat assessment. Commercial applications of research findings are also seen. However, few agencies are able to keep abreast of the latest research findings..

One important tool for problem solving in stalking investigations is a knowledge of stalker typologies. These include the following:

¹³⁰ Los Angeles Police Department, Threat Management Unit, Threat Management Unit Guidelines (Feb 1999).

The Abnormal Stalker. One of the first typologies was developed by Zona and colleagues and was based on case files from the Los Angeles Police Department's Threat Management Unit.¹³¹ This typology focuses on the psychological underpinnings of the stalker-victim relationship. Thus, the typology distinguishes between three types of psychological motivations for stalking:

- *Simple obsessional.* Stalker and victim had a prior relationship (e.g., former intimate partners). The motivations for the simple obsessional relationship include a desire to lure the other person back into a relationship, anger at loss of control or feelings of mistreatment, and revenge for perceived wrongs.
- *Love obsessional.* The stalker and the victim have no prior relationship but the stalker, nonetheless, focuses on the victim as the object of love and adoration. Some stalkers suffer from a psychiatric disorder such as schizophrenia, while others are simply socially maladjusted. Stalking of public figures is a common subgroup of this category.
- *Erotomania.* The defining characteristic of this type of stalking is that the stalker delusionally believes that the victim is in love with him. Moreover, the stalker may perceive other parties as responsible for the victim's failure to acknowledge this love. Hence, spouses of the erotomaniac's victim can also become stalking victims because the stalker believes that the spouse is interfering with the victim's love for the stalker.

A recent addition to this typology takes note of a small number of reported stalking cases that involve false victimizations: no one is stalking the "victim." This is sometimes called "false victimization syndrome." Motivations for that behavior range from psychiatric disorders to simple seeking of attention from another person or the authorities. When stalking laws were first implemented, most false stalking reports seemed to reflect a variety of causes ranging from the "victim's" desire for attention to more serious psychological disturbances. More recently, as stalkers have become more familiar with these laws, false stalking reports have become part of the behavioral pattern of stalking itself whereby the stalker countercharges the victim with stalking him.¹³²

¹³¹ Michael A. Zona, K. K. Sharma & John Lane, *A Comparative Study of Erotomania and Obsessional Subjects in a Forensic Sample*, 38 J. FORENSIC SCI. 894 (1993). See also Michael A. Zona, Russell E. Palarea & John Lane, *Psychiatric Diagnosis and the Offender-victim Typology of Stalking*, in THE PSYCHOLOGY OF STALKING: CLINICAL AND FORENSIC PERSPECTIVES 70 (J. Reid Meloy ed., 1998). A review of the relevant literature on this typology as of 1997 is Joseph Davis & Marcella Chipman, *Stalkers and other obsessional types: A review and forensic psychological typology of those who stalk*, 4 J. CLINICAL FORENSIC MED. 166 (1997).

¹³² Personal communications from prosecutors and victim advocates from New York City to Austin, Texas, to Sacramento, California. MULLEN *et al.*, *supra* note 9 at 191-92, discuss a number of reasons for false

Mixed Psychological and Other Factors. Harmon and colleagues also based their stalking classification scheme on a review of criminal case files, in this instance cases referred to the Forensic Psychiatry Clinic of the Criminal and Supreme Courts of New York City.¹³³ This typology uses two factors: (1) prior relationship: personal, professional, employment, media, acquaintance, and none; and (2) the nature of the stalking motivation: affectionate/amorous or persecutory/angry. The researchers also noted that amorous/affectionate stalkers were also likely to victimize third parties that they viewed as barriers to the relationship between the stalker and the object of affection. They also pointed out that stalker motivations can change from seeking romance to seeking revenge when rejection occurs.

A third classification scheme was developed by Wright and colleagues at the Federal Bureau of Investigation.¹³⁴ This typology uses a number of factors, including whether the stalker–victim relationship grew out of a domestic relationship (including coworkers) or some other relationship; whether the communications are delusional or non-delusional; whether the stalker is motivated by infatuation, possessiveness, anger/retaliation, or some other motive; and how aggressive the stalker's behavior is. Wright's final typology factor involving case outcomes is relevant to protecting the victim but is not relevant to case investigation issues.

Gavin de Becker, who has developed a computerized threat assessment program for law enforcement, classifies stalkers according to their differing motivations.¹³⁵ These include attachment seekers, identity-seekers, rejection-based, and delusion-based. While the other categories are not unfamiliar, identity-seekers is a new term. By this, de Becker is referring to stalkers whose motivation is to gain fame or attention (e.g., Mark Chapman, who killed John Lennon in 1980). As thus described, this type of "stalker" may not be engaged in behavior covered by most states' stalking laws, which require victim fear.

victimization claims; their listing does not, however, include reasons for false victimization claims based upon a legal defense strategy to rebut the stalking criminal charges. They do make reference, however, to "malingerers" as a group of false stalking claimants, who do so to avoid prosecution for other offenses by claiming an unknown person is stalking them. *Id.* at 198-202.

¹³³ Ronnie B. Harmon, Richard Rosner & Howard Owens, *Obsessional Harassment and Erotomania in a Criminal Court Population*, 40 J. FORENSIC SCI. 188 (1995); *Sex and Violence in a Forensic Population of Obsessional Harassers*, 4 PSYCHOL., PUB. POLICY & LAW 236 (1998).

¹³⁴ James A. Wright, Allen G. Burgess, A.T. Laszlo, Gregg O. McCrary & John E. Douglas, *A Typology of Interpersonal Stalking*, 11 J. Interpersonal Violence 487 (1996).

¹³⁵ Reported in MULLEN *et al.*, *supra* note 9 at 74.

Another typology is that developed by Mullen and colleagues in Australia.¹³⁶ Like several of the more recent typologies, it is multi-axial. The typology focuses on the stalker's motivation and the context in which the stalking occurs. The researchers also consider the prior relationship with the victim and the psychiatric diagnosis. Their primary classifications are the rejected, intimacy seekers (reacting to loneliness), the resentful (perceived insult or injury), the predatory (seeking sexual gratification and control), and the incompetent (poor suitors or courtiers). Prior relationships in this typology include former intimate partners, professional contacts, work-related contacts, casual acquaintances and friends, the famous, and strangers. Psychiatric status is divided into psychotics and nonpsychotics (primarily personality disorders).

Finally, Spitzberg and Cupach have developed a typology of stalking behavior based on a meta-analysis of the stalking research literature. They categorize stalking behaviors as including these characteristics:

- Hyperintimacy (aggressive or inappropriate romantic gestures)
- Pursuit and proximity (increased contact including collection of information by such means as surveillance)
- Invasion (escalated surveillance)
- Intimidation (coercion in response to rejection)
- Violence (last resort or rage response to rejection).

These researchers have also developed a typology using the dimensions of love versus hate and behavior from controlling to expressive. This leads them to posit four types of stalkers: the Intrusive Pursuer, who loves and tries to control, posing a moderate risk of violence;¹³⁷ the Annoying Pursuer, who loves, uses expressive behaviors, and is low risk; the Organized Stalker, who hates, is controlling, and is high risk; and the Disorganized Stalker, who hates, uses expressive modes of behavior, and is also high risk.¹³⁸

¹³⁶ MULLEN *et al.*, *supra* note 9 at 80-81.

¹³⁷ Among others, this category includes the classic domestic violence batterer who uses stalking as a means of continuing prior efforts to control the former intimate. See R. F. DOBASH & R. P. DOBASH, *WOMEN, VIOLENCE AND SOCIAL CHANGE* (1992) for a discussion of the controlling behavior paradigm.

¹³⁸ Brian H. Spitzberg & William R. Cupach, *What Mad Pursuit? Obsessive Relational Intrusion and Stalking Related Phenomena*, *AGGRESSION & VIOLENT BEHAVIOR* (in press, 2002). See also Spitzberg and Cupach, *Paradoxes of*

Synthesis. The several researchers studying stalking from a variety of perspectives (psychiatric, behavioral science, legal) have identified five critical variables:

- Prior relationship
- Motivation for stalking
- Mental health status of stalker
- Stalking behaviors
- Background explanatory factors.

Prior relationship includes spouses, former spouses, and dating intimates; family members; acquaintances such as coworkers, neighbors, or those with whom one has a business relationship; and strangers. To this one might add "stalker unknown," to include false victimization cases.

Motivations include two primary categories, love and hate (revenge), with a third, less common category of predation. Motivation subcategories include love-pursuit, love-regain, and love-turned-to-hate. Furthermore, these three "love" motivation categories may change over time from love-pursuit to love-hate. Relatively uncommon motivations include attention seeking for false victimization claims and "white knight" savior hopes as part of an effort to appear the hero.

Mental health status includes both clinical disorders (such as depression and schizophrenia) and personality disorders (such as narcissistic, antisocial, compulsive and histrionic).¹³⁹

Behaviors may be characterized as pursuance, surveillance, intrusion, control, intimidation, threat, and violence. They also include revenge-motivated acts such as harassment and attempts to demean the victim.

Background factors are often important in the case analysis as an aid for explaining why certain behaviors occur and for threat assessment. These include stalker's substance abuse, stalking in the context of a divorce or child custody battle, prior criminal history, prior domestic violence, escalating behaviors and boundary probing.

Pursuit: Towards a Relational Model of Stalking-Related Phenomena, in STALKING CRIMES, *supra* note 1; *The Inappropriateness of Relational Intrusion*, in INAPPROPRIATE RELATIONSHIPS (R. Goodwin & Duncan Cramer eds., 2001)

This simple list of stalker distinctions shows how extensive data collection about stalkers can be and thus how important are sophisticated information management techniques. It also shows the reason for widespread use of threat assessment scales and programs.¹⁴⁰ One of the most commonly mentioned programs associated with threat assessment is MOSAIC. However, MOSAIC does not claim to predict future violence; it rates cases on a scale of 1-to-10, with 10 being assigned to those situations that contain factors associated with violence escalation. As such, MOSAIC's data requirement is designed to lead the user in an information gathering process for further individualized threat assessment.¹⁴¹

Exhibit 3 integrates these several typologies from the perspective of an investigator with only limited case knowledge. Thus, the summary begins with the prior relationship since that is the most common bit of information known. For each of the three categories of prior relationship, the table sets forth the most common motivations and any special issues associated with that prior relationship. More detailed information such as specific psychiatric diagnosis is omitted because of the difficulty in gathering such information.

Exhibit 3. Stalking Typologies Summary

Prior Relationship	Motivation	Psychiatric Diagnosis	Other Issues
Past Intimates	Intimacy regain Revenge/control	Personality disorder Alcohol/drug dependency	Motivation changeable over time

¹³⁹ A more complete review of mental health issues of stalkers than that found here is in J. Reid Meloy, *Stalking (Obsessive Following)* in J. REID MELOY, VIOLENCE RISK AND THREAT ASSESSMENT, 167, 174-75 (2000).

¹⁴⁰ See JAN ROEHL & KRISTIN GUERTIN, CURRENT USE OF DANGEROUSNESS ASSESSMENTS IN SENTENCING DOMESTIC VIOLENCE OFFENDERS (September 1998) (reprinted in 21 JUSTICE SYS. J. 171 (2000) (identifying ten "dangerousness" instruments).

¹⁴¹ Unlike some dangerousness instruments, MOSAIC does not claim to be a predictor of violence in specific cases. Instead, it is described by its creator, Gavin de Becker, as a "training system that teaches an assessment method" (personal communication, April 2001). From this perspective, its usefulness lies in the fact that the MOSAIC computer program leads users to consider variables related to threat assessment that they might not have thought about or gathered information on. It does not, therefore, provide correlation statistics to show what proportion of stalker behavior is accounted for by its 10-point scale. Even if such statistics were available, it is not clear that its practitioner users would find them useful. Many practitioners have also favorably commented in interviews on the fact that MOSAIC is designed to allow them to quickly provide a threat assessment report to victims, thereby underscoring how serious their cases are and emphasizing that they need to take actions to reduce that threat. On the other hand, the absence of validation data means that use of MOSAIC should not extend to its citations by expert witnesses as evidence relevant to proving victims' reasonable fear. Other instruments, such as the Spousal Assault Risk Assessment (SARA), that have been subject to validation studies are more appropriate for testimonial purposes. Personal communication from Dr. J. Reid Meloy.

	(jealousy common)		Prior domestic violence
Acquaintances/ Friends	Intimacy seeking Revenge	Personality disorder Social incompetence Psychotic	Danger to third party
Stranger	Intimacy seeking Identity/fame	Psychotic/delusional Erotomania	Danger to third party Celebrity targets
Unknown	Attention seeking "victim" White knight protector Other	Varies or none available	

Of course, these categories (especially the category of prior relationship) oversimplify reality. Of all stalking relationships, stranger or casual acquaintance stalking is probably the most underreported. For example, one experienced stalking prosecutor assigned to a government benefit fraud unit found that agency officials who were seen by the applicant as denying benefits were later stalked by the applicant in revenge for the benefit denial.¹⁴² These cases had not been identified as stalking until then. Another category of unreported stalking is stalking conducted by gang members of youth who rejected an "invitation" to join the gang.¹⁴³

Practitioner Uses of Typology Research Findings. Case investigation may use these typologies in a number of ways.¹⁴⁴ For example, informal intervention without arrest or evidence collection may be most successful with those characterized as "incompetents," i.e., acquaintances or strangers who do not know how to engage in dating behaviors.¹⁴⁵ Incompetents are also among the least likely to engage in extended stalking (more than one year in duration), to abuse drugs or alcohol, or to have prior criminal records. They also typically engage in simple stalking (not creating victim fear), as compared to rejected stalkers, who engage in many more types of stalking behavior.¹⁴⁶ In comparison, while predator stalkers have background characteristics similar to the incompetents, predators are three times more likely than the incompetents to have a prior criminal record.¹⁴⁷ For these stalkers, criminal justice intervention is an imperative. Investigators may also find useful the research findings on

¹⁴² Personal communication.

¹⁴³ See REGIONAL SEMINAR SERIES, *supra* note 5 at 18 (discussing stalking by gang members in public housing).

¹⁴⁴ Threat assessment may make even more use of this information. See *infra* notes 208-221 and accompanying text.

¹⁴⁵ MULLEN *et al.*, *supra* note 9 at 78.

¹⁴⁶ *Id.*

predatory stalkers suggesting that voyeurism is a not uncommon early stalking behavior.¹⁴⁸ Similarly, research shows that some stalkers file false claims against the victim, such as filing for orders of protection or alleging wrongful behavior by the victim against her employer, insurance company, etc. The former may be motivated by an intimacy seeker seeking to get close to the victim, while the latter typically is a rejected or resentful stalker seeking revenge.¹⁴⁹

Case investigators may also find demographic data useful in determining who the stalker is. Male victims, for example, were found by Mullen and colleagues to be most likely to be stalked by another male, usually a stranger.¹⁵⁰

Findings: Victim Behaviors

Investigators must also take into account victim behaviors. One obvious reason is the need to exclude false victimization reports, which victim behavior may signal. In addition, a small proportion of stalking cases that involve former intimates may be terminated when the stalker and the victim reconcile; reconciliation is a common occurrence in domestic violence cases.¹⁵¹

Most commonly, however, the investigator has to rely on victim cooperation in keeping a record of the stalking events to help in building a prosecutable case. At the same time, the victim is experiencing stress and fear as the stalking and the investigation continue. During this interim period, the victim may have to cope with ongoing stalking behavior as best she can, often without official support or advice. As a result, many victims develop coping behaviors that may, on the surface, appear to undercut the seriousness of the threat faced by the victim and her fear of the stalker. Victim behavior in coping with this stress needs to be monitored and assistance provided as needed, both to ensure evidence collection and to preempt any later defense claim that the victim invited the stalking.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 105, 111.

¹⁴⁹ *Id.* at 177, 179.

¹⁵⁰ *Id.* at 161-165.

¹⁵¹ Questions of the voluntariness of reconciliation may be often asked, however, since fear of the stalker may be the real motivation, especially where there is a history of domestic violence. Nonetheless, reconciliation for whatever reason undercuts the prosecution of a stalking case that by its very nature requires victim testimony about fear of the stalker.

Hence, research on victim reactions to being stalked is a second tool for case investigators. However, there are only a few studies of victim behavior. One study of 128 stalking cases by a researcher working with the Sacramento District Attorney's Office found that victims' responses to stalking by former intimate partners consisted of four types of behavior:¹⁵²

- Active resistance
- Help seeking
- Coping to reduce danger
- Coping by complying with the stalker's demands.

Victim's active resistance (i.e., self-help in facing the stalker) included (in declining order of frequency):

- Not letting defendant in
- Threatening to call 911
- Fighting or struggling
- Logging or recording the stalker's behavior.

Help seeking behavior included:

- Calling police /insisting on arrest/insisting on prosecution
- Getting an escort
- Screaming.

Victim coping strategies to minimize danger included:

- Screening phone calls/changing phone number
- Leaving the scene/moving within the area
- Staying with family or friends, or hiding
- Taking other security measures.

The most important of Dunn's findings for the investigator was the degree to which victims engaged in compliance behavior in an effort to appease the stalker in order to reduce the threats.

¹⁵² Jennifer Dunn, *Forceful Interaction: Social Construction of Coercive Pursuit and Intimate Stalking* (1999) (unpublished Ph.D. dissertation, University of California at Davis) (scheduled for commercial publication in 2002).

Nearly one in five victims who had been stalked by former intimates exhibited some form of compliance behavior as a survival strategy. Such behaviors included:

- Requesting that the case be dismissed, or recanting
- Visiting defendant in jail
- Going places with the stalker
- Continuing to have sex with the stalker.

Compliance behavior can complicate case outcomes by making it harder to prove that the victim is fearful of the stalker. Indeed, compliance can suggest to the naive observer that the victim is encouraging the stalker or leading him on. Moreover, victims of stalking by former intimates often have conflicting emotions toward the stalker. Behavior reflecting both fear and love can muddy the image of victim innocence for a jury.

Findings: Other Investigative Tools and Techniques

Investigative responses to stalking complaints are typically tailored to the specific facts of the case: who the victim is, what she does, what types of stalking behavior are occurring, who the stalker is, what the relationship is (or was) between the two, etc. Nonetheless, common problems among groups of cases may be resolved by using similar methods. Sometimes these methods are drawn from other types of crime investigations. For example, proving stalking is occurring may require surveillance. In some cases it may be possible to place video cameras or trained personnel outside the residence of the victim to await the appearance of the stalker. In other cases, it may be necessary to watch the stalker until he or she contacts the victim. In cases where stalking is being done without personal contact, it may be necessary to perform surveillance on a mailbox, a telephone booth, or even a computer terminal in a college laboratory. In one case where the suspect could not be found, the LAPD Threat Management Unit staked out his automobile, to which he did in fact return with evidence of the stalking.¹⁵³ Other common investigative methods include obtaining security videotapes from businesses where a stalking incident occurred, using phone traps, and seizing suspect's phone records.

¹⁵³ Personal communication from Greg Boles, formerly supervising detective, Los Angeles Police Department, Threat Management Unit.

Search warrants are especially useful once a suspect has been identified. Anne O'Dell, a former stalking investigator with the San Diego Police Department, recommends looking for non-obvious items of evidence such 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
- Equipment that might have been used to stalk the victim, such as a camera or binoculars.¹⁵⁴

The Metropolitan Police (Scotland Yard) reminds investigators that stalkers often are serial stalkers. Investigators should always check local records to see if there have been similar complaints or cases. Similarly, friends and relatives of the victim should be contacted to determine whether they too have been stalking targets.¹⁵⁵ In domestic violence-related stalking, this advice should extend to past intimate partners of the suspect.

Victim-Generated Evidence. Evidence collection begins with the initial victim interview. Even the initial police report detailing the victim's complaint and her demeanor may be used in evidence to refresh the memory of a police officer witness. The investigator assigned to the case will also begin with an interview of the witness. This interview has several motivations: to gather evidence, to obtain leads for additional evidence gathering, to protect the victim from any threat (including safety planning and referral to services), and to enroll the victim as an additional aid to evidence gathering. To accomplish all these tasks, the Canadian Department of Justice advises investigators as follows:

- Do not minimize the situation.
- Be sensitive to the personal situation of the victim, including any distress the victim is experiencing.

¹⁵⁴ Anne O'Dell, Stalking (n.d.) (unpublished paper on file).

¹⁵⁵ Hamish Brown, METROPOLITAN POLICE (London), STALKING 4 (2000) (www.scotlandyard.police.uk/stalking/guide.htm) (hereinafter METROPOLITAN POLICE).

- Explain the seriousness of the offence, especially any threat potentials.
- Obtain a detailed chronology, including words and gestures used by the suspect and other communications. Find out where and when the conduct occurred. Determine whether the victim has directly or through others informed the suspect that the conduct is not welcome.
- Find out whether there are witnesses to any of these events.
- Obtain relationship information.
- Obtain information about the impact of stalking on the victim and what the victim has done in response, especially to protect her safety.
- Ask about legal actions, such as a pending child custody action.
- Ask about restraining orders in effect and whether the suspect is under court supervision.
- Ask about weapons owned or possessed by the suspect.¹⁵⁶

The most common innovation in stalking investigations is to have the victim keep a log of all stalking incidents. In the log will be noted the time and date of the incident, where it occurred, the presence of any witnesses, and the details of the incident. The victim may also be asked to write how she reacted to the incident, including specific behaviors and psychological responses.¹⁵⁷ When it is also used as a diary, the log may help to disprove counterclaims of stalking pressed by the stalker. Victims are also asked to retain any corroborative evidence they have, including audiotapes from a telephone answering machine (time and date stamped), receipts from businesses at the location where the stalking incident occurred, etc. Several jurisdictions have prepared pamphlets for victims that detail what role they are asked to play in the investigation and that contain the log books to be used.¹⁵⁸ Victims may also be asked to take photographs of property damage caused by the stalker and immediately seal unwanted letters or gifts in plastic bags when investigators are not available.

¹⁵⁶ CANADIAN DEPARTMENT OF JUSTICE, CRIMINAL HARASSMENT: A HANDBOOK FOR POLICE AND CROWN PROSECUTORS (n.d.) (<http://canada.justice.gc.ca/en/dept/pub/hpcp/table.html>) [hereinafter CRIMINAL HARASSMENT HANDBOOK].

¹⁵⁷ *See, e.g.*, Los Angeles Police Department, Threat Management Unit, Stalking Victim's Handbook (n.d.). Other items recorded in the log include information about the stalking suspect, outstanding restraining orders, and police information, such as name of officer taking the report.

¹⁵⁸ *Id.*

Suspect Interview. Investigators may (when deemed safe) also ensure that the stalker is told that his behaviors (such as following, telephoning, leaving gifts, and the like) are unwanted (often called a "Knock and Talk" intervention).¹⁵⁹ By personally informing the stalker of this fact, the officer will be able to testify that the stalker's actions were "knowingly" done, a critical element of the crime under many states' anti-stalking laws.¹⁶⁰ The Dover Police Department recommends that investigators gather as much information as possible about the suspect (including motor vehicle and criminal record checks¹⁶¹) before interviewing him. Interviews with family, friends, neighbors, etc. are also part of the suspect pre-interview data gathering. All interviews should be fully documented.

The types of information about the suspect sought at this time include the following:

- History of violence, especially domestic violence (including controlling behaviors)
- 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 for firearms license.¹⁶²

When the suspect is finally interviewed, he should be given an opportunity to explain how his actions may have been misinterpreted by the victim (or others). Before the interview is completed, the suspect should be asked about prior similar behavior (toward other victims).¹⁶³

¹⁵⁹ Knock and Talks are typically used in stalking cases where there is no "credible threat" or its equivalent and the state law requires such a threat. It is precisely because no arrest is imminent that the stalker may feel free to discuss the stalking behaviors complained of.

¹⁶⁰ The CRIMINAL HARASSMENT HANDBOOK, *supra* note 157, discourages multiple warnings, saying these may even be counterproductive.

¹⁶¹ The CRIMINAL HARASSMENT HANDBOOK, *supra* note 157, suggests further that additional databases be checked, including child protection authorities, firearms registry, and immigration records (where applicable).

¹⁶² *Id.*

¹⁶³ Dover Police Department, Anti-Stalking Unit Investigative Guide and Protocols 26 (2000) [hereinafter Dover Protocols].

An important consideration in interviewing stalkers is their tendency to use self-justification to explain their stalking behaviors. As Mullen *et al.* put it, they have a unique ability to "deny, minimize and rationalize." These medical practitioners suggest that questioning in their context be "nonjudgmental, if not collusive."¹⁶⁴ They further found that "intimacy seekers in particular respond well to reframing stalking in terms of a quest." This allows answers that do not require justification of actions.¹⁶⁵ As one law enforcement practitioner described it, they need to be questioned as child molesters: "Tell us how your acts were misunderstood."¹⁶⁶

Cyberstalking Evidence Collection. Other investigative techniques are much more sophisticated, especially where cyberstalking is involved. In these cases, it may be necessary to serve search warrants on Internet Service Providers (ISPs) to help identify who is sending the cyberstalking messages or simply to prove that the suspect was responsible (where identity is already known). In most instances, the suspect is not notified of service of a search warrant. However, where the ISP provides Internet service through a cable system used to deliver television services, federal law requires that notice be given by the ISP.¹⁶⁷ In some California jurisdictions, the prosecutor routinely requests that the court issuing the warrant also enjoin the required notice until the investigation is complete.¹⁶⁸ It should also be remembered that cyberstalking cases require great speed in gathering electronic evidence. Many ISPs routinely erase their service records within 12 or 24 hours of when an e-mail or web link is provided.

Other Actions to Gain Corroborative Evidence. The state of Connecticut has developed training materials for stalking investigators. These materials provide suggestions about additional steps investigators can take to obtain evidence corroborating the victim's statements. Investigators are encouraged to do the following:

- Determine the suspect's place of work since stalkers often do their stalking while going to or returning from work. This shows opportunity and may rebut any alibi.

¹⁶⁴ MULLEN *et al.*, *supra* note 9 at 282.

¹⁶⁵ *Id.* at 283.

¹⁶⁶ Personal communication.

¹⁶⁷ 47 U.S.C. § 551(c), (h).

¹⁶⁸ Edward Messinger & Richard Goldstein, *Cyberstalking Issues*, in CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, STALKING SEMINAR (2001). *See also*, ELECTRONIC CRIME SCENE INVESTIGATION: A GUIDE FOR FIRST RESPONDERS (July 2001).

- Conduct drive-by patrols of the suspect's and victim's homes to track suspect movements.
- In cases where the victim lives near a school, notify crossing guards to call police if they see the suspect or his vehicle in the area.¹⁶⁹

Interviews of coworkers, friends, neighbors, family members, or even persons living in the same multi-family building as the victim may provide important corroborative evidence. The interviews may also uncover additional stalking behaviors that the victim was unaware of (e.g., lurking in the area).¹⁷⁰

Other types of corroborative evidence may be gathered by obtaining the suspect's telephone records for calls to the victim and by using the media (where the case has unique features) to get reports of similar victimizations.¹⁷¹

Investigators are also reminded that because stalking investigations are time-consuming, victims may stop reporting stalker contacts or incidents. That does not mean they are uninterested in having the stalker arrested; they are simply fatigued.¹⁷² This problem, identified by the state trainers, is likely to be most acute where the victim has no single point of contact at the law enforcement or prosecutor's office to call for support.

Case File Management. The history of the stalker's behavior is the heart of any stalking investigation. This history is, of course, contained in the unit or investigator's case files. How those files are maintained is critical to successful investigations and prosecutions. The LAPD Threat Management Unit requires that each stalking case file be maintained in a separate, case-specific three-ring binder that is maintained chronologically.¹⁷³ The Colorado Springs DVERT program has adopted a similar requirement for its investigators handling stalking cases.¹⁷⁴ The stalking case file typically includes the following:

¹⁶⁹ CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, "STALKING TRAINING MODULE" (n.d.).

¹⁷⁰ Deirdre Bialo-Padin, *Analysis of the Stalking Law* (May 2000) (materials prepared for Kings County (N.Y.) District Attorney's Office). Interviews may also, as noted *supra* note 155-157 and in accompanying text, identify other cases of stalking involving the suspect.

¹⁷¹ METROPOLITAN POLICE, *supra* note 156 at 4.

¹⁷² *Id.*

¹⁷³ Los Angeles Police Department, Threat Management Unit, Threat Management Unit Guidelines, Addendum # 5 "Guidelines for Maintenance of Files" (February 1999).

¹⁷⁴ Personal communication.

- Case summary profile, including victim and suspect identifiers (names, addresses, employers, birth dates, etc.) and name of detective assigned to case
- Copies of all incident and arrest reports
- Interviews with the suspect, witnesses, and victim
- Suspect criminal records
- Motor vehicle agency records
- Other police department contacts
- Media reports.

Other information that may be contained in the file is as follows:

- 911 tapes
- Suspect telephone records
- ISP records
- Search warrants
- Suspect's military record
- Suspect's mental health information
- Child welfare agency investigative records
- Photograph of suspect.

Selected data from the file is also entered into the unit's computerized database. All files are kept in a locked file cabinet in the TMU area. Computerized data about stalking cases is maintained indefinitely. Depending on whether the case was considered "active" or simple information only, hard copies of the files are kept for three years before being transferred to archives or destroyed.

Agency Collaboration. Agency collaboration is a necessity in many stalking cases where stalking crosses local jurisdictional areas. For example, the victim may be stalked at her home in one city, at her workplace in another town, and while shopping in a third jurisdiction. Evidence from all the stalking locations must be collected, yet no single law enforcement agency has jurisdiction over all the stalking locations. Even the county prosecutor may not have authority over all the sites involved in the stalking. To remedy this problem, a number of agencies have entered into agreements that assign

control of the investigation to one agency's stalking officers. If a stalking incident occurs in another jurisdiction, the victim is told to inform the local investigators of the name of the lead agency investigator and the case number. Copies of all reports of the incident will then be sent to the lead investigator.¹⁷⁵

A second type of agency collaboration is discussion of stalking case issues at regular meetings attended by different agency investigators and prosecutors assigned to stalking cases and by other persons interested in stalking issues. In San Diego, for example, a multi-agency Stalking Case Assessment Team (SCAT) meets monthly to discuss stalking cases that have presented problems to the investigators. These problems might call for discussing how best to identify who the stalker is or whether the case involves a false victimization claim. Attendees at these meetings include representatives from the District Attorney's Stalking Unit, the City Attorney's Domestic Violence Unit, the San Diego Police Department, other local law enforcement agencies in the county, a mental health specialist who treats stalkers, court security personnel, local university police officers, and academic researchers. Representatives from victim services agencies may also attend, often to inform the assessment team members of the services they provide to victims. Federal agency investigators may also participate. In addition to brainstorming about active cases, the SCAT meetings may be used as a forum for training participants on such topics as threat assessment.

A final agency collaboration is the assistance provided to local agencies by the federal government. The Behavioral Analysis Unit of the Federal Bureau of Investigation's National Center for the Analysis of Violent Crime will, upon request, provide local agencies with assessments of communicated threats, dangerousness assessments of known offenders, profiles of unknown offenders, crime scene analysis, and investigative and interview strategies. In addition, center staff provide training on these topics.¹⁷⁶ For example, the center's analysis of threat stylistics may be useful in a case where the stalker's identity is unknown. Such an analysis may suggest the stalker's probable level of education, criminal sophistication, race, use of English as second language, and sex. Where a suspect is identified,

¹⁷⁵ See O'Dell, *supra* note 155 (describing the "Key Case Concept" used in San Diego County). The Chicago Police Department has a similar requirement for instructing the victim to notify other investigators that hers is a stalking case that is being handled by the investigator first assigned to the case, and that the case number is specified. Chicago Police Department, Department Special Order 92-15, Stalking Procedures IV (f)(2).

¹⁷⁶ See Mission Statement for the National Center for Analysis of Violent Crimes at its website, www.fbi.gov/hq/isd/cirg/ncavc.htm.

comparative examination of other suspect writings may help in ascertaining whether the suspect is the person sending written threats. The Secret Service provides similar help through its National Threat Assessment Center staff. They have developed protocols for handling threat cases¹⁷⁷ and also provide training for state and local law enforcement agency staff who have protective responsibilities, including those associated with stalking cases. The Secret Service's forensic unit also provides technical assistance to local law enforcement agencies in specific cases. The assistance includes document comparisons, handwriting analysis, and information from the Secret Service's database of celebrity stalkers and persons who have threatened public officials.¹⁷⁸

Referral to Prosecution. When an arrest is made, the case is then referred to the prosecutor's office. At that point, the arresting officer should summarize the key elements of the case for the prosecution. The summary should describe the following:

- Stalking behavior
- Reasons for victim's fear
- Victim's responses to fear (e.g., moving, taking self-defense course)
- Evidence of intent to stalk or recklessness to victim fear.¹⁷⁹

Law enforcement development of a case summary would be especially useful to the prosecutor at bail hearings where there has been little time to interview the victim or gain other information about the seriousness of the case.

Findings: Stalking Prosecution

Stalking prosecutions are often problematic because of staff inexperience with stalking cases and the absence of agency policies and procedures that might otherwise provide guidance in lieu of personal expertise. The primary responsibility of prosecutors is, of course, to prove that the defendant committed the crimes charged. While the defendant will plead guilty to the charges in many instances, in a significant number of cases a trial will be required. It is unclear, at this point, whether stalking cases

¹⁷⁷ See the National Threat Assessment Center website at www.treas.gov\uss/ntac.htm.

¹⁷⁸ See ROBERT A. FEIN & BRYAN VOSSEKUIL, PROTECTIVE INTELLIGENCE AND THREAT ASSESSMENT INVESTIGATIONS: A GUIDE FOR STATE AND LOCAL LAW ENFORCEMENT OFFICIALS (1998) (available from National Institute of Justice)

¹⁷⁹ CRIMINAL HARASSMENT HANDBOOK, *supra* note 157.

are more likely to go to trial than other types of criminal cases. There is some reason to suspect that this may be the case, at least for some types of stalkers, such as those seeking fame. In any case, prosecutors must always prepare their cases as if they will have to convince a jury that the defendant stalked the victim.

Prosecutor Investigators. Because most law enforcement agencies do not have specially trained investigators to handle stalking complaints, stalking prosecutors may need to have their own investigative staff help gather the evidence necessary to prove stalking. Since stalking is an ongoing crime, prosecutor investigators are especially critical in the management of evidence collection, even where local law enforcement agencies have investigators available. In many jurisdictions, however, caseload pressures are such that the prosecutor's investigator may be the only person assigned to the case on a permanent basis.

Pretrial Release. Prosecutors' traditional responsibilities begin after the suspect is arrested and appears before the court at a bail or pretrial release hearing. While in many jurisdictions, bail is a routinized procedure for which there may even be a bail schedule, routine bail should never occur in a stalking case where the threat of violence is the basis of the arrest. Prosecutors will typically stress the uniqueness of these cases to the official who sets bail and release conditions, especially the dangers that may be presented to the victim by the stalker. Law enforcement experts on stalking can help educate the hearing officer about what stalking is and about its dangers for victims. In some cases, pretrial detention may be requested on the basis that it is needed to prevent intimidation of the victim or other witnesses. Some prosecutors will also charge the stalker with all possible crimes committed while stalking. This is intended, in part, to educate the bail hearing officer on the scope and seriousness of the stalking.

In appropriate cases, preventive detention or referral to psychiatric evaluation may be requested. In other cases, intensive pretrial supervision (including electronic monitoring) may be needed. The court should also be asked to issue a no-contact order forbidding the suspect from engaging in any stalking behaviors; this order should be specific to the facts of the case. As appropriate, a curfew may be ordered. The order should also forbid the suspect to obtain any dangerous weapons and to surrender any weapons already in his possession. When called for, substance abuse testing

should be required. 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. Where available and needed, victims should be provided with a means to contact 911 wherever they are, including panic buttons to alert neighbors, passersby, etc.¹⁸⁰

Among the types of evidence that the prosecutor may use to support objections to release are the following:

- History of violating court orders
- History of probation violations
- Threat assessment findings, such as explicit threats against the victim or threats of suicide
- Testimony from a mental health expert or an experienced detective to educate the judge about risks of violence
- Victim fear.

Victim Interview. The heart of the prosecution's case is the victim's story. It is critical that this story be as complete as possible. In many instances, prosecutors should not rely on the police investigation to obtain all the facts known by the victim. Police investigations, especially where there is no specialized staff or unit, do not require a full debriefing of the victim; they only need enough information to support a probable cause determination that a crime has occurred. For this reason alone, prosecutors will have to re-interview the victim early in the process to gather evidence that the police investigation did not uncover.¹⁸¹ Several points should guide this interview:

- Victims may have difficulty remembering every stalking incident, they may feel some incidents are not important, or they may believe the prosecutor will discount the significance of certain events. Patient discussion with the victim can bring these incidents out. A checklist of stalking behaviors can be a useful prompt for the victim's memory.

¹⁸⁰ See Dover Protocols, *supra* note 164, at 53-62 (Role of Prosecution in Stalking and Stalking Related Cases). See also CRIMINAL HARASSMENT HANDBOOK, *supra* note 157.

¹⁸¹ The San Diego District Attorney's Office recommends that this interview include the prosecutor, the prosecutor investigator assigned to the case, and the investigating detective from the referring agency. Greg Peters, *Prosecution Focused Investigative Techniques*, in CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, STALKING SEMINAR (2000).

- The victim may be embarrassed or feel partially 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.¹⁸²
- 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.¹⁸³

The prosecutor's interview with the victim is also an opportunity to provide the victim with information about what she can do to enhance her personal safety and how public safety agencies can assist. For this reason, prosecutors may wish to have a victim advocate join the victim interview to help with safety planning and referral to community services.

Prosecutors may also at this point become involved with the victim's civil court efforts to obtain a stalking protection order. It is common for prosecutors to suggest that victims consider seeking such an order, with due consideration being given, of course, to victim safety issues. It is also becoming increasingly common for stalkers to counteract (even preemptively) with their own filing for a court order of protection. Because they have been involved in numerous cases where the stalker tried to manipulate the court system by falsifying the facts, staff in the District Attorney's Office in Kings County (Brooklyn), New York, routinely intervene in the civil court proceedings to present the facts as they know them to the court. Doing so serves to prevent conflicting orders and removes potential confusion for jurors when the case is tried in criminal court.¹⁸⁴

Filing the Case. The first important tactical decision in a stalking case is the filing of formal charges. Decisions must be made about the scope of the charges to be filed. For example, prosecutors may have to choose between charging all stalking acts as one crime or charging several crimes. Charging all acts as one crime shows the full extent of the stalking behaviors, while splitting up the

¹⁸² Deirdre Bialo-Padin, WHAT EVIDENCE IS NEEDED IN ORDER TO PROVE STALKING? 3 (May 2000) (materials prepared for Kings County (N.Y.) District Attorney's Office).

¹⁸³ Machaela Hctor, *Victim Issues*, in CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, STALKING SEMINAR (2000).

¹⁸⁴ Personal communication.

behaviors into two or more charges may increase the defendant's sentencing exposure.¹⁸⁵ The prosecutor must also determine what other non-stalking charges to file. These can include serious felonies, such as aggravated assault, rape, or residential burglary; lesser misdemeanors, such as criminal mischief or trespassing; and violation of a court order of protection. Again, sentencing considerations play a significant role in this decision. In some jurisdictions (e.g., New York), charging lesser crimes may be important because lesser crime convictions may increase the penalties for stalking should there be subsequent recidivism.¹⁸⁶ In other states (e.g., California), the law authorizes consecutive sentencing in misdemeanor cases so that the actual exposure to incarceration may be greater for multiple misdemeanors than for a stalking felony charge.¹⁸⁷

At the same time, these filing decisions must take into account any potential double jeopardy issues relating to twin convictions for the same crimes.¹⁸⁸ Finally, court venue may play a role in some states where the stalking behavior occurred in several different locations. Most states, however, provide venue in both the locality where the crime occurred and the location where the crime was planned (i.e., where the intent to commit a stalking act arose).¹⁸⁹ Another concern may be the victim's ability to cope with an extended wait for a felony trial; misdemeanor cases can typically be closed in half the time of felony cases.¹⁹⁰

A final filing decision regards what charges to bring where the victim says she is not in fear of the stalker, yet the applicable statute requires victim fear as an element of the crime. While there is only one court decision that directly supports charging defendants with attempted stalking,¹⁹¹ there are also analogous decisions holding that attempted terroristic threats may be charged where there is an intent to instill fear, but the victim was not fearful.¹⁹²

¹⁸⁵ Jane Shade, *Stalking*, in CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, STALKING SEMINAR (training materials) (March 2000).

¹⁸⁶ Bialo-Padin, *supra* note 183 at 12.

¹⁸⁷ CAL. PENAL CODE § 19.2

¹⁸⁸ See *United States v. Dixon*, 113 S. Ct. 2849 (1993). See also, *People v. Kelly*, 52 Cal. App.4th 568 (1997) and other cases described in Appendix 4.

¹⁸⁹ See, e.g., CAL. PENAL CODE § 778a(a).

¹⁹⁰ CRIMINAL HARASSMENT HANDBOOK, *supra* note 157.

¹⁹¹ *State v. Rooks*, 468 S.E.2d 354 (Ga. 1996).

¹⁹² See *People v. Toledo*, 96 Cal. Rptr.2d 640 (Ct. App. 2000); *People v. Benitez*, 104 Cal. Rptr.2d 718 (Cal. Ct. App. 2001). The only article written on the topic of attempted stalking opposes such a crime on the basis that stalking is an inchoate crime, that is, it is a prelude to other crimes such as murder or rape. See Nick Zimmerman,

Preparing the Case. Trial preparation is critical to any successful prosecution. A stalking prosecutor in Orange County, California, provides the following checklist of preparation actions:

- Review statute and case law. (Stalking law is still unfamiliar to most prosecutors.)
- Organize evidence per the KISS motto.
- File trial brief to educate the judge on key stalking issues (e.g., reasonableness of fear).
- Prepare witnesses on details of stalking and fear. (Some victims may be reluctant to admit fear before their stalker; this is seen as "giving in." Witness preparation should address this by explaining the importance of such testimony.)
- Anticipate defenses (e.g., that the defendant did not perform the acts or that the victim overreacted).
- Develop a theme to present to the jury.
- Prepare exhibits (e.g., use a timeline).
- Obtain certified copies of court orders of protection and supporting declarations.
- Organize case "cast" for jury to understand.
- Prepare for a voir dire that includes the "He never laid hands on her" defense, and address the difference between a credible threat and joking.¹⁹³

Trying the Case. Because the statutory elements making up the crime of stalking typically include reasonable victim fear, 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 that the victim had a reasonable fear for her safety due to the stalking begins with the victim's testimony. It, too, must be corroborated by such evidence as the following:

- Law enforcement officer testifying about the victim's calls for help, her demeanor when explaining the reason for the calls, and the officer's evidence collection efforts
- Victim's friends and co-workers relating changes in victim's behavior (e.g., asking for an escort to go shopping or to the parking lot when leaving work)
- Security officials at the victim's workplace who had been informed of stalking occurrence

Attempted Stalking: An Attempt to Almost Attempt Act, 20 N. ILL. U. L. REV. 219 (2000). As the review *supra* demonstrates, stalking by itself is a serious personal crime without regard to any other crimes that it may lead to.

¹⁹³ Ray Armstrong, *Investigation and Prosecution of Stalking Cases*, in CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, STALKING SEMINAR (training materials) (March 1999).

- Record of victim statements that are not limited by the hearsay rule (e.g., 911 tapes, police incident reports)
- Answering machine tapes and audiotapes of phone calls
- Pictures of stalker taken by victim (date and time stamped)
- Evidence gained through search warrants, including computer, stalker's diary, property of victim found at stalker's residence, pictures of victim taken by stalker, etc.
- Videotaped interview with stalker.

The crux of the prosecution's story should usually be the impact of the stalking on the victim, however bizarre the facts of the case may be. In rebuttal, the defendant may claim that there was no threat expressed or implied or that the stalking behaviors exhibited were simply acts of love. The victim may even have exhibited behaviors, as described above, seemingly inconsistent with being a victim, especially to one unfamiliar with the dynamics of domestic violence and stalking. However, the prosecutor has several potentially important tools to work with.

First, the prosecutor will have corroborative evidence that backs up the victim's testimony. This includes all the evidence detailed above that makes up a *prima facie* case of stalking. Identity evidence may come from victim testimony, videotapes or cameras, fingerprints on gifts or letters, or paper (similar to that used for notes) found under defendant's control during a warrant search, etc.

In some cases, the facts may not be clear. One common problem is proving victim fear. Victim testimony and collaborative evidence from other witnesses can address direct factual items such as behavior changes, locks changed, etc. The victim can also detail the time and effort expended in keeping safe, such as the time involved in filing for civil orders of protection and the number of trips required.¹⁹⁴ Such detail is intended to lead the jury to infer that the fear described must have been a major motivator for such extraordinary efforts. In addition, the prosecutor can call expert witnesses to explain to the jury that stalking has occurred and that the victim was fearful.¹⁹⁵ Thus, a psychiatrist, psychologist, or other treatment expert may be used to prove both the reasonableness of the victim's

¹⁹⁴ Shade, *supra* note 186.

¹⁹⁵ This may be more easily said than done. There are apparently few credentialed experts to explain stalking victim coping behavior. In the absence of qualified academic experts or researchers, one possibility is to use victim advocates who have worked with a significant number of stalking victims as experts.

fear and its reality. Behavior seemingly inconsistent with being a stalking victim can be shown to be a common adaptive response to the stress of being a stalking victim at high risk of violence for a long period. Building a pool of expert witnesses qualified to testify on stalking may be difficult, but it probably is one of the first non-case specific tasks a special prosecution stalking unit must do.

Proving reasonableness of the victim's fear requires leading the finder of fact to understand the importance of the context in which the stalking occurred. The significance of implied threats can best be understood in light of the defendant's history, especially prior incidents of violence (including violence directed at the victim or violence against others that is known to the victim). Not all states permit entry into evidence of the defendant's prior acts, on the basis that it is likely to be more prejudicial than probative. However, many do, and where it is permitted, prosecutors must make an effort to obtain corroborative evidence to support the victim's testimony about prior history. This, of course, is another important reason for the prosecutor's office to have its own investigative staff in stalking cases.

Stalker intent may be the hardest fact to prove. Some state laws require proof of the stalker's specific intent to stalk and terrorize the victim; others merely require a general intent to do the acts that resulted in terror and fear. One common method for proving general intent is to show that the stalker was informed by the victim, the police, 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. Letters, police testimony about intervention, and court orders of protection are used to document such warnings. Where specific intent is required, the defendant's continued actions after such notification may be subject to the proposition that one is presumed to intend the natural and probable consequences of one's actions.¹⁹⁶

One problem in a small proportion of cases is that the victim may become uncooperative. Typically this occurs when former intimates become reconciled, although a few cases may involve a victim so terrorized that she cannot effectively cooperate with the prosecution. Depending on when in the course of investigation and prosecution this occurs, it may be impossible to proceed without victim testimony; such testimony is usually critical to proving actual victim fear, as many states' stalking laws

require. Not all states have such a requirement; even though fear itself cannot be shown, proof that victim fear would have been a reasonable reaction may be all that is needed. Participants in the regional seminar series sponsored by the Bureau of Justice Assistance favored a modified no-drop policy in stalking cases where the victim is uncooperative. They pointed to the possibility of using prior victim statements under the spontaneous utterance exception to the hearsay rule, for example. The participants also suggested that prosecutors have the victim testify at bail hearings and probable cause hearings in any case where they suspect victim cooperation may become an issue.¹⁹⁷ The participants did not discuss either how a no-drop policy might affect victim safety or what to do if the victim testifies for the defendant.

Finally, although most stalkers do not testify at trial, when they do, adroit cross-examination can make them the best witnesses 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 let the stalker talk; his "explanations" may simply make the jury as fearful as the victim. In other cases, a stalker's "explanations" should be cut off, since they are often both clever and manipulative, and if only one juror buys his answer, a hung jury may result. 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. When this occurs, 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., works, drives without accidents). This dual approach to countering any claim of debilitating mental illness will show that the planning that went into the stalking is inconsistent with any serious mental defect that could undercut specific intent.¹⁹⁸

Sentencing and Supervision. Unless foreclosed by a plea agreement, once a conviction has been obtained, the prosecutor will make a recommendation to the court about the most appropriate

¹⁹⁶ *United States v. Beltran-Garcia*, 179 F.3d 1200 (9th Cir. 1999). See also *Chasson v. Rivera*, 459 U.S. 1162 (1983) (dissent) (explaining that the presumption about natural consequences of one's actions must not be phrased in a mandatory manner, but simply one of allowing the jury to make such an inference).

¹⁹⁷ REGIONAL SEMINAR SERIES *supra* note 5.

¹⁹⁸ Shade, *supra* note 186; personal communication from Rhonda Saunders, Deputy District Attorney, Los Angeles County District Attorney's Office.

sentence. In many cases, the threat to the victim is so great that the sentencing recommendation is self-evident: incarceration for as long as possible. When the threat is not as great, the court may favor a probation sentence, or a plea agreement may specify probation. In either case, the prosecution will want conditions that help guard victim safety attached to the probation sentence.¹⁹⁹ Just as the prosecutor argued for restrictive conditions upon pretrial release, so too will the prosecutor seek intensive supervision, electronic monitoring, and no-contact orders, violation of which will result in revocation of probation. Furthermore, where new stalking occurs in violation of the probation conditions, prosecutors will press the new criminal charges rather than simply requesting the court to resentence the stalker based on the probation revocation. These are separate proceedings, and victim safety often requires that both cases be prosecuted.

Regardless of whether a sentence of incarceration or probation has been issued, prosecutors will want to maintain periodic contact with the victim to determine whether there have been any new incidents of stalking. One of the unique features of stalking is that incarceration does not necessarily end it. Inmates may call or send letters to the victim directly²⁰⁰ or through third parties, or they may ask released inmates to continue their stalking efforts.²⁰¹ Furthermore, in almost all cases, incarceration eventually ends. Prosecutor contacts with the victim during the incarceration period reassure the victim that there is someone to go to if the stalking should resume after the stalker's release.

In cases where the stalker is sentenced to probation, assignment to an intensive supervision caseload is often found appropriate after a threat or dangerousness assessment is conducted. Typically, intensive supervision caseloads involve no more than 30 probationers per officer. That ratio allows for at least one face-to-face contact each month, plus unscheduled visits to determine whether the probationer is at work and obeying all other conditions of probation. It also allows the probation officer

¹⁹⁹ Victim suggestions for probation conditions should be solicited at this time to ensure that the conditions to be imposed by the court are complete.

²⁰⁰ For this reason, prosecutors may wish to contact corrections staff directly, asking them to monitor mail and telephone privileges to ensure that the no-contact order is not violated. In some jurisdictions, the court order of commitment may include a directive to that effect. In yet other states, correctional agency policies and procedures include monitoring for violation of orders. Prosecutors may also ask corrections staff to keep track of any evidence suggesting that the stalker continues to obsess about the victim, including keeping a diary, pictures of the victim, etc.

²⁰¹ A number of states' stalking laws explicitly state that incarceration is not a defense to a stalking charge. *See, e.g.*, CAL. PENAL CODE § 646.9(g).

to meet the victim and encourage her to call the officer should stalking resume. It further enables the officer to call the victim periodically to check on how things are going and to reinforce the earlier message that probation is a resource for help. In practice, however, only the most serious cases are eligible for intensive supervision because the staff needed for this function are overworked. Priorities will need to be set; periodic victim contacts are probably the minimum task requirement to protect victim safety. Such contacts should be coordinated with the prosecutor, and procedures should be set forth so that each notifies the other when information about a potential danger to the victim is discovered.

Where possible, the intensive supervision caseload should be supervised by a probation officer experienced in dealing with stalkers because stalkers are generally a "better" class of criminal, with higher intelligence and education.²⁰² The very nature of stalking, moreover, is one of manipulation, using their intelligence and often pleasing personalities to direct the probation supervision in ways that undermine its effectiveness. One experienced probation officer reports that because stalkers are generally hostile to supervision, she sets firm boundaries on their behavior to emphasize the control relationship underlying intensive probation. For example, there should never be open-ended or vague requirements or promises to end supervision by a set date. Just as stalkers do not "hear" the victim's "no," so too they do not hear the probation officer's qualifications in their relationship. Another tip for handling stalkers is never to let them set times for supervision meetings, since doing so goes against the officer's authoritarian role in the relationship. A second reason for using stalking-experienced probation officers is their increased ability to monitor stalker recidivism through the victim. By helping the victim with needed services and providing a prompt and sure response to victim complaints, the strengthened relationship between the officer and the victim can be critical to effective supervision.²⁰³

²⁰² While this view of stalkers was anecdotally expressed by both researchers and practitioners, it obviously is an overgeneralization that does not apply to all types of stalkers. It does, however, probably describe the most serious and dangerous stalkers, who often demonstrate great planning abilities in carrying out their stalking. These, of course, are the ones that the justice system is most likely to see. See Meloy & Gothard, *supra* note 12, and Harmon, Rosner & Owens, *supra* note 134, for two studies finding high stalker intellectual achievement.

²⁰³ Personal communication from Anna Guzman, San Diego County Probation. Officer Guzman also suggests that the order of probation include multiple provisions, such as warrantless search and seizure, restrictions on computer use, polygraph requirements, mandated counseling, and stay-away orders. If probation conditions are violated, prosecutors should ask the court for rearrest and other sanctions.

In a few jurisdictions, the convicted stalker may be required to attend a stalker-treatment program.²⁰⁴ Because there are so few such programs known, no generalized description of them is possible. Known programs use a psychologist or psychiatrist and a group therapy approach to instill behavioral change. More intensive pharmacological services may be used for stalkers exhibiting serious mental illnesses. In addition, some stalkers may also need instruction on life skills, such as acquiring and maintaining friendships and improving social networks. Research on successful treatment of stalkers is limited.²⁰⁵ Hence, linking probation and stalker treatment is still a problematic exercise today.²⁰⁶

Findings: Victim Safety and Well-Being

Victim safety and well-being are critical responsibilities for both law enforcement and prosecution. The victim is undergoing tremendous stress from the stalking. At a minimum, psychological support is critical to her well-being. Referrals for counseling, support groups, and other victim services may also be needed.

Threat Assessment. The most important question in a stalking case is, "How dangerous is the stalker likely to be to the victim?" Protecting the victim is a higher priority than a successful prosecution.²⁰⁷ 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. Typical factors considered in threat assessment include the suspect's history of mental illness or violence; history of domestic violence; explicit threats of violence; vandalism or pet abuse; and increase in stalking activity. Much of this

²⁰⁴ Laws requiring or permitting the court to order offender treatment include CAL. PENAL CODE § 646.9(j); GA. CODE § 16-5-90(d); MICH. STAT. § 750.411I(4)(c); N. MEX. § 30-3A-3(D); S.C. § 16-3-1740; W. VA. REV. STAT. § 61-2-9a(h).

²⁰⁵ See generally, MULLEN *et al.*, *supra* note 9 at 285-288.

²⁰⁶ REGIONAL SEMINAR SERIES, *supra* note 5, presents a recommendation for mandating counseling for stalkers on the basis that such counseling can help some stalkers even though one cannot identify which ones will be helped. This ignores the possibility that mandated counseling may in some situations worsen the threat to the victim.

²⁰⁷ Virtually every stalker prosecutor we spoke with volunteered this statement in our discussions. The Nashville Metropolitan Police Department's Guide to Domestic Violence Risk Assessment, Risk Reduction and Safety Plan (n.d.) (www.police.nashville.org/bureaus/investigative/domestic/stalking.htm), states, "In some cases, the most appropriate suspect intervention (from the point of view of enhancing the safety of a given victim) is to leave it alone because any system-based intervention directed at the suspect/offender will dramatically escalate victim risk...." By and large, however, these comments may be reflecting the speaker's recognition of the constitutional limits on the justice system's response to stalking threat cases, including the inability to provide preventive detention and the length of time until trial. In some jurisdictions, inadequate penalties upon conviction might also be added.

information can be gathered from official sources. Where there has been a prior relationship, investigators will often be able to obtain additional information from the victim about prior domestic violence, other prior violence, weapon possession, substance abuse, and mental health. Victims should also be asked about their assessment of potential violence.

As noted earlier, research on threat assessment is still rudimentary. Nonetheless, some typology studies do provide indicators or correlates of dangerousness. Zona's research found that "simple obsessional" stalkers were the most likely to present a threat of violence, especially those who had had a prior relationship with the victim.²⁰⁸ Other researchers have also found that erotomanics, who typically have not had any prior relationship with the victim, can be dangerous,²⁰⁹ especially to third parties viewed as blocking successful pursuit of the stalking victim.²¹⁰ Many other researchers have focused on relationship factors. Schwartz-Watts and colleagues confirmed Zona's finding that the greatest risk of violence came from stalkers who had a prior relationship with the victim.²¹¹ Similarly, Harmon and colleagues found that prior relationship was a predictor of violence against the victim. Nearly two-thirds of stalkers who had had an intimate relationship with the victim showed violence; only one-third of those who had been acquaintances showed violent behavior; and less than one-quarter of stranger stalkers were violent.²¹² Looking at other stalker characteristics, the Harmon research team found that the greatest likelihood of violence was with stalkers diagnosed with both a personality disorder and substance abuse or mental disorder. Most significantly, they found that most stalkers who threatened the victim acted on that threat. In comparison, only 20 percent of those who did not threaten acted violently.²¹³ Harmon's principal findings were replicated by Kienlen and colleagues, who also found that stalker violence was most likely among those with a personality disorder or substance abuse

²⁰⁸ Zona, *supra* note 132.

²⁰⁹ Paul E. Mullen & Michele Pathe, *The Pathological Extensions of Love*, 165 BRITISH JOURNAL OF PSYCHIATRY 614 (1994); Paul E. Mullen & Michele Pathe, *Stalking and the Pathologies of Love*, 28 AUSTL. & N.Z. J. PSYCHIATRY 469 (1994).

²¹⁰ See, e.g., R. Menzies, J. P. Fedoroff, C. M. Green & K. Issacson, *Prediction of Dangerous Behavior in Male Erotomania*, 166 BRIT. J. OF PSYCHIATRY 529 (1995).

²¹¹ Donna Schwartz-Watts & Donald W. Morgan, *Violent Versus Nonviolent Stalkers*, 26 J. OF THE AMER. ACAD. OF PSYCHIATRY & THE LAW 241 (1998); Donna Schwartz-Watts, Donald W. Morgan & Cheryl J. Barnes, *Stalkers: The South Carolina Experience*, 25 J. OF THE AMER. ACAD. OF PSYCHIATRY AND THE LAW 541 (1997).

²¹² Harmon (1998), *supra* note 134. Note, however, that violence as defined in this study included both physical assaults and property damage.

and who had a former sexual relationship with the victim.²¹⁴ In the largest of these studies, Mullen and colleagues found that one-third of 146 stalkers attacked their victims; 6 percent attacked a third party. While most of the violent episodes were minor, nearly 20 percent involved sexual assaults or attempted assaults. Following their typology, the researchers found that rejected suitors were most likely to be violent (59 percent); these stalkers were also likely to threaten their victims. Predatory stalkers were also likely to both threaten and carry out their threats. Although resentful stalkers were most likely to use threats (87 percent), they were far less likely to actually use violence (29 percent); they were, however, likely to commit property damage (50 percent). Intimacy seekers were also prone to threats (50 percent), but far less likely to commit violence (24 percent). The researchers also found that violence was associated with personality disorders and substance abuse. Prior criminal record was also highly correlated with stalking violence. Interestingly, the correlation between prior threat and violence was not present for former intimates; nonetheless, former intimates were most likely to commit violence (64 percent), and stranger stalkers were the least likely to do so (24 percent).

Mullen *et al.* conducted a regression analysis to determine which risk factors were the most useful in predicting violence. They found that the most important predictor was prior criminal record, followed by substance abuse and typology. Other important indicators of potential violence are prior relationship and overt threats.²¹⁵ Further, substance abuse of any kind is strongly associated with violent acts. All these factors need to be assessed on a case-specific basis. As Mullen *et al.* point out, although strangers are the least likely stalkers to commit violence, this group includes predatory stalkers, who are among the most likely to commit sexual assaults against their victims.²¹⁶ Mullen and Pathe also cite studies of non-stalking violence that list other indicators such as suicide threats, depression, common bail risk factors such as unemployment or social isolation, and case-specific clinical issues such as having high anger levels directed at the victim, having an intense sense of entitlement, or fantasizing about an attack.²¹⁷ Another, more recent study of 187 former intimate stalking victims found that for this victim subpopulation, prior violence is a moderate predictor of future violence; the author speculates

²¹³ *Id.*

²¹⁴ Kristine K. Kienlen, Daniel L. Birmingham, Kenneth B. Solberg, John T. O'Regan & J. Reid Meloy, *A Comparative Study of Psychotic and Nonpsychotic Stalking*, 25 J. AMER. ACAD. PSYCHIAT. & LAW 317 (1997)

²¹⁵ MULLEN *et al.*, *supra* note 9 at 213-14.

²¹⁶ *Id.* at 217.

that the stalker's reduced access to the victim moderates the value of this predictive factor.²¹⁸ The study also supported other research findings that a stalker's use of verbal threats is the most powerful indicator of future violence.²¹⁹ Other research, however, finds that verbal threats are a weak predictor of future violence compared to profile information such as a prior intimate relationship between the stalker and victim.²²⁰

In sum, threat assessment begins with characterizing the stalking according to typology, since the research clearly shows that different risk factors are associated with different types of stalkers and stalking. The next step is to particularize the threat assessment by examining the specific behaviors, as well as background factors such as prior criminal history and incidents of violence. Thus, using the studies above as a guide, it is possible to roughly divide stalkers into low, medium, and high-risk offenders. Two problems with this approach remain, however. First, even low risk does not mean *no* risk. False negatives are not uncommon because assessment of risk potential may change over time as new information becomes available, e.g., overt threats are issued or information about prior convictions becomes available from other jurisdictions. Risk assessment is therefore a continuing process. Second, false positives (mistaken predictions of violence) are also of concern.

Safety Management. Once the threat is assessed, the question arises as to how best to protect the victim. Each case must, of course, be assessed on its individual merits. In some cases, a simple intervention or warning interview will suffice;²²¹ in others, a court injunction or protection order may be sought. In yet a few other cases, obtaining a civil order of protection may have the reverse effect of increasing the level of danger to the victim.²²² Other common tactics used by law enforcement

²¹⁷ *Id.* at 220

²¹⁸ See, e.g., Mary Brewster, *Stalking by Former Intimates: Verbal Threats and Other Predictors of Physical Violence*, 15 VIOLENCE AND VICTIMS 41 (2000).

²¹⁹ *Id.*

²²⁰ J. Reid Meloy, Beth Davis & Jon Lovette, *Risk Factors for Violence Among Stalkers*, 1 J. THREAT ASSESSMENT 3, 8-9 (2001).

²²¹ Agency practice in "intervening" varies. Some simply have the investigator make an informal house call to inform the suspect that his actions, if continued, may constitute stalking and result in an arrest. Others use a formal, hand-delivered letter procedure to warn the stalker.

²²² This is a common warning. See, e.g., OFFICE FOR VICTIMS OF CRIME, NATIONAL VICTIM ASSISTANCE ACADEMY (1996) ("Chapter 21, Stalking") (1998 Supplement) (www.ojp.usdoj.gov/ovc/assist/nvan/ch12-2st.htm). See also Gavin de Becker Inc., "Intervention Decisions: The Value of Flexibility. A Confidential White Paper Report." (n.d.) (citing Judge Watson, a prime sponsor of the 1990 California stalking law, for the view that temporary restraining orders do not always work; hence, the need for the law). *But see* J. Reid Meloy, Patricia

include providing the victim with a home alarm system that will trigger police action. Where this is done, more advanced systems will also ensure that the 911 dispatcher has access to descriptive information about any suspect and his vehicles. Victims will also be advised to take other actions, such as changing phone numbers, varying routes to work, or renting a post office box for mail. In extreme cases, the victims will be aided in relocating 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.²²³

A number of law enforcement and prosecutor agencies provide victims with an informational booklet that details measures they can take to protect themselves. The LAPD Threat Management Unit handbook, for example, prefaces its recommendations with the statement that police cannot guarantee safety and thus the victim is encouraged to take steps on her own. Among other measures, the booklet advises victims to do the following:

- Inform friends, family, neighbors, and employer of the stalking.
- Improve security at the residence by installing dead bolts, change keys if not all keys can be accounted for, positively identify visitors before opening door, install adequate lighting on porch and outside, install loud alarm, keep fuse box locked, and have battery lanterns available.
- Maintain unlisted telephone number.
- Extend security precautions to any outside domestic help.
- Prepare an evacuation plan and test it periodically.
- Maintain all-purpose fire extinguishers in residence and garage.
- Vary routes taken and time spent walking.
- Park in secured area at home, work, and shopping.
- Do not leave name on any reserved parking spot.

Yim Cowett, Stephen B. Parker, Brad Hofland & Aaron Friedland, *Domestic Protection Orders and the Prediction of Subsequent Criminality and Violence Toward Protectees*, 34 PSYCHOTHERAPY 447, 453-56 (1997) (mutual orders of protection found to be significantly correlated with reduced levels of domestic violence). One major cause of the ineffectiveness of orders of protection is the common failure of police to arrest when order violations occur and of prosecutors to press charges in these cases. Where arrests are made and charges filed by the prosecutor, there is anecdotal evidence to indicate that orders of protection are effective.

²²³ See, e.g., CAL. CIVIL PROC. CODE § 1277, 78, GOV'T CODE 6205.5; IOWA CODE §§ 236.3, 236.10; WASH REV. STAT. C 40.24.010.

- Have another employee screen all calls or mail at work.
- Equip car with locking gas cap.
- Visually check the passenger compartment before entering vehicle.
- Keep doors locked while vehicle is in use.
- Select a reliable service station for vehicle service.
- When traveling by vehicle, plan ahead to determine location of police or fire stations and busy shopping centers along the way.
- Use private mailbox service; have all mail from friends, creditors, businesses, etc. sent to the mailbox; change address with U.S. Postal Service to mailbox.
- Remove home address from personal checks.
- Destroy discarded mail.
- Install telephone at another location and use call forwarding to residence.
- Place residence rental agreements in another person's name.²²⁴

The Dover Police Department protocol suggests additional actions regarding the family's children. For example, children need to be instructed to keep all address and telephone information confidential. The protocol also raises the question of whether the children's school should be notified, but it does not provide an answer.²²⁵

Other actions to offer victims of stalking, suggested by a victim services agency, include the following:

- Get or borrow a dog.
- Seek out self-defense training (to build assertiveness).
- Refuse flowers or deliveries from anonymous people.
- Require identification of repair persons before admitting them into the household.
- Install a peephole in front door.

²²⁴ Los Angeles Police Department, Threat Management Unit, Victim Handbook (n.d.).

²²⁵ Dover Protocols, *supra* note 164 at 45-46.

- If there are children in common, find out which child-related records the ex-partner has a legal right to and minimize personal information in those records. If necessary, ask court to take away those rights.²²⁶

Victim Well-Being: Other Services. Stalking victims require non-criminal justice assistance for at least two reasons. First, being stalked is stressful. Victims often need support and counseling. Medical and psychiatric or psychological treatment services may also be required to help the victim deal with past or ongoing stress.²²⁷ 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, the safety precautions described above 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.

Victim advocates and similar service providers can deliver some limited services themselves and refer the victim to other, more specialized service providers. Many special anti-stalking units have victim advocates assigned to help the stalking victims. For example, virtually all the special stalking prosecution units in the several California county prosecutor offices with such units have a victim advocate assigned to the unit. In part, this may be due to the availability of state funding for advocate units in the prosecutor offices;²²⁸ such funding reduces the financial costs of the stalking unit advocates, although it does not explain why prosecutors have made that position a priority. In contrast, only a few victim service agencies direct special attention to stalking victims, even in the context of domestic violence. Again, funding issues may explain, in part, why this is so.

The types of services needed by stalking victims include these:

- Therapeutic services, including counseling, peer group support, and even psychological or psychiatric treatment
- Relocation assistance within the local jurisdiction
- Help in applying for victims' compensation

²²⁶ Legal Aid Services of Oregon, Stalking Protection Orders: Training Manual for Law Enforcement and Advocates (n.d.) (unpublished training materials on file).

²²⁷ See MULLEN *et al*, *supra* note 9 at 239-247.

²²⁸ CAL. PENAL CODE §§ 13835-13835.10.

- Help in applying for name or address confidentiality program, including issuance of new social security number
- Finding short-term shelter space
- Advocacy with public benefits agencies
- Advocacy with employers
- Legal advocacy in filing for civil orders of protection
- Court support and accompaniment to appearances in either criminal or civil court.²²⁹

Since stalking victims may also be victims of other crimes, such as sexual or physical assaults, victim services that relate to those crimes should also be available. Similarly, when stalking victims have also been subjected to domestic violence, additional victim services may be appropriate. Finally, while all crime victims may be nervous about testifying in court, fears of testifying are especially large for stalking victims who have been trying to avoid face-to-face contacts with their stalker. Special attention to these fears needs to be displayed by victim advocates.²³⁰

Victim Involvement. Victim involvement in the investigation and prosecution of stalking cases is often critical to completion of these cases. This involvement may also be beneficial to the victim since it allows the victim to feel that she is retaking control over her life. Not coincidentally, regaining control increases victim cooperation with law enforcement and prosecution. Another way agencies can help victims regain control (or not lose control) is to help them live their lives as normally as possible. The Legal Aid Service of Oregon advises victims of stalking to do the following:

- Keep a sense of humor.
- Ask for support and reach out to others.
- Get enough sleep.
- Exercise.
- Eat nutritious foods.

²²⁹ The San Diego District Attorney's Office recommends that the victim report to the District Attorney's offices, not to the court. The District Attorney's Office provides transportation when needed. The victim should always be escorted to and from the courtroom and the courthouse by a victim advocate. She should never be left alone. Peters, *supra* note 182.

²³⁰ See Dover Police Department, Dealing with Anxiety Prior to Testifying: A Handout for Victims, *in* Dover Protocols, *supra* note 164.

- Talk to someone supportive.
- Call a crisis line.
- Try a support group.
- Get information on stalking and know what to expect.
- Do not avoid intimacy or withdraw from others.
- Do not self-medicate with drugs or alcohol.²³¹

Agency Collaboration. Providing services for stalking victims generally requires collaboration between criminal justice agencies, victim service agencies, and such service providers as the following:

- Family violence coalitions or service providers, including victim advocates
- Shelters
- Mental health agencies and professionals
- Child protection services
- Medical services (hospitals and professionals)
- Schools
- Civil legal services.

Collaborative relationships are developed and maintained differently in every community. In some jurisdictions, collaboration is more or less ad hoc. In others, formal agreements are reached. The Colorado Springs DVERT program, for example, is a joint venture involving local criminal justice agencies and both public and private service agencies, including mental health, social services, child protective services, and the local victim services agency. Each agency assigns staff to work with the other agencies' staff at the DVERT offices, which are located apart from any of the sponsor agencies.

Findings: Special Unit Management

Stalking cases are different from other types of crime cases. These differences are reflected in the organization and operation of the special anti-stalking units. The most important difference lies in the relationship between the victim and the investigator or prosecutor assigned to the victim's case. Stalking cases last a long time and rely on the victim for important evidence gathering. By themselves, those two factors lend themselves to a relationship between the agency staff and the victim. Such relationships are

to the advantage of both parties: the victim knows whom to call when a problem occurs, and the agency obtains increased victim cooperation in evidence gathering and testimony.

The investigative or prosecuting agency, therefore, has a significant interest in promoting strong victim-staff relationships. One agency policy that fosters such relationships is assigning one investigator or prosecutor to handle all aspects of the case.²³² Unitary or vertical case assignment of staff means, however, that the investigator or prosecutor assigned to the case must be able to respond to a stalking call from a victim at all times. While many issues may be handled by telephone, not all can be, and an on-scene presence may be needed.

An unusually high demand for staff overtime to handle victim calls for assistance or evidence collection (e.g., from stakeouts) is a second management concern.²³³ Nonetheless, such calls are the cost of doing business as an anti-stalking unit. They can be budgeted for to some extent, while alternatives such as compensatory time may be used where permitted.

Staff caseloads are a third management issue that must be addressed. Stalking cases are labor-intensive due to the long period during which evidence must be collected. For example, one domestic violence investigator estimates that only 1 percent of his cases involve stalking, but those cases take up 10 percent of his time.²³⁴ While that may be an extreme case, managers should expect stalking investigators and prosecutors to have lower caseloads than more generalized staff and domestic violence unit staff.

Further compounding the staff caseload issue is that most special unit supervisors and staff are also responsible for non-case specific duties. Because stalking is not yet well understood, the demand for information about stalking is high. Hence, special unit staff are responsible for training other agency staff about stalking, training related agency staff (e.g., prosecutors training police) on stalking, and providing community education to encourage reporting of stalking. Experience suggests that as much as 10 percent of supervisor staff time and 5 percent of other unit staff time may be spent on these activities.

²³¹ Legal Aid Service of Oregon, *supra* note 227 (no page number available).

²³² This is the uniform practice of virtually every agency studied. See also METROPOLITAN POLICE, *supra* note 156 ("Try to keep the same investigating officer for the case, especially if incidents are ongoing....").

²³³ See generally, David H. Bayley & Robert E. Worden, *Police Overtime: An Examination of Key Issues*, in NATIONAL INSTITUTE OF JUSTICE, RESEARCH IN BRIEF (May 1998).

Managers, especially law enforcement managers, may also be expected to develop an operations manual that sets out written policies and procedures to guide staff actions. In several places in this report, references have been made to different aspects of such manuals, including case file management and case eligibility screening. A unit manual might also include agency policy on overtime, procedures for referrals to other service agencies, and guidance on victim safety planning assistance.

C. Summary

A substantial body of experience with anti-stalking initiatives has been gained among the few law enforcement, prosecution, probation, and victim advocate agencies sponsoring such efforts. Interestingly, this experience is consistent with the efforts of agencies in other countries, such as the United Kingdom and Australia, to implement their anti-stalking laws. Among the key managerial lessons learned is the need for specialized staff, vertical handling of cases, and multi-agency/community coordination. Lessons for practitioners include the importance of victim-gathered evidence (and the need to work better with victims and victim advocates), corroborative evidence, problem-solving approaches, and the use of research on stalking and stalkers to inform threat assessment and safety planning. The research uncovered numerous examples of how these principles are being implemented and can be emulated.

²³⁴ Personal communication.

V. Summary, Conclusions, and Recommendations

Examination of the wealth of material available on stalking confirmed in great detail that stalking is a serious crime. Stalking's toll on victims is insidious and pervasive. More importantly, the research on the incidence of stalking suggests that it is a far more common occurrence than previously recognized. The enactment of anti-stalking laws is amply supported.

The review of state anti-stalking laws and their implementation found both good and bad news. The good news is that every state has enacted an anti-stalking law, and those laws are becoming progressively more strict, even though significant gaps in state anti-stalking laws are still common. The bad news is that programs to implement the stalking laws are currently limited to relatively few jurisdictions. Where these programs exist, they are generally doing an outstanding job, especially where they use specialized staff to handle the most serious stalking cases. Special unit staff also serve as a resource for other agency personnel who handle spillover stalking cases that are not handled by the core unit staff. By and large, a problem-solving, case-specific approach to these cases is used by the best programs. However, a number of routinized procedures have been developed to ensure that records are maintained in full and that important questions do not go unasked.

A. Legislative Issues

Summary of Key Findings

Anti-stalking efforts begin with laws that make stalking a criminal offense. Such laws can deter some potential stalkers from stalking and keeping others from stalking during a period of incarceration or supervision. The great majority of these laws were adopted in a short period, 1990-1993. At that time, comparative information about the effectiveness of differing approaches to anti-stalking legislation was totally lacking; indeed, relatively little was known about the extent and seriousness of stalking itself. As a result, virtually no state's laws dealt with the myriad of issues that a comprehensive anti-stalking legislative package would include. As experience with these laws' shortcomings has come to light, a number of states have amended and added to their original anti-stalking laws. Almost every state's

stalking laws need significant change, such to increase the penalties for stalking, provide civil remedies, or make other adjustments.

States should review and update their anti-stalking laws to take advantage of what has been learned in the past decade about effective legislation. 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.²³⁵

Recommendations for Legislators

Legislative review should include consideration of the following:

- *Increasing the penalties provided for stalking.* Many states continue to treat stalking as a misdemeanor crime. However, stalking is a serious crime, just as dangerous and harmful to the victim as many felony offenses, including aggravated assault. Stalking should be treated as a far more serious offense—a felony, not a misdemeanor. Furthermore, where stalking is classified as a felony, it should call for a term of extended incarceration. At least one state provides a presumptive probation sentence for stalking rather than a prison sentence. Such laws lead prosecutors to ignore the stalking law in favor of lesser charges that will result in a jail sentence.²³⁶
- *Elimination of definitional language that restricts application of the stalking laws to situations involving physical presence.*²³⁷ These changes should make it clear that stalking may be conducted by any means, including electronic communication (cyberstalking).²³⁸
- *Improving coordination of stalking laws with related offenses, such as harassment, terroristic threats, or invasion of privacy.* The review of state laws found several instances where a state law implicitly adopted an anti-harassment provision by creating a two-level stalking law, the first of which is essentially a pre-

²³⁵ *Supra* note 4.

²³⁶ Personal communication from a Kansas prosecutor. See also discussion *supra* of prosecutor comments to the National Surveys.

²³⁷ Dussuyer, *supra* note 45, presents recommendations based on police and magistrate experiences in Australia that focus on the inadequacies of present law to deal with serial stalkers. These include amending the stalking law to permit police to charge stalking in cases where the victim is yet unaware of the stalking but the stalker has a history of stalking different victims, often as a prelude to sexual misconduct. One possibility is to expand the definition of "course of conduct" to include multiple single incidents of stalking against different victims. She also presents a suggestion that the civil laws authorizing orders of protection be amended to permit court orders against a stalker that would cover multiple unknown victims.

²³⁸ See *infra* note 243 for a more detailed discussion.

stalking misdemeanor crime.²³⁹ This lesser stalking offense includes all the elements of stalking except a threat to the victim's safety. These laws fill a gap in the state criminal code where there had not been any effective harassment laws. In these states, stalking that includes a threat is a felony offense.

- *Authorizing civil orders of protection against stalking* (in states where no such provision exists) and *statewide registration of these orders* in the state registry used for domestic violence orders. States' Full Faith and Credit laws may also need to be amended to include these orders.²⁴⁰

In addition to strengthening the civil and criminal code provisions for stalking and related offenses, other amendatory issues include the following:

- Clarifying the stalking law to explicitly include offenses committed while incarcerated and to increase penalties for this type of continued stalking
- Providing for warrantless arrests in misdemeanor stalking cases where probable cause to arrest exists
- Authorizing use of civil commitment upon completion of a prison sentence in appropriate cases where stalking results from serious mental illness (using procedures similar to those used for sexual predators)
- Authorizing the sentencing judge in appropriate cases to include a requirement for registration as a sexual offender
- Forbidding persons subject to a stalking order of protection to possess firearms or explosives
- Providing for issuance of no-contact orders in release hearings, violation of which would be a separate crime subject to warrantless arrest
- Requiring training for law enforcement on stalking issues, including stalking dynamics, impact of stalking, and stalking investigation

²³⁹ *E.g.*, NEV. REV. STAT. § 200.575, N. Y. PENAL LAW § 120.45 *et seq.*

²⁴⁰ Needless to say, implicit in this recommendation is the assumption that the stalking orders will be enforced. Not surprisingly, much research shows that unimplemented laws are not effective in deterring stalking. There are few studies of the effectiveness of stalking orders of protection where the orders are enforced by law enforcement and prosecution.

See also, Mindy Mechanic, Mary H. Uhlmansiek, Terri L. Waever & Patricia A. Resick, *The Impact of Severe Stalking Experienced by Acutely Battered Women: An Examination of Violence, Psychological Symptoms and Strategic Responding*, 15 VIOLENCE & VICTIMS 443, 455 (2000), whose findings on stalker use of visitation orders as a stalking tool suggest the need for stalking orders of protection to take precedence over conflicting family court orders.

- Establishing name and address confidentiality programs and related aid to victims, including funding for moving relocation expenses where local law enforcement finds this necessary to protect victim safety
- Creating a civil law tort for stalking.²⁴¹

Other stalking law amendments that should be considered include these:

- Increased penalties for stalking of minors
- Authorization for employers to seek orders of protection on behalf of employees while at work
- Authorization for law enforcement officers to apply for emergency orders of protection on behalf of stalking victims
- Confidentiality of communications between stalking victims and counselors or other treatment professionals
- Creation of new crime of cyberstalking²⁴²
- Creation of new crime of stalking by group or gang members.²⁴³

²⁴¹ See generally Victoria O'Brien, *Civil Legal Remedies for Crime Victims*, OVC BULLETIN (December 1992) (Office for Victims of Crime, United States Department of Justice). See also, Kristin J. Bouchard, *Can Civil Legal Damage Suits Stop Stalkers?* 6 B.U. PUB. INT. L.J. 551 (1997). For an example of a stalking civil tort law, see TEX. CIV. PRAC. & REM. §§ 85.001-006. Dr. J. Reid Meloy in a personal communication, however, warns that engaging stalkers in civil lawsuits may actually result in increased stalking by providing the stalker with a new forum for stalking and providing an opportunity for the stalker to obtain personal information about the victim through the discovery process. See also Alexina Baldini, *Stalking: Ramifications and Preventive Strategies for Professionals*, in AIC Conference Papers, who reports on how stalker self-representation in criminal proceedings acts to revictimize the victim by forcing her to interact with her stalker in the court proceedings.

The utility of a civil tort remedy may also be undercut by the fact that many stalkers are effectively "judgment proof," without resources to pay any judgment. This is because stalking can be a full-time job on its own.

²⁴² Cyberstalking is implicitly included in the stalking criminal law in virtually all states because their laws prohibit *any pattern of behavior* or conduct that harasses and threatens the victim. Only a few states' laws do not include either specific mention of electronic communications or language that could so be interpreted. From this perspective, amendments to the state stalking laws that explicitly state that stalking may be committed by electronic means are redundant, although such amendments can cut off nuisance litigation. *But see* CYBERSTALKING, *supra* note 105, and Joseph C. Merschman, *The Dark Side of the Web: Cyberstalking and the Need for Contemporary Legislation*, 24 HARV. WOMEN'S L. J. 255, 278 (2001) (36 states' laws can be interpreted to fit cyberstalking) for a different conclusion. The more serious problem is that many states' stalking laws do not provide adequate penalties for stalking of any kind, including cyberstalking. See *supra*, notes 76-82 and accompanying and preceding text. The variation in the seriousness with which stalking and cyberstalking are treated in the 50 states can affect cooperation between jurisdictions in enforcing out-of-state subpoenas. See HOLLES STAMBAUGH *et al.*, ELECTRONIC CRIME NEEDS ASSESSMENT FOR STATE AND LOCAL LAW ENFORCEMENT, 26-27 (2001).

²⁴³ *Cf.* WA. REV. CODE § 9A.46.120.

B. Implementation Issues

Summary of Key Findings

The most significant finding relative to implementation of state stalking laws is that relatively few jurisdictions have acted to enforce the state stalking laws by assigning staff to that purpose. Hence, the immediate need is to expand the number and responsibilities of specialized units handling stalking cases.

Perhaps the greatest barrier to the establishment of new stalking units is the lack of understanding of the nature and seriousness of stalking among local policymakers who fund and manage criminal justice agencies. Specifically, those policymakers need to understand that stalking cases

- Are more common than they think,
- Are more dangerous than they appreciate, and
- Require specialized staff skills for investigation and prosecution.

Stalking Cases Are Widespread. Studies on the incidence of stalking indicate that there are 2 to 6 million stalking cases annually, depending on the definition of stalking used. However, convincing local policymakers that stalking cases are numerous in their jurisdictions is not simply a matter of showing a few research numbers. Because of the often widespread skepticism of research, national estimates of the number of stalking cases are not especially persuasive. Instead, policymakers must be pointed to the large number of serious stalking cases that special stalking units are presently handling in jurisdictions similar to the one where these policymakers reside. For example, DVERT, in Colorado Springs, Colorado, expects to have in 2001 up to 70 serious stalking cases involving domestic violence. The San Diego District Attorney's Office handles about 100 serious stalking cases annually, divided almost equally between domestic violence and stranger-related cases, with perhaps another 100 less serious cases handled by prosecutors outside the special unit. In Queens County, New York, Safe Haven advocates respond to between 250 and 300 stalking victims annually. In none of these jurisdictions are the justice agencies aggressively seeking out stalking cases. In Dover, however, the police department stalking unit is aggressive in looking for stalking cases and handles as many as 30

annually, in a town whose population is less than 30,000.²⁴⁴ The statistics from Oregon of over 1,400 stalking civil petitions filed annually are especially instructive in demonstrating how few stalking cases are recognized by law enforcement. Extrapolating from the experiences of the special anti-stalking units we have looked at and talked with, there are, at a minimum, 40,000-50,000 *serious* stalking cases each year. This statistic is not insignificant; it is three times the annual number of homicides and more than half of the number of forcible rapes reported in the United States. In sum, one does not need to cite victim surveys alone to prove how common stalking is; one needs merely to point to the experiences of several jurisdictions that have made an effort to deal with stalking, experiences that show that "if you build a stalking unit, they will come."

Policymakers, especially agency managers who often place responsibility for stalking cases with their domestic violence unit, need also to be made aware that less than half of all stalking cases involve intimate or former intimate partners. The National Violence Against Women Survey found that 40 to 45 percent of all stalking cases involved domestic violence.²⁴⁵ The review of court decisions discussed *supra* reached similar conclusions. Thus, any stereotype of stalking that solely links stalking with domestic violence is simply wrong in many instances.

Stalking Is Serious. Comparison of stalking cases to homicide and rape is not unjustified. At one level, many homicide cases, especially domestic homicides, often have a stalking component. This is the reason that stalking cases are so common among special units that are set up to deal with only the most serious threats to personal safety. At another level, the disruption in life that stalking can create for the victim can be just as serious as that from other personal injury crimes. Furthermore, because stalking is a continuous crime, its effects can continue to escalate until the victim requires extensive therapy, is forced to move from the jurisdiction, spends thousands of dollars on safety equipment, etc.

By and large, policymakers understand that stalking can be a serious crime. Indeed, it is precisely that understanding that prompted the enactment of anti-stalking laws. To the extent that more needs to be done to explain how serious stalking can be, the court decisions reported above can be

²⁴⁴ The statistics cited above are based on summary statistical reports provided to the author by agency officials at each site and are on file.

²⁴⁵ Discussed *supra* note 38 and accompanying text.

usefully cited, as can the numerous stories in the daily press and first-person stories in popular or mass-market magazines.

Specialized Staff Skills Are Needed. Stalking cases are unique in their complexity, duration, and level of threat. Often they require extensive victim involvement in evidence collection and a level of agency staff-victim cooperation that is new to most practitioners. State stalking laws place new demands on investigators in gathering evidence and prosecutors in moving these cases forward. Innovation must be matched with routinization of these new methods and procedures. Experienced personnel are required. Without such personnel, many stalking cases will go unrecognized and without any justice system response. Other cases will fail for lack of adequate evidence collection or the prosecutor's inability to explain stalking to juries. Victims will go unprotected and some will either be seriously injured (or even killed), while others will lead lives of quiet desperation while their stalkers continue to haunt them. Models of how to develop staff expertise are available, however. How these specialized staff and units operate is fully documented *supra*. These models need to be implemented in jurisdictions around the country.

Recommendations for Agency Managers

- Specialized staff should be assigned to handle stalking cases.

Stalking laws do not enforce themselves; investigators and prosecutors enforce them. Furthermore, the unique prospective character of stalking cases, the high resource demands they place on stalking case investigators and prosecutors, and the specialized expertise required all suggest the establishment of specialized staff or units.

Recommendations for Funding Sources

- Agencies should commit adequate resources for specialized stalking staff or units.
- Funding for victim services agencies' units for helping stalking victims is especially important, but often overlooked.

In many instances, non-agency funding sources should support the new anti-stalking initiatives until they demonstrated their worth. Because of the prospective nature of these cases, investigating and

prosecuting stalking cases requires low staff caseloads; estimates of how labor intensive stalking cases are range upward of 10 times the time spent on the average domestic violence case. Establishing a special stalking unit is an important commitment of agency resources. Because of the normal skepticism surrounding any new resource investment, agencies may seek first to use funds available under the Violence Against Women Act of 2000 (VAWA) to test the effectiveness of new anti-stalking initiatives.²⁴⁶ The act specifically includes stalking as a program focus area. A number of jurisdictions have used their STOP and other federal dollars for this purpose. In other instances, the development of STOP-funded specialized domestic violence units has resulted in the unit staff being exposed to stalking cases for the first time.

Federal funding under VAWA is likely to be critical to improved anti-stalking efforts. Although a number of anti-stalking initiatives have already been funded under the STOP program, they are small in number compared to domestic violence or even sexual assault initiatives. More needs to be done by the state STOP offices responsible for allocating these funds. For example, in 1999 the California STOP agency issued a request for proposals for special prosecution anti-stalking units, awarding three such grants.²⁴⁷ STOP agencies in Colorado and Oregon have also funded multiple anti-stalking initiatives, although many of these programs are directed at helping women obtain civil orders of protection rather than funding justice agency operations as such. Other state STOP agencies need to be encouraged to do more about stalking in their states. STOP funding should include, in addition to investigative and prosecution positions, support for victim advocates and the development of linkages to community-based agencies to provide stalking victims with services and safety planning.

Recommendations for Technical Assistance

- Technical assistance should be provided to help agency managers develop anti-stalking initiatives. Especially needed is technical assistance on these topics:
 - Stalking case identification
 - Case management policies and procedures
 - Management of specialized staff and units

²⁴⁶ Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386, 114 Stat. 1464, 1495-96; 42 U.S.C. §§ 3796gg, 3796gg-1, 3793 (a)(18).

²⁴⁷ See Appendix 2 for a list of agencies funded by the California STOP office.

- Enhancing victim safety and well-being.

Because stalking is a new crime and agencies have little or no experience with it, they will need help in setting up new anti-stalking initiatives. One obvious type of encouragement is offering technical assistance to both STOP agencies and their subgrantees on stalking-related topics. Technical assistance is, of course, just another way of saying information transfer. The first "next step" must be to more fully inventory existing anti-stalking efforts and then to build upon the lessons gained from these efforts, regardless of funding source. Building such a knowledge base will be critical to expansion and improvement of anti-stalking efforts. The specific areas of most concern in building the knowledge base include identification of stalking cases, case management policies and procedures, special unit staff, and victim safety policies and procedures.²⁴⁸

Stalking Case Identification. By and large, most stalking victims are not receiving help from the justice system. Numerous stories from all over the country tell of police officers refusing to take stalking complaints, even in jurisdictions where there are special stalking units or officers. Patrol officers are simply unable to recognize stalking cases even when a complaint lays out all the elements of the crime. Looking for hidden cases of stalking is totally beyond their training. The objective should be to develop a computerized method for identifying these cases that does not depend on officers' expert response to victim complaints of stalking or less definitive victim concerns about multiple other crimes. Enough is known about how to do this that a few test sites might profitably be used to demonstrate what works and what does not work for improved case identification.

Case Management Policies and Procedures. Agencies need to develop stalking-specific policies and procedures on case assignment, staff caseloads, record keeping, and investigation. The existing policies and procedures developed by a few agencies can be used as initial models for emulation and adaptation, but they are far from complete in detailing the many informal policies and procedures in use in these same agencies, much less in those without formal manuals. None of these manuals, for example, provides any guidance on threat assessment and agency collaboration to improve victim safety.

Managing Specialized Units and Investigators. It is critical for any anti-stalking initiative to have specialized staff handle stalking cases. One important element of specialized units is vertical handling of the stalking cases, in which the person assigned to the case is responsible for its future handling. It is the ongoing relationship with the victim that vertical case handling brings that is critical to victim cooperation in collecting evidence, victim reporting of future stalking incidents (even after the case is closed), and maximization of agency efforts to protect the victim. Creation of special anti-stalking units also permits the development of special policies and procedures for stalking cases, such as the stalking case book for record keeping or overtime policies that recognize the off-hours pattern of much stalking. More importantly, the development of specialized units allows the fostering of a problem-solving approach to investigating and prosecuting stalking crimes. Special stalking units can also lead to enhanced victim safety and well-being through victim advocates assigned to the unit and through collaboration with community agencies.

The development of staff stalking expertise may have several important collateral effects. For example, law enforcement officers may be used as expert witnesses to testify about the impact of stalking on victims at both pretrial release and trials. They may also be useful at trial to explain stalker behaviors (e.g., collecting souvenirs) and victim coping behavior.²⁴⁹ Prosecutors in a special stalking unit are in a better position to argue for a bail schedule and related release policies that recognize the danger to victims from their stalkers. Similarly, anti-stalking prosecutors can become a powerful voice in recommending changes to strengthen existing stalking laws.

Recommendations for Training

- Training for specialized expertise in investigation and prosecution of stalking cases should be provided by federal, state, and local agencies.
- Training should be provided for agency staff to help them better assist stalking victims in safety planning and in obtaining needed services.

²⁴⁸ The Violence Against Women Office of the U.S. Department of Justice has recently funded the National Center for Victims of Crime to establish a Stalking Resource Center that can provide technical assistance to local agencies receiving federal assistance funds.

²⁴⁹ See *State v. Schenck*, 2000 Wash. App. LEXIS 650 (Wash. Ct. App. 2000).

Expertise in investigating and prosecuting stalking cases cannot be developed simply through handling these cases or through technical assistance to agency managers. The personnel handling stalking cases must know from the start how difficult these cases can be and how dangerous they can be to victims. Mistakes made by stalking personnel can literally be life-threatening. The stakes are simply too high for a "sink or swim" approach to preparing staff to handle these cases. Nor should managers assume that expertise in one area of the law, such as domestic violence, is easily transferable to stalking cases. The two types of cases are different and require different means for making the case, dealing with victims, and interviewing suspects. Indeed, the extent to which stalking cases are different can best be illustrated by the difficulty many agencies have in identifying these cases. Although many domestic violence cases, especially those involving separated former intimates, have a stalking component to them, domestic violence investigation units rarely identify the stalking. This problem is even more acute with stranger stalking that has not yet reached the stage of dire threats. For reasons relating the manipulation abilities of many stalkers, specialized expertise is also needed by probation staff and other court officials, ranging from the judiciary to pretrial release agency staff.

Training in Investigation and Prosecution. At all levels,²⁵⁰ the need for training is almost totally unmet. Meeting this need begins with state legislation requiring stalking training, yet only two states have such laws. While a few other state agencies such as California's Peace Officers Standards and Training Commission (POST) have developed training programs for specialized officers, the largest need is for training patrol.²⁵¹

²⁵⁰ A common practitioner and advocate complaint is the need for judicial training. Existing efforts seem to have been inadequate. For example, although California law requires judicial training on domestic violence, GOV'T. CODE § 68555, law enforcement, prosecutors, and advocates alike continue to report that such training has not affected judicial awareness of the dynamics of domestic violence. Compare the specificity provided by the state legislature in specifying the training required of law enforcement on domestic violence, CAL. PENAL CODE § 13519. Needless to say, no such legislation exists in any state for judicial training in stalking issues.

²⁵¹ The California POST has recently updated its stalking training materials. Personal communication from Ray Bray, Director of California POST. The earlier stalking training module is CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING, STALKING: TELECOURSE REFERENCE GUIDE (June 1996). California's response to stalking training need is still uncommon. See Farrell *et al.*, supra note 109 at 162. *But see*, North Carolina Justice Academy, Stalking and Stalking Behaviors, Course # 3328, published at www.jus.state.nc.us/NCJA/stalking.gif, describing a two-session training course offered in February and June, 2001.

Based on the many training program materials reviewed to date, virtually no training focuses on the problem-solving view of stalking investigation and prosecution. Instead, training for non-specialist agency staff is largely focused on what the law says.²⁵² In view of the changes in law that occur in many states, this is not without merit, especially for patrol officers. Even with specialized staff, training is often limited to replicating the policies and procedures approach that has been used successfully with other crimes. Stalking is not completely subject to routinization of effort; stalking investigation is not limited to looking for evidence related to past crimes. Hence, techniques that work for investigating crimes committed before law enforcement involvement are not sufficient.

Not only must there be increased training on stalking, the stalking training must also focus on the problem-solving approach to investigation. Training must go back to basics: How do I find out who is the stalker? How do I prove X is the stalker? This entails a mindset that is willing and eager to innovate. Existing training must be improved. Research findings such as those discussed above must be made part of the stalking curriculum.

Training in working with victims includes important issues such as victim evidence collection, victim support, and victim safety. The close relationship between investigators or prosecutors and the victim is distinct from that in other types of investigations, especially domestic violence, where evidence-based prosecutions that do not rely on victim testimony dominate.

Training in Victim Services and Safety. As already noted, law enforcement agency written policies and procedures relating to stalking investigations and case management uniformly limit discussion of victim issues. Training for these same victim issues is also limited. In part, this is because relatively little attention has been paid by either researchers or funding agencies to better understand stalking victim needs or improve the capacity of agencies to respond to these needs. Again, federal and state assistance efforts directed at improving anti-stalking efforts should do more to stress victim safety and service needs.

²⁵² Where such training is provided to law enforcement personnel, it is often accomplished at roll call training. The Dover, New Hampshire, department uses computerized training modules that permit individual department officers to receive the weekly training at different times. Use of the computer also permits testing of learning. Stalking training is part of the training curriculum.

Recommendations for the Judiciary

- Judges should receive training on stalking.
- Stalking training should be an independent topic, not part of a larger training on domestic violence.

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 orders of protection, and sentencing. Unfortunately, judges are rarely provided training on stalking law, much less stalking dynamics or the impact of stalking on victims. As a result, judges may be prone to accepting arguments such as, "He hasn't hurt her," or viewing the defendant's manipulative and likable personality as proving credibility. Judges may also be inclined to order stalkers to attend domestic violence counseling or anger management on the ill-founded theory that it could not hurt.

Judges clearly need stalking training. In the absence of such training, prosecutors must make every effort to teach judges informally about stalking through pretrial briefs, use of expert witnesses at trial and at sentencing, and use of victim impact statements at sentencing. The absence of such training to date remains a critical failure and one that was highlighted in this research's two national surveys of law enforcement and prosecutor agencies.²⁵³

Recommendations for Researchers

- Research on stalking should focus on these topics:
 - Improving threat assessment
 - Treating stalkers
 - Treating victims
 - Minority group victims of stalking.

Threat Assessment. The largest hole in our knowledge about stalking lies in the issue of threat assessment. The discussion *supra* lays out the complexity of this issue, especially the multiple ways in which stalkers can be categorized, and indicates the difficulties associated with threat assessment. The most important of these is the inability of many researchers to develop methodologies

²⁵³ Indeed, it is virtually impossible to attend training or any other meeting involving stalking practitioners where the topic of judicial training is not raised.

that capture the complexity of the issues.²⁵⁴ This is largely due to the small number of cases that researchers are able today to identify as stalking cases. To capture the association between many different types of stalkers and violence outcomes requires a much larger number of cases than is typically available in most stalking research. To overcome this problem, researchers often combine otherwise heterogeneous categories of either stalkers or violence outcomes. This has not proven satisfactory, resulting, for example, in an absence of uniformity across research studies in defining violence. It also means that meta-analysis that combines studies to increase the total number of subjects studied cannot be done. This is an especially serious problem in trying to study stalking-related homicides and rapes, which despite small numbers are precisely the violent behaviors that practitioners are most fearful of. Of course, it may be that these latter occurrences are such rare events as to be statistically random, for which prediction studies are not appropriate. But it is much too early to give up on threat assessment without first trying better methods that permit examination of multiple studies' findings.

Monitoring and Treating Stalkers. Research on monitoring stalkers, especially through probation, is virtually nonexistent. The "best practices" suggestions above should, therefore, be taken as only preliminary suggestions based on limited experience. Much more knowledge is needed about how differing probation agencies respond to the challenges posed by stalkers assigned to their supervision.

Very little is known about treating stalkers. Clearly, stalkers who are delusional need to be treated for their delusions. Presumably, treating the underlying disease will also reduce the stalking.²⁵⁵ However, most stalkers are not delusional. They may suffer from a variety of psychiatric diagnoses. As Mullen *et al.* point out, they are especially difficult to treat because of their capacity to "deny, minimize, and rationalize."²⁵⁶ Furthermore, in the experience of the present researchers, mental health and correctional practitioners do not believe stalkers should be sent for counseling such as that provided to domestic violence offenders. Because of their higher levels of intelligence and tendency to manipulate others, they gain little from such sessions and diminish the value of the counseling for the non-stalker

²⁵⁴ This comment is not limited to threat assessment in the context of stalking. See Joseph Davis, *The Assessment of Potential Threat and Future Prediction of Violence: A Second Look*, 15 J. POLICE & CRIM. PSYCHOL. 31 (2001), for a more expansive discussion on this point.

²⁵⁵ MULLEN *et al.*, *supra* note 9 at 280.

participants. Thus, it is not surprising that the research identified only two stalker treatment programs in the country. More needs to be done in this field, especially in determining what works for which stalkers.²⁵⁷ One interesting possibility for evaluators is to validate the forthcoming protocol for stalker treatment now in preparation by a group of San Diego practitioners.²⁵⁸ This protocol is expected to emphasize personalized treatment using cognitive behavior approaches in preference to group counseling, which their experience showed reinforced stalking behaviors and presented logistical problems in adding new members to preexisting groups.²⁵⁹ The protocol will also call for periodic reassessment of the stalker for possible modification of the treatment plan, done in conjunction with probation or parole supervisors.

Treating Victims. It is notable that there is only limited research on treating victims. One of the few exceptions is the work of Collins and Wilkas, who examined the issue of victim trauma from stalking, akin to other post-traumatic stress syndromes.²⁶⁰ One area for research is to survey treatment practitioners through the state victim compensation boards that may certify treatment providers for state payment. Another area for research is to examine stalking victims who are disabled.²⁶¹

Minority Group Victims. While prior research has demonstrated that stalking affects all societal groups, little is known about possible differences in how stalking affects victims of color. Nor

²⁵⁶ *Id.*

²⁵⁷ See Barry Rosenfeld, *Assessment and Treatment of Obsessional Harassment*, 5 *AGGRESSION & VIOLENT BEHAV.* 529 (2000), who states that "no treatments for obsessive harassment have been either proposed or systematically studied." See also, Danah Westrup, *Stalking in the US: Time to Focus on Treatment*, in *AIC Conference Papers*, *supra* note 9, who presents some treatment guidelines based on experiences with treating stalkers at the Stanford Medical Clinic.

²⁵⁸ Personal communication Anna Guzman, San Diego Department of Probation.

²⁵⁹ Personal communication from Anna Guzman. One alternative to a specialized stalker treatment program that has been suggested is to use sex offender treatment programs; the similarities between stalkers and sex offenders have already been noted. However, fears of legal liability may affect treatment provider willingness to adopt this approach.

²⁶⁰ Melissa J. Collins & Mary Beth Wilkes, *Stalking Trauma Syndrome and the Traumatized Victim*, in *STALKING CRIMES*, *supra* note 1. In contrast, Sophia F. Dziegielewski & Albert R. Roberts, *Stalking Victims and Survivors: Identification, Legal Remedies, and Crisis Treatment*, in *CRISIS INTERVENTION AND TIME-LIMITED COGNITIVE TREATMENT* (Albert R. Roberts, ed., 1995), focus on the short-term crisis intervention needs of stalking victims. See also Emily Spence-Diehl & Miriam Potocky-Tripode, *Victims of Stalking: A Study of Service Needs as Perceived by Victim Services Practitioners*, 16 *J. INTERPERSONAL VIOLENCE* 86 (2001).

²⁶¹ *Cf.* Crime Victims With Disabilities Awareness Act, P.L. 301-105 (1998); 42 U.S.C. § 3796gg(b)(10) (STOP grant program); 42 U.S.C. § 3766hh (8) (pro-arrest policies grants).

do we really know with much certainty about the prevalence of stalking among smaller immigrant groups such as those of Indian-Asian backgrounds, southeast Asia, or the former Soviet bloc countries.

Other Recommendations

- Community agency collaboration should be encouraged to better serve stalking victims.
- Community education should be included among the responsibilities of agency staff assigned to handling stalking cases.

Agency Collaboration. Victim needs for services go far beyond those provided by victim advocates. For example, victims may need medical and sometimes even psychiatric treatment. Victim advocates and service agencies do not typically provide such services themselves. Instead, they may have to identify medical specialists who have experience with stalking and domestic violence; often that expertise will initially come from training provided by the advocates or victim services agency. Ideally, medical practitioners with experience in working with traumatized patients of all sorts would be available, since they are familiar with the anxieties and stress-caused problems that typify stalking victims' needs. Although community collaboration is a priority under the VAWA, more might be done in enlisting national professional and other associations in encouraging local affiliates to join in such collaborations.

Community Education. While television and the movies may vividly illustrate the dangers of stalkers, dramatizations about how the justice system handles these cases are missing. If few law enforcement officers know about stalking crimes, virtually no stalking victim understands that what is being done to her is a crime. The result is that only a small proportion of stalking cases are reported by victims. Instead, they might complain of harassment or violations of an order of protection. The stalking component is only revealed when a homicide results. In most jurisdictions, nobody, other than a few domestic violence service agencies and shelters, is telling victims to file stalking complaints. In a few jurisdictions, these agencies are very aggressive and the authorities might see dozens or even hundreds of stalking cases. But such success is the exception, not the rule. The number of justice agencies that handle a significant number of stranger stalkings is very low. Yet these cases are far more common than supposed, based on the experience of several specialized stalking units that aggressively respond to such cases. Victims need to be made aware of the stalking laws, and it is the responsibility of the justice

agencies to take on the task of community education about stalking. One special area of concern here is stalking among underserved populations. As the experience of the Dover Police Department shows, size of jurisdiction is irrelevant; stalking occurs in small towns as well as big cities and their suburbs. Substantial evidence from a variety of sources indicates that black women victims of domestic violence are often stalked, although less is known about other types of stalking against blacks. Anecdotal evidence also shows that stalking occurs among immigrant populations and in rural areas. However, special efforts will need to be made to reach those populations.

Special efforts also need to be directed at educating employers about stalking. A number of states, such as California, have recently enacted legislation that permits employers to file on behalf of their employees for court orders of protection against stalking at the workplace. These laws show a growing recognition of how stalking in the workplace is a significant policy problem. Although a detailed discussion of this topic is beyond the scope of this report, Hoffman and Baron have summarized the kinds of actions employers might take to mitigate workplace stalking.²⁶²

Justice system responses to stalking were nonexistent a decade ago. Today, there are a few jurisdictions that might be cited as having exemplary responses; in others, significant efforts are underway to improve their response to stalking. Even in the "best" jurisdictions, many gaps remain, especially in providing counseling and services to stalking victims. Despite these problems, steady improvement is evident. The threshold of success in the effort to effectively help stalking victims has not yet been reached, but it is in sight.

In sum, anti-stalking efforts have come a long way since 1990. Considerable policy-relevant research now exists to help agencies start anti-stalking initiatives. While few agencies have established special stalking units, those that have can also provide important assistance and guidance to their colleagues. However, availability of information is not enough. Agency leaders need to be told about the information base and its importance to their work. One way to get the word out is for federal

²⁶² Suzanne Hoffman & S. Anthony Baron, *Stalkers, Stalking, and Violence in the Workplace Setting*, in STALKING CRIMES, *supra* note 1 at 139. See also Regina A. Petty & Lois M. Kosch, *Workplace Violence and Unwanted Pursuit: From an Employer's Perspective*, in STALKING CRIMES, *supra* note 1 at 459.

funding to place a greater priority on stalking issues. Finally, some limited research on practitioner needs also should be conducted, especially on better identifying stalking cases.

Appendix 4: Stalking and Related Court Decisions

This table summarizes the status of state cases filed through mid-March 2001. For each state, the cases are listed in the following order based on the nature of the offense: stalking, threat, telephone threat, harassment, and telephone harassment. Constitutional decisions are presented before statutory construction cases. Decisions of the highest state court precede decisions of intermediate courts of appeal, which are followed by trial court decisions. Finally, the most recent decisions are listed first except if they simply cite an older leading case decision.

State	Case	Type of Law	Citation	Issue/Holding
AL	Culbreath v. State	Stalking	667 S.2d 156 (Ct. Crim. App. 1995), <i>reh'g denied</i> , 5/26/95, <i>cert. denied</i> 8/4/95	Vagueness, overbreadth claims rejected (intent requirement ameliorates any vagueness problem; reasonable person standard is inferred from assault law antecedents).
	State v. Randall	Stalking	669 So.2d 223 (Ct. Crim. App. 1995)	Vagueness, overbreadth claims rejected (terms "repeated" and "series" are not vague).
	Ivey v. State	Stalking	698 So.2d 179 (Ct. Crim. App. 1995) <i>aff'd</i> 698 So.2d 187 (Ala. 1997)	Vagueness and overbreadth claims rejected under <i>Culbreath</i> . Prior conviction for contempt of court is not double jeopardy
	Hayes v. State	Stalking	717 So.2d 30 (Ct. Crim. App. 1997), <i>reh'g denied</i> , 12/19/97, <i>cert pending</i> 1/6/98; released for publication 10/6/98.	Intent to carry out threat is not required, but ability to carry out threat is required; substantial emotional distress standard is used, rather than fear of death or serious bodily injury.
	Morton v. State	Stalking	651 So.2d 42 (Ct. Crim. App. 1994)	Violation of criminal order issued at bail hearing can be basis for aggravated stalking charge. Civil orders are not the only basis for increased penalties under the statute. Prior burglary is admissible to show defendant's pattern of behavior in harassing multiple victims

AL cont.	Tanner v. City of Hamilton	Telephone threat	668 So.2d 157 (Ct. Crim. App. 1995)	Harassment must include “fighting words” language.
	Ex parte N.W.	Harassment	748 So.2d 190 (1999)	Harassment is not lesser included offense of menacing because conviction for the latter does not require fulfilling elements of crime of harassment.
	Brooks v. City of Birmingham	Harassment	485 So.2d 385 (Ct. Crim. App. 1985)	Vagueness and overbreadth claims rejected (“fighting words” used).
	Conkle v. State	Harassment	677 So.2d 1211 (Ct. Crim. App. 1995)	Verbal threat not constituting “fighting words” is not harassment.
	T.W. v. State	Harassment	665 So.2d 987 (Ct. Crim. App. 1995), <i>reh’g denied</i> , 5/5/95	Harassment may include obscene gestures that constitute fighting words to ordinary person.
	B.E.S. v. State		629 So.2d 761 (Ct. Crim. App. 1993)	Fighting words are not present to support harassment charge (no threat nor “probability of physical retaliation”).
	South v. City of Mt. Brook	Telephone harassment	688 So.2d 292 (Ct. Crim. App. 1996)	First Amendment claim rejected (harassing communication crime does not involve face-to-face contact; “fighting words” doctrine inapposite).
	Donley v. City of Mountain Brook	Telephone harassment	429 So.2d 603 (Ct. Crim. App. 1982), <i>rev’d on other grounds</i> , 429 So.2d 618 (1983)	Vagueness and overbreadth claims rejected (intentional acts of telephoning undercut vagueness and overbreadth issues).

AK	Petersen v. State	Stalking	930 P.2d 414 (Ct. App. 1996)	Vagueness, overbreadth, and substantive due process claims rejected (term “repeated” means more than once, citing <i>Konrad</i> . “Knowing” conduct requirement defeats claim of potential for inadvertent violation; substantial core of covered cases much larger than any overbreadth potential). Statute only reaches telephone calls made solely to threaten or harass; reasonable person standard used.
	Wyatt v. State	Threat	778 P.2d 1169 (Ct. App. 1989)	Victim’s fear from threat must be reasonable; reckless behavior standard implies reasonable fear.
	Allen v. State	Telephone threat	759 P.2d 541 (Ct. App. 1988)	Overbreadth claim rejected (defendant acts constituted reckless behavior, knowing falseness of report). Statute bars reckless acts taken with knowledge of falseness of reports; victim fear is required.
	Konrad v. State	Telephone threat	763 P.2d 1369 (Ct. App. 1988)	Vagueness and overbreadth claims rejected (term “repeated” means more than once).
	McKillop v. State	Telephone harassment	857 P.2d 358 (Ct. App. 1993)	Vagueness and overbreadth claims rejected (statute bars only calls having no legitimate communication purpose where only purpose is to annoy).
	Jones v. Anchorage	Telephone harassment	754 P.2d 275 (Ct. App. 1988)	Vagueness and overbreadth claims rejected (intent test is used, rather than subjective response of victim).
AZ	State v. Musser	Telephone threat	954 P.2d 1053 (Ct. App. 1997)	Overbroad (lawful threats included in statute’s scope; law covers threats made during call made by victim, minimizing invasion of privacy element of crime)

AZ cont.	State v. Weinstein	Telephone threat	898 P.2d 513 (Ct. App. 1995)	Overbroad (law covers common business practices)
	State v. Hagen	Telephone harassment	558 P.2d 750 (Ct. App. 1976) <i>reh'g denied</i> , 5/9/76, <i>rev. denied</i> , 1/4/77	Vagueness and overbreadth claims rejected (by specifying intent and nature of prohibited behavior, statute does not violate First Amendment; statute gave fair warning where conduct is clearly proscribed).
	Baker v. State	Telephone threat	494 P.2d 68 (Ct. App. 1972)	Overbroad (use of obscene language is not evidence <i>per se</i> of intent to harass or threaten).
AR	Reeves v. State	Stalking	5 S.W.3d 41 (1999)	Condition of probation banishing defendant from state for period of 7 years violates state constitution.
	Wesson v. State	Stalking	896 SW2d 874 (1995)	Immediate ability to carry out threat is not required under terroristic threat and stalking laws.
	Dye v. State	Stalking evidence	17 S.W.3d 505 (Ct. App. 2000)	Evidence of firearm and ammunition purchase is relevant to capacity to carry out threat
	Warren v. State	Threat	613 S.W.2d 97 (1981)	Overlap with assault law (imminent injury threat versus protracted threats) is not unconstitutional. Threats need not be over long period of time.
	Webb v. State	Threat	2000 Ark. App. LEXIS 770 (Ct. App. 2000)	Threat may be communicated by third party, but proof of victim receipt of threat is required.
	Arnold v. State	Threat	2000 Ark. App. LEXIS 483 (Ct. App. 2000)	Victim testimony about prior criminal acts of defendant to prove victim fear is not relevant to whether threat made or with what purpose.
	Hartzog v. State	Threat	2000 Ark. App. LEXIS 235 (Ct. App. 2000)	Evidence of intent to threaten may be inferred from victim's reasonable fear.

AR cont.	Hagen v. State	Threat	886 S.W.2d 889 (Ct. App. 1994)	Threat against fetus is necessarily threat against the woman.
	Knight v. State	Threat	758 S.W.2d 12 (Ct. App. 1988)	Threat must be intended to instill fear; threat to third party did not do this (boasting).
	State v. Musser	Telephone harassment	977 P.2d 131 (1999)	Overbreadth claim rejected because of lack of real and substantial danger of threat to protected speech, especially in context of law regulating, in part, conduct.
	State v. Hagen	Telephone harassment	558 P.2d 750 (Ct. App. 1976)	Intent to harass must exist at time call is made.
CA	People v. Borrelli	Stalking	91 Cal. Rptr.2d 851 (Ct. App. 2000) (<i>rev. denied</i> April 19, 2000)	Vagueness, overbreadth, and First amendment challenges rejected (threats are not protected speech and term "safety" is widely and commonly used, including multiple statutory uses). Nine acts over 15-month period is sufficient to show a single course of action rather than being nine isolated acts.
	People v. Ewing	Stalking	90 Cal Rptr.2d 177 (Ct. App. 1999)	Vagueness challenge rejected (terms "alarms," "annoys," "torments," and "terrorizes" that constitute "harassment" have clear dictionary definitions.. Severe and substantial emotional distress" requires evidence of degree, frequency, and duration of victim distress).

CA cont.	People v. Falck	Stalking	60 Cal. Rptr.2d 624 (Ct. App.), <i>rev. denied</i> , 4/16/97, 1997 Cal. LEXIS 1974 (1997)	Vagueness and overbreadth claims rejected (statute provides fair warning to offender and guidelines for police enforcement. Term “safety” in ‘fear for safety’ is not vague. Intent requirement refers only to intent to create fear. Intent to cause fear may be inferred from continuation of communications despite victim acts to avoid him and warnings from police and courts.
	People v. Halgren	Stalking	61 Cal. Rptr.2d 176 (Ct. App. 1996)	Vagueness and overbreadth claims rejected (term “credible threat” is not vague, since intent to create fear is also required. No inhibition of protected speech exists).
	People v. Kelley	Stalking Stalking order	60 Cal. Rptr.2d 653 (Ct. App.), <i>rev. denied</i> , 4/23/97, 1997 Cal. LEXIS 2366 (1997)	Double jeopardy is not violated where acts in one course of conduct occur after contempt violation found. Section of law defining stalking in violation of protection order is sentencing enhancement, not element of crime.
	People v. Gams	Stalking Stalking order	60 Cal. Rptr.2d 423 (Ct. App.), <i>rev. denied</i> , 4/16/97, 1997 Cal. LEXIS 2032 (1997)	Due process claim rejected (victim can not consent to violation of order; hence, there can be no entrapment by victim).
	People v. Tran	Stalking	54 Cal. Rptr. 2d 650 (Ct. App. 1996), <i>rev. denied</i> , 10/16/96	Vagueness claim rejected (phrase “conduct serves no legitimate purpose” is not vague).

CA cont.	People v. McClelland	Stalking Stalking order	49 Cal. Rptr.2d 587 (Ct. App.), <i>rev. denied</i> , 4/17/96, 1996 Cal. LEXIS 2160 (1996)	Vagueness claim rejected (terms “harasses” and “credible threat” are sufficiently definite; terms “willfully” and ‘maliciously” are defined in penal code). Felony penalty requires violation of both stalking bar and protective order.
	People v. Heilman	Stalking	30 Cal. Rptr. 2d 422 (Ct. App. 1994), <i>rev. denied</i> , 8/25/94	Vagueness claim rejected (term “repeatedly” is not vague in conjunction with intent requirement).
	People v. Norman	Stalking	89 Cal. Rptr.2d 806 (Ct. App. 1999)	Victim fear from stalking need not occur at the same time as the stalking threats were made.
	People v. McCray	Stalking	67 Cal. Rptr. 2d 872 (Ct. App. 1997) <i>rev. denied</i> , 1/14/98, 1998 Cal. LEXIS 52 (1998)	Term “repeated” refers to only following, since harassment definition requires proof of a course of conduct (there is no need to show repeated acts of harassment).
	People v. Carron	Stalking	44 Cal. Rptr. 2d 328 (Ct. App.), <i>rev. denied</i> , 12/14/95, 1995 Cal. LEXIS 7521 (1995)	Intent to commit harm is irrelevant; intent is to create fear. Reasonable fear test is used for threat effect.
	People v. Butler	Stalking Civil commitment	88 Cal. Rptr.2d 210 (Ct. App. 1999)	Stalking is an offense subject to civil commitment as mentally disordered offender, since amended law covers crimes involving threat of force.
	People v. Gudger	Threat	34 Cal Rptr. 2d 510 (Ct. App. 1994)	Overbreadth claim rejected (specific intent requirement limits overbreadth problem) Conditional threat is covered by statute (<i>contra Brown</i>).
	People v. Fisher	Threat	15 Cal. Rptr.2d 889 (Ct. App. 1993)	Overbreadth claim rejected (there is no constitutional requirement that only intent to carry out threat can be penalized; not protected

				speech).
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CA cont.	People v. Hudson	Threat	6 Cal. Rptr.2d 690 (Ct. App. 1992), <i>rev. denied</i> , 7/23/92	Overbreadth claim rejected (intent to carry out threat is not required by constitution or by statute; third party to threat passing on threat to victim covered by law.
	In re David L.	Threat	286 Cal. Rptr. 398 (Ct. App. 1991), <i>rev. denied</i> , 1/16/92	Overbreadth claim rejected (statute does not reach substantial amount of protected speech). Threat can be communicated by third person.
	People v. Mirmirani	Threat	636 P.2d 1130 (1981)	Statute void for vagueness (threats made with intent to terrorize defined as for political or social goals leave too much discretion as to its scope).
	People v. Butler	Threat	102 Cal. Rptr.2d 269 (Ct. App. 2000)	Threat does not need to specify precise time or method of execution, since surrounding circumstances give meaning to words used.
	People v. Andrews	Threat	89 Cal. Rptr.2d 683 (Ct. App. 1999)	Jury may infer that defendant intended that third party would inform victim of threat.
	People v. Bolin	Threat	956 P.2d 374, 402 (1998)	Threat is not required to be unconditional.
	People v. Teal	Threat	71 Cal. Rptr.2d 644 (Ct. App. 1998), <i>rev. denied</i> , 5/13/98	Threat does not require that defendant saw or knew victim was home at time threat made outside home.
	People v. Brown	Threat	25 Cal. Rptr. 2d 76 (Ct. App. 1993) (<i>overruled by Bolin</i>)	Conditional threat not covered by statute; construing explicit language of unconditional threat to include conditional threat raises constitutional issues.
	People v. Dias	Threat	60 Cal. Rptr. 2d 443 (Ct. App.), <i>rev. denied</i> , 4/16/97, 1997 Cal. LEXIS 2152 (1997)	Conditional threat is covered by statute (<i>contra Brown</i>).

CA cont.	People v. Mendoza	Threat	69 Cal. Rptr. 2d 728 (Ct. App. 1997)	Ambiguous words may constitute threat when context taken into account, such as history of gang involvement.
	People v. Martinez	Threat	62 Cal. Rptr.2d 303 (Ct. App. 1997), <i>rev. denied</i> , 6/25/97	Threat meaning of ambiguous words is gained from surrounding circumstances.
	People v. Stanfield	Threat	38 Cal. Rptr.2d 328 (Ct. App. 1995), <i>rev. denied</i> , 6/1/95	Conditional threat is covered by statute (apparent condition, but condition is illusory).
	People v. Allen	Threat	40 Cal. Rptr.2d 7 (Ct. App. 1995)	“Sustained fear” element of threat statute met (sustained means more than momentary; 15 minutes until police arrived sufficient).
	People v. Brooks	Threat	31 Cal. Rptr.2d 283 (Ct. App. 1994), <i>rev. denied</i> , 9/29/94	Conditional threat is covered by statute (<i>contra Brown</i>).
	People v. Garrett	Threat	36 Cal. Rptr. 2d 33 (Ct. App. 1994)	Evidence of prior abuse is relevant to questions of intent to threaten and victims “sustained fear.”
	People v. Melhado	Threat	70 Cal. Rptr.2d 878 (Ct. App. 1998)	The term “immediate” modifying threat refers to the immediacy of the victim’s response in understanding the prospect that a threat will be carried out in the future.
	People v. Toledo	Attempted threat	96 Cal. Rptr.2d 640 (Ct. App. 2000)	Attempted threat can occur where threat made but not communicated to victim or victim not fearful where reasonable person would be. Overbreadth challenge rejected (an attempt requires threat which is not protected speech).
	People v. Benitez	Attempted threat	105 Cal Rptr.2d 242 (2001)	Attempted threat occurs when victim is not in fear, although defendant intended to create fear.
CA	People v.	Threat	88 Cal. Rptr.2d	Threat of future violence is

cont.	Lopez	Civil commitment	252 (Ct. App. 1999)	predicate offense under mentally disordered offender law authorizing civil commitment.
	People v. Hernandez	Telephone harassment	283 Cal. Rptr. 81 (Ct. App. 1991), <i>rev. denied</i> , 10/3/91	Vagueness and overbreadth claims rejected (there is no real danger of compromising First Amendment protections).
CO	People v. Baer	Stalking	973 P.2d 1225 (1999)	Vagueness and overbreadth claims rejected (statutory language is interpreted to mean that credible threat can occur before, during or after stalking behavior; as interpreted overbreadth claim is inapposite, since protected speech is not reached. Reasonable person test of threat undercuts vagueness.
	People v. Bastian	Stalking	981 P.2d 203 (Ct. App. 1998)	Ex post facto objection rejected (although one element of crime occurred before law change increased penalty, crime was only completed after act became effective).
	People v. Hines	Threat	780 P.2d 556 (1989) (<i>en banc</i>)	Conditional threat is covered by statute where contingency is controlled by defendant.
	People v. Smith	Harassment	862 P.2d 939 (1993) (<i>en banc</i>)	Overbroad (law lacks "fighting words" limitation, nor is it limited in application to privacy protection).
	Aguilar v. People	Disorderly conduct	886 P.2d 725 (1994) (<i>en banc</i>)	Overbroad (law lacks "fighting words" limitation).
	People v. Norman	Harassment	703 P.2d 1261 (1985) (<i>en banc</i>)	Void for vagueness ("annoy or alarm" bar goes to core of law, but terms are undefined and without limiting standards).
	Van Meveren v. County Court	Harassment	551 P.2d 716 (1976)	Vagueness and overbreadth claims rejected ("repeatedly" is not vague due to common usage; fighting words limitation restricts law's application).

CO cont.	Bolles v. People	Harassment	541 P.2d 80 (1975) (<i>en banc</i>)	Overbroad (anti-abortion mailing is protected speech; adding phrase “without legitimate purpose: would be void for vagueness).
	People v. Weeks	Telephone harassment	591 P.2d 91 (1979) (<i>en banc</i>)	Vagueness and overbreadth claims rejected (statutory bar against use of “obscene” speech does not require <i>Miller</i> three-part instruction, since content is not core of crime, but invasion of privacy is; court can only speculate on whether other persons deterred from protected speech).
	People v. McBurney	Telephone harassment	750 P.2d 916 (1988) (<i>en banc</i>)	Overbreadth claim rejected (terms “annoy” and “alarm” must be read in context with intent requirement and law’s limitation to telephone messages).
CT	State v. Jackson	Stalking	742 A.2d 812 (App. Ct. 2000)	Vagueness and overbreadth claims rejected (citing <i>Marsala</i> and <i>Culmo</i>).
	State v. Marsala	Stalking	688 A.2d 336 (App. Ct.), <i>cert. denied</i> , 690 A.2d 400 (1997)	Vagueness and overbreadth claims rejected (statute on its face implicates speech, quoting <i>Culmo</i> . Facts of case permit stalking law application).
	State v. Cummings	Stalking Harassment	701 A.2d 663 (App. Ct.), <i>cert. denied</i> , 702 A.2d. 645 (1997)	Vagueness claim against stalking law rejected (citing <i>Marsala</i>) Vagueness claim against harassment law rejected (citing <i>Snyder</i>).

CT cont.	State v. Culmo	Stalking	642 A.2d 90 (Super. Ct. 1993)	Right to travel, vagueness and overbreadth claims rejected (statute in its entirety gives sufficient warning. Claims that terms “physical safety,” “willful,” “repeatedly,” “following,” and “lying in wait” are vague are vitiated by intent requirement). Law’s reasonable man standard has both objective and subjective elements. No First Amendment rights are implicated, since speech used to prove crime, not as crime itself. There is no infringement on right to travel, since intent requirement limits application of law.
	Champagne v. Gintick	Stalking order	871 F. Supp. 1527 (D. Conn. 1994)	Overbreadth claim rejected in denying injunction (right to associate with friends does not reach substantial amount of protected conduct under statute.).
	State v. Murphy	Mail harassment	757 A.2d 1125 (2000)	First Amendment challenge overruled (content of letters admissible to prove intent to harass, even where content of letters is not admissible to prove harassment itself).
	State v. Snyder	Mail harassment	717 A.2d 240 (App. Ct. 1998)	Vagueness and overbreadth claims rejected (statute proscribes abusive conduct not speech; prior judicial interpretation saves law from vagueness in “annoyance” language).
	State v. Snyder	Mail harassment	672 A.2d 535 (App. Ct.) , <i>cert. denied</i> , 676 A.2d 1375 (1996)	Scope of law includes third party communications. Direct communication is not required where intent to harass exists.

CT cont.	State v. Marsala	Telephone harassment	684 A.2d 1199 (1996), <i>cert. denied</i> , 688 A.2d 329 (1997)	Vagueness claim rejected on procedural grounds.
	Gormley v. Director	Telephone harassment	632 F.2d 938 (2d Cir.), <i>cert. denied</i> , 449 U.S. 1023 (1980)	Overbreadth claim rejected (risk of chilling Free Speech is remote and minor compared to evil addressed by statute).
	State v. Anonymous	Telephone harassment	389 A.2d 1270 (App. Sess. Conn. Super. 1978)	Overbreadth claim rejected (law regulates conduct not speech; there is no need to limit terms “annoy” and “alarm” to fighting words as was required for disorderly conduct statute in same case).
	State v. Martino	Telephone harassment	762 A.2d 6 (App. Ct. 2000)	Double jeopardy contention rejected where contempt of court conviction based on other acts distinct from telephone harassment calls.
	State v. Lewtan	Telephone harassment	497 A.2d 60 (App. Ct. 1985)	Evidence from victim’s tape of phone calls properly admitted.
DE	Snowden v. State	Stalking	677 A.2d 33 (1996)	Vagueness claim rejected (term “repeatedly” refers to one series of acts, not two or more series for “harassment”) Following on public roads is not constitutionally protected activity.
	Williams v. State	Stalking	756 A.2d 349 (2000)	Enactment of new stalking law includes implied saving clause, maintaining old criminal charge.
	State v. Knight	Stalking	1994 WL 19938 (Super. Ct. 1994)	Victim feeling of hopelessness from continued harassment meets requirement of “substantial emotional distress.” No expert testimony required to prove this. Claim that act of “love” cannot be “malicious” act reflects an inability to separate fantasy from reality.
	Burnham v.	Stalking	761 A.2d 830	Harassment is lesser included

	State	Harassment		offense of stalking.
	Bilinski v. State	Threat	462 A.2d 409 (1983)	Terroristic threat is lesser offense under extortion.
DC	United States v. Smith	Stalking	685 A.2d 380 (1996), <i>cert. denied</i> , 118 S. Ct. 152 (1997)	Vagueness, overbreadth claims rejected (intent requirement in conjunction with “repeatedly” and “emotional distress” are constitutionally sufficient.) Objective “reasonable” fear test is required. Terms “repeatedly” and “course of conduct” do not require two series of acts, merely one.
	Washington v. United States	Stalking	760 A.2d 187 (1999)	Evidence of prior order of protection properly admitted as relevant to stalking charge. “Unanimity” instruction not required because jury not asked to convict if either following or harassing occurred, only the latter component of stalking was charged.
	Postell v. United States	Threat	282 A.2d 551 (1971)	Conditional threat is covered by statute.
	U.S. v. Baish	Telephone threat	460 A.2d 38 (1983)	Jurisdiction lies in District where recipient of threatening call received call.
FL	Bouters v. State	Stalking	659 So.2d 235, <i>cert. denied</i> , 516 US 894 (1995)	Vagueness and overbreadth claims rejected (conduct described by statute is not protected, clearly criminal. Reasonable person standard avoids vagueness fault).
	State v. Kahles	Stalking	657 So.2d 897 (1995), <i>aff’g</i> , 644 So.2d 512 (Ct. App. 1994)	Vagueness, overbreadth claims rejected (citing <i>Bouters</i>).
	Folsom v. State	Stalking	654 So.2d 128 (1995), <i>aff’g</i> , 638 So.2d 591 (Ct. App. 1994)	Overbreadth claim rejected (citing <i>Bouters</i>).

FL cont.	Gilbert v. State	Stalking	659 So.2d 233 (1995), <i>aff'g</i> , 639 So.2d 191 (Ct. App. 1994)	Vagueness and overbreadth claims rejected (citing <i>Bouters</i>).
	Huffine v. State	Stalking	655 So.2d 103 (1995), <i>aff'g</i> , 648 So.2d 783 (Ct. App. 1994)	Vagueness and overbreadth claims rejected (citing <i>Bouters</i>).
	Pallas v. State	Stalking	654 So.2d 127 (1995), <i>aff'g</i> , 636 So.2d 1358 (Ct. App. 1994)	Vagueness and overbreadth claims rejected (citing <i>Bouters</i>).
	Williams v. State	Stalking Domestic violence order	658 So.2d 665 (Ct. App. 1995), <i>aff'd</i> , 673 So.2d 486 (1996) (citing <i>Johnson</i>)	Vagueness and overbreadth claims rejected (citing <i>Bouters</i>).
	Perez v. State	Stalking	656 So.2d 484 (1995), <i>aff'g</i> , 648 So.2d 784 (Ct. App. 1994)	Overbreadth claim rejected (citing <i>Bouters</i>).
	Salatino v. State	Stalking	660 So.2d 627 (1995), <i>aff'g</i> , 644 So.2d 1035 (Ct. App. 1994)	Vagueness, overbreadth claims rejected (citing <i>Bouters</i>).
	State v. Barron	Stalking	637 So.2d 384 (Ct. App. 1994)	Vagueness and overbreadth claims rejected (citing <i>Bouters</i>).
	State v. Baugher	Stalking	637 So.2d 384 (Ct. App. 1994)	Vagueness, overbreadth claims rejected (citing <i>Bouters</i>).
	State v. Tremmel	Stalking	644 So.2d 102 (Ct. App. 1994)	Overbreadth claim rejected (citing <i>Kahles</i>).
	Varney v. State	Stalking	659 So.2d 234 (1995), <i>aff'g</i> , 638 So.2d 1063 (Ct. App. 1994)	Vagueness, overbreadth claims rejected (citing <i>Bouters</i>).
	Altingeyik v. State	Stalking	659 So.2d 692 (1995), <i>aff'g</i> , 649 So.2d 943 (Ct. App. 1994)	Vagueness, overbreadth claims rejected (citing <i>Kahles</i>).

FL cont.	Daniels v. State	Stalking	658 So.2d 927 (1995), <i>aff'g</i> , 639 So.2d 624 (Ct. App. 1994)	Overbreadth claim rejected (citing <i>Bouters</i>).
	Koshel v. State	Stalking	659 So.2d 232, <i>cert. denied</i> , 1116 S. Ct. 245 (1995), <i>aff'd on other grounds</i> , 689 So.2d 1229 (Ct. App. 1997)	Overbreadth claim rejected (citing <i>Bouters</i>).
	Morrison v. State	Stalking	658 So.2d 1038 (Ct. App. 1995)	Vagueness, overbreadth claims rejected (citing <i>Kahles</i>).
	Polson v. State	Stalking	654 So.2d 127 (1995), <i>aff'g</i> , 636 So.2d 695 (Ct. App. 1994)	Overbreadth claim rejected (citing <i>Bouters</i>).
	Ratcliffe v. State	Stalking	660 So.2d 1384 (1995), <i>aff'g</i> , 651 So.2d 1205 (Ct. App. 1995)	Overbreadth claim rejected (citing <i>Bouters</i>).
	State v. Gonzalez	Stalking	651 So.2d 185 (Ct. App. 1995)	Vagueness, overbreadth claims rejected (citing <i>Kahles</i> , <i>Bouters</i>).
	State v. Foster	Stalking	661 So.2d 58 (Ct. App. 1995)	Overbreadth claim rejected (citing <i>Bouters</i>).
	Blount v. State	Stalking	654 So.2d 126 (1995), <i>cert. denied</i> , 516 US 849 (1995)	Overbreadth claim rejected (citing <i>Bouters</i>).
	Saiya v. State	Stalking	654 So.2d 128 (1995)	Overbreadth claim rejected (citing <i>Bouters</i>).
	Rosen v. State	Stalking	644 So.2d 531 (Ct. App. 1994), <i>cert. denied</i> , 1648 So.2d 724 (1994)	Vagueness, overbreadth claims rejected (citing <i>Kahles</i>).
	Higgins v. State	Stalking	656 So.2d 483 (Ct. App. 1995)	Vagueness claim rejected (citing <i>Bouters</i>).
	Marinelli v. State	Stalking	706 So.2d 1374 (Ct. App. 1998)	Double jeopardy for two convictions for stalking exists

				where there was one course of action.
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FL cont.	State v. Jones	Stalking	678 So.2d 1336 (Ct. App. 1996)	Acquittal of stalking in one case does not constitute double jeopardy for second charge of stalking based on first case post-arrest behavior; the two cases involve different events.
	State v. Johnson	Stalking protective order	676 So.2d 408 (1996) <i>reh'g denied, corrected</i> , 21 Fla. L. Weekly S311 (Fla. 1996)	Double jeopardy following contempt of court order claims rejected (separate crime elements for both crimes).
	McKinnon v. State	Stalking	712 So.2d 1259 (Ct. App. 1998)	State need not prove intent to cause fear, only that fear occurred as result of intentional acts.
	Goosen v. Walker	Stalking	714 So.2d 1149 (Ct. App. 1998)	Repeated videotaping of neighbors is not conduct within constitutionally protected activity exception of statute.
	Butler v. State	Stalking	715 So.2d 339 (Ct. App. 1998)	Reconciliation between harassing events goes against "continuity of purpose" element of stalking definition
	Waldowski v. State	Stalking	708 So.2d 1015 (Ct. App. 1998)	Jury is not permitted to speculate that defendant was the unknown source of false complaints of child abuse as part of stalking pattern of conduct
	Gilbreath v. State	Telephone harassment	650 So.2d 10, <i>cert. denied</i> , 514 U.S. 1112 (1995)	Vagueness claim rejected (terms "offend" and "annoy" are deleted from law as too vague; terms "abuse," "threaten," and "harass" are not vague).
	State v. Elder	Telephone harassment	382 So.2d 687 (1980)	Overbreadth claim rejected (law is aimed at conduct, not content of speech).
	State v. Keaton	Telephone harassment	371 So.2d 86 (1979)	Overbroad (statute's bar against obscene calls is not limited to calls where intent is to harass).

GA	Johnson v. State	Stalking	449 S.E.2d 94 (1994)	Vagueness and overbreadth claims rejected (intent requirement overcomes any potential vagueness in non-consensual contact language. Constitution does not require that threat produce substantial emotional distress, merely fear).
	Fly v. State	Stalking	494 S.E.2d 95 (Ct. App.), <i>cert. denied</i> , 1998 Ga. LEXIS 329, <i>cert. denied</i> , 119 S. Ct. 125 (1998)	Vagueness and overbreadth claims rejected (citing <i>Johnson</i> for holding that conduct is not protected by First Amendment).
	Kinney v. State	Stalking	477 S.E.2d 843 (Ct. App. 1996), <i>cert. denied</i> , 1997 Ga. LEXIS 205 (1997), <i>aff'd</i> , 506 S.E.2d 441 (Ct. App. 1998)	Vagueness claim rejected (phrase “to contact” is well understood and in conjunction with intent requirement law passes muster). Double jeopardy is violated when state charges stalking after conviction for violation of protective order involving same acts.
	State v. Rooks	Stalking	468 S.E.2d 354 (1996)	Stalking is not the same as common law assault; attempted stalking can be a crime although attempted assault can not.
	Crenshaw v. State	Stalking evidence	515 S.E.2d 642 (Ct. App. 1999)	Showing similar course of conduct is valid basis for witness testimony about prior similar harassment by defendant
	Robinson v. State	Stalking	456 S.E.2d 68 (Ct. App. 1995, <i>cert. denied</i> , 1995 Ga. LEXIS 619 (1995))	Phrase “to contact” is readily understood.
	Adkins v. State	Stalking	471 S.E.2d 896 (Ct. App. 1996)	Otherwise innocuous act such as delivery of letter in public place may nonetheless be part of pattern of conduct constituting stalking.

GA cont.	Jagat v. State	Stalking	525 S.E.2d 388 (Ct. App. 1999)	Aggravated stalking law does not require victim awareness of surveillance where defendant knowingly violated pretrial release order based on simple stalking by conducting surveillance of victim.
	Todd v. State	Stalking Threat	498 S.E.2d 142 (Ct. App. 1998)	Telephone harassment may be lesser included offense of terroristic threat except where there is no evidence raising lesser charge. Evidence of prior rape is admissible as showing intent and victim fear reasons, and as part of course of conduct
	Scott v. State	Threat	484 S.E.2d 780 (Ct. App. 1997)	Corroboration needed to support victim's testimony of threat is provided by actions that followed threat, including wounding
	Lanthrip v. State	Threat	218 S.E.2d 771 (1975)	Vagueness and overbreadth claims rejected (term "threat" is commonly understood; threats are never protected speech)
	Boone v. State	Threat	274 S.E.2d 49 (Ct. App. 1980)	Victim terror is not required, focus is on conduct of making threat; conditional threats that are not covered by law are those "made merely to preserve the status quo."
	Masson v. Slaton	Threat	320 F. Supp. 669 (N.D. Ga. 1970)	Vagueness and overbreadth claims rejected (threats are not protected speech).
	Constantino v. State	Telephone harassment	255 S.E.2d 710, <i>cert. denied</i> , 444 U.S. 940 (1979)	Vagueness claim rejected (intent to harass is crux of law; hence, no vagueness in subjective response of victim as showing harassment).
	Harris v. State	Telephone harassment	380 S.E.2d 345 (Ct. App. 1989)	Message left on machine is sufficient to constitute harassment, since law bars intent to harass plus calls.

	Troncalli v. Jones	Civil stalking suit	513 S.E.2d 478 (Ct. App. 1999)	Civil suit for stalking is not authorized by criminal law
HI	State v. Snell	Stalking	2000 Haw. App. LEXIS 222 (Ct. App. 2000)	Police officer may testify as expert that stalkers typically take “trophies” from their victims
	State v. Chung	Threat	862 P.2d 1063 (1993)	Threats are not protected by First Amendment. Actual communication of threat is not required where threats made “in reckless disregard” if likelihood exists that communication through third party will occur.
	State v. Klinge	Threat	994 P.2d 509 (2000)	Due process claim that statute defines two separate crimes, both independently requiring unanimous verdicts rather than a single verdict rejected (citing <i>Schad v. Arizona</i> , 501 U.S. 624).
	State v. Alston	Threat	865 P.2d 157 (1994)	Threat via third party need not be communicated to victim (victim terror not required; statute merely requires that acts be made in “reckless disregard” of terror resulting).
	In re Doe	Threat	650 P.2d 603 (Ct. App. 1982)	Threat requires proof of intent or reckless disregard, rather than likelihood of threat being carried out.
	State v. Meyers	Telephone threat	825 P.2d 1062 (1992)	Jurisdiction lies in Hawaii where telephone call made to Hawaii resident.
	In re John Doe	Harassment	869 P.2d 1304 (1994)	Free speech rights violated (harassment is a form of disorderly conduct, but aimed at single person. Police training precludes violent response to harassment acts in most incidents. Hence, higher standard required of police).

HI cont.	Bailey v. Sanchez	Harassment injunction	990 P.2d 1194 (Ct. App. 1999)	Equal protection violation claim rejected where statute provides for alternative bases for civil harassment injunction, but requires intent only where lesser degree of threat exists
	State v. Taliferro	Harassment	881 P.2d 1264 (Ct. App. 1994)	State must show harassment acts likely to provoke violent response.
	In re Doe	Harassment	788 P.2d 173 (Ct. App. 1990)	Objective test to be used in determining if "harassment" likely to provoke violent response.
ID	State v. Richards	Telephone threat Harassment	896 P.2d 357 (Ct. App. 1995)	Vagueness and overbreadth claims rejected (law is directed at conduct not speech; use of telephone solely to inflict injury is not protected. Terms "obscene," "lewd," "lascivious," and "indecent" connote language with vulgar sexual overtones; term "profane" means abusive cursing language. Terms "harass" and "offend" are commonly used words.).
IL	People v. Bailey	Stalking	657 N.E.2d 953 (1995)	Vagueness, overbreadth claims rejected (term "following" is construed to require additional intent to advance threat to victim; threat is not protected speech when part of unlawful conduct).
	People v. Nakajima	Stalking	691 N.E.2d 153 (App. Ct. 1998), <i>appeal denied</i> , 699 N.E.2d 1035 (1998)	Vagueness and overbreadth challenges rejected (while <i>Bailey</i> is not dispositive because challenge here is to new law, defendant failed to preserve claims). Due process claim over absence of <i>mens re is</i> rejected (citing <i>Cortez</i> for implied culpability requirement).

IL cont.	People v. Cortez	Stalking	676 N.E.2d 195 (App. Ct. 1996), <i>appeal denied</i> , 684 N.E.2d 1338 (1997)	Vagueness and overbreadth claims rejected (statute proscribes only culpable conduct requiring intent. Terms “follows” and “surveillance” are not vague).
	People v. Rand	Stalking	683 N.E.2d 1243. (App. Ct. 1997), <i>appeal denied</i> , 1998 Ill. LEXIS 1832 (1998)	Vagueness and overbreadth claims rejected (citing <i>Cortez</i>).
	People v. Zamudio	Stalking	689 N.E.2d 254 (App. Ct. 1997)	Vagueness, overbreadth and due process claims rejected (citing <i>Cortez</i>). Stalking is nothing more than one type of common law assault. Requirement for two separate acts inhibits discriminatory enforcement.
	People v. Holt	Stalking	649 N.E.2d 571 (App. Ct. 1995)	Vagueness, overbreadth claims rejected (explicit objective standards in law include reasonableness and intent components of stalking; there is no substantial infringement of protected rights). Statutory prohibition of stalking outside a building does not foreclose stalking within the same building.
	People v. Daniel	Stalking	670 N.E.2d 861 (App. Ct. 1996), <i>appeal denied</i> , 677 N.E.2d 967 (1997)	Surveillance under law was shown although building that is in 2 parts separated the two individuals.
	People v. Sowewimon	Stalking	657 N.E.2d 1047 (App. Ct. 1995)	Confinement of victim by defendant can be basis for finding “enforced surveillance” where surveillance occurs within a separate portion of a larger structure.

IL cont.	People v. Soto	Stalking	660 N.E.2d 990 (App. Ct. 1995)	Prior protective order issuance can not by itself prove earlier threats because higher level of proof required in criminal case.
	People v. Krawiec	Stalking	634 N.E.2d 1173 (App. Ct. 1994)	Acts in furtherance of a threat do not require violence or even intent to commit violence. "Under surveillance" requires only that there be remaining in the vicinity, regardless of whether victim is present (e.g., "lying in wait").
	People v. Young	Telephone threat	727.E.2d 386 (App. Ct. 2000)	Proof of location to determine court's jurisdiction uses reasonable doubt standard
	People v. Peterson	Letter threat (intimidation)	715 N.E.2d 1221 (App. Ct. 1999)	First amendment challenge rejected (threats are not protected speech). Testimony about victims' response to letter threats is admissible since it tends to show reasonableness of letters' tendency to create fear. Intent to carry out threat is not element of crime.
	People v. Parkins	Telephone harassment	396 N.E.2d 22 (1979), <i>appeal dismissed</i> , 446 U.S. 901 (1980)	Overbreadth claim rejected (terms "abuse" and "harass" take restricted meaning from word "threaten" also in statute).
	People v. Klick	Telephone harassment	362 N.E.2d 329 (1977)	Overbroad (statute applies to any call made with intent to annoy; no "unreasonable manner" limitation to save law can be inferred, since crime occurs when call made regardless of subsequent conversation content.

IL cont.	People v. Karich	Telephone harassment Order violation	687 N.E.2d 1169 (App. Ct. 1997)	Violation of protection order based on numerous telephone calls requires evidence of telephone call content intended to be harassing, notwithstanding statutory presumption that calls resulted in emotional distress.
	People v. Reynolds	Domestic violence protection order	706 N.E.2d 49 (App. Ct. 1999)	Vagueness and overbreadth challenges to law's use of term "harassment" rejected notwithstanding that complained of acts differ from examples in statute where harassment presumed, since listing not exhaustive and defendant's intent to intimidate was not a proper purpose.
IN	Johnson v. State	Stalking	648 N.E.2d 666 (Ct. App. 1995)	Vagueness claim rejected (intent requirement militates against vagueness).
	Johnson v. State	Stalking	721 N.E.2d 327 (Ct. App. 1999)	Due Process challenge to sentencing enhancement rejected where he stalked victim while a prior stalking complaint was pending; there is no need for first charge to have resulted in conviction. Hence, there is no denial of right to jury trial on issue. Further, it was reasonable for legislature to enact enhancement; this is not an equal protection violation. Defendant's actions over a five or six hour period were sufficient to constitute a course of action under the stalking law. Jury could infer fear where no direct victim testimony given; evidence of prior acts is not double jeopardy when used to prove victim state of mind.

IN cont.	Garza v. State	Stalking	736 N.E.2d 323 (Ct App. 2000)	Jury could have inferred reasonable fear from victim statements of unease from 2 years of unwanted communications
	Landis v. State	Stalking	704 N.E.2d 113 (1998)	Proof of prior similar acts may be admitted into case-in-chief, but prior convictions are admitted only into sentencing hearing
	Burton v. State	Stalking Stalking order Privacy invasion	665 N.E.2d 924 (Ct. App. 1996)	Double jeopardy claim rejected for stalking and privacy invasion convictions (charging facts for both offenses overlapped, however).
	Waldon v. State	Stalking	684 N.E.2d 206 (Ct. App. 1997)	Jury could infer intent to threaten and fear from victim description of six encounters in public places within one year period.
	Haynes v. State	Harassment Intimidation	656 N.E.2d 505 (Ct. App. 1995)	Double jeopardy claim rejected since intimidation and harassment are distinct crimes.
	Hott v. State	Telephone harassment	400 N.E.2d 206 (Ct. App. 1980), <i>transfer denied</i> , 409 N.E.2d 1082, <i>cert. denied</i> , 449 U.S. 1132 (1981)	First Amendment claim rejected (obscene telephone calls violated victim's privacy and are not protected).
	Leuteritz v. State	Telephone harassment	534 N.E.2d 265 (Ct. App. 1989)	Telephone harassment law is not applicable without intent of only nonlegitimate reason for call; reasonable man test of intent.
IA	State v. Beecher	Stalking	616 N.W.2d 532 (2000)	Double jeopardy does not attach until trial begins; violation of protective order is not a lesser included offense of stalking, since provision in stalking statute making stalking in violation of order a felony is a sentencing enhancement, not element of crime.
IA	State v.	Stalking	600 N.W.2d 316	The several acts complained of

cont.	Limbrecht		(1999)	constitute a threatening course of conduct even if individual acts in isolation could be seen as only harassing.
	State v. Bellows	Stalking	596 N.W.2d 509 (1999)	Violation of out-of-state stalking protection order may be used to enhance penalties for stalking in state. This is not enforcement of order under full faith and credit clause.
	State v. Neuzil	Stalking	589 N.W.2d 708 (1999)	Stalking is general intent crime (mean to commit act without regard to specific results).
	State v. Milner	Threat of arson	571 N.W.2d 7 (1997)	Vagueness and overbreadth challenges rejected (threats not protected speech even when directed at public official under claim of political speech. Speech was within “hard core” of prohibited acts).
	State v. Mulvany	Harassment	600 N.W.2d 291 (1999)	First degree harassment is not lesser included offense of stalking where stalking may be proven without harassment.
	State v. Fratzke	Letter harassment	446 N.W.2d 781 (1989)	Overbreadth claim rejected with statutory interpretation (statutory requirement that communication have no legitimate purpose eliminates overbreadth objection. Offensive language can not however take away legitimate purpose of protesting to government action. “Fighting words” exception has especially high standard when police officers are target).
	State v. Jaeger	Telephone harassment	249 N.W.2d 688 (1977)	Vagueness claim rejected (phrase “obscene, lewd or profane” is not vague due to specific intent element of law).

KS	State v. Whitesell	Stalking	13 P.3d 887 (2000)	Vagueness and overbreadth claims rejected (citing <i>Rucker</i> ; otherwise valid law not directed at protected speech does not violate 1 st Amendment). Intent to place victim in fear may be inferred from circumstantial evidence. Defendant's prior acts may be used to prove credible threat. News articles saved by defendant about spousal murders admissible to show intent. Victim's testimony use of term stalking not legal conclusion, but representation of her fear.
	State v. Rucker	Stalking	987 P.2d 1081 (1999)	Vagueness claim rejected where legislative amendments now provide objective standard and include statutory definition for harassment, course of conduct and credible threat. Phrase "repeated course of conduct" is not vague, but is one of common understanding. Phrases "apparent ability" and "legitimate purpose" are based on objective standard and not vague.
	State v. Bryan	Stalking	910 P.2d 212 (1996)	Void for vagueness (undefined terms "alarms," "annoys," and "harasses" are vague without objective measure; term "following" however is sufficiently comprehensible).
	State v. Zhu	Stalking	909 P.2d 679 (Ct. App. 1996)	Telephone calls can be both part of a campaign of "following" and acts of harassment under law providing alternate methods of stalking.
	State v. Gunzelman	Threat	502 P.2d 705 (1972)	Vagueness claims rejected (terms "threat" and "terrorize" are adequately defined by Code and

				dictionary).
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KS cont.	State v. Miller	Threat	629 P.2d 748 (Ct. App. 1981)	Cross burning is physical act that constitutes threat; speech not required.
	State v. Knight	Threat	549 P.2d 1397 (1976)	Threat may be implied; third person involvement in carrying out threat permitted where intent to terrorize exists.
	State v. Thompson	Telephone harassment	701 P.2d 694 (1985)	Overbreadth claim rejected (intent to harass is element of crime, not missing from law).
KY	Poindexter v. Commw.	Stalking	1996 Ky. App. LEXIS 156 (Ct. App. 1996)	Vagueness and overbreadth claims rejected.
	Welch v. Commw.	Stalking Probation violation	988 S.W.2d 506 (Ct. App. 1999)	Violation of no-contact provision occurs where defendant makes continued harassing hang-up calls without any conversation.
	Thomas v. Commw.	Threat	574 S.W.2d 903 (Ct. App. 1978)	Overbreadth and vagueness claims rejected (terms “threat” and “terrorize” well understood; threats not protected speech). Threat may be conditional; victim fear of immediate harm not needed; intent to complete threat not relevant.
	Musselman v. Commw.	Harassment	705 S.W.2d 476 (1986)	Void for vagueness and overbroad (law lacks fighting words limitation that can not be added by judicial interpretation).
	U.S. v. Sturgill	Harassment	563 F.2d 307 (6th Cir. 1977)	Overbroad (citing <i>Gooding v. Wilson</i> , 405 U.S. 518 (1972) and <i>Acker v. Texas</i> , 430 U.S. 962 (1977)).
	Yates v. C.	Telephone harassment	753 S.W.2d 874 (Ct. App. 1988)	Vagueness and overbreadth claims rejected (“fighting words” doctrine is inapplicable to private communications by telephone; law regulates harassing conduct, not speech).

LA	State v. Rico	Stalking	741 So.2d 774 (Ct. App. 1999)	Following victim from one location to another and then to another is one continuous act, rather than a pattern of conduct involving at least two separate acts.
	State v. Meunier	Telephone harassment	354 So.2d 535 (1978)	Vagueness and overbreadth claims rejected (terms “annoy,” “harass,” and “embarrass” “take color” from surrounding words, limiting their scope).
	State v. Martin	Telephone harassment	491 So.2d 458 (Ct. App. 1986)	Specific intent to harass may be inferred from voluntary act that rationally may be expected to annoy or harass.
ME	State v. Porter	Threat	384 A.2d 429 (1978)	Overbreadth claim rejected (threats not protected speech). Statute is interpreted to apply only to person who made threat or third party who adopts threat in repeating it.
	State v. Thibodeau	Threat	686 A.2d 1063 (1996)	Objective reasonableness of victim fear is not essential element of threatening, since intent to place in fear is sufficient.
	State v. Lizotte	Threat	256 A.2d 439 (1969)	Intent to carry out threat and actual fear are not required; the crime committed is causing fear to ordinary person.
	State v. Ilsley	Letter threat Harassment order	595 A.2d 421 (1991)	Letter to third party in same home violated harassment order.
	State v. Cropley	Harassment	544 A.2d 302 (1988)	Overbreadth claim rejected (harassing conduct is not protected speech).
	State v. Hills	Harassment order	574 A.2d 1357 (1990)	Vagueness claims rejected (term “harassment” is commonly understood).

MD	Streater v. State	Stalking protective order evidence	724 A.2d 111 (1999)	Prior criminal acts evidenced on face of protective order that was admitted into evidence is not admissible to show intent without hearing by trial judge on possible prejudice.
	Piper v. Layman	Stalking protective order	726 A.2d 887 (Ct. Spec. App. 1999)	Validity of protective order is not moot where permanent order recorded; order may have future repercussions.
	Caldwell v. State	Harassment	337 A.2d 476 (Ct. Spec. App. 1975)	Vagueness claims rejected (intent requirement saves statute from vagueness).
	Pall v. State	Harassment	699 A.2d 565 (Ct. Spec. App. 1997)	Statute requires warning to cease and desist harassing conduct.
	Galloway v. State	Letter harassment	744 A.2d 1070 (Ct. Spec. App. 2000)	Vagueness and overbreadth challenges rejected (terms “alarm” and “serious annoyance” are not vague where law requires specific intent to harass; there is less need for notice where words are in common use and defendant has been asked to stop his behavior. Law regulates conduct not speech). Evidence shows invasion of victim privacy: the objective of the law.
	Von Lusch v. State	Telephone harassment	387 A.2d 306 (Ct. Spec. App. 1978), <i>cert denied</i> , 283 Md. 740 (1978)	First Amendment claim rejected (harassment is not protected speech). Harassment purpose need not be sole intent of actor.
MA	Commw. v. Kwiatkowski	Stalking Stalking order	637 N.E.2d 854 (1994)	Void for vagueness in instant case (statute could be interpreted to require more than 2 patterns of conduct). For future, only single pattern or series of events will be needed to be shown.

MA cont.	Commw. v. Matsos	Stalking	657 N.E.2d 467 (1995)	<i>Kwiatkowski</i> not applied retroactive to convictions before decision made where vagueness claim not raised at trial; defendant's behavior came squarely within statute's bar).
	Commw. v. Bibbo	Burglary (stalking predicate)	20001 Mass. App. LEXIS 2 (App. Ct. 2001)	Jury in resolving burglary charge based on intent to commit stalking may consider prior acts as part of required course of conduct crime element.
	Commw. v. Delaney	Stalking protective order	682 N.E.2d 611 (1998), <i>cert. denied</i> , 118 S. Ct. 714 (1998)	Intent is not required for violation of protective order. Constitutional issue was raised but not argued.
	Commw. v. Alphas	Stalking Order violation	762 N.E.2d 575 (1999)	Stay-away order in divorce decree is equal to order of protection for purposes of enhancement of stalking law for violation of order.
	Commw. v. Butler	Harassment order	661 N.E.2d 666 (App. Ct. 1996)	Overbreadth claim against no-contact order rejected (term "contact" is clear) Anonymous sending of flowers violated order.
	Commw. v. Basile	Abuse prevention order	712 N.E.2d 633 (App. Ct. 1999)	Violation of no-contact provision of court order may be violated by mere presence in vicinity of victim; jury must infer whether contact was intended.
	Commw. v. Richards	Electronic harassment	690 N.E.2d 419 (1998)	Fax is not covered by law against annoying telephone calls.
	Commw. v. Wotan	Telephone harassment	665 N.E.2d 976 (1996)	Term "repeatedly" requires three or more harassing calls.
	Commw. v. Strahan	Telephone harassment	570 N.E.2d 1041 (App. Ct. 1991), <i>rev. denied</i> , 576 N.E.2d 685 (1991)	Desire to harass must be sole purpose of calls to sustain conviction, notwithstanding harassing effect.

MI	People v. Coones	Stalking	550 N.W.2d 600 (Ct. App. 1996)	Double jeopardy not violated by state punishing both stalking and contempt of court for order violation. Violation of protective order and bond conditions make contact acts <i>per se</i> "illegitimate" notwithstanding defendant's "ends justify means" argument that acts were to preserve marriage.
	People v. White	Stalking	536 N.W.2d 876 (Ct. App. 1995)	Vagueness claims rejected (statutes provide fair notice; terms' meanings can be easily ascertained and possess common and generally accepted meaning). Statutory rebuttable presumption of stalking after being asked to discontinue contacts provides due process since connection to victim's state of mind and fear is reasonable. It is not double jeopardy for defendant to first plea to misdemeanor charge with different dates from later felony plea dates.
	People v. Ballantyne	Stalking	538 N.W.2d 106 (Ct. App. 1995)	Vagueness and overbreadth claims rejected (Citing <i>White</i>).
	Staley v. Jones,	Stalking	239 F.3d 769 (6 th Cir. 2000), <i>reversing in part</i> , district court decision, 108 F. Supp 2d. 777 (W.D. Mich. 2000)	Vagueness and overbreadth challenges rejected (state court rulings limiting law's application per statute does not limit constitutionally protected "legitimate conduct" activities to illustrative examples in law; fair notice of proscribed conduct is provided by law)

MI cont.	Staley v. Jones	Stalking	108 F. Supp. 777 (W.D. Mich. 2000)	Double jeopardy claim rejected for lack of standing (only charged with one crime). Vagueness challenged accepted in part (phrase “includes, but not limited to” is read to modify statute’s concern with unconsented contact; phrases “constitutionally protected action” and “legitimate purpose,” as interpreted in <i>White</i> , are overbroad, infringing upon both press rights and right of petition government).
	People v. Kieronski	Stalking	542 N.W.2d 339 (Ct. App. 1995)	Stalking is not limited to face-to-face contacts.
	Haverbush v. Powelson	Harassment civil liability (emotional distress)	551 N.W.2d 206 (Ct. App. 1996), <i>appeal denied</i> , 564 N.W.2d 37 (1997)	Intentional emotional distress injury award is affirmed (extreme and outrageous behavior was proven; reasonableness test for intent is same as reckless behavior).
	People v. Taravella	Telephone harassment	350 N.W.2d 780 (Ct. App. 1984)	Vagueness and overbreadth claims rejected (statute provides clear warning; law punishes maliciously intended conduct, not speech).
MN	State v. Orsello	Stalking	554 N.W.2d 70 (1996)	Vagueness claims rejected (law is interpreted to require specific intent to harass or stalk with adverse effects).
	State v. Loewen	Stalking	565 N.W.2d 714 (Ct. App), <i>rev. granted</i> , 1997 Minn. LEXIS 685 (1997)	<i>Orsello</i> rule retroactive.
	State v. Romans	Stalking	1997 WL 600455 (Ct. App. 1997)	<i>Orsello</i> rule retroactive (citing <i>Loewen</i>).

MN cont.	State v. Bowen	Stalking	560 N.W.2d 709 (Ct. App. 1997)	<i>Orsello</i> specific intent rule is applied retroactively to require new trial to prove intent for harassment conduct. It is not double jeopardy for felony conviction based on predicate misdemeanor on different dates.
	Prell v. State	Harassment	1998 WL 2408 (Ct. App. 1998), <i>rev. denied</i> , 3/26/98	<i>Orsello</i> intent rule is not applicable to harassment pattern, only underlying acts.
	State v. Davisson	Stalking	1997 WL 292159 (Ct. App. 1997), <i>rev'd on other grounds</i> , 1998 WL 747135 (Ct. App. 1998)	<i>Orsello</i> ruling requirement is met.
	State v. Davis	Stalking Harassment	1997 WL 259946 (Ct. App. 1997), <i>rev. denied</i> , 8/5/97	<i>Orsello</i> requires reversal of conviction for engaging in pattern of harassment, but not stalking.
	State v. Murphy	Threat	545 N.W.2d 909 (1996)	Threat statute is not limited to oral or written threats. Implied threats to commit future violence are covered by law.
	State v. Farzan	Threat	2001 Minn. App. LEXIS 30 (Ct. App. 2001)	Circumstantial evidence of intent can be drawn from victim's reaction and prior relationship as evidenced by existing order of protection.
	State v. Murphy	Threat	545 N.W.2d 909 (1996), <i>on remand</i> , 1997 Minn. App. LEXIS 1236 (Ct. App. 1997)	Physical acts alone may constitute threat.
	State v. Dolgalevsky	Threat	2000 Minn. App. LEXIS 341 (Ct. App. 2000)	History of hostility and victim reaction provide circumstantial evidence of intent to create fear.

MN cont.	State v. Kehren	Threat	2000 Minn. App. LEXIS 15 (Ct. App. 2000)	Instructions on elements of crime were sufficient to allow trial judge to refuse instruction on transitory anger where arguments permitted during trial; victim fear helps show intent.
	Sykes v. State	Threat	578 N.W.2d 807 (Ct. App. 1998), <i>remanded</i> , 1997 Minn. App. LEXIS 1236 (Ct. App. 1997)	Court has jurisdiction over threat originating in England where received in state.
	State v. Marchand	Threat	410 N.W.2d 912 (Ct. App. 1987), <i>rev. denied</i> , October 2, 1987	Terroristic threats include threats of future actions. A continuing tirade in face of victim's evident fear is circumstantial evidence of intent and negates any claim of transitory anger.
	State v. Schweppe	Threat	237 N.W.2d 609 (1975)	Intent may be established through reasonable inferences from circumstances of the incident including victim reaction. Defendant may terrorize or cause extreme fear through third party where defendant knows or should know threat likely to be passed on to victim.
	State v. Tellinghuisen	Threat	1998 Minn. App. LEXIS 558 (Ct. App.), <i>appeal denied</i> , July 16, 1998; 1998 Minn. LEXIS 432 (1998)	Conditional threats are covered under statute. Threat context is relevant where defendant had history of violent abuse towards victim.

MN cont.	State v. Fisher	Threat	354 N.W.2d 29 (1984)	Defendant knew or should have known that threat to third party would be communicated to victim. Evidence of prior threats is admissible to show intent and motive; transitory anger defense was rebutted by evidence of prior threats and continuing tirade for 6 hours.
	State v. Idowu	Threat	2000 Minn. App.LEXIS 36 (Ct. App. 2000)	Direct communication of threat to victim is not required.
	State v. Spencer	Threat, harassment order	1998 Minn. App. LEXIS 856 (Ct. App. 1998)	Evidence that victim applied for protection order after threat issued is probative of meaning of threat even if victim's reaction not an element of the crime. However admission of order itself is prejudicial since it tends to show that judge already found a threat to have been made.
	State v. Jones	Threat	451 N.W.2d 55 (Ct. App. 1990)	Transitory anger is not covered by threat law.
	State v. Lavastida	Threat	366 N.W.2d 677 (Ct. App. 1985)	Instruction on transitory anger defense not required when instructions submitted covered all elements of the crime.
	State v. Machholz	Harassment	574 N.W. 2d 415 (1998)	Overbroad, (statute not limited to non-expressive conduct and offensive conduct in a public meeting not directed at any individual did not constitute fighting words).
	State v. Schmidt	Harassment Stalking	612 N.W.2d 871 (2000), <i>aff'ing</i> 1999 Minn. App. LEXIS 958 (Ct. App. 1999)	Conviction voided under <i>Machholz</i> is not a bar to new charges under stalking section of law not affected by ruling, since there was no final decision in case on merits.

MN cont.	State v. Mullen	Harassment	577 N.W.2d 505 (1998)	<i>Orsello</i> intent rule does not require proving intent to commit pattern, just underlying crimes.
	State v. Anderson	Harassment	1996 WL 722099 (Ct. App. 1996)	Double jeopardy protection violated in use of earlier plea involving same acts to prove pattern for enhanced penalty.
	Robbinsdale Clinic v. Pro-Life Action Ministries	Harassment	515 N.W.2d 88 (Ct. App. 1994), <i>rev. denied</i> , 1994 Minn. LEXIS 445 (1994)	Constitutionality of underlying order may be collaterally attacked on appeal of contempt conviction. Order was overbroad because harassment injunction was not content neutral. There is no presumption that Clinic acts on behalf of patients not desiring to hear message.
	State v. Egge	Harassment protection order	611 N.W.2d 573 (Ct. App. 2000)	Protection order of no-contact was violated when defendant instigated third-party harassment.
	Hamlin v. Barrett	Harassment protective order	1999 Minn. App. LEXIS 733 (Ct. App. 1999)	Single instance of harassment may be basis of order issuance even without finding that conduct likely to reoccur.
	Asgian v. Schnorr	Harassment protective order	1996 WL 557410 (Ct. App. 1996), <i>rev. denied</i> , 12/4/96	First Amendment protection is not infringed by order that places narrow limits on communication and is content neutral.
	State v. Badiner	Telephone harassment	412 N.W.2d 810 (Ct. App. 1987)	Statute does not require that intent to harass be sole purpose of call.
MS	Shackelford v. Shirley	Telephone threat	948 F.2d 935 (5th Cir. 1991)	Overbreadth claim rejected (there is no realistic danger of substantial compromise of First Amendment protections).
MO	State v. Schleiermacher	Stalking order violation	924 S.W.2d 269 (1996)	Vagueness challenge rejected (phrase "lingering outside" gives sufficient notice against slowing down or staying near residence of victim).

MO cont.	State v. Cartwright	Stalking	17 S.W.3d 149 (Ct. App. 2000)	Victim's delay in calling police does not nullify defendant's intent to cause fear
	State v. Dawson	Stalking	985 S.W.2d 941 (Ct. App. 1999)	Similar transaction evidence that was not proven to be committed by defendant can not be used to prove course of conduct acts
	Wallace v. Van Pelt	Stalking protection order	969 S.W.2d 380 (Ct. App. 1998)	The context in which vague threats were made of a reasonable conversation to workout problems belies likelihood of reasonable substantial emotional distress.
	State v. Martin	Stalking	940 SW.2d 6 (Ct. App. 1997)	Expert medical testimony is not needed to prove substantial emotional distress; this is not akin to "substantial emotional injury" requiring such evidence.
	Alexander v. State	Harassment	864 S.W.2d 354 (Ct. App. 1993)	Overbreadth claim rejected (threat made in civil lawsuit pleading is not protected speech; relevancy is required for privilege to attach).
	State v. Koetting (I)	Telephone harassment	616 S.W.2d 822 (1981) (<i>en banc</i>)	Vagueness and overbreadth claims rejected (phrases "for the purposes of frightening or disturbing another person" and "uses coarse language offensive to one of average sensibility" use common words and are not vague. Invitation to prostitution is offensive language. Statute applies only to protect privacy interests in own home and is not overbroad).
	State v. Koetting (II)	Telephone harassment	691 S.W.2d 328 (Ct. App. 1985)	Overbreadth claim rejected (citing <i>Koetting I</i>). Intent to harass need not be sole aim.
	State v. Creech	Telephone harassment	983 S.W.2d 169 (Ct. App. 1998)	State need not prove victim asked defendant to stop calling before counting of "repeated" calls begins.
MO cont.	State v. Rafaeli	Telephone harassment	905 SW.2d 516 (Ct. App. 1995)	Specific intent to frighten or disturb is required; may be one of several

				purposes.
	State v. Placke	Telephone harassment	733 S.W.2d 847 (Ct. App. 1987)	Messages left on answering machine fall within purview of law. Repeated calls means more than one.
	State v. Patterson	Telephone harassment	534 S.W.2d 847 (Ct. App. 1976)	Statute requires that sole purpose of call be to harass victim.
MT	State v. Cooney	Stalking	894 P.2d 303 (1995)	Free Speech claim rejected (telephone “love” calls inflicted injury and lacked social value; they are not protected speech). Venue lies in any county where any act occurred, including receipt of letter.
	State v. Martel	Stalking	902 P.2d 14 (1995)	Vagueness and overbreadth claims rejected (phrases “repeatedly” “harassing,” and “intimidating” are well understood; terms; “reasonable apprehension” and “substantial emotional distress” are subject to reasonable person test. Intent requirement reinforces this conclusion. Conduct, not speech, is prohibited by law; no showing of infringement here).
	State v. McCarthy	Stalking	980 P.2d 629 (1999)	Term “repeatedly” means more than once, not more than twice. Communicating through a third party can be part of a pattern of stalking behaviors.
	State v. Kaplan	Stalking	910 P.2d 240 (1996)	Challenge to mental illness verdict disallowed, since no conviction is being appealed.
	State v. Ross	Intimidation Letter threat	889 P.2d 161 (1995)	Overbreadth claims rejected (threatening speech is not protected).
	State v. Lance	Threat	721 P.2d 1258 (1986)	Overbreadth claim rejected (threats to take a hostage are not protected speech).

MT cont.	Wurtz v. Risley	Threat	719 F.2d 1438 (9th Cir. 1983)	Overbroad (there is no requirement that threat produce victim fear; threat to "commit any criminal offense" could apply to minor victimless offenses). Threats need not be intended to be carried out; create fear is crux of crime.
	State v. Hawk	Intimidation	948 P.2d 209 (1997)	Intimidation requires proof that threats were made to influence another's actions.
	State v. Baugatz	Order violation	2000 Mont, LEXIS 151 (2000)	Vagueness challenge to order violation law rejected (term "knowing" has generally understood meaning when used as prerequisite for criminal enforcement of order).
NE	State v. Schmailzl	Threat	502 N.W.2d 463 (1993), <i>appeal dismissed</i> , 534 N.W.2d 743 (1995) (lack of appellate jurisdiction)	Vagueness and overbreadth claims rejected ("threats" and "threatens" are terms of common usage; threats to commit violent crime are not protected speech).
	State v. Bourke	Threat	464 N.W.2d 805 (1991)	Vagueness claim rejected (phrase "reckless disregard of the risk of causing such terror..." is defined by prior cases defining reckless).
	State v. Mayo	Threat	464 N.W.2d 798 (1991)	Vagueness claim rejected (citing <i>Bourke</i>).
	State v. Hamilton	Threat	340 N.W.2d 397 (1983)	Void for vagueness (term "threat" is undefined; Model Penal Code language requiring intent to terrorize fatally omitted).
	State v. Fisher	Threat	343 N.W.2d 772 (1984)	Void for vagueness (citing <i>Hamilton</i>).
	State v. Saltzman	Threat	458 N.W.2d 239 (1990)	There is no requirement in statute for intent to act on threat.

NE cont.	State v. Kipf	Telephone threat	450 N.W.2d 397 (1990)	Vagueness and overbreadth claims rejected (intent to harass without any communication permissible purpose is object of law. Phrase “indecent, lewd lascivious or obscene” has sexual connotation but does not require <i>Miller v. California</i> definition).
	Langford v. City of Omaha	Harassment	755 F. Supp. 1460 (D. Neb. 1989), <i>appeal dismissed without op.</i> , 978 F.2d 1263 (8 th Cir. 1992)	Void for vagueness (term “annoy” is vague; providing no standard for measuring whose sensitivity to use to determine annoyance; terms “legitimate” and “obscene” communications are not defined by ordinance). Vagueness claim is rejected for subsection making unlawful repeated anonymous communications (specific intent to harass saves ordinance).
NV	No cases			
NH	No cases			
NJ	State v. Saunders	Stalking Harassment	695 A.2d 262 (App. Div. 1997), <i>cert. denied</i> , 700 A.2d 881 (1997)	Overbreadth and vagueness claims rejected (nonverbal expressive behavior such as “following” can be banned; law does not reach substantial amount of protected acts. Terms “annoy” and “alarm” must be construed together as prohibiting serious harassment only; term “following” is commonly understood. Specific intent requirement further clarifies law).

NJ cont.	State v. Cardell	Stalking	723 A.2d 111 (Super. Ct. 2000)	Vagueness and overbreadth challenges rejected (Change in law from specific to general intent law does not significantly increase scope of law's coverage to protected conduct, nor does statute limit defendant's ability to go where he wishes where such behavior will not result in behavior creating fear of injury or death. Term "visual or physical proximity" is not vague where statute makes clear what type of conduct is prohibited).
	D.C. v. F. R.	Stalking Domestic violence order	670 A.2d 51 (App. Div. 1996)	Prior conduct before law's implementation date can be considered in injunction proceedings.
	Rumbauskas v. Cantor	Intrusion on seclusion tort	649 A.2d 853 (1994)	Tort of intrusion on seclusion (as from stalking) is governed by two-year statute of limitation as action for personal injury, not injury to rights of others (emotional not economic harm).
	Grant v. Wright	Harassment	536 A.2d 319 (App. Div.), <i>certif. denied</i> , 546 A.2d 493 (1988)	Single act does not meet statutory requirement for "course of alarming conduct" or "repeated acts."
	State v. Hoffman	Letter harassment Protection order	695 A.2d 236 (1997), <i>rev'g</i> , 676 A.2d 565 (App. Div. 1996)	Vagueness and overbreadth claims rejected as statute interpreted (mailing of torn up court order to estranged wife is insufficient annoyance for harassment or contempt of court using invasion of privacy test, but may constitute harassment for victim of domestic abuse. Mailing violated protective order against "contact.").

NJ cont.	State v. Hoffman	Letter harassment	676 A.2d 565 (App. Div. 1996), <i>aff'd in part, rev'd in part</i> , 695 A.2d 236 (Sup. Ct. 1997)	Harassment law covers communication by mail. Term "annoyance" means causing alarm or serious annoyance, not merely nettlesome.
	State v. J.T.	Harassment protection order	683 A.2d 1166 (App. Div. 1996)	Evidence of positioning self to be seen on exit from house was "contact" violating order; course of conduct may arise from single incident of remaining in a single location with intent to harass.
	Peranio v. Peranio	Harassment protection order	654 A.2d 495 (App. Div. 1995)	Harassment protection order is not warranted where there is no intent to harass, notwithstanding alarming statements.
	Corrente v. Corrente	Harassment protection order	657 A.2d 440 (App. Div. 1995)	Non-violent harassment is not domestic violence warranting issuance of protective order.
	Roe v. Roe	Harassment protection order	601 A.2d 1201 (App. Div. 1992)	Preponderance of evidence standard is used for proving violations of court order.
NM	State v. Duran	Stalking Harassment	966 P.2d 766 (Ct. App. 1998)	Double jeopardy occurs where same acts prove both stalking and harassment, because same social policies underlie both laws and no significant intent requirement exists. Void for vagueness challenge to harassment law is rejected (person of ordinary intelligence would know acts were unlawful).
	State v. Gattis	Telephone harassment	730 P.2d 497 (Ct. App. 1986)	Vagueness and overbreadth claims rejected (intent requirement excludes innocent calls from law's scope; law directed at conduct, not speech. Intent requirement also negates any vagueness problems. Moreover, law uses words of common knowledge).

NY	People v. Starkes	Stalking	2000 N.Y. Misc. LEXIS 311 (Crim. Ct. N.Y. City 2000)	Statute does not require victim fear for 3 rd degree stalking, only that defendant intend to act in way as likely to result in fear. Information must allege all elements of stalking crime.
	People v. Payton	Stalking	612 N.Y.S.2d 815 (Crim. Ct. N.Y. City 1994)	Course of conduct defined to mean a series of acts over a period of time, however short. Intention to place victim in fear is an element of stalking (menacing) crime.
	People v. Murray	Menacing	635 N.Y.S.2d 928 (Crim. Ct. N.Y. City 1995)	Course of conduct may last for short time (6 or 8 minutes) where there is continuity of purpose in series of acts.
	People v. Munn	Harassment Threat	688 N.Y.S.2d 384 (Crim. Ct. N.Y. City 1999)	Harassment statute covers threats posted on Internet newsgroup.
	People v. Dietze	Harassment	549 N.E.2d 1166 (1989)	Overbroad (law against annoying statements is not limited to "fighting words"). Outburst without more is not a serious threat covered by law.
	People v. Wood	Harassment	464 N.Y.S.2d 738 (1983)	Course of conduct must be more than isolated act.
	People v. Viau	Harassment	409 N.E.2d 1376 (1980)	Citizen band radio harassment is not covered by law directed at telephone or written communication harassment.
	People v. Hogan	Harassment	664 N.Y.S.2d 204 (Crim. Ct. N.Y. City 1997)	Harassment requires course of conduct that is more than isolated acts. Protective order to avoid harassment refers to Penal Code; expanded definition would be constitutionally vague (failure to give notice).

NY cont.	People v. Forman	Harassment protection order	546 N.Y.S.2d 755 (Crim. Ct. N.Y. City 1989)	Due process claim that defendant has right to hearing before issuance of criminal no-contact order as a condition of bail release is rejected (emergency nature of order precludes pre-issuance hearing as long as prompt appeal available. Danger of intimidation or injury standard is not vague. Order to “refrain from offensive conduct” is too vague for contempt enforcement.
	People v. Lamb	Harassment	384 N.Y.S.2d 929 (City. Ct. Rochester 1976)	Vagueness claim rejected (citing <i>People v. Harvey</i> , 123 N.E.2d 81 (1954).
	People v. Tralli	Harassment	387 N.Y.S.2d 37 (App. Term 1976)	Course of conduct does not require repeated harassing acts.
	People v. Shack	Telephone harassment	86 N.Y.2d 529 (1995)	First Amendment, overbreadth, and vagueness claims rejected (law regulates only conduct and excludes “legitimate communications;” phrase “without legitimate purpose” is commonly understood to mean without expression of ideas other than threats).
	People v. Caldwell	Telephone harassment	661 N.Y.S.2d 436 (App. Term. 1997), <i>appeal denied</i> , 89 N.Y.2d 1033 (1997)	Free speech claim rejected (citing <i>Shack</i>).
	People v. Smith	Telephone harassment	392 N.Y.S.2d 968 (App. Term), <i>cert. denied</i> , 434 U.S. 920 (1977)	Vagueness and overbreadth claims rejected (defendant’s behavior fits within hard core of statute’s bar; telephone harassment is a form of trespass, lacking constitutional protection). Statute construed to prohibit only acts likely to annoy or alarm done with intent to harass.

NY cont.	People v. Wood	Telephone harassment Protection order	698 N.Y.S.2d 122 (App. Div. 1999)	Family Court civil finding of contempt provides Double Jeopardy bar to City Court criminal contempt proceeding where same actions underlie both proceedings. Charging five different acts of telephone harassment is okay even where calls made close in time.
	People v. Portnoy	Telephone harassment	600 N.Y.S.2d 900 (Crim. Ct. N.Y. City. 1993)	A pattern of repeated calls is only means of inferring harassment intent, no pattern in instant case with only four calls in two weeks.
	People v. Zullo	Telephone harassment	650 N.Y.S.2d 926 (Dist. Ct. Nassau Cnty. 1996)	Single isolated incident not sufficient to constitute harassment.
	People v. Miguez	Telephone harassment	556 N.Y.S.2d 231 (Crim. Ct. N.Y. City 1990), <i>aff'd</i> , 590 N.Y.S.2d 156 (App. Term 1992)	Overbreadth claim rejected (law bars private not public communication; <i>Dietz</i> not controlling). Messages left on answering machine constitute communication under statute.
	People v. Barhan	Telephone harassment	556 N.Y.S.2d 441 (Crim. Ct. N.Y. City 1990)	Communicating in a manner likely to cause annoyance or harm may be proven by either one or several calls over time.
	People v. Liberato	Telephone harassment	689 N.Y.S.2d 363 (NY City Crim. Ct. 1999)	Single call can constitute harassment where there is no legitimate purpose for call, only threats and intimidating utterances.
	People v. Rusciano	Telephone harassment	656 N.Y.S.2d 822 (Just. Ct. Westchester County 1997)	Aggravated harassment requires communication; telephone calls must be completed calls. While course of conduct is needed for simple harassment, single alarming communication can be aggravated harassment.

NC	State v. Ferebee	Stalking	529 S.E.2d 686 (Ct. App. 2000)	Stalking law making warning to desist an element of crime is not complied with by erroneous entry into evidence of acts occurring before warning
	State v. Roberson	Threat	247 S.E.2d 8 (Ct. App. 1978)	Conditional threat is covered by law where condition was without legal authority.
	Radford v. Webb	Telephone threat and harassment	446 F. Supp. 608 (W.D.N.C. 1978), <i>aff'd</i> , 596 F.2d 1205 (4th Cir. 1979)	Overbroad (laws bars not only obscenity, but also merely vulgar or profane communications).
	State v. Camp	Telephone harassment	295 S.E.2d 766 (Ct. App. 1982), <i>appeal dismissed</i> , 299 S.E.2d 216 (1982)	Overbreadth and vagueness claims rejected (law prohibits conduct, not speech; law adequately warns).
	In re Simmons	Telephone harassment	210 S.E.2d 84 (Ct. App. 1974)	Vagueness and overbreadth claims rejected (appropriate and sufficiently narrowed law).
	State v. Boone	Telephone harassment	340 S.E.2d 527 (Ct. App. 1986), <i>cert. denied</i> , 347 S.E.2d 442 (1986)	Term “repeatedly” does not require more than one call per day.
ND	Svedberg v. Stamness	Stalking protection order	525 N.W.2d 678 (1994)	Disorderly conduct order is not First Amendment violation (“fighting words” when used to 14 year old boy). Phrase “reasonable grounds” is equated with probable cause standard for issuing order.
	State v. Olson	Threat	552 N.W.2d 362 (1996)	Threat was made to third party in reckless disregard of possibility it would be communicated to victim.
	State v. Carlson	Threat	559 N.W.2d 802 (1997)	Intent relates to putting fear into, rather than intending to actually carry out threat.
	State v. Touche	Threat	549 N.W.2d 193 (1996)	Testimony about protective order may be used to show victim fear.
ND			506 N.W.2d 404	Assault is not “lesser included”

cont.	State v. Hondl	Threat	(1993)	offense of terrorizing.
	Wishnatsky v. Huey	Harassment protection order	560 N.W.2d 878 (1997), <i>aff'd</i> , 584 N.W.2d 859 (Ct. App. 1998)	Disorderly conduct protection order fails for failure to show pattern of intimidation; two instances of meeting by happenstance is not enough.
	Cave v. Wetzel	Harassment protection order	545 N.W.2d 149 (1996)	Phrase "reasonable grounds to believe" is equated with probable cause in determining whether injunction should issue.
	Williams v. Spilovoy	Harassment protection order	536 N.W.2d 383 (1995)	Conclusory claims of threats or harassment without factual detail showing harassment do not support issuance of no-contact order.
	State v. Monson	Probation no-contact order	518 N.W.2d 171 (1994)	Term "contact" is defined to exclude attendance at public forum; contact means communication or coming together.
OH	City of Toledo v. Emery	Stalking	2000 Ohio App. LEXIS 2880 (Ct. App. 2000)	Free speech claim rejected (liberty rights to videotape victims are superseded by latter's right to privacy). Direct threat of harm is not required; it is enough to show series of acts likely to result in fear of harm.

OH cont.	State v. Smith	Stalking	709 N.E.2d 1245 (Ct. App. 1998)	First Amendment challenge rejected (law regulates conduct not speech). Vagueness and overbreadth claims rejected (term “pattern of conduct” is simple and easy to understand; <i>Scienter</i> requirement vitiates any other claim of vagueness. Whatever First Amendment protection for picketing exists, defendant crossed the line in uttering threats). Picketing activity can be acts constituting statutory “course of conduct. Explicit threats are not required. Expert testimony is not required to prove mental distress.”
	State v. Schwab	Stalking	695 N.E.2d 801 (Ct. App. 1997)	Vagueness claim rejected (phrase “mental distress” sufficiently clear). Expert testimony is not needed to prove mental distress.
	State v. Francway	Stalking	1995 WL 491104 (Ct. App), also, 1995 Ohio App. LEXIS 3384 (1995, <i>rev. denied</i> , 659 N.E.2d 313 (1996)	Vagueness and overbreadth claims rejected (phrase “mental distress” is sufficient to put defendant on notice; no unconstitutional restriction on right to travel).
	State v. Dario	Stalking	665 N.E.2d 759 (Ct. App. 1995)	Vagueness and overbreadth claims rejected (knowing or intent requirement results in defendant being aware that conduct will result in another’s fear; stalking is not protected behavior) (phrase “pattern of conduct” is defined by statute while phrase “closely related in time” was sufficiently clear to ordinary persons).

OH cont.	State v. Fleming	Stalking	1996 WL 100962 (Ct. App. 1996), <i>dismissed, appeal not allowed</i> , 669 N.E.2d 856 (1996)	Vagueness claim rejected. (citing <i>Francway</i>)
	State v. Benner	Stalking	644 N.E.2d 1130 (Ct. App. 1994)	Vagueness claim rejected (not facially void and conduct is not protected speech).
	State v. Bilder	Stalking	651 N.E.2d 502 (Ct. App. 1994), <i>dismissed</i> , 649 N.E.2d 278 (1995), <i>stay denied</i> , 651 N.E.2d 1013 (1995), <i>cert. denied</i> , 516 U.S. 1009 (1995), <i>reaff'd</i> , 1996 Ohio App. LEXIS 4837 (1996)	Overbreadth claim rejected (stalking is not protected conduct). Two confrontations closely related in time constituted “pattern of conduct” under law. Expert testimony is not needed to prove mental distress.
	City of Dayton v. Smith	Stalking	646 N.E.2d 917 (Mun. Ct. Dayton 1994)	Vagueness and overbreadth claims rejected (phrase “pattern of conduct” is adequately defined by statute; no substantial infringement shown).
	State v. Hart	Stalking	2000 Ohio App. LEXIS 5796 (Ct. App. 2000)	Evidence of psychological treatment is not required to prove mental distress.
	State v. Halgrimson	Stalking	2000 Ohio App. LEXIS 5162 (Ct. App. 2000)	Prior acts admissible to prove stalking where they “tend to show” intent, motive etc., since they show the factual background needed to understand what occurred.
	State v. Tichon	Stalking	658 N.E.2d 16 (Ct. App.), <i>appeal dismissed</i> , 654 N.W.2d 986 (1995)	Mental distress may be proven without expert testimony.

OH cont.	State v. Wasmire	Stalking	94 WL 476462 (Ct. App. 1994)	Law requires awareness that conduct will cause harm and fear and that actions were directed at the victim.
	Lindsay v. Jackson	Stalking order	2000 WL 1268810 (Ct. App. 2000)	Due process challenge to procedures used before issuance of protection order upheld (one day notice of hearing insufficient to prepare defense and failure to inform defendant of right to cross examine undermined "full hearing" requirement of statute). Preponderance of evidence standard applicable in protection order cases.
	State v. Manny	Threat	1992 WL 113246 (Ct. App. 1992)	Threat may be made to third party where defendant "knows" that it will be communicated to victim.
	State v. Denis	Threat	678 N.E.2d 996 (Ct. App.), <i>aff'd</i> , 1996 Ohio App. LEXIS 5498 (1996)	Proof of victim fear is required.
	Felton v. Felton	Harassment protective order	679 N.E.2d 672 (1997)	Court may issue protective order even where divorce decree already orders no harassment, since new order gains more protection from police. Preponderance of evidence standard used for issuing order.
	State v. Gibbs	Telephone harassment	730 N.E.2d 1027 (Ct. App. 1999)	Overbreadth claim rejected on privacy grounds where statute makes criminal a telephone call made despite request not to call, regardless of any legitimate nature of call content.
	State v. Mollenkopf	Telephone harassment	456 N.E.2d 1269 (Ct. App. 1982)	Vagueness claim rejected (statute gave sufficient notice).
	State v. Bonifas	Telephone harassment	632 N.E.2d 531 (Ct. App. 1993)	Intent to harass, not subjective annoyance of victim; it must be proven.

OK	State v. Saunders	Stalking	886 P.2d 496 (Ct. Crim. App. 1994)	Vagueness claim rejected (intent “triggers” law; rebuttable presumption of intent from victim request to discontinue behavior is rational).
OR	State v. Rangel	Stalking	977 P.2d 379 (1999)	Overbreadth claim rejected (law focuses on effects achieved by speech: a threat, although not directly specified, is permitted by First Amendment where law also requires ability to carry out threat, expression of intent to carry out threat, and reasonable person standard for fear).
	State v. Maxwell	Stalking Stalking protection order	998 P.2d 680 (Ct. App. 2000)	Vagueness challenge to terms of protection order rejected (phrase “visual or physical presence” has plain and ordinary meaning). Defendant knew when entering a room where victim was that he was capable of being seen by victim. Words are required to prove threat where simple presence results in fear. Order violation does not require evidence of threat.
	Hanzo v. deParrie	Stalking protection order	953 P.2d 1130 (Ct. App. 1998)	Overbroad as applied (abortion protester “contacts” involved expression that do not constitute a threat and were not “unwanted” under statute that requires “threat”).
	Shook v. Ackert	Stalking protection order	952 P.2d 1044 (Ct. App. 1998)	Overbreadth claim rejected (statute authorizing protection order is not facially overbroad in its specification of what the order contents may be, since court will determine on case-by-case basis what communication is constitutionally permitted).

OR cont.	Delgado v. Souders	Stalking protection order	934 P.2d 1132 (Ct. App. 1997), <i>rev. granted</i> , 943 P.2d 633 (1997)	Vagueness claim rejected (terms “contact,” “alarm,” and “personal safety” are not vague). Statute does not abridge right of travel.
	State v. Norris-Romine	Stalking protection order	894 P.2d 1221 (Ct. App.), <i>rev. denied</i> , 900 P.2d 509 (1995)	Void for vagueness (phrase “without legitimate purpose” is not self-explanatory and lacks sufficient warning of what is barred).
	State v. Orton	Stalking protection order Contempt	904 P.2d 179 (Ct. App. 1995)	Void for vagueness (phrase “without legitimate purpose” for judging post-issuance behavior is vague, citing <i>Norris-Romine</i>). Collateral bar doctrine does not defeat claim that order provision is vague.
	Starr v. Eccles	Stalking protection order	900 P.2d 1068 (Ct. App. 1995)	Void for vagueness (citing <i>Norris-Romine</i> for ruling that “legitimate purpose” phrase is vague).
	Boyd v. Essin	Stalking protection order	12 P.3d 1003 (Ct. App. 2000)	<i>Rangel</i> dictum about expressive contacts raising 1 st Amendment issues is not present where record shows 3 non-expressive contacts justifying order issuance. Reasonable fear shown where defendant had history of violence.
	Johnson v. McGrew	Stalking protection order	902 P.2d 1209 (Ct. App.), <i>rev. denied</i> , 907 P.2d 248 (1995)	Right of counsel does not apply to appeal of protection order violation proceeding (civil, not criminal, prosecution).
	Wayt v. Goff	Stalking protection order	956 P.2d 1063 (Ct. App. 1998)	Police officer did not indicate contacts were unwanted to meet statutory requirements for injunction.
	In re Dompeling	Menacing	171 Or. App. 692, 2000 WL 1874106 (Ct. App. 2000)	Menacing law use of term “imminent” threat does not require actual immediacy, but may be merely “near at hand.,” within next few hours.

OR cont.	State v. Moyle	Telephone threat	705 P.2d 740 (1985) (<i>en banc</i>)	Vagueness and overbreadth claims rejected (threats not protected speech as statute is interpretatively limited: there must be reasonable fear and intent to provoke this fear; fear of violence against family limited to felonious acts. Term “alarm” interpreted to mean fear from danger due to threat of felony violence; other terms are defined in Code. Intent implied in law.) There must be actual threat to exclude protected hyperbole, rhetorical excess, and impotent expressions of anger.
	State v. Harrington	Harassment	680 P.2d 666 (Ct. App.), <i>rev. denied</i> , 685 P.2d 998 (1984)	Overbroad (statute punishes speech regardless of intent or effect on listener, it goes beyond fighting words to “likely to provoke a disorderly response.”
	State v. Sanderson	Harassment	575 P.2d 1025 (Ct. App. 1978)	Void for vagueness (terms “alarms” and “seriously annoys” are vague; latter is a “dragnet” provision not subject to judicial limiting).
	State v. Harrington	Harassment	680 P.2d 666 (Ct. App. 1984)	Overbroad (statute punishes speech regardless of intent or effect on listener, it goes beyond fighting words that are “likely to provoke a disorderly response.”
	State v. Ray	Telephone harassment	733 P.2d 28 (1987)	Void for vagueness and overbroad (law reaches too far, even to recipient of call if he is the one using annoying language. Use of <i>Miller</i> -three part definition of obscenity delegates to jury to be used to determine what is forbidden).

OR cont.	State v. Blair	Telephone harassment	601 P.2d 766 (1979) (<i>en banc</i>)	Void for vagueness (phrase “likely to cause alarm” is too broad. Statute lacks any requirement of actual harm or fear.).
	State v. Hibbard	Telephone harassment	823 P.2d 989 (Ct. App. 1991)	Overbreadth and vagueness claims rejected (law focuses on telephoning conduct not speech; dicta that call must have no purpose to communicate. Law is not vague (citing <i>Lowery</i>).
	State v. Lowery	Telephone harassment	693 P.2d 1343 (Ct. App. 1985) (<i>per curium</i>)	Vagueness claim rejected (no merit to claim).
	State v. Larsen	Telephone harassment	588 P.2d 41 (Ct. App. 1978)	Vagueness claim rejected (law is directed at specific conduct of using telephone with intent to harass).
	State v. Zeit	Telephone harassment	539 P.2d 1130 (Ct. App. 1975)	Vagueness claim rejected (person of common intelligence would know law was violated).
	State v. Sallinger	Telephone harassment	504 P.2d 1383 (Ct. App. 1972)	Vagueness claim rejected (statute provides adequate notice of prohibited conduct. Law is intended to cover batteries).
	State v. Norgard	Telephone harassment	(1999), 967 P.2d 499 (Ct. App. 1998) (<i>en banc</i>), <i>rev. denied</i> , 1999 Ore. LEXIS 436 (1999)	Use of answering machine to replay messages meets statutory requirement that defendant “cause” victim to answer call.
	State v. Lopez	Telephone harassment	949 P.2d 1237 (Ct. App. 1997), <i>rev. denied</i> , 326 Or 465 (1998)	Husband answering telephone for victim does not meet statutory requirement “caused” victim to answer call.
	State v. Wilson	Telephone harassment	724 P.2d 840 (Ct. App. 1986), <i>rev. denied</i> , 732 P.2d 915 (1987)	Law requires victim to be actually placed in fear.

PA	Commw. v. Schierscher	Stalking Harassment	668 A.2d 164 (Super. Ct. 1995), <i>appeal denied</i> , 688 A.2d 171 (1997)	Vagueness and overbreadth claims rejected (harassment law upheld, citing <i>Duncan</i> . Stalking is not protected behavior: “speech designed to coerce through fear and intimidation” is not protected).
	Commw. v. Roefaro	Stalking	691 A.2d 472 (Super. Ct. 1997)	Double jeopardy claim rejected (evidence of prior convictions is admissible to prove course of conduct element of stalking crime since otherwise defendant would get one “free stalk” following stalking conviction).
	Commw. v. Miller	Stalking Domestic violence order	689 A.2d 238 (Super. Ct. 1997), <i>appeal denied</i> , 695 A.2d 785 (1997)	Overbreadth claim rejected (intent requirement obviates such a finding). Order does not violate constitutional right to travel (no intrastate right to travel). Intent to cause “substantial emotional distress” may be inferred from defendant’s conduct.
	Commw. v. Davis	Stalking	737 A.2d 797 (Super. Ct. 1999)	Testimony about prior attempt to hit victim with car is admissible as evidence of pattern of behavior and not excludable as “prior bad act.”
	Commw. v. Leach	Stalking	729 A.2d 608 (Super. Ct. 1999)	Each act involved in the stalking may be a separate count of stalking in an indictment even where each act is part of course of conduct making up stalking, since each new act creates a new course of conduct.
	Commw. v. Urrutia	Stalking	653 A.2d 706 (Super. Ct. 1995), <i>appeal denied</i> , 661 A.2d 873 (1995)	Proof of no legitimate purpose is not required, <i>contra</i> harassment law. Evidence of civil protection order may be used to show intent and course of conduct.

PA cont.	Commw. v. Johnson	Stalking	2001 PA. Super. 60, 2001 Pa. Super. LEXIS 193 (Super. Ct. 2001)	A following that was interrupted and a separate surveillance on the same day constitute a course of action involving 2 separate acts.
	Commw. v. Reese	Stalking Harassment	725 A.2d 191 (Super. Ct. 1999), <i>appeal denied</i> , July 9, 1999, 1999 Pa. LEXIS 1947 (1999)	Harassment is lesser included offense of stalking.
	Commw. v. Green	Threat	429 A.2d 1180 (Super. Ct. 1981)	Vagueness claim rejected (“terrorize” activity is described with requisite precision).
	Commw. v. Bunting	Threat	426 A.2d 130 (Super. Ct. 1981)	Vagueness claims rejected (statute gives fair warning).
	Commw. v. Kelley	Threat	664 A.2d 123 (Super. Ct. 1995), <i>appeal denied</i> , 674 A.2d 1068 (1996)	Evidence is not needed to prove victim was actually frightened. Threat to third party was done in reckless disregard of risk of causing terror; intent to terrorize may be inferred.
	Commw. v. Tizer	Threat	684 A.2d 597 (Super. Ct. 1996)	Neither ability to carry out threat nor victim belief that threat will be carried out is essential element of terrorizing. Spur of the moment defense for threats made in anger is not applicable where no argument in progress and victim made no threats of any sort.
	Commw. v. Cancilla	Threat	649 A.2d 991 (Super. Ct. 1994)	Threats through third party (911 call) were done in reckless disregard of risk of causing terror.
	Commw. v. Campbell	Threat	625 A.2d 1215 (Super. Ct. 1993)	Threat through third party was done in reckless disregard of causing terror. Intent to cause terror is controlling, not whether threat fully understood.

PA cont.	Commw. v. Hudgens	Threat	582 A.2d 1352 (Super. Ct. 1990)	Spur of moment/excited utterance defense that threat made in anger during dispute is not available where victim made no threats of any kind and weapon brandished. Ability to carry out threat is not required.
	Commw. v. Anneski	Threat	525 A.2d 373 (Super. Ct.), <i>appeal denied</i> , 532 A.2d 19 (1987)	Neither ability to act nor actual victim fear is required by statute. Spur of moment threat made in transitory anger is not covered by law.
	Commw. v. Kidd	Threat	442 A.2d 826 (Super. Ct. 1982)	Spur of moment anger leading to threat may undercut actual intent to cause fear.
	Commw. v. Hardwick	Threat	445 A.2d 796 (Super. Ct. 1982)	Intent to carry out threat is not part of crime, only intent to terrorize is needed.
	Commw. v. Ferrer	Threat	423 A.2d 423 (Super. Ct. 1980)	Threat to commit crime of violence may be inferred from speech.
	Commw. v. Ashford	Threat	407 A.2d 1328 (Super. Ct. 1979)	Statute does not require that there be a present ability to carry out threat.
	Commw. v. Duncan	Harassment	363 A.2d 803 (Super. Ct. 1976)	Vagueness and overbreadth claims rejected (no political content to speech in instant case. Statutory requirement for intent undercuts claim). Speaking can constitute course of conduct under harassment law.
	Commw. v. Townley	Harassment	722 A.2d 1098 (Super. Ct. 1998)	Harassment is not lesser included offense within assault, where the former requires intent, but the latter crime does not.

PA cont.	Commw. v. Hendrickson	Harassment by fax	724 A.2d 315 (1999)	Vagueness and overbreadth claims rejected (statute directed at conduct, not content of speech; intent requirement limits overbreadth possibility; common meanings of statutory terms sufficient to give warning, especially where intent requirement to harass is part of law).
	Commw. v. Lewis	Telephone harassment	30 Pa. D. & C.2d 133 (1962)	Vagueness and overbreadth claims rejected (obscenity is not protected speech).
RI	State v. Fonesca	Stalking	670 A.2d 1237 (1996)	Vagueness claims rejected (phrase “repeatedly follows or harasses” is not vague and does not potentially require two series of harassing acts).
	State v. Breen	Stalking	673 A.2d 75 (1996)	Constitutionality challenge rejected (citing <i>Fonseca</i>).
SC	State v. Prince	Stalking	517 S.E.2d 229 Ct. App. 1999)	Acts of property damage are acts of violence for purposes of enhanced aggravated stalking charge.
	State v. Brown	Telephone harassment	266 S.E.2d 64 (1980)	Vagueness and overbreadth claims rejected (law is interpreted to require evidence of sole intent to make obscene, threatening, or harassing calls).
SD	State v. McGill	Stalking	536 N.W.2d 89 (1995)	Vagueness claim rejected (terms “willful,” “maliciously,” “repeatedly,” “follows,” and harass” are not vague because they are in common usage, citing decisions in other states).
	State v. Hoxie	Stalking	963 S.W.2d (1998)	Rule requiring state to narrow allegations from among numerous claimed actions testimony (“election”) that applies to single act charge is not applicable to stalking, which subsumes a series

				of acts.
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SD cont.	State v. Hauge	Letter harassment Protection order	547 N.W.2d 173 (1996)	First Amendment and overbreadth challenges rejected (protection orders serve valid purpose of protecting the vulnerable. If order were potentially overbroad, proper challenge was to seek order modification, not its violation).
	State v. Diede	Telephone harassment	319 N.W.2d 818 (1982)	Vagueness, overbreadth claims rejected (“repeated” means more than one call; term “anonymous” is not vague).
TN	State v. Lakatos	Telephone harassment	900 S.W.2d 699 (Ct. Crim. App. 1994)	Vagueness and overbreadth claims rejected (phrase “without a legitimate purpose of communication” is limited by intent and alarm requirements. Law regulates conduct not speech).
	State v. Carter	Telephone harassment	687 S.W.2d 292 (Ct. Crim. App. 1984)	Vagueness claim rejected (words “lewd, lascivious, and obscene” are sufficient descriptions).
TX	Long v. State	Stalking	931 S.W.2d 285 (Ct. Crim. App. 1996)	Void for vagueness; (statute needs reasonable fear and knowing clauses, predicate act nexus to stalking is missing).
	Clements v. State	Stalking	19 S.W.3d 442 (Ct. App. 2000)	Vagueness and overbreadth claims rejected (law specifies what conduct is prohibited and includes intent provision. Attempt to “save” marriage is not constitutionally protected conduct requiring close scrutiny of law). Events occurring before law’s enactment are admissible as showing victim state of mind; this does not constitute element of crime.
	Escobedo v. State	Stalking	2000 WL 795307 (Ct. App. 2000)	Vagueness and state due process challenges rejected (person of ordinary intelligence knows what law means).

TX cont.	Poteet v. State	Order violation Threat	957 S.W.2d 165 (Ct. App. 1997)	Service of order presumed where defendant in court when order issued and had waived court reporter where only record of service would come from court record. Threat intent may be inferred from actions.
	Gonzales v. State	Threat	2000 Tex. App. LEXIS 5555 (Ct. App. 2000)	Uncertainty about when threat would be carried out does not undercut “imminent threat” language.
	Dues v. State	Threat	634 S.W.2d 304 (Ct. Crim. App. 1982)	Present inability to carry out threat is irrelevant and victim fear irrelevant to defendant intent to terrorize.
	Gonzales v. State	Threat	2000 Tex. App. LEXIS 5555 (Ct. App. 2000)	Victim fear is not an element of crime; only defendant intent to create fear. Victim fear may be relevant to immediacy of threat, an element of crime.
	Cook v. State	Threat	940 S.W.2d 344 (Ct. App. 1997)	Intent is inferred from acts, words, and conduct; conditional threat is covered where there is proximity between condition and threatened harm.
	Bryant v. State	Threat	905 S.W.2d 457 (Ct. App. 1995)	Conditional threat based on future acts is not within statute’s requirement for fear of “imminent” danger.
	George v. State	Threat	841 S.W.2d 544 (Ct. App. 1992), <i>aff’d on discretionary review</i> , 890 S.W.2d 73 (1994 Ct. Crim. App.)	Defendant intent can not be inferred from victim response, since actual fear is not required. Ability or intention to carry out threat is irrelevant.
	Webb v. State	Retaliation (threats)	991 S.w.2d 408 (Ct. App. 1999)	Vagueness and overbreadth claims rejected (threat is not protected speech; conditional threat based upon position as potential witness

				is reasonable interpretation of statutory term “retaliate”).
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TX cont.	Puckett v. State	Retaliation	801 S.W.2d 188 (Ct. App. 1990)	Claim of First Amendment protection as applied to facts of case rejected (threats are not protected speech).
	Kramer v. Price	Harassment	712 F.2d 174 (5 th Cir. 1983), <i>on reh</i> , 723 F.2d 1164 (5 th Cir. 1984) (<i>per curium</i>) (vacating panel opinion on other grounds and affirming decision)	Void for vagueness (terms “annoy” and “alarm” have not been construed by state courts that would limit their scope; hence, it is unclear what standard to use to measure annoyance).
	May v. State	Telephone harassment	765 S.W.2d 438 (Ct. Crim. App. 1989) (<i>en banc</i>)	Void for vagueness (crime depends upon sensitivity of victim, rather than use of reasonable person; terms “annoys” and “alarms” are not defined).
	Townsend v. State	Telephone harassment	1999 Tex. App. LEXIS 9561 (Ct. App. 1999)	Vagueness and overbreadth claims rejected (citing <i>DeWillis</i>).
	DeWillis v. State	Telephone harassment	951 S.W.2d 212 (Ct. App. 1997) (<i>habeas denial</i>), <i>direct appeal aff’d</i> , 1998 Tex. App. LEXIS 431 (Ct. App. 1998)	Vagueness claim rejected (new law specifically defines the conduct necessary to harass; reasonable person standard is implied in use of term “another.”)
	Bader v. State	Telephone harassment	773 S.W.2d 769 (Ct. App. 1989)	Vagueness and overbreadth claims rejected (phrase “what alarms people” is adequately defined; use of reasonable standard provides measure for law).

TX cont.	Alobaidi v. State	Telephone harassment	433 S.W.2d 440 (Ct. Crim. App.), <i>cert. denied</i> , 393 U.S. 943 (1968)	Equal protection claim denied (claim that statutory exception to its application for legitimate communications discriminates by permitting one class of callers to use obscene language, but not another, misreads statute; challenged phrase refers to harassing communications only).
	Manemann v. State	Telephone harassment	878 S.W.2d 334 (Ct. App. 1994)	Objective test to be used to measure threat. Threats may be implicit. Ability to act is not required by law.
	Kramer v. State	Letter harassment	605 S.W.2d 861 (Ct. Crim. App. 1980)	Vagueness and overbreadth claims rejected (terms “coarse” and “offensive” are not vague since core of law is intent to harass thus preventing subjective standard of blame. Law does not deal with public communication.).
UT	Salt Lake City v. Lopez	Stalking	935 P.2d 1259 (Ct. App. 1997)	Vagueness and overbreadth claims rejected (phrase “emotional distress” is defined by tort law to mean outrageous and intolerable behavior. Law is directed at threatening, not innocent associations.
	State v. Spainhower	Threat	988 P.2d 452 (Ct. App. 1999)	Victim fear is not an element of crime, although it can be considered by jury.
VT	State v. Goyette	Harassment protection order	691 A.2d 1064 (1997)	Validity of scope of protective order based on stipulations of fact may not be collaterally attacked in criminal trial.
	State v. Wilcox	Telephone harassment	628 A.2d 924 (1993)	Intent to harass must exist when telephone call is made rather than rising during conversation, although intent to harass need not be sole purpose of call.

VA	Parker v. Commw.	Stalking	485 S.E.2d 150 (Ct. App. 1997), <i>cert. denied</i> , 118 S.Ct. 1510 (1998)	Vagueness, overbreadth claims rejected with reasonable fear and knowing provisions (adequately inform of law's proscription).
	Woolfolk v. Commw.	Stalking	447 S.E.2d 530 (Ct. App. (1994)	Vagueness and overbreadth claims rejected (reasonable, great distress meaning given to "emotional stress" language. Statute construed to include "having no legitimate purpose").
	Bowen v. Commw.	Stalking	499 S.E.2d 20 (Ct. App. 1998)	Statute requires actual knowledge of victim fear, rather than reasonably should have known.
	Perkins v. Commw.	Threat	402 S.E.2d 229 (Ct. App. 1991)	Vagueness challenge rejected.
	Jones v. Commw.	Threat (arson)	1999 Va. App. LEXIS 127 (Ct. App. 1999)	It is for the jury to determine credibility where victim delays report of threat to police.
	Wyatt v. Commw.	Threat (arson)	1998 Va. App. LEXIS 167 (Ct. App. 1998)	Victim delay in reporting threat goes to credibility of testimony about fear, rather than proving unconcern.
	Henry v. Commw.	Threat (arson)	1997 Va. App. LEXIS 404 (Ct. App. 1997)	Evidence of prior bad acts subsequent to threat is admissible to show reasonableness of victim fear.
	Saunders v. Commw.	Letter threat	523 S.E.2d 509 (Ct. App. 2000)	Statute requires proof of <i>mens re</i> , not malice, for criminal intent.
	Johnson v. Marcel	Harassment	465 S.E.2d 815 (Ct. App. 1996)	Harassment by landlord in violation of protective order is equated to common law trespass as a cause of action.
	Walker v. Dillard	Telephone harassment	523 F.2d 3 (4 th Cir.), <i>cert. denied</i> , 423 U.S. 906 (1975)	Overbroad (application of statute is not limited to caller; use of terms "vulgar" and "profane" is undefined).

WA	State v. Lee	Stalking	957 P.2d 741 (1998), <i>aff'g</i> , 917 P.2d 159 (Ct. App 1996)	Vagueness and overbreadth claims rejected (there is no constitutionally protected right to travel under First Amendment. Term “follows” is not vague; no right to follow another: “without lawful authority” is a valid application to following).
	State v. Ainslie	Stalking	11 P.3d 318 (Ct. App. 2000)	Void for vagueness challenge rejected (person of ordinary understanding would have known that he was stalking).
	State v. Petz	Stalking	1999 Wash. App. LEXIS 1565 (Ct. App. 1999)	First Amendment claim of protection for posting of flyers rejected (non-traditional political conduct, not speech, is regulated; any potential overbreadth may be dealt with on case-by-cases basis).
	State v. Partowkia	Stalking	1999 Wash. App. LEXIS 1228 (Ct. App. 1999)	Vagueness and overbreadth challenges rejected (citing <i>Lee</i>).
	State v. Terry	Stalking	2000 Wash. App. LEXIS 1886 (Ct. App. 2000)	Defendant’s knowledge that behavior would create fear and knowing violation of protective order constitutes stalking.
	State v. Wilson	Stalking	99 Wa. App. 1049; 2000 Wash. App. LEXIS 352 (Ct. App. 2000)	Defendant knew or should have known of wife’s fear from his erratic behavior in appearing in locations where she was despite court order.
	State v. Clemonts	Stalking	2000 Wash. App. LEXIS 220 (Ct. App. 2000)	Evidence was sufficient to show a specific person was target of the stalking behavior.
	State v. Taylor	Stalking	2000 Wash. App. LEXIS 643 (Ct. App. 2000)	Court is not obligated to require defendant to plead not guilty by reason of insanity.

WA cont.	State v. Emery	Stalking sentencing	1999 Wash. App. LEXIS 1654 (Ct. App. 1999)	Defendant's taking advantage of position as employee to gain information to facilitate stalking justifies enhanced sentence.
	State v. Alvarez	Threat	904 P.2d 754 (1995) (<i>en banc</i>)	One act of harassment threat is sufficient without pattern of conduct required.
	State v. Maciolek	Threat	676 P.2d 996 (1984) (<i>en banc</i>)	Vagueness claim rejected (definition of "weapons" and weapon "use" is understandable to average person. Even if "deadly weapon" is potentially vague in its outer limits, no such problem exists in this case).
	State v. J.M.	Threat	6P.3d 607 (Ct. App. 2000)	State need not prove defendant knew threat said to third person would be transmitted to victim nor that victim fear would result.
	City of Seattle v. Allen	Threat	911 P.2d 1354 (Ct. App. 1996)	Defendant charged under statute directed at threat of future injury may instead have actually committed assault by threat of immediate injury.
	State v. Davila-Mendez	Threat	2000 Wash. App. LEXIS 2461 (Ct. App. 2000)	E-mail threats are prosecuted under general harassment law, not telephone harassment law
	City of Seattle v. Huff	Telephone threat	767 P.2d 572 (1989) (<i>en banc</i>)	Vagueness and overbreadth claims rejected (non-public forum speech over telephone may be regulated even where non-fighting words involved and are viewpoint neutral. Terms "intimidate," "harass," and "torment" are narrowly defined; intent requirement makes law even less vague).
	State v. Pierce	Telephone threat	1999 Wash. App. LEXIS 1231 (Ct. App. 1999)	State need not prove victim fear from threat.
	State v. Savaria	Telephone threat	919 P.2d 1263 (Ct. App. 1996)	Victim fear need not be of precise threat.

WA cont.	State v. Smith	Harassment	759 P.2d 372 (1988) (<i>en banc</i>)	Vagueness claim rejected (phrase “without lawful authority” is valid, because one can look to readily ascertainable sources of law to test conduct).
	State v. Williams	Harassment	991 P.2d 107 (Ct. App. 2000)	Vagueness and overbreadth challenges rejected (law does not reach substantial amount of protected speech due to intent, “malicious” acts, and “reasonable fear” provisions. Phrase “mental health” when read in context of law gives adequate notice.
	State v. Costello	Harassment	2000 Wash. App. LEXIS 5 (Ct. App. 2000)	Evidence of offer to immediately fight does not satisfy future harm element of harassment law.
	State v. Ragin	Harassment evidence	972 P.2d 519 (Ct. App. 1999)	Evidence of prior bad acts is relevant to proving reasonable fear element of harassment crime.
	Sate v. Klinke	Harassment	1999 Wash. App. LEXIS 1614 (Ct. App. 1999)	Evidence of violation of protective order is admissible to prove element of crime, reasonable victim fear.
	City of Bellevue v. Lorang	Telephone harassment	992 P.2d 496 (1999) (<i>en banc</i>)	First Amendment and vagueness challenges upheld (term “profane” to describe harassing speech has religious connotation which is not content neutral. Language is no guide to law enforcement responding to complaint).
	State v. Alexander	Telephone harassment	888 P.2d 175 (Ct. App. 1995)	Vagueness and overbreadth claims rejected (terms “embarrass and ”profane” are not overbroad. Statute is not overbroad in toto because it regulates conduct not speech. Terms “anonymously” and “repeatedly” are in common usage).

WA cont.	State v. Dyson	Telephone harassment	872 P.2d 1115 (Ct. App. 1994)	Vagueness and overbreadth claims rejected (intent requirement makes any impact on speech minimal, especially so in view of its focus on “indecent” speech that is given minimal First Amendment protections. Phrase “extremely inconvenient hour” gives adequate notice.).
	City of Everett v. Moore	Telephone harassment	683 P.2d 617 (Ct. App. 1984)	Void for vagueness and overbroad (law provides no clear line as to what is criminal and what is not; e.g., always coming late to meetings can be seriously annoying, but not criminal) (statute not limited to telephone calls; alarming behavior can have legitimate purpose: e.g., fire alarm).
	Perkins v. State	Telephone harassment	402 S.E.2d 229 (Ct. App. 1991)	Vagueness and overbreadth challenges rejected (statute interpreted to require <i>mens re</i> and limited to obscene language; as such law does not reach substantial amount of protected speech. Intent requirement ensures law provides adequate notice.
	City of Redmond v. Burkhart	Telephone harassment	991 P.2d 717 (Ct. App. 2000)	Law encompasses instances where intent to harass arises during telephone call, in addition to those calls where intent to harass was basis for making call.
WV	State v. Thorne	Harassment Threat	333 S.E.2d 817, <i>cert. denied</i> , 474 U.S. 996 (1985)	Overbreadth claim rejected (statute does not prohibit communicative speech).
	Thorne v. Bailey	Harassment	846 F.2d 241 (4th Cir. 1988)	Overbreadth claim rejected (statute criminalizes conduct, not speech).

WI	State v. Rapey	Stalking	581 N.W.2d 593 (Ct. App. 1998); 1998 Wisc. App. LEXIS 264 (1998)	Vagueness and overbreadth challenges rejected (Statute provides “fair notice,” citing <i>Ruesch</i> ; protected expression is not reached by law-aimed at intolerable behavior) There is no violation of right to travel, citing <i>Ruesch</i> .
	State v. Ruesch	Stalking	571 N.W.2d 898 (Ct. App. 1997)	Vagueness, overbreadth, and equal protection claims rejected (overbreadth doctrine is not applicable to right of intrastate travel; intent and “reasonable person” standard defeats vagueness challenge; exclusion for labor picketing is rational).
	State v. Sveum	Stalking Harassment	584 N.W.2d 137 (Ct. App. 1998)	Threats made prior to harassing acts may be found by jury to “accompany” harassing acts. Single act provoking fear is sufficient to prove fear from “course of conduct.”
	Bachowski v. Salamone	Harassment protection order	407 N.W.2d 533 (1987)	Vagueness and overbreadth challenges rejected (provisions of law requiring intent and absence of any legitimate purpose, as well as course of conduct element, provide specificity and ensure law does not reach to protected speech). Injunction was too broad where its order included acts not proven at trial.
	State v. Schordie	Harassment protection order	570 N.W.2d 881 (Ct. App. 1997)	Attempt to run over victim also violated no-contact order.
	State v. Clark	Harassment protection order	Unreported (Ct. App. 1997)	Collateral attack on harassment order is not permitted in criminal violation proceeding.
	Katie T. v. Justin R	Harassment protection	555 N.W. 2d 651 (Ct. App. 1996)	Student harassment order against another student required

		order		appointment of guardians <i>ad litem</i> to be paid by county.
WI cont.	Sarazin v. Hudson	Harassment protection order	555 N.W.2d 411 (Ct. App. 1996)	Evidence of harassment is sufficient for order issuance.
	State v. Nienhardt	Harassment protection order	537 N.W.2d 123 (Ct. App. 1995)	Travel condition of probation for violating harassment order upheld where order prohibits entry into town where victim of telephone harassment lives; remove temptation rationale.
	State v. Bouzek	Harassment protection order	484 N.W.2d 362 (Ct. App. 1992)	Collateral attack is not permitted against underlying injunction in criminal proceeding for its violation.
	Croop v. Sweeney	Harassment injunction	605 N.W.2d 664 (Ct. App. 1999)	Order provision against possession of firearm is not supported by evidence when there was no indication of past ownership of gun.
	Aderman v. Greenwood	Harassment injunction	587 N.W.2d 215 (Ct. App. 1998)	One act of harassment involving force is sufficient basis for order issuance.
	State v. Greene	Harassment injunction	573 NW2d 900 (Ct. App. 1997) (table)	Violation of no-contact bail condition is bail jumping; restitution to victim employer for costs to protect victim struck down (only victim is eligible).
	State v. Dronso	Telephone harassment	279 N.W.2d 710 (Ct. App. 1979)	Overbroad (phrase "intent to annoy" is too encompassing, because it includes communicative speech not intended to annoy).
WY	Brock v. State	Stalking	981 P.2d 465 (1999)	Vagueness and overbreadth challenges rejected (statute provides adequate standard of conduct; 2000 Tex. App. LEXIS 5555 (Ct. App. 2000) no infringement of 1 st Amendment protected activities).

WY cont.	Garton v. State	Stalking	910 P.2d 1348 (1996)	Vagueness and overbreadth claims rejected (citing <i>Luplow</i>). It is not a denial of equal protection to increase penalties for stalking in violation of probation condition (valid public purpose in this classification).
	Luplow v. State	Stalking	897 P.2d 463 (1995)	Vagueness and overbreadth claims rejected (law is content neutral; terms “harass” and “substantial” are adequately defined by law and term “emotional distress” is defined by prior civil cases).
	Vit v. State	Civil liability	909 P.2d 953 (1996)	Vagueness and overbreadth claims rejected (citing <i>Luplow</i>).
US	United States v. Sweeney	Stalking	48 MJ 117 (Ct. App. Armed Forces 1998)	Testimony of former wife of defendant’s stalking is admissible to prove stalking intent against second wife.
	United States v. Young	Interstate stalking (18 U.S.C. 2261A)	1999 U.S. App. LEXIS 32721 (4 th Cir. 1999)	Tenth Amendment and vagueness challenges rejected (statute contains interstate travel requirement; defendant lacks standing to claim vagueness, since his acts fall within statute’s scope of conduct prohibition).
	United States v. Vollmer	Interstate stalking (18 U.S.C. 2261A)	2001 U.S. App. LEXIS 348 (8 th Cir. 2001) (Per curium)	Threatening intent combined with acts to place victim in fear justify Congress’ use of Commerce Clause; <i>Morrison</i> , 529 U.S. 598 (2000) inapposite.
	United States v. Alkhabaz	Electronic threat (18 U.S.C. 875 (c))	104 F.3d 1492 (6 th Cir. 1997), <i>aff’g</i> , United States v. Baker, 890 F. Supp. 1375 (E. D. Mich. 1995)	Interstate threats by e-mail to third party are not covered by federal threat law (statute requires intimidation element).
US cont.	United States v. Kelner	Threat (18 U.S.C. 875 (c))	534 F.2d 1020 (2 ^d Cir. 1976)	First Amendment challenge rejected (“threat” defined to limit constitutional objections to those

				which on its face are unequivocal, unconditional, immediate, and specific so to convey gravity of purpose and immediate prospect of execution).
	United States v. Spruill	Telephone threat (18 U.S.C. 844 (e))	118 F.3d 221 (4th Cir. 1997), <i>cert. denied</i> , 118 S.Ct. 2347 (1998)	Federal threat law requires bomb threat be pled and proven even where threat is to an individual.
	United States v. Fulmer	Threat (18 U.S.C. 115 (a)(1)(B))	108 F.3d 1486 (1 st Cir. 1997)	Jury may determine that ambiguous statement is true threat. Test of threat is reasonable recipient, not reasonable sender.
	United States v. Whiffen	Telephone threat (18 U.S.C. 875 (c))	121 F.3d 18 (1 st Cir. 1997)	Test of threat, based on general intent requirement, is whether defendant's actions may reasonably be construed to be threat by recipient.
	United States v. Aman	Letter threat (18 U.S.C. 876)	31 F.3d 550 (7 th Cir. 1994), <i>aff'd after remand</i> , 54 F.3d 779 (7 th Cir. 1995)	Subjective (by victim) measure of threatening content is to be used over showing actual intent to threaten.
	United States v. Bellrichard	Letter threat (18 U.S.C. 876)	994 F.2d 1318 (8 th Cir. 1993)	First Amendment claim rejected (conditional threats may be "true threats;" use of outrageous terms does not turn threat into political speech).
	Apollomedia Corp. v. Reno	Electronic harassment (47 U.S.C. 223 (a)(1)(A))	19 F. Supp.2d 1081 (1998), <i>aff'd</i> , 119 S.Ct. 1450 (1999)	Vagueness claim rejected (use of term "indecent" and intent requirement is redundant with use of term "obscene" to describe communications barred by statute).

US cont.	United States v. Lampley	Interstate telephone harassment and threats (18 USC 875 (c); 47 U.S.C. 223 (a)(1)(D))	573 F.2d 783 (3rd Cir. 1978)	Vagueness and First Amendment challenges rejected (law is not directed at mere communication because of intent requirement; there is no requirement that language used be itself harassing. Vagueness claim is vitiated by intent requirement.).
	United States v. Twine	Interstate telephone and mail threats (18 U.S.C. 875 (c), 876)	853 F.2d 676 (9th Cir. (1988)	Specific intent to threaten is required (<i>contra Whiffen, Fulmer</i>).
	United States v. Francis	Interstate telephone threat (18 U.S.C. 875 (c))	164 F.3d 120 (2 nd Cir. 1999), <i>rev'g</i> , 975 F. Supp. 288 (S.D. N.Y. 1997)	Call forwarding service across state lines provides jurisdiction to federal court. Government must show general intent to act; need not prove intent to be threatening.
	United States v. Freeman	Interstate telephone threat (18 U.S.C. 875 (c))	176 F.3d 575 (1 st Cir. 1999).	Plea of guilty subsumes claim that prank calls are not within scope of threatening telephone calls law; standard is whether defendant "reasonably should have known" call would be taken as threat.
	United States v. Kammersell	Interstate threat (18 U.S.C. 875 (c))	196 F.3d 1137 (10 th Cir. 1999), <i>aff'g</i> , 7 F. Supp.2d 1196, <i>adopting</i> , 1998 U.S. Dist. LEXIS 8712, 8719 (D. Utah 1998)	Threatening communication using the Internet to person in same state creates federal jurisdiction under Commerce Clause.
	United States v. Popa	Telephone harassment (47 U.S.C. 223)	187 F.3d 672 (D.C. Cir. 1999)	Statute violates First Amendment as applied to defendant's calls to U.S. Attorney's Office, regardless of annoying nature.

US cont.	Baird v. Perez	Telephone harassment (42 U.S.C. 1983)	1999 U.S. Dist. LEXIS 8814 (S.D.N.Y. 1999)	Telephone harassment by police officer is not a violation of constitutionally protected privacy rights.
	United States v. Darsey	Interstate telephone harassment (47 U.S.C. 223 (a)(1)(D))	342 F. Supp. 311 (E.D. Pa. 1972)	Harassing phone call law is not applicable unless harassment sole motive for calls.