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**Stalking: *Prosecutors
Convict and Restrict***

American Prosecutors
Research Institute

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Research Institute. This monograph was
developed under Grant No. 94-DD-CX-0008:
Interagency Strategies for Domestic Violence and
Stalking, Bureau of Justice Assistance, U.S.
Department of Justice. Points of view do not
necessarily represent official positions of the U.S.
Department of Justice.

Contents

<i>Forward</i>	v
<i>Acknowledgments</i>	vii
Introduction	1
Purpose of the Study and Report	2
Methodology	2
How to Use this Report	3
Two Innovative Antistalking Programs	
Dover, New Hampshire	5
History	5
Statutes	5
Strengths of New Hampshire's Law	6
Weaknesses of New Hampshire's Law	6
Prosecution	6
Law Enforcement	7
Conditions of Bail and Sentencing Alternatives	8
How Does <i>JurisMonitor</i> Work?	8
A Coordinated Response	9
Criticisms of the <i>JurisMonitor</i> System	9
Victim Advocacy	10
Establishing Public/Private Partnerships	11
Cellular One Portable Phones	11
Alert Link Pendants	11
Conclusion	11
Los Angeles, California	12
History	12
Law Enforcement	13
MAC Tables	13
Threat Management Unit	13
SMART Unit	15
Typologies of Stalkers	15
Statute	16
Strengths of California's Law	17
Weaknesses of California's Law	17
Prosecution	17
Family Violence Division	17
Use of Experts	17
Beyond Convictions	18
Establishing Public/Private Partnerships	18
Association of Threat Assessment Professionals	18
Conclusion	18
Endnotes	19
Recommendations	21
Federal Law	23
The Interstate Stalking Punishment and Prevention Act of 1996	23
Practical Issues: Using The Act	23
Investigation	24
Charging And Trial	24
Training	25
Conclusion	26
Endnotes	26
Handling The Stalking Victim	27
Who Are Stalking Victims?	27
Tips For Prosecutors	27
Telephone Survey Results	29
Methodology	29
Findings	29
Background	29
Case Management	29
Pretrial Policies	30
Trials	30
Sentencing Options	30
Victim Support Programs	31
Conclusion	31
Appendix A: New Hampshire Stalking Statute	33
Appendix B: California Stalking Statute	35
Appendix C: Stalking Law Code Citations	37
Appendix D: Case Law Review	39
Alabama	39
Arkansas	40
California	40
Connecticut	41
Delaware	41

Contents Continued

iv

Florida	42
Georgia	42
Illinois	43
Indiana	43
Massachusetts	44
Michigan	45
Montana	45
New York	46
Ohio	46
Oklahoma	47
Oregon	47
Pennsylvania	47
South Dakota	48
Virginia	48
Wyoming	49
Endnotes	49
Appendix E: Telephone Survey	
Instrument	51
Case Management	51
Pretrial Policies	51
Diversion	51
Trials	52
Sentencing Options	52
Victim Support Programs	52
Background Information	52
Appendix F: Telephone Survey	
Results	53

Foreword

I am pleased to present the monograph, *STALKING: Prosecutors Convict and Restrict*, prepared by the American Prosecutors Research Institute (APRI). This report describes current initiatives local prosecutors can follow to successfully prosecute, convict, and sentence stalkers. The report also examines two innovative antistalking programs within an urban and a rural jurisdiction. Prosecutors, probation officers, law enforcement officers, judges, victim advocates and other key criminal justice practitioners were interviewed at each site. The antistalking programs in Dover, NH, and Los Angeles, CA, demonstrate how law enforcement agencies and prosecutors collaborate to hold offenders accountable and improve victim safety. Funded by the Bureau of Justice Assistance (BJA), this publication documents the importance of cooperation among agencies as well as prioritizing interagency resources. Overall, in light of limited resources, the report provides criminal justice practitioners with innovative ideas and solutions for implementing antistalking programs.

In September 1994, the President signed the Violent Crime Control and Law Enforcement Act. As part of the Act, the Department of Justice created the Violence Against Women Grants Office (VAWGO) to continue BJA's efforts to assist State and local criminal justice systems in breaking the cycle of violence directed toward women. BJA and VAWGO continuously collaborate to assist investigators and prosecutors in effectively meeting the unique demands of handling stalking cases.

For prosecutors, stalking cases present the combined challenges of terrified victims and significant concern for victim safety, complex charging decisions, and uninformed judges and juries. Successful prosecution requires time and resources not available to many criminal justice

agencies. The goals, objectives and activities outlined by APRI were designed to increase local prosecutors' effectiveness in dealing with stalking cases by providing prosecutors with the necessary information and training tools. Through telephone surveys and interviews with local prosecutors' offices nationwide, APRI ascertained that statutory challenges and counter-stalking initiatives were in their infancy.

With BJA funding, APRI developed a "how-to" training curriculum on investigation and prosecution of stalking cases, which included: a comprehensive overview of stalking as a crime, profiles of stalking cases; and innovative tactics, techniques, policies, and procedures to enhance the investigation and prosecution of offenders while protecting victims; and a presentation of methods to overcome or mitigate the challenges and obstacles of these cases. In July 1996, APRI launched *Mission Possible: Stopping Stalkers*, the first national stalking training for prosecutors and law enforcement held in Alexandria, Virginia.

In the fight against stalking, BJA recognizes the American Prosecutors Research Institute's achievements in identifying stalking prosecution methods and informing local prosecutors of enhanced strategies to combat obstacles with stalking cases in their jurisdictions. This report serves as an implementation tool for local prosecutors to incorporate antistalking programs within their jurisdictions. I look forward to continued success in communicating innovative techniques and effective programs addressing criminal justice policy issues to State and local justice system practitioners.

Nancy E. Gist
Director
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Acknowledgements

The American Prosecutors Research Institute (APRI) is pleased to provide criminal justice practitioners nationwide with a publication documenting innovative strategies for combating stalkers. This publication could not have been completed without the efforts of numerous individuals. In particular, APRI is grateful to the telephone survey respondents and key staff at selected case study sites for their assistance. Without their cooperation and contributions, this monograph would not exist. The following individuals were invaluable in providing information and organizing the site visits to their jurisdictions: *Lieutenant John Lane*, Threat Management Unit, Los Angeles, California, Police Department; *Rhonda Saunders*, Deputy District Attorney, Los Angeles County, California, District Attorney's Office; and *George Wattendorf*, Prosecuting Attorney, Dover, New Hampshire.

In addition, we would like to extend our sincere gratitude to the many individuals who participated in interviews with our staff during the site visits. The information gathered was crucial to our understanding these programs and contributed greatly to the writing of this report.

The dedication and commitment of APRI staff to the completion of this document cannot be overlooked. The following individuals researched information, drafted various sections, and edited the monograph throughout the project:

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One individual stands out as providing support to the successful production of this monograph. This person conducted background research and site visits, collected information, authored several sections of the work, and coordinated the drafts and edited all of the sections. APRI recognizes the outstanding work of staff member *Kathy Free*, Policy Analyst, Research Unit.

APRI also recognizes the excellent work of Editorial Experts, Inc. in polishing the text.

Finally, APRI appreciates the guidance received from the Bureau of Justice Assistance, Department of Justice. In particular, we would like to thank *Jennifer Knobe*, Grants Manager, and *Charles "Bud" Hollis*, Chief, Adjudication Branch, for their expert advice and counsel in recognizing this publication's contribution to the criminal justice field.

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Introduction

Although stalking behavior has long been recognized, only recently have legislatures enacted laws criminalizing stalking. Based on findings from the National Violence Against Women Survey, it is estimated that one out of every 12 women, or 8 million American women, is stalked during her lifetime.¹ Stalking victims and their advocates increasingly call on the criminal justice system to end the harassment and violence that plagues their lives and to hold stalkers accountable. The recent passage of antistalking legislation has increased the number of stalking cases that have reached the attention of the criminal justice system. Criminal justice practitioners are now demanding new and detailed information on the effective handling of stalking cases.

California passed the first antistalking law in 1990, making it a crime to repeatedly follow or harass someone with a credible threat to cause fear of bodily harm.² Since then, all fifty states have enacted a variety of laws that address stalking.³ Unfortunately, local tragedy is often the impetus for creating these statutes. The original California legislation was drafted in the wake of five unrelated murders of women who had been stalked in Orange County, California, including the July 1989 murder of actress Rebecca Schaeffer by an obsessed fan who had stalked her for two years. Virginia lawmakers were moved to act after Regina Butkowski was stalked for six months by a weight lifter who finally shot her, set her body on fire, and dumped it into a creek, where it was found eight months later. Support for passage of Georgia's antistalking law gained strength after Joyce Durden's estranged husband carried out his repeated death threats by gunning her down at a school where she taught mentally disabled preschoolers. He then shot himself in the head.

In many cases, stalking behavior does not

escalate to physical violence. However, as shown above, there are numerous cases in which stalking is a precursor to homicide. In addition to stopping stalking behavior the new antistalking laws give prosecutors and investigators one more weapon to use against stalkers in the hope that homicides can be prevented. Individuals who harass or threaten others in ways that previously were not considered criminal activity now can be charged under antistalking laws as well as harassment, battery, trespass, violation of orders of protection, forcible entry, or assault laws. The new antistalking laws allow law enforcement personnel to apprehend stalkers before tragedy results.

To effectively protect victims, antistalking laws must be broad in scope and carry substantial penalties. However, they must also pass constitutional muster. The heterogeneous nature of stalking behavior makes reaching an appropriate balance difficult. Stalkers, as a group, have been found to manifest a variety of psychological disorders (*e.g.*, erotomania, schizophrenia). Stalking also occurs in many contexts, from situations involving former intimates to cases involving complete strangers. Designing one law to protect all victims and reach all offenders has proven challenging.⁴

The new antistalking laws have not been a panacea, however. In a well-publicized case in Massachusetts, Kristin Lardner, a twenty-one-year-old Brookline art student, was murdered by her former boyfriend just two weeks after the state's antistalking law went into effect. In her case and many other ongoing and complex cases, the law was unable to meet the victims' needs. The inadequate law, coupled with a lack of communication between criminal justice agencies, cost Kristin Lardner her life. Prosecutors, law enforcement personnel, victims' advocates, and community organizations must

work together to develop multidisciplinary strategies that focus on victim safety and offender accountability.

In 1993, Congress directed the National Institute of Justice (NIJ) to undertake a project to develop model antistalking legislation that would withstand constitutional scrutiny. This model code proposes a comprehensive definition of stalking, an in-depth examination of antistalking laws in the United States, and a starting point for understanding stalking behavior. The NIJ study also suggests strategies for managing stalking cases, including the adoption of a multidisciplinary approach.⁵

Prosecuting stalkers promises victims relief from continued harassment and violence. At the same time, it affirms the state's intolerance of stalking behavior. For a victim who already has been harassed by a stalker, prosecution may prevent continued stalking by punishing the stalker, by using the power of the court to force the stalker into rehabilitative treatment, and by empowering the victim to arrange for his or her own security.

No empirical studies on the effectiveness of prosecution policies in preventing stalking exist. From the program briefs presented in this monograph, it is clear that prosecutors throughout the country have assumed a leadership role in protecting victims from stalkers. This monograph examines two innovative multidisciplinary antistalking programs. These two programs represent an effort to improve the criminal justice system's response to stalking. The strategies and practices are the products of agencies and individual prosecutors working in both urban and rural communities throughout the country. The American Prosecutors Research Institute (APRI) selected these programs because of their dedication and

commitment to intervening and controlling stalking. However, readers are cautioned that the programs were not formally evaluated thus, no significant conclusions can be made about their effectiveness.

PURPOSE OF THE STUDY AND REPORT

The purpose of this study, conducted by APRI and funded by the U.S. Department of Justice, Bureau of Justice Assistance, is to (1) identify antistalking prosecution programs that significantly involve or are led by local prosecutors; (2) document these programs by conducting site visits and in-depth interviews with key criminal justice personnel; and (3) produce a report discussing the findings from the telephone interviews and case studies. This publication is designed for criminal justice practitioners who seek to implement a stalking program without "reinventing the wheel."

METHODOLOGY

To identify potential programs nationwide, APRI conducted telephone interviews with representatives from twenty-eight prosecutors' offices and collected detailed program information. APRI identified jurisdictions through surveys of the boards of directors of APRI, the National District Attorneys Association (NDAA), and state prosecutor coordinators; through announcements in publications produced by APRI; and through NDAA referrals. Because so few programs existed, APRI elected to conduct telephone interviews, which provided better information from respondents. This study is exploratory in nature and not intended to be nationally representative of prosecutors' offices or an evaluation of any particular program.

From the twenty-eight telephone interviews, APRI selected two jurisdictions, one large and

one small, to serve as examples. These programs use innovative and proactive approaches to manage stalking cases and enhance victim safety. APRI staff then visited the two jurisdictions to interview key personnel and observe the mechanics of these programs. All the information in this report was obtained through interviews and documents provided to APRI by representatives of the jurisdictions participating in this project.

HOW TO USE THIS REPORT

APRI drafted this publication to provide criminal justice practitioners with information on innovative stalking programs. Prosecutors may want to adopt these programs or specific activities highlighted in this report that suit their jurisdictions. For more information, contact the person designated in the report or APRI staff. Below is an outline of the sections in this monograph:

- ❖ *Program Briefs for Two Innovative Antistalking Programs* offer solutions for both urban and rural jurisdictions about how to combat common stalking problems. Both programs demonstrate the importance of multiagency cooperation, as well as prioritizing interagency resources. Also included in these descriptions are the names, addresses, and telephone numbers of individuals to contact for more information.
- ❖ *The Recommendations* provide practitioners with innovative ideas and solutions in the face of limited resources.
- ❖ *The Federal Law* section outlines the recent passage of the Interstate Stalking Punishment and Prevention Act of 1996 and the practical implications of using the Act for line prosecutors.
- ❖ In addition, the *Handling the Stalking Victim* section discusses the unique needs of stalking victims and the prosecutor's role in successfully resolving these cases.
- ❖ The *Telephone Survey Results* allow readers to compare their own experience with those of twenty-eight other jurisdictions around the country.
- ❖ Additional resources are provided in the *appendices*.

Endnotes

1. Pat Tjaden and Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, Center for Policy Research, Denver, CO, January 1997.
2. Cal. Penal Code § 646.9 (West 1990 & Supp. 1995).
3. Harvey Wallace, *A Prosecutor's Guide to Stalking*, THE PROSECUTOR, January/February 1995, at 26.
4. Richard Lingg, *Stopping Stalkers: A Critical Examination of Anti-Stalking Statutes*, 67 St. John's L. Rev. 347 (1993).
5. *Draft Final Report: Project to Conduct a Regional Seminar Series for States on Implementing Anti-Stalking Codes*, National Criminal Justice Association, Washington, D.C., unpublished, at 1.

Two Innovative Antistalking Programs

DOVER, NEW HAMPSHIRE

Vital Statistics

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Population: 30,000

History

In 1992, in Dover, New Hampshire, Prosecuting Attorney George Wattendorf began investigating the relentless stalking of a woman by her mentally ill, estranged husband. After she decided to leave him, the husband bombarded his wife with letters, visits, and phone calls and engaged in various other forms of harassing behavior. Unfortunately, at this time, New Hampshire's criminal code did not offer the prosecutor a means to intervene in the case. Traditional remedies were inadequate, frustrating both the victim and the prosecutor. Had the current antistalking statute been in effect in New Hampshire then, the prosecutor would have been able to file felony charges and immobilize the defendant with a lengthy jail term.

Also in 1992, many other states began drafting antistalking legislation. After learning that New Hampshire did not have an antistalking statute, State Representative Donna Sytek, chairman of the New Hampshire State Legislature Corrections and Criminal Justice Committee, began working in 1993 to create one. She collaborated with numerous criminal justice personnel in drafting the statute, including a representative from the American Civil Liberties

Union to avoid any potential civil rights violations.¹ Prosecutor Wattendorf represented line prosecutors in the statutory process. New Hampshire passed the resulting antistalking law in July 1993.

Statutes

New Hampshire's antistalking statute is complex and, at times, cumbersome in its application (see Appendix A). The statute provides that stalking occurs when an offender repeatedly follows a victim or repeatedly appears at a victim's residence or place of employment, causing the victim to fear for his or her personal safety. Stalking also occurs when an offender violates a restraining order by appearing or following a victim, or when an offender engages in a pattern of threatening conduct or makes threats to intimidate or cause the victim emotional distress.² The statute provides for warrantless arrests if a law enforcement officer has probable cause to believe that a violation occurred within the six hours preceding the arrest. The New Hampshire statute allows prosecutors to enhance a second stalking charge to a felony and requires judges to enforce foreign restraining orders under the full faith and credit provision of the statute.

Other charging options are available to prosecutors if an offender's behavior does not fall within the stalking statute or if stalking would be too difficult to prove. For example, the behavior may fall within New Hampshire's criminal harassment statute, which addresses any communication sent, delivered, faxed, phoned, or mailed by an aggressor (N.H. Rev. Stat. Ann. § 644:4). Additionally, prosecutors may charge an offender with a misdemeanor offense for violating an order of protection, if appropriate. Alternative charges give the prosecutor more freedom in preparing his or her case, since the intent to cause fear in the victim is often difficult to prove.

Strengths of New Hampshire's Law

- ❖ Although other states may question whether a first stalking offense should be charged as a felony or misdemeanor, New Hampshire prosecutors are confident in charging an offender with a misdemeanor because, in practice, prosecutors find it difficult to convince the trier of fact of the gravity of stalking. Society, unfortunately, does not see these crimes as significant and is reluctant to severely penalize offenders. In addition, the trier of fact is often reluctant to convict the defendant for calling and/or following the victim based on minimal physical evidence.
- ❖ A second stalking charge is enhanced to a felony, carrying a sentence of three-and-one-half to seven years in state prison. The threat of a lengthy prison sentence and felony charge discourages recidivism.
- ❖ The criminal harassment statute and the antistalking statute are the only tools prosecutors can use in stalking cases involving strangers. Most stalking legislation focuses on crimes where the offender and victim have some type of prior relationship.

Weaknesses of New Hampshire's Law

- ❖ Determined stalkers can use third parties (e.g., friends, boy/girlfriends, family) or the mail to circumvent the statute. In one case, the stalker inundated his victim with mail order products, magazines, and music records with little legal recourse. State and federal laws do not exist to prosecute these individuals, and mail order companies rarely keep records.
- ❖ Stalkers can target the victim's friends and family by telephone, mail, and leaving objects at their houses without recourse.

- ❖ To evade the law, stalkers need only move to a new jurisdiction within New Hampshire. A victim who lives and works in a different town or whose stalker relocates to another jurisdiction yet continues to harass him or her is without immediate remedy.⁹ Each jurisdiction must conduct its own investigation, giving the stalker more time to harass and terrorize the victim before being held accountable, making the criminal justice process cumbersome.
- ❖ The law does not contain a presumption or "prior bad acts" clause. For example, if a person is threatened repeatedly, that person will probably fear for his or her safety. In a case of repeated threats, the prosecution would not have to prove the fear element if the statute allowed a presumption of fear. If the statute authorized the introduction of prior bad acts (e.g., the victim sees the stalker kill a pet, or the stalker describes the harm he inflicted on a prior girlfriend), the prosecutor could use the evidence to establish fear or a pattern designed to invoke fear.

Prosecution

Early intervention in stalking cases is the key to saving lives. Using vertical prosecution to handle these cases is crucial, because the prosecutor can personally conduct the arraignments to better understand the circumstances and facts early, and have input throughout the proceedings. In addition, vertical prosecution allows the prosecutor to build a strong rapport with the victim and it prevents the victim from having to repeat his or her story to different prosecutors before each hearing.

For example, in evaluating the case, Prosecutor Wattendorf weighs civil and criminal remedies in light of the following questions: (1)

What is best for the victim? (2) How do we stop the offender's criminal behavior? Through early intervention, the prosecutor can assess whether the stalker has any mental health problems. The prosecutor might ask whether the stalking behavior would subside if the offender took prescribed medicine or whether the offender will physically harm or fatally attack his or her victim. The prosecutor can also look for signs of whether the offender would try to attack the victim if he or she were released after arrest for stalking.

Victim safety is the highest priority in stalking cases. Where appropriate, the prosecutor will encourage victims to apply for an order of protection. Using protection orders can help establish a pattern of conduct and prove the element of fear. In Dover, victims can obtain Emergency Orders of Protection twenty-four hours a day. If an incident occurs after business hours, a police officer can contact an on-call judge to issue an Emergency Order of Protection. The order is effective until 5:00 p.m. the following day, during which time an *ex parte* hearing can be held.

Establishing a good rapport with stalking victims is essential. This rapport enables victims to feel comfortable discussing their concerns and questions, making them more willing to cooperate. Although Dover has a no-drop policy for domestic violence cases, stalking cases cannot go forward without the victim's cooperation, since physical evidence rarely exists and the victim most likely is the only witness. The prosecutor will also provide the victim with a safety plan and brochure explaining the prosecutor's role in stalking cases.

Law Enforcement

The Dover Police Department is equally committed to making stalking cases a high priority. Police Chief William Fenniman's commitment of resources and dedication to resolving these cases is evidenced by the attention these cases receive from patrol officers and detectives.

For example, when a patrol officer receives a call, he or she promptly responds to the scene to assess, intervene, and collect initial information. Patrol officers are trained to identify stalking cases and closely question the victim, offender, and witnesses while at the scene. The head detective screens all incoming police reports to identify stalking cases and assign a detective to follow the case as it progresses through the system.⁴ At this time, a letter is sent to the suspect stating that he or she is under investigation for the crime of stalking. The detective tries to contact the suspect to set up a noncustodial interview.

To empower the victim, an officer or detective instructs the victim on how to collect the evidence necessary to build a case against the aggressor (*e.g.*, keeping all letters, deliveries, and answering machine message tapes). Victims may be instructed to keep a journal of all contacts or sightings of the offender and to consider a phone trap to trace the suspect's calls. Police officers will interview the victim's family members and friends to document their observations of the victim's fear and to better understand the dynamics of the case. In addition, the detective works with the victim to design a safety plan, because these cases often escalate to confrontations and violence.

The assigned detective works closely with the prosecutor to build a case against the offender. Prosecutor Wattendorf, a former police

officer with the Peterborough, New Hampshire, Police Department and currently employed by the Dover Police Department, prosecutes all the misdemeanors for the Dover District Court. His presence in the police department promotes a strong rapport between the police and prosecutor's office and encourages cooperative efforts. He serves as the point and resource person for the police department, augmenting departmental consistency in investigative and charging decisions. He periodically trains law enforcement personnel on stalking issues and is consulted regularly on these cases by patrol officers and detectives.

An innovative strategy used by the Dover Police Department to keep officers abreast of legal and investigative developments is computer-aided training (CAT). Every week police officers study a lesson plan on topics ranging from domestic violence and stalking to gun control. Officers can access the lesson plan through the computers in patrol cars or through in-house police department computers. Officers then take a short quiz of six to ten questions on the lesson plan. Police training personnel monitor the scores, which count toward officers' yearly performance evaluations. Lesson plans on domestic violence and stalking are presented several times a year.

Conditions of Bail and Sentencing Alternatives

One reason APRI selected Dover as a case study site is its success in using the *JurisMonitor* system. This relatively new, and often controversial, technology offers an innovative, cost-effective tool for monitoring a stalking offender's compliance with conditions of pretrial release and/or sentencing. For Dover, the case that was the impetus for the new antistalking legislation was also the stimulus for the *JurisMonitor* program. In 1993, a defendant was

convicted of a trespass charge and served twenty-three days in jail. Each day he wrote the victim a letter and/or tried to contact her by telephone. Criminal justice personnel turned to the *JurisMonitor* system to track the stalker upon his release.⁵ As a condition of his parole, the court ordered him to wear the electronic bracelet, which would alert the police if he returned to the victim's house.

<i>JurisMonitor</i> Success Rate	
Cases (since 3/93)	30
Violations	3

The prosecutor must carefully weigh whether an offender is a candidate for the electronic monitoring system before recommending its use to the judge. Considerations include the stalker's prior criminal history, facts of the case, offender's mental state, level of violence or threat, presence of weapons, and likelihood and level of bail. The electronic monitoring system is used to control chronic yet innocuous offenders. If the offender is determined to be a high risk, the prosecutor will not propose using the electronic monitoring system.

When the electronic monitoring system is deemed appropriate as a condition of bail or sentencing, the prosecutor contacts the defense attorney to determine whether the accused can afford and will agree to use the equipment. In Dover, *JurisMonitor* participation is voluntary, and the offender incurs the cost of the system, about \$8.00 per day.

How Does JurisMonitor Work?

In the *JurisMonitor* program, offenders wear an ankle bracelet that transmits an electronic signal. The offender's movements, including all curfew violations and attempts to interfere with, or remove, the equipment, are monitored

continuously. The victim is provided with a home monitoring unit, which is linked into her telephone system and will sound an alarm when the offender's bracelet comes within a certain range of the victim's home.⁶ When the alarm is triggered, the victim's monitoring unit signals operators at the *JurisMonitor* monitoring center, who alert the local police department. The unit also begins an audio recording of any activity or conversation occurring in the home. This recording can be used as evidence in court proceedings, if necessary. When the police arrive at the scene, they have enough probable cause to arrest the offender for violating an order of protection. Within minutes after the police are dispatched, the central monitoring center faxes a notice of the cause of the alarm to the police department. The monitor has a battery backup in its base unit should a power outage occur. If a victim does not have access to telephone services, the welfare department will pay the hookup fee. However, the victim becomes responsible for the phone charges upon installation.

A Coordinated Response

An important factor in the success of this system is the commitment of key players in the criminal justice system. The police department, the prosecutor's office, victim advocates, judges, and probation officers all support the effort to monitor stalking. Of course, victim safety is paramount. Thus, *JurisMonitor* alarms are dispatched as the highest priority call. Violators are apprehended quickly and arrested. The quick response deters future crimes, making offenders realize that there are immediate consequences for their actions.

Equally as dedicated as the police and prosecutors is the probation department.

Probation and parole officers aggressively manage stalking cases. One probation and parole officer is assigned to handle all *JurisMonitor* cases. This officer checks offenders' bracelets each week to ensure that they are functioning properly.

No monitoring system is fail-safe. Advocates of the system are quick to explain that it is a safety enhancer, not a guarantee. The *JurisMonitor* system provides a means for tracking the defendant's whereabouts and augments other safety plans that victims are cautioned to employ. Since implementing *JurisMonitor* in 1993, Dover has not experienced any serious incidents. From the prosecutor's perspective, the electronic monitoring system helps to bolster a case, because the audio recording is available as evidence. Advocates also argue that having the system is better than providing the victim with nothing at all.

Criticisms of the JurisMonitor System

Perhaps the strongest criticism of the *JurisMonitor* program is that it gives victims a false sense of security. In reality, there is no guarantee of safety from physical harm. Despite the ankle bracelet, a determined offender can break into a victim's home and assault him or her. The *JurisMonitor* program simply establishes boundaries and provides immediate notification of any violation. Critics also argue that criminal justice personnel should trust victims to report contact violations rather than rely on electronic monitoring.⁷ Problems also may exist with the monitoring technology and equipment. The technology is useful only when it works. Any equipment breakdown or malfunction could have serious consequences for a victim. *JurisMonitor* asks victims to sign a release form that states that the product is considered "experimental."

An additional criticism of the system is that victims lose their privacy. Because the system works through a victim's telephone line, some of his or her conversations may be recorded accidentally, or telephone service may be disrupted. As part of the service, the central monitoring center periodically dials the victim's system to make sure the phone line is working. If the victim is on the phone, the call will be disconnected. This frequent intrusion can be quite annoying and interfere with the victim's lifestyle. Also, police will respond to any alarm, even if it is set off inadvertently. If the victim's home is unoccupied and an alarm sounds, police may forcibly enter the home. These inconveniences should be fully explained to any victim considering the *JurisMonitor* system.

Critics also assert that many offenders who may be eligible for the program are unable to participate because they cannot afford the user fees. Program expenses add up quickly if offenders must stay on the system for several months. This fact is troubling, but communities have limited resources and often need offenders' contributions.

Another significant criticism is that judges may be more inclined to order low bail or release the defendant on his or her own recognizance because the electronic monitoring system is available. To combat this tendency, prosecutors must assess the seriousness of each case and determine whether it is appropriate to offer the defendant this alternative. If the prosecutor seeks a high bail but the judge releases the defendant on his or her own recognizance, the prosecutor may then want to ask the judge to consider using the *JurisMonitor* system. Although this strategy may require more time and preparation by the prosecutor, the reality is that first-time stalking offenders will receive low bail, and most will be

out on the streets before the court date.

Electronic monitoring at least offers a way to monitor low-risk offenders' whereabouts.

Finally, the *JurisMonitor* program requires a significant coordinated community response. Violations of *JurisMonitor* must be the highest priority for law enforcement. Close supervision of the offenders by probation personnel is necessary to ensure that the bracelet is not tampered with or defective. Prosecutors and judges must deliver swift and meaningful punishments for any violations, holding offenders accountable for their actions. All these components of the system must work together, efficiently and effectively, to protect the victim.

Victim Advocacy

Two types of advocacy services are available for domestic violence or stalking victims in Dover. *A Safe Place*, a shelter for battered women, provides multiple services including temporary shelter, weekly support groups, referrals to lawyers and counselors, and information on court appearances. However, many stalking victims, even those who have survived domestic violence, feel that their needs are different and are not served by existing domestic violence programs and support groups (see *Handling the Stalking Victim*, p. 27).⁹ Thus, even if referred to these programs, few stalking victims follow up or continue to receive services, because they do not share common experiences with domestic violence victims.

Dover has ten volunteer victim advocates who guide victims through the court system.⁹ Once assigned, the advocate contacts the victim and explains the advocate's role. Advocates do not counsel victims, rather they serve as victims' liaison throughout the proceedings. Advocates encourage victims to complete a victim impact

statement, to notify the advocate of any threats or intimidation by the aggressor, and to participate in plea bargain negotiations.¹⁰

Volunteer advocates attend a two-day training program that includes court observation and classroom instruction. Each of the ten core volunteers assumes approximately one new case every two months.

Victim advocates are integral to the criminal justice system. Full-time services to victims of stalking and a stalking support group currently are unavailable in Dover due to funding constraints. In the meantime, Dover's dedicated volunteer advocates provide an invaluable service to anxious stalking victims.

Establishing Public/Private Partnerships

Because agencies are faced with limited funds, they must find creative solutions to stalking crimes. In Dover, law enforcement agencies make innovative use of resources to augment the budget shortfall. Electronic monitoring systems are criticized for providing safety for victims only within the confines of their homes. Recognizing this limitation, Dover has implemented two additional programs: the use of cell phones and Alert Link pendants.

Cellular One Portable Phones

Since 1993, victims given the *JurisMonitor* system are also provided with a portable cellular telephone. Pursuant to a cooperative agreement between *Cellular One* and the Dover prosecutor's office, victims are provided with a phone that is programmed to dial 911 upon the touch of a button. Six of these phones are available through the prosecutor's office. This service comes at no cost to victims, and there is a minimal charge of five dollars per month to the prosecutor's office for each of the phones.¹¹ Victims must sign a

form releasing the prosecutor's office and *Cellular One* from liability in case the equipment malfunctions.

Alert Link Pendants

In September 1995, the Dover Police Department and *Elderwatch* began providing victims with Alert Link pendants. When manually triggered, the pendants alert operators at *Elderwatch*, who then notify the police. The pendant works through the victim's phone line, so the victim must be in close proximity to his or her home in order for the alarm to be triggered. Activated manually, the pendant works only when the victim is awake and alert. However, it provides added security when and if the victim sees the offender. Five pendants are available to stalking victims, and the service is provided to stalking victims and the prosecutor's office for free.

Conclusion

In Dover, New Hampshire, criminal justice practitioners recognize the seriousness of stalking cases, which has led to a successful, multidisciplinary approach to these cases. An important component of this program is the vertical investigative work conducted by the police department, coupled with vertical prosecution by the prosecutor's office. Assigning one detective and one prosecutor to handle stalking cases has generated positive results. In addition, the innovative use of resources and comprehensive victim safety plans have ensured that offenders are held accountable for their actions and that victims remain safe. Dover can serve as a model program to other jurisdictions intent on implementing a coordinated response to stalking cases.

LOS ANGELES, CALIFORNIA

Vital Statistics

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Population: 3,500,000

History

In the mid to late eighties, a series of high profile stalking cases occurred in California with tragic results. In one case, an obsessed fan brutally attacked actress Teresa Saldana, stabbing her ten times as she unlocked her car door. In another, actress Rebecca Schaeffer was shot and killed in the foyer of her apartment building by a man who stalked her for several years. These two incidents, along with several other celebrity stalking cases, sparked debate regarding the lack of tools law enforcement possessed to control stalking behavior and protect victims. As a result of these incidents, a representative from the Los Angeles Police Department (LAPD) met with celebrities' agents and managers who, during the meeting, challenged law enforcement's limited role in stalking cases. Specifically, they criticized law enforcement for not taking preventive measures

and acting only when someone was physically hurt or killed.

As a result, the LAPD created the Threat Management Unit (TMU) in 1990 to handle aggravated stalking cases assertively and proactively. Unlike many law enforcement investigations, these cases require long-term intervention strategies and a significant commitment of police resources to resolve them. Lieutenant John Lane, the new head of the unit, sought advice from the only experts in the field, those in the private sector security industry. With this information, he, along with three other detectives, began handling stalking cases.

Nashville PD Takes a Stand

In August 1994, the Nashville Police Department established the Domestic Violence Division to handle family violence cases. With thirty-four full-time officers, the division's mission is to aggressively investigate these crimes in the hope of preventing further violence. In domestic violence related stalking cases, investigators "stalk the stalker" and use other innovative investigative techniques.

The success of this division is evident: domestic violence related homicides in Nashville have decreased by 70 percent. Part of the success is the result of the commitment and dedication of resources by other criminal justice agencies. Three prosecutors have been assigned to handle the domestic violence docket, and six probation officers monitor these cases. For more information, contact:

Sgt. Mark Wynn
Metropolitan Police Department
Domestic Violence Division
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In 1990, California passed the first antistalking statute in the country. Based on the new statute, the Los Angeles County District Attorney's Office developed new strategies for aggressively handling these cases. In 1993, Deputy District Attorney Rhonda Saunders was assigned to the Organized Crime Unit to vertically prosecute nondomestic violence related felony stalking cases. Since then, she has worked closely with the TMU and developed expertise in prosecuting these cases. Although Saunders has moved to a new unit, she continues to dedicate her time to stalking cases.

Law Enforcement

MAC Tables

In 1994, the LAPD assigned Major Assault Crimes (MAC) detectives to each of Los Angeles County's eighteen geographic divisions. The MAC detectives, who form MAC Tables for each divisional office, handle the more commonplace and less aggravated stalking cases in their regional divisions. In most of these cases, the victim and offender know one another. The MAC Tables organize training days for new MAC detectives every other month. At these training sessions, a TMU representative speaks on the mechanics of identifying and investigating stalking cases. Unfortunately, because of their high-volume caseload, MAC detectives do not have the resources to handle stalking cases with the long-term strategies they require. However, the TMU serves as a resource for these detectives. If a situation falls under the purview of cases the TMU handles, the MAC detective can request the TMU's assistance.

Threat Management Unit

The TMU is the only detective unit in the country whose mission is to handle only stalking

cases. TMU detectives investigate "long-term, abnormal threat and harassment" cases. The benefits of designating a unit to handle only stalking cases are evident. First, at least one person becomes an expert in handling these complex, ongoing cases and can serve as a resource for other criminal justice practitioners. Second, with dedicated resources, these cases can be handled aggressively and in a timely manner. As a result, the message to the stalker is that stalking will not be tolerated.

The TMU's centralized case management system allows detectives to handle every crime that occurs during the case (*e.g.*, sending love letters, sending flowers, trespassing even though no physical evidence is available). Consequently, detectives handle a small active caseload, about five open cases per detective, to provide the appropriate attention to each case. In addition, TMU detectives handle incidents that may not rise to the level of criminal behavior but concern victims (*i.e.*, individual instances of harassment). Traditionally, these types of acts could not be handled by investigators because of a shortage of resources and lack of understanding of their serious implications. In stalking cases, minor incidents need to be controlled to send a message to the stalker before his or her behavior becomes aggravated or deadly. The centralized case management system affords detectives the time to become familiar with the stalker, establish a strong rapport with the victim, and examine each case thoroughly to decide what intervention strategies are necessary.

A case can be referred to the TMU internally, or victims may contact the TMU directly. A TMU detective will conduct a telephone interview with the victim to gauge the seriousness of the case. If it meets the threshold for action by the TMU (a "long-term, abnormal threat and harassment"

case), a detective will interview the victim in person to further determine the authenticity of the case and get a sense of the victim's credibility and willingness to participate in the lengthy investigative process. The detective will inform the victim of options for intervention strategies and security. Also, the detective will explain that the victim's active role in the investigation is critical. If the victim does not want to cooperate fully with TMU detectives, his or her case will not be pursued under TMU's guidance. Detectives from the TMU stress that although police may help victims, the victim is ultimately responsible for dealing with the stalker's behavior. Presented here are strategies TMU detectives recommend for victims:¹²

- ❖ **Education.** It is essential to educate victims about the crime of stalking and explain to them the dynamics of stalkers. TMU detectives provide victims with security measures and explain that victims must take control of the situation, because law enforcement cannot provide twenty-four hour protection.
 - ❖ **Behavior Modification.** TMU detectives recommend that victims modify their daily schedules and lifestyles for their own protection. Establishing and preserving victims' anonymity is the most important precaution to prevent further stalking behavior. TMU detectives recommend that victims change their phone numbers and, if financially possible, add another phone line with an answering machine to monitor calls. Victims should consider relocating, establishing a post office box for mail, and removing their addresses from checks and other documents. It is also important for victims to tell others what is occurring so that others take note of the stalker's behavior.
 - ❖ **Support Systems.** It is important for victims to establish a support system. Often victims keep their experiences to themselves, receiving only little support from the criminal justice system. Although TMU detectives establish a strong rapport with victims, which provides them an outlet, the detectives recommend that victims attend support groups or take self-defense classes. These precautions may empower victims to establish appropriate boundaries for the stalkers.
- Investigators face several problems with stalkers. First, many of these individuals have mental disorders and either disregard or are unable to comprehend the consequences of their behaviors. Second, stalkers may believe that their behaviors will be overlooked by an overburdened criminal justice system. Therefore, detectives need to intervene quickly so stalkers know that this behavior will not be tolerated. TMU detectives use the following tactics, depending on the type of case:
- ❖ Send the suspect a "detective contact card" requesting that he or she contact the detective (used in misdemeanor cases and when the whereabouts of the suspect are unknown).
 - ❖ Contact the suspect over the phone.
 - ❖ Conduct a personal interview (used in aggravated cases).
 - ❖ Use protective/restraining orders when the law enforcement response to the stalker's violation is quick (which helps establish a pattern of conduct and the element of fear).
 - ❖ Arrest and detain suspects or divert them to mental health facilities (which sometimes shocks stalkers into terminating their harassment).

In addition, the TMU monitors cases that do not fit the usual criteria. In these cases, TMU detectives will inform victims about safety planning and contact them once a month. If the victim says that the stalking behavior has escalated, TMU detectives become actively involved in handling the offender.

SMART Unit

Establishing a partnership with the mental health community is paramount in stalking cases because many stalkers have psychological disorders, and traditional law enforcement intervention, arrest, and detention may not stop their behavior. In 1993, the LAPD began a pilot program named the System-Wide Mental Assessment Response Team (SMART). This innovative program pairs a law enforcement officer with a mental health professional. The goals of the SMART program are listed below:

- ❖ Prevent unnecessary incarceration or hospitalization of mentally ill individuals.
- ❖ Provide alternative care in the least restrictive environment through a coordinated, comprehensive approach.
- ❖ Prevent the duplication of mental health services.
- ❖ Allow police patrol units to return to service sooner.¹³

Four SMART teams, divided between day and night watch, function under the authority of the Mental Evaluation Unit. If a patrol officer responds to a call that involves a mentally disordered person, the officer will call the Mental Evaluation Unit, which operates twenty-four hours a day, to respond to the scene. The Mental Evaluation Unit dispatches a SMART team to the scene, relieving the patrol officer to respond to other calls for service. The SMART team

assesses the individual to determine the type of intervention necessary. A mentally disabled person can be involuntarily placed in a seventy-two-hour holding/treatment facility if there is probable cause to believe the person is a danger to himself or herself or others, or is gravely disabled because of a mental disorder.

Although the SMART unit was not created to handle only stalking cases, its success in these cases demonstrates that law enforcement and the medical community can overcome imposed barriers and work together to control common problems. The following section outlines the psychological profiles common to stalkers.

Typologies of Stalkers

Several profiles of stalkers exist. Stalkers come from all walks of life; they can be male or female; they can be motivated by anger, revenge, jealousy, absolute fantasy, or delusion.¹⁴ Many stalkers in the domestic violence context do not exhibit "mentally ill" behavior; however, they usually exhibit dependent or controlling personalities.¹⁵ Psychiatrist Michael Zona, M.D. developed typologies using information from the TMU's caseload. The following typologies are based on his review of seventy-four cases handled by the TMU in 1991:

- ❖ **Erotomania.** Originally known as de Clerambault's syndrome, erotomania is a psychological disorder in which the stalker believes a person, usually a celebrity or public figure, is in love with him or her.¹⁶ The Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised, classifies this disorder as delusional; the stalker will go to great lengths to contact the victim.¹⁷ Men are more often the victims of these stalkers.¹⁸

- ❖ **Love Obsessional.** As in erotomania, the stalker generally knows the victim only through the media. However, these stalkers do not believe their victims are in love with them. Generally, the stalkers' quest is to make their existence known to the victims. In these types of cases, women are more often victimized.¹⁹
- ❖ **Simple Obsessional.** In the most common type of stalking cases, a prior relationship existed between the victim and stalker. Usually, the stalking behavior begins when the relationship goes sour or the stalker perceives mistreatment by the victim. Women are often targeted in these cases.²⁰ These cases make up most of the TMU's caseload.
- ❖ **False Victimization Syndrome.** In a small percentage of cases, the victim claims to be stalked, but these allegations turn out to be false. The victim may be seeking attention, or may have a psychological disorder.

Statute

The first antistalking statute enacted by the California legislature in 1990 did not have much practical application. With help from the office of the Los Angeles County District Attorney, California legislators amended the law in 1994, making it more useful (see Appendix B).

The statute defines a stalker as anyone who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat toward the victim, with the intent to place the victim in reasonable fear for his or her safety or the safety of his or her immediate family.²¹ Violations of the law are punishable by a fine of up to \$1,000 and/or by up to one year in prison.²² The amended statute provides specific definitions of the terms used to characterize stalking to help prevent challenges to the statute

on the grounds of overbreadth and vagueness.

For example, "harasses" is defined as a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person and serves no legitimate purpose.²³ A "course of conduct" is defined as a series of acts over time that evidences a continuity of purpose.²⁴ The course of conduct must be one that would cause a reasonable person to suffer substantial emotional distress and that actually causes substantial emotional distress to a person.²⁵ The statute specifically excludes constitutionally protected activity from the definition of "course of conduct."²⁶

"Credible threat" is defined as a verbal or written threat that is implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety, or the safety of his or her immediate family.²⁷ Under the statute, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity, or any other person who regularly resides in the household or who, within the preceding six months, regularly resided in the household.²⁸ Conduct that occurs during labor picketing is excepted from the "credible threat" definition.²⁹

The statute provides for a sentence of two, three, or four years in prison if stalking occurs while a restraining order is in effect. Subsequent convictions for stalking are punishable by two, three, or four years in prison.³⁰ As an alternative to fines or imprisonment, a court can recommend that an offender receive treatment.³¹

Strengths of California's Law

With the implementation of the revised statute in 1995, a prosecutor's task became easier. The following is a list of the statute's strengths:

- ❖ Unlike many states, in California, a first stalking offense may be prosecuted as a misdemeanor or a felony even if no restraining order is in effect. If a restraining order is in effect, the offense constitutes a nonreducible felony, punishable by two, three, or four years in jail. Subsequent offenses are also felonies punishable by two, three, or four years in prison.
- ❖ Prosecutors in California appreciate the specific definition of "credible threat" that the statute provides. Under the definition, a threat may be implied through an offender's pattern of conduct. Thus, it is not necessary to prove that an offender actually intended to execute the threat.
- ❖ Many stalkers continue to threaten their victims through letters and telephone calls after incarceration. California's law provides that present incarceration does not bar the prosecution of a person making the threats, thus holding such offenders accountable for their criminal behavior.
- ❖ Prosecutors also appreciate the statute's broad definition of "immediate family," which includes roommates and third parties. This provision affords more protection to these people, since stalkers sometimes exploit a victim's family and friends in order to reach the victim.

Weaknesses of California's Law

Prosecutors complain that sentences for stalking convictions are not severe enough. The maximum punishment for an aggravated stalking

charge is four years in a state prison, which could result in an offender being released after serving only two years. To ensure maximum victim safety and offender accountability, prosecutors argue that punishment for aggravated stalking should be stricter.

Prosecution

Family Violence Division

To prosecute felony domestic-related cases effectively, the Los Angeles County District Attorney's office established the Family Violence Division (FVD) in July 1994. In this division, fourteen prosecutors handle all felony spousal or partner abuse, child physical abuse, and child homicide cases for Los Angeles County's Central District. In addition, if a stalking case is related to domestic violence and is charged as a felony, it is handled by FVD prosecutors. Cases are assigned vertically, allowing prosecutors to provide better service to victims of family violence.

Use of Experts

The Los Angeles Deputy District Attorney uses experts as consultants to prepare for stalking cases. Many stalking cases require the involvement of mental health professionals to assist prosecutors in assessing the defendant's mental state and to create a profile of the offender. In the courtroom, these experts help prosecutors develop questions for cross-examination of defense experts and defendants. They also help the prosecutor to explain the stalker's behavior to the trier of fact in laymen's terms. Although no precedent has been set, another suggestion for prosecutors is to use an expert to testify in their case-in-chief.

Unfortunately, recruiting reputable mental health professionals as experts is expensive.

One alternative is to invite a psychiatrist to participate in a coordinating council, which may bridge the gap between the criminal justice and mental health professions. Medical professionals may be more apt to assist prosecutors for a low fee or no fee at all. In addition, mental health professionals may be more willing to participate if they are placed on a rotation with other doctors and are not called on a daily basis.

Beyond Convictions

Stalking cases require prosecutors to consider post-conviction implications. Many stalkers are not detained long enough for their stalking tendencies to subside. For many of them, prison only aggravates their stalking tendencies. Thus, it is essential to have victim notification rights and mechanisms in place. In California, the state must notify the stalking victim at least fifteen days before the offender's release. Once stalkers are sentenced and sent to prison, victims complete notification forms. Victims also may list the terms of parole they would like to see implemented (e.g., the offender may be paroled thirty-five miles away or must continue psychiatric therapy).

Additionally, many stalkers continue to harass their victims from jail. Thus, prosecutors and victims formulate post-conviction safety plans. If possible, victims should seek protection or restraining orders that prohibit mail or phone contact from the defendant while serving his or her sentence. In California, victims can request that the offender stay away from victims, family members, and witnesses who testified for the prosecution.

Establishing Public/Private Partnerships *Association of Threat Assessment Professionals*

Creating public/private partnerships is necessary for successfully resolving stalking

cases. In large jurisdictions, private security firms and law enforcement must work together to resolve cases. However, territorial issues sometimes stand in the way of a successful resolution. In Los Angeles, organizations have overcome these barriers by establishing a group, the Association for Threat Assessment Professionals, to share information and strategies in a professional environment. Initially, representatives from the police department approached private sector representatives to form this group. The association holds meetings every two months to discuss relevant issues and specific cases and to share successful case management and intervention strategies. The sharing of ideas and information by private sector representatives, law enforcement, prosecutors, and others has contributed to the timely resolution of cases. Four cities have chapters: Los Angeles, California; San Francisco, California; Chicago, Illinois; and Washington, D.C.

Conclusion

Criminal justice practitioners in Los Angeles first recognized stalking as a criminal behavior and created effective investigative and prosecutorial techniques to intervene in these cases. Both law enforcement and the prosecutor's office have given these cases the specialized attention they require. Law enforcement has committed long-term resources to resolve these cases successfully, and the prosecutor provides long-term initiatives to ensure victim safety. In addition, Los Angeles demonstrates the importance of having the criminal justice and medical communities work together to resolve a common problem. This proactive stance to handling stalking cases serves as an example to all jurisdictions nationwide, small or large.

Endnotes

1. Phil Lemos, *Family Violence Council Forum Addresses Stalking*, FOSTER'S DAILY DEMOCRAT, July 17, 1995.
2. See George Wattendorf, *What Constitutes Stalking: Victims Have Recourse*, THE UNION LEADER, (Manchester, N.H.), Nov. 26, 1993.
3. However, federal laws are now available to cover interstate stalking crimes. See Federal Law section, p. 45.
4. Prior to the site visit to the Dover Police Department, one detective was assigned to investigate stalking cases. However, that individual was reassigned to another department. After our site visit, the Dover Police Department assigned a new detective to follow up on stalking cases. These cases often are long term and require time-consuming investigative efforts. Having a detective who specializes in and understands the complexities of these cases can benefit any police department.
5. Information taken from the *BI Monitoring Corporation Officer Training Manual: JurisMonitor User Manual*, BI Incorporated, Anderson, IN.
6. The alarm system can be triggered three ways. First, if the offender comes within 1,000 yards of the house, the alarm on the base unit sounds, notifying the victim that the offender is near. Second, if the offender tampers with the bracelet, he or she sounds an alarm at the central monitoring center. Finally, the victim can manually sound the alarm by pushing a button on the base unit.
7. See Susan R. Paisner, *The Power of Technology: Bringing Help to Domestic Violence and Stalking Victims*, NATIONAL BULLETIN ON DOMESTIC VIOLENCE PREVENTION 2, no. 4 (April 1996) at 6.
8. In response to a stalking victim's need for information and services, several jurisdictions have implemented support groups and special services, including Los Angeles, California; Atlanta, Georgia; and Richmond, Virginia. For more information, please contact APRI at (703) 549-6790.
9. The Dover, N.H., prosecutor's office is the recipient of a federally funded AmeriCorps volunteer to perform full-time victim advocate duties. This individual will work on stalking cases as part of his or her workload.
10. Jane Andrews, *Dover District Court Gets Victim Assistance Program*, UNION LEADER (Manchester, N.H.), Sept. 26, 1992.
11. Alan J. Keays, *Stalking Victims in Dover to Get Portable Phones*, FOSTER'S DAILY DEMOCRAT, Nov. 6, 1993.
12. Information for victim and stalker intervention strategies was taken from Willie Williams, John Lane, and Michael Zonar, *Stalking: Successful Intervention Strategies*, THE POLICE CHIEF, Feb. 1996.
13. Los Angeles Police Department, *SMART Guidelines*, 1994. For more information on this program, contact the Los Angeles Police Department or the Los Angeles County Department of Mental Health.
14. Kerry Wells, *California's Anti-Stalking Law a First*, LAW ENFORCEMENT QUARTERLY (Aug.-Oct. 1996) at 10.
15. *Id.*
16. Michael A. Zona, Kaushal K. Sharma, and John Lane, *A Comparative Study of Erotomantic and Obsessional Subjects in a Forensic Sample*, J. FORENSIC SCI. 38, no. 4 at 894-903 (1993).
17. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Third Edition*, Revised. Washington, D.C.: American Psychiatric Association, 1987.
18. Of seven erotomantic cases, five victims were men.

19. Of thirty-two love obsessional cases, women were victims in 94 percent of these cases. Zona, *supra* note 16.
20. Of thirty-five simple obsessional cases, women were victims in 71 percent of these cases. Zona, *supra* note 16.
21. Cal. Penal Code § 646.9 (West 1990 & Supp. 1995).
22. *Id.*
23. Cal. Penal Code § 646.9(d) (West 1990 & Supp. 1995).
24. *Id.*
25. *Id.*
26. *Id.*
27. Cal. Penal Code § 646.9(e) (West 1990 & Supp. 1995).
28. Cal. Penal Code § 646.9(i) (West 1990 & Supp. 1995).
29. Cal. Penal Code § 646.9(f) (West 1990 & Supp. 1995).
30. Cal. Penal Code § 646.9(c) (West 1990 & Supp. 1995).
31. Cal. Penal Code § 646.9(j) (West 1990 & Supp. 1995).

Recommendations

Traditionally, prosecutors and law enforcement have been trained to react to crimes after they have been committed. Stalking, by definition, is a crime that requires a “preventive” approach; therefore, law enforcement and prosecutors must take a proactive stance. However, this position is difficult to take because it is contrary to prosecutors’ traditional roles.

In prosecuting other types of crimes (*e.g.*, battery, aggravated battery, murder), the prosecutor may have medical records, photos of the crime scene, photos of the victim’s injuries, independent witnesses, and so on. However, when prosecuting stalking cases in which the defendant verbally threatens and follows the victim a few times, the prosecutor may be extremely limited in presenting physical evidence to the jury. In this type of case, chances are good that there will be no pictures, no medical evidence, and no crime scene photos. Thus, the prosecutor must convince the fact finder that the offender is going to act out his or her verbal threat, and that the followings signal that the offender intends to do serious harm to the victim. Prosecutors must convince the trier of fact that although the defendant has only threatened to do something serious to the victim, this declaration foreshadows tragedy.

Although a threat and two followings may be enough to charge someone with stalking, judges often hesitate to set high bails, because they feel awkward “predicting” what the defendant may do. Contrary to their roles in other cases where judges merely weigh the strength of the state’s case, many judges now perceive their role in stalking cases to be one in which they must predict the lethality and dangerousness of the offender. This role puts a greater burden on the prosecutor to convince the judge that stalking cases must be taken as seriously as other cases.

So, how does a police investigator or prosecutor overcome these obstacles? Consider the following suggestions:

- ◆ **Education/Training.** Law enforcement needs to be educated on how to identify stalking cases and what questions to ask victims and other witnesses while at the scene. Similarly, they must be trained to use effective intervention strategies and innovative evidence gathering techniques (*e.g.*, stalk the stalker, examine credit card receipts, telephone bills, and flower shop receipts). Prosecutors need training on innovative charging and sentencing techniques and on conducting follow-up strategies with victims to ensure their safety.
- ◆ **Lethality Assessment.** Many times in stalking cases, the judiciary has difficulty predicting whether a defendant who has committed a stalking offense (*e.g.*, one threat and two followings) will commit an act of violence. Prosecutors need to work with the research community to establish measures for assessing whether the defendant will commit a violent or deadly act, and educate the trier of fact on these measures.
- ◆ **Centralized Management.** Law enforcement needs to make stalking cases a high priority and dedicate resources to their management. At a minimum, one law enforcement representative should be designated to handle these types of cases. Early intervention will save lives.
- ◆ **Vertical Prosecution.** Stalking cases and the statutes are complex and require educated and trained personnel to handle them proactively. Prosecutors’ offices should designate at least one individual to become proficient in handling stalking cases.

- ❖ **Use of Expert Testimony.** Educating the fact finder about psychological profiles, lethality assessment, and stalking behavior is necessary because of the seriousness of stalking. Expert testimony can provide credibility and legitimacy to a case.
- ❖ **Victim Notification.** If a stalker is sent to prison, the harassment of his or her victim may not stop after the conviction. Notifying the victim of the stalker's release is crucial and helps when formulating post conviction safety plans.
- ❖ **Sharing of Information.** Criminal justice agencies must share information to successfully resolve these long-term cases. Obstacles to sharing knowledge and expertise in stalking cases must be overcome within and among agencies.
- ❖ **Multidisciplinary Approaches.** It is difficult to stop stalking without the cooperation of all agencies within the criminal justice system. Law enforcement, prosecutor's offices, probation and parole officers, victim services, and the mental health community all have important roles in combating stalking.
- ❖ **Establishing Victim Support Groups.** Stalking victims have unique needs and experiences. Criminal justice practitioners must recognize these needs and provide or direct victims to victim advocacy and counseling programs.
- ❖ **Public/Private Partnerships.** As government funding for new programs dissipates, criminal justice practitioners should involve private corporations in their efforts. Corporations do have a stake in seeing stalking cases resolved because stalking can affect the workplace, negatively affecting a victim's productivity. A private corporation's generosity can be tapped to help criminal justice agencies create and fund new programs.

Federal Law

THE INTERSTATE STALKING PUNISHMENT AND PREVENTION ACT OF 1996

On July 25, 1996, the U.S. Senate passed the Interstate Stalking Punishment and Prevention Act of 1996 (the Act), making it a federal crime to cross state lines to injure or harass another person.¹ The Act also gives federal law enforcement personnel the authority to investigate and prosecute a limited number of stalking cases. Most important, it makes a restraining order issued in one state valid in all states.

The Act amends 18 U.S.C. § 2261 and prohibits traveling across state lines with the intent to injure or harass another person.² The statute also provides that the victim be in "reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family."³ The statute expands the definition of "victim" to include any person stalked, including those stalked by intimate partners or spouses.⁴ This definition is broader than the definitions included in recent state domestic violence legislation that protects only persons stalked by intimates.⁵

The statute provides strict punishments for convictions, including up to five years in prison for stalking, up to ten years in prison for stalking with a dangerous weapon, or if serious bodily injury occurs, up to twenty years if permanent disfigurement or a life-threatening injury occurs, and life in prison if death results from the stalking.⁶

The Act was passed amid criticism that it federalizes more state crimes. Federal judges expressed concern that Congress was creating federal crimes virtually identical to existing state crimes.⁷ Critics also asserted that federalization congests an already overburdened federal judiciary with crimes traditionally addressed by state courts.

Supporters of the Act emphasize that stalking is a serious crime that deserves national attention.⁸ The Act enables city and state prosecutors to proceed on violations of protection orders when the conduct occurs outside their jurisdictions. It creates a federal crime when a perpetrator crosses state lines with the intent to injure or harass another person. Although city and state prosecutors generally do not welcome the federalization of crimes, this Act allows the U.S. Attorney's office to assist in prosecuting stalking cases. The new federal stalking crime gives city and state prosecutors more options in prosecuting and punishing the perpetrator, and ensures that offenders who stalk victims from one state to another do not elude prosecution.

To use the provisions of the Act effectively, state prosecutors and law enforcement must establish working relationships with federal prosecutors and investigators. Federal and local prosecutors and law enforcement must coordinate and communicate to make appropriate decisions regarding investigation, charging, and trial. In addition, criminal justice professionals at both the state and federal levels need to know how the federal antistalking law applies. Training regarding the new law is necessary so that city and state prosecutors can communicate with federal authorities when these situations arise. Federal law enforcement, U.S. Attorneys, and federal judges also will need training on local stalking policies and procedures, and the crime of stalking itself.

PRACTICAL ISSUES: USING THE ACT

The Interstate Stalking Punishment and Prevention Act of 1996 provides stalking victims with additional resources and remedies. Prosecutors should understand what these new resources are and use them in the victim's best

interest. For example, prosecutors and law enforcement should determine whether federal agencies and courts can offer victims greater access to programs appropriate to the victim's needs, as well as whether the strict federal sentences should be used for the case at hand.

The following hypothetical case presents a basis on which the Act can be understood. The case illustrates the most common type of stalking: namely, a woman stalked by someone she knows (*e.g.*, a prior boyfriend or ex-husband).

The woman obtains a restraining order against her ex-husband from the local court in Chicago, based on his prior abuse. The ex-husband is served with the order that evening. (Note: a restraining order and its subsequent violation provide solid evidence of stalking). The next day the woman travels to Milwaukee. Her ex-husband learns of this and follows her there. Upon finding her, he harasses, threatens, and beats her.

On these facts, the ex-husband can be prosecuted under the Act. First, he has crossed state lines with the intent to injure or harass the victim. Second, he violated the validly issued restraining order from Illinois that, under the Act, is enforceable in Wisconsin. Therefore, federal law enforcement can investigate the case and prosecute him.

Questions that local and federal prosecutors must answer are when to use the Act and how, and whether to bring all or some of the Act into play. The following sections discuss the issues that prosecutors must consider when this type of situation arises.

INVESTIGATION

With the passage of the Act, city and local law enforcement or prosecutors may contact the

FBI or the U.S. Attorney's Office. Prosecutors should address the following:

- ◆ Upon determining that a state line was crossed with the intent to injure or harass another person in violation of a restraining order, law enforcement in the jurisdiction where the violation occurred should contact the jurisdiction that issued the order to verify its validity. If the restraining order was validly issued, then it is enforceable in any state.
- ◆ Both the local prosecutor from the jurisdiction that issued the restraining order and the local prosecutor from the jurisdiction where the order was violated may call the U.S. Attorney's Office to discuss investigation and charging options. The local prosecutor can call the U.S. Attorney's Office either where the order was issued or where the order was violated.
- ◆ Upon determining that a crime under the Act has been committed, the FBI may be called to start or enhance an existing investigation. Its participation may be helpful when the jurisdiction issuing the order and the jurisdiction where it was violated are far apart or, absent a restraining order, where the stalking covers distant states.

CHARGING AND TRIAL

Once a prosecutor determines that the Act has been violated, the prosecutor should contact the other agencies. Communications between the local prosecutors and the U.S. Attorney's Offices will facilitate charging the stalker in the most advantageous jurisdiction and with the most appropriate charges. Such coordination helps avoid the danger of a jurisdiction with the greatest interest being precluded from prosecuting the stalker. In some cases, a stalker may be charged under the laws of several

jurisdictions. (See Appendix C for a list of state code citations and Appendix D for a summary of case law).

The prosecutor should consider the following facts when deciding in which jurisdiction to charge the stalker:

- ❖ ***The victim's safety, availability, and dispositional needs.*** Prosecutors and law enforcement should evaluate who can better protect the victim, where the victim resides or is employed, the difference between proceeding in federal court versus state court, the difference in possible outcomes at trial, the likelihood of obtaining outcomes preferred by victims and the predicted disposition of charges, where victim agencies can offer support and advocacy while prosecution is pending, and the victim's willingness to cooperate with prosecutors (which may be dictated by the degree of rapport a victim has with a prosecutor and the amount of information and pretrial and posttrial protection given to the victim).
- ❖ ***Which prosecuting office will get the better outcome.*** The prosecutor should consider the following resources and possible procedural differences: which jurisdiction has more favorable bail standards and pretrial protections, which jurisdiction has witness assistance most suitable to the victim, which jurisdiction has resources that fit the victim's needs (*e.g.*, investigation abilities, witness protection), and what the different sentencing options are.

Issues that may arise during trial must also be weighed when making charging decisions. For instance, in the above hypothetical case several trial issues arise when the U.S. Attorney's Office

in Illinois charges the ex-husband with crossing a state line with intent to injure or harass, the local Wisconsin prosecutor's office charges the ex-husband with battery, and the local Chicago court maintains the protection order. These issues are as follows:

- ❖ Which jurisdictions will provide the victim protective conditions on the defendant's release pending trial in federal court? If there is more than one protection order, how does the court inform itself of the protective conditions issued by other courts in order to avoid inconsistent protective conditions?
- ❖ Double jeopardy emerges as an issue when a defendant is charged in both federal and state courts with crimes arising out of the same actions where elements of federal and state crime are identical. Federal prosecution under the Act will not necessarily preclude prosecution under state stalking laws, but the prosecutor should find out before jeopardy attaches and take appropriate action.
- ❖ Prosecuting offices must communicate in order to prevent the generation of unnecessary impeachment material (*i.e.*, victim may testify in a proceeding in one jurisdiction, creating possible impeachment material that could be used against the prosecution in a proceeding in another jurisdiction).

TRAINING

All agencies involved in prosecuting stalking cases need to be educated as to the existence and provisions of the Interstate Stalking Punishment and Prevention Act of 1996. Some training issues that need to be addressed follow:

- ❖ Because most stalking cases are initially handled by local agencies, law enforcement and prosecutors need to know about the

existence of the Act and when it applies. That way they can communicate with federal authorities when a stalker violates the Act's provisions.

- ❖ City and state judges need to be trained on the Act's provision that provides for enforcement of a restraining order outside the issuing state and how to determine the order's validity.
- ❖ Federal law enforcement, U.S. Attorneys, and federal judges need to be trained on the Act, local stalking laws and procedures, procedures and policies associated with the issuance of protection orders, and the phenomenon of stalking.

8. *See Bill Would Restrain Stalkers in Each State*, THE AUSTIN AMERICAN-STATESMAN, May 8, 1996, at A6. (Republican Senator Kay Bailey Hutchinson concedes that stalking is a state crime but avers that the bill "simply allows federal resources to be brought to bear to see that stalkers are caught and stopped if they cross state lines").

CONCLUSION

This new federal law enables city and state prosecutors to pursue another option to hold offenders accountable. Although the Act offers tremendous relief to victims, it requires a commitment from U.S. Attorneys, local prosecutors, and federal and local law enforcement to form protocols and policies and develop innovative and quick responses to charging individuals who violate this law.

Endnotes

1. Interstate Stalking Punishment and Prevention Act of 1996, 18 U.S.C. § 2261A (1996).
2. 18 U.S.C. § 2261A (1996).
3. *Id.*
4. *Id.*
5. *Id.*
6. 18 U.S.C. § 2261 (1996).
7. *Congress Keeps on Creating Crimes: Some Needed, Many Political*, THE TIMES-PICAYUNE, May 12, 1996, at A1.

Handling the Stalking Victim

WHO ARE STALKING VICTIMS?

A common misconception is that victims of stalking are most often celebrities. However, most stalking victims have had a relationship with their stalkers. Those who have experienced domestic violence are at heightened risk of being stalked. Other types of victims have had only one or two dates with the offender or have experienced harassment in the workplace by a supervisor, colleague, or subordinate.

Once stalked, many victims' attitudes and behavior change remarkably. Some believe they will never be able to lead a normal life, because they live in fear of others and paranoia, are afraid of the unknown, and lose their sense of privacy. Many victims report that being stalked is not only emotionally and physically draining but often disrupts their relationships with others. Activities that were previously taken for granted become trying and possibly dangerous (e.g., exercising outdoors, going to work). As a result, victims are likely to withdraw from social activity.

Victims may be afraid to sleep and ultimately become exhausted. Consequently, when being interviewed by law enforcement or prosecutors, they may tremble or slur words. It is not uncommon for them to need to hear questions several times before answering. In addition, they often become very protective of their children. Criminal justice personnel should ascertain whether the children show signs of stress and frustration, as well.

While women are more often victims of stalking, findings from the National Violence Against Women Survey indicate that 371,000 American men are stalked each year.¹ Typically, male victims are reticent to admit fear because of societal attitudes and sexual bias within the criminal justice system. Even though antistalking laws are gender neutral, criminal justice

personnel and the public often believe men do not need legal protection. Thus, support groups often lack sympathy for men, believing that men may have deserved this treatment or should be able to take care of themselves. Law enforcement and prosecutors must be prepared to direct men to support groups that are sensitive to their special needs. Finding such an organization can be difficult since male victims who report stalking cases are rare. In the event that no organization sufficiently assists men, law enforcement and prosecutors should recommend that support groups learn about and prepare for male victims.

TIPS FOR PROSECUTORS

When communicating with a stalking victim, prosecutors must establish relationships that dispel some of the victim's fears. A priority for investigators and prosecutors is to gain the victim's trust. By taking the victim's needs seriously, prosecutors can gain his or her trust. Statements such as "I am sorry this happened to you" show interest and compassion. Prosecutors must keep in constant contact with the victim and try to encourage him or her to prosecute. If prosecutors convey that "this is just another case," victims may become discouraged. During conversations with the victims, prosecutors should use simple language that will not intimidate the victim. It is critical that prosecutors be candid about the process and possible outcomes of the criminal case, including pleas of guilty, trials, testifying, sentencing, and so forth. This frankness will help the victims form realistic expectations. The communication between victims and prosecutors should routinely include the following:

- ◆ A brief discussion of the criminal justice system.
- ◆ The purpose of questioning.

- ❖ The roles of judges, prosecutors, advocates, and others in stalking cases.
- ❖ An assessment of the victim's needs and expectations.
- ❖ The possible outcomes of the case.
- ❖ Ongoing updates on the status of the case.

Victims should always be made aware of the consequences of discussing their cases prior to trial with friends, defense attorneys, the defendants' friends or acquaintances, the media, witnesses, or potential witnesses. The prosecutor also should instruct victims on how to collect evidence, specifically preserving evidence that has not been inventoried by the police. Because stalking defendants often contact their victims during the pretrial stage, all victims need to know the appropriate procedures to follow when the offender makes contact.

If victims become reluctant, prosecutors should find out why. Knowing the cause helps prosecutors determine the best way to convince victims to proceed with their cases and later helps prosecutors present the case to the trier of fact. Reasons why victims become reluctant may include the following:

- ❖ The victim feels ashamed or embarrassed.
- ❖ The victim still lives with the defendant.
- ❖ The defendant may be threatening the victim.
- ❖ The victim may be financially dependent on the defendant.

Victims constantly look to prosecutors for guidance. As a result, prosecutors should assume a leadership role for victims. Because antistalking laws did not exist until 1990, law enforcement often walked away from victims who were pleading for help. Victims often were told that no one could help them until the offender committed, not just threatened, a violent act. Prior to the antistalking laws, making an obscene

telephone call was virtually the only criminal charge that could be brought against a stalker, barring a physical attack or trespassing. Following or harassing a victim in other forms was legally acceptable.

Since stalking cases are time-consuming, prosecutors have not always given them the attention they require. Prosecutors must trace crimes that may have been developing for a year or more. Because of prosecutors' high transfer rates, victims may have to explain their cases to a new prosecutor every time they come to court. Prosecutors must take the time to thoroughly examine each case. Each case is different, but each needs to be evaluated to ensure the victim's safety. Most important, prosecutors should refer victims to victim advocates. These representatives of the criminal justice system can reduce stress for victims and prosecutors by becoming a liaison while cases are pending, understanding the court system and explaining it to victims, and attending to victims' economic and social needs. Thus, the victim advocate is critical to increasing reluctant victims' cooperation during the trial process.

Endnotes

1. Pat Tjaden and Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, Center for Policy Research, Denver, CO, January 1997.

Telephone Survey Results

METHODOLOGY

To identify prosecutor needs and experiences in prosecuting stalking cases, the American Prosecutors Research Institute (APRI) endeavored to learn what programs existed nationwide. APRI staff interviewed prosecutor coordinators and APRI and National District Attorneys Association (NDAA) board members, and placed announcements in APRI publications soliciting input from local prosecutors experienced in prosecuting stalking offenses. From these contacts, APRI staff developed a list of thirty prosecutor offices to direct further inquiry. During 1995, APRI staff administered a telephone survey (see Appendix E) to representatives in the identified jurisdictions. Interviews were completed with seventeen large jurisdictions (population equal to or above 250,000) and eleven small jurisdictions (populations below 250,000). The survey instrument used in the interviews contained thirty-two questions addressing the following seven areas: background, case management, pretrial policies, diversion, trials, sentencing options, and victim support programs.

Below is a summary of key findings from the interviews. For specific answers, see Appendix F. The information and conclusions presented reflect only the twenty-eight jurisdictions that participated in the survey. Hence, these results cannot and should not be generalized to a larger population of prosecutor offices.

FINDINGS

Background

Prosecutorial Experience. The offices surveyed varied widely in their filing of stalking charges. Large jurisdictions prosecuted from ten to over one hundred misdemeanor stalking cases yearly, while small jurisdictions processed from

zero to thirty cases annually. Large jurisdictions handled less than one hundred felony stalking cases each year. Most small jurisdictions prosecuted less than three felony stalking cases each year.

Victim/Offender Relationship. All prosecutors interviewed stated that the typical relationship in stalking cases was one in which the offender and victim knew each other.

Case Management

Vertical Prosecution. Most of the large jurisdictions (thirteen) and the majority of small jurisdictions (ten) use a vertical approach to prosecuting stalking cases. In addition, most stalking cases are handled by prosecutors who have experience with domestic violence cases.

Training. Prosecutors in eleven large jurisdictions and seven small jurisdictions had received either formal or informal (on-the-job) training on the prosecution of stalking cases. In most of those jurisdictions, training regarding stalking cases was offered as a component of a domestic violence curriculum. However, several prosecutors expressed the need for guidance concerning the prosecution of stalking cases involving strangers, despite their low number. Furthermore, prosecutors stated that they need more definitive psychological profiles of both stranger and acquaintance stalkers. This information would help prosecutors ascertain the mental state of an offender to determine the appropriate prosecutorial and intervention strategies.

Protocol/Policy Statement. Few large jurisdictions (four) or small jurisdictions (two) have formal, written protocols for prosecuting stalking cases. As with training, the protocols for stalking cases were usually incorporated into guidelines for domestic violence cases. Several

prosecutors stated that although they do not have written protocols for this type of crime, they have verbal policies that are understood and followed by office staff.

Multidisciplinary Approaches. Most of the prosecutors interviewed, in both small and large jurisdictions, coordinate informally with many organizations outside their offices (e.g., shelters, community advocacy groups, counseling centers). These organizations are instrumental in preparing the victim for the prosecution process and in taking the necessary precautions for victim safety.

Pretrial Policies

Restraining Orders. With the exception of one large jurisdiction, every jurisdiction surveyed uses restraining/protective orders in stalking cases. In seven of the large jurisdictions, a violation of a restraining order is charged as a separate offense. In six large and seven small jurisdictions, violations constitute a first-degree misdemeanor. The general penalties range from incarceration (in one small jurisdiction, for up to five years) to fines (from \$500 to \$10,000). These sanctions underscore the importance of having restraining and protection orders in place to establish a pattern of conduct and the element of fear required under most statutes.

Trials

Obstacles to Successful Prosecution. The prosecutors interviewed described some of their reasons for dropping stalking charges. Insufficient evidence is the most common problem, followed by uncooperative or reluctant victims. Accordingly, successful prosecutions hinge on prosecutors' abilities to establish trust with victims and communicate to victims the important role they can play in gathering evidence about offenders' behaviors.

Ways to Overcome Obstacles. The most serious obstacle to convicting stalking offenders is insufficient evidence. Convincing the fact finder of unlawful conduct and presenting victims as credible witnesses are other obstacles that the prosecution must overcome. Prosecutors described certain steps to help them meet the burden of proof. Among those steps are thorough investigations by law enforcement and encouragement of victims to document events and evidence. In addition, obtaining an injunction against the defendant and educating the judiciary and jurors on the nature of stalking as a criminal behavior can strengthen prosecutors' cases.

Typical Defenses. The most common defense used in stalking cases is denial; the defense often presents events as coincidental meetings with no intent to inflict fear or threaten violence to the victim. Other common defense tactics include blaming the victim, claiming that the victim exaggerated the behavior, and claiming the victim was following the defendant. This strategy presents a serious conflict for prosecutors and fact finders, whose only witness is often the victim. Thus, for successful prosecutions, it is essential to have a victim chronicle events (even those that seem coincidental or circumstantial), record phone messages and calls, and file an order of protection.

Sentencing Options

Trends and Patterns. When prosecutors were asked to rate sentencing patterns in stalking cases, the responses varied. Five prosecutors from large jurisdictions and six prosecutors from small jurisdictions felt that the sentences were adequate. However, prosecutors from seven large jurisdictions and four small jurisdictions characterized sentencing patterns as too lenient.

Treatment. The use of diversion programs as a sentencing alternative in stalking cases is fairly limited. Only five large jurisdictions and four small jurisdictions allow either pretrial or post plea diversion options for stalkers. Usually, they are batterer treatment programs for those stalkers who are involved in intimate relationships with their victims and also show evidence of domestic violence in their prior relationships. In addition, jurisdictions may use mental health remedies that are better suited to handle a stalker's psychological needs than actual jail time (which may serve to aggravate stalking behavior).

Victim Support Programs

Victim Services. Most of the jurisdictions surveyed do not maintain a specialized support program for stalking victims. However, stalking victims usually receive a variety of services through a general victim/witness unit if the case is related to domestic violence. These services include legal assistance such as filing restraining orders, learning about the prosecution process, and obtaining restitution. Other services offered are referrals for counseling and advocacy, shelters, and medical assistance.

CONCLUSION

As with any survey of the size used in the present study, readers should treat the findings with caution when drawing general conclusions based on the responses. The sample is small and was not developed in a manner that renders the respondents as representative of local prosecutors throughout the United States. The respondents were chosen because they were known to have experience with the prosecution of a newly recognized crime: the crime of stalking. In a legal arena where the enactment of stalking laws is relatively recent and enforcement

of these laws is in its infancy, those who have prosecuted violators of these laws can easily be seen as the pathfinders in controlling a crime area that is gaining increasing public attention. The primary value of this survey, then, is that it provides some insights into the experiences and concerns of those who have prosecuted stalking offenders. In doing so, the survey provides an early understanding of what may be required to effectively control this crime problem.

The criminal justice landscape described by those prosecutors interviewed is one of local criminal justice systems that, by and large, do not yet treat stalking as a distinct and unique crime area. Therefore, certain obstacles to the successful prosecution of stalking are present. The overriding problem depicted by interviewed prosecutors is that local criminal justice systems have yet to establish specialized, strategic approaches to stalking offenses that acknowledge the exceptional characteristics of the crime itself, and the problems inherent in its effective prosecution. According to interviewees, a formal protocol to guide prosecutors when charging stalking offenses is rare, the sentencing practices of judges can be less than satisfactory, alternative sentencing options are limited, and victim assistance is confined to services oriented to general domestic violence. Although there is some evidence that prosecutor offices may be evolving toward instituting policies for charging and processing stalking cases, the pace and extent of the system's response to some of the most immediate concerns voiced by the prosecutors interviewed is uncertain.

Based on interview results, the most acute need of local prosecutors was to have an enhanced ability to successfully prosecute criminal stalkers. Certain evidentiary problems and tactical defense maneuvers in the courtroom designed to discredit victim testimony were said

to be common hindrances to prosecuting stalking cases. Surmounting these obstacles depends on the prosecutors' ability to create professional relationships with both the victims and the police associated with these unusual cases. The prosecutor was viewed as being pivotal in guiding the victim to document events and occurrences involving the stalking. This helps to counteract future defense strategies developed to repudiate victim assertions about the offender's criminal behavior.

To overcome these obstacles effectively, however, the prosecutor must be aware of the best methods for successfully prosecuting stalking offenders. One clear message from the interviews is that prosecutors could benefit from customized educational programs that comprehensively explain the hurdles they most likely will encounter in prosecuting stalking offenses, and that demonstrate proven techniques for achieving desirable case results. Rather than being a minor part of broader training programs on domestic violence, more specialized programs that respond to the full range of problems revolving around stalking are necessary, according to this modest sample.

Appendix A: New Hampshire Stalking Statute

N.H. REV. STAT. ANN. § 633:3-a (Supp. 1994)
provides:

I. As used in this section:

(a) "Intimidates" means to engage in a course of conduct directed at a specific person with the purpose of inflicting substantial emotional distress and which results in substantial emotional distress in the victim.

(b) "Course of Conduct" means a pattern of conduct composed of acts on more than one occasion over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" shall not mean any constitutionally protected activity.

(c) "Explicit or implicit threat" means an act made with the intent to cause the person who is the target of the act to reasonably fear for his safety or which would cause a reasonable person to fear for his safety. The threat must be to cause death or bodily injury to a person.

(d) "Stalk" means any of the following:

(1) To follow another person from place to place on more than one occasion for no legitimate purpose with the intent to place such person in fear for his personal safety; or

(2) To appear on more than one occasion for no legitimate purpose in proximity to the residence, place of employment, or other place where another person is found with the intent to place such person in fear for his personal safety; or

(3) To follow another person from place to place on more than one occasion for no legitimate purpose under circumstances that would cause a reasonable person to fear for his personal safety; or

(4) To appear on more than one occasion for no legitimate purpose in proximity to the residence, place of

employment, or other place where another person is found under circumstances that would cause a reasonable person to fear for his personal safety; or

(5) After being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B or RSA 458:16 or an order that prohibits the person from having contact with specific individuals pursuant to RSA 597:2, on a single occasion and in violation of the provisions of such order to:

(A) Follow another person from place to place; or

(B) Appear in proximity to any other place described in the protective order or bail order.

II. A person is guilty of stalking if such person:

(a) Purposely or knowingly stalks another as defined in RSA 633:3-a, I(d)(1) or (2);

(b) Purposely, knowingly or recklessly stalks another as defined in RSA 633:3-a, I(d)(3), (4) or (5); or

(c) Purposely or knowingly intimidates another and makes an explicit or implicit threat against another.

III. For the purposes of this section, a person who engages in acts which would constitute stalking after having been advised by a law enforcement officer as defined in RSA 630:1, that his acts were in violation of this chapter, shall be presumed to have acted knowingly.

IV. In any complaint, information, or indictment brought for the enforcement of any provision of this statute, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained herein and the burden of proof on any exception, excuse, proviso, or exemption shall be upon the defendant.

V. Any law enforcement officer may arrest, without a warrant, any person that the officer has probable cause to believe has violated the provisions of this section when the offense occurred within 6 hours, regardless of whether the crime occurred in the presence of the officer. A law enforcement officer shall arrest a person when he has probable cause to believe a violation of the provisions of this section has occurred within the last 6 hours when the offense involves a violation of a protective order issued pursuant to RSA 173-B or RSA 458:16.

VI. (a) Any person convicted of a violation of this section and who has one or more prior stalking convictions in this state or another state when the second or subsequent offense occurs within 7 years following the date of the first or prior offense shall be guilty of a class B felony.

(b) In all other cases, any person who is convicted of a violation of this section shall be guilty of a class A misdemeanor.

VII. If any provision or application of this section or the application thereof to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

Appendix B: California Stalking Statute

CAL. PENAL CODE § 646.9 (West 1990 & Supp. 1995) provides:

(a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars (\$1,000), or both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Every person who, having been convicted of a felony under this section, commits a second or subsequent violation of this section shall be punished by imprisonment in the state prison for two, three, or four years.

(d) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress and actually cause substantial emotional distress to the person. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(e) For the purpose of this section, "credible threat" means a verbal or written threat or threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. The present incarceration of a person making the threat shall not be a bar to prosecution under this section.

(f) This section shall not apply to conduct that occurs during labor picketing.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(h) The court shall also consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. The duration of the restraining order may be longer than five years only in an extreme case, where a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(i) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(j) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

Appendix C: Stalking Law Code Citations

Alabama	ALA. CODE §§ 13a-6-94 (Supp. 1994)
Alaska	ALASKA STAT. §§ 11.41 260-270 (Supp. 1994)
Arizona	1995 Ariz. Sess. Laws 58 (to be codified at ARIZ. REV. STAT. § 13-2923)
Arkansas	1995 Ark. Acts 1302 (amending ARK. CODE § 5-71-229)
California	CAL. PENAL CODE § 646.9 (West 1990 & Supp. 1995)
Colorado	1995 Colo. HB 1070 (amending COLO. REV. STAT. ANN. § 18-9-111)
Connecticut	CONN. GEN. STAT. §§ 53a-181c & d (1994)
Delaware	DEL. CODE ANN., tit. 11, § 1312A (Supp. 1994)
District of Columbia	1994 D.C. ALS 151 (amending D.C. CODE ANN. § 22-504)
Florida	FLA. STAT. ANN. § 784.048 (Supp. 1994)
Georgia	GA. CODE ANN. §§ 16-5-90 to 16-5-93 (Supp. 1994)
Hawaii	HAW. REV. STAT. §§ 711-1106-1106.5 (1988 & Supp. 1994)
Idaho	IDAHO CODE § 18-7905 (Supp. 1994)
Illinois	720 ILCS 5/12-7.3-7.4 (1993 & Supp. 1994)
Indiana	IND. CODE ANN. §§ 35-45-10-1 to 35-45-10-5 (Burns Supp. 1994)
Iowa	1994 Ia. S.F. 2265 (amending Iowa Code 708.11)
Kansas	1995 Kan. Sess. Laws 251 (amending KAN. STAT. ANN. § 21-3438)
Kentucky	KY. REV. STAT. ANN. §§ 508.130 to .150 (Michie/Bobbs-Merrill 1994)
Louisiana	1994 La. Acts 30 (amending LA. REV. STAT. ANN. § 14:40.2)
Maine¹	ME. REV. STAT. ANN. tit. 17-A, § 210 (1983 & Supp. 1994)
Maryland	MD. ANN. CODE art. 27, § 121B (Supp. 1994)
Massachusetts	MASS. GEN. L. ch. 265, § 43 (Supp. 1995)
Michigan	MICH. COMP. LAWS ANN. §§ 750.411h-i (Law. Co-op. 1993 & Supp. 1994)
Minnesota	1995 Minn. Ch. Law 259 (amending MINN. STAT. ANN. § 609.749)
Mississippi	MISS. CODE ANN. § 97-3-107 (Supp. 1993)

¹Information is for Maine's terrorizing statute.

Missouri	MO. ANN. STAT. § 565.225 (Vernon Supp. 1994)
Montana	1995 Mt. SB 278 (amending MONT. CODE ANN. § 45-5-220)
Nebraska	NEB. REV. STAT. §§ 28-311.02-.05 (Supp. 1994)
Nevada	1995 Nev. Stat. 50 (amending NEV. REV. STAT. § 200.575)
New Hampshire	N.H. REV. STAT. ANN. § 633:3-a (Supp. 1994)
New Jersey	N.J. REV. STAT. § 2C:12-10 (Supp. 1994)
New Mexico	N.M. STAT. ANN. § 30-3A-3 (Michie Supp. 1994)
New York²	N.Y. PENAL LAW §§ 120.13-.14 (McKinney Supp. 1994)
North Carolina	N.C. GEN. STAT. § 14-277.3 (1993 & Supp. 1994)
North Dakota	1995 N.D. Laws 126 (amending N.D. CENT. CODE § 12.1-17-07.1)
Ohio	OHIO REV. CODE ANN. §§ 2903.211-215 (Anderson 1993 & Supp. 1994)
Oklahoma	OKLA. STAT. ANN. tit. 21, § 1173 (West Supp. 1995)
Oregon	OR. REV. STAT. §§ 163.730-.750 (1993)
Pennsylvania	18 PA. CONS. STAT. § 2709 (Supp. 1994)
Rhode Island	1994 R.I. Pub. Laws 7 (amending R.I. GEN. LAWS §§ 11-59-1 to 11-59-3)
South Carolina	1994 S.C. Acts 472
South Dakota	S.D. CODIFIED LAWS ANN. § 22-19a-1-7 (Supp. 1995)
Tennessee	1995 Tn. HB 1770 (amending TENN. CODE ANN. § 39-17-315)
Texas	TEX. PENAL CODE ANN. § 42.07 (Vernon 1994); TEX. CRIM. PROC. CODE ANN. § 17.46 (Vernon Supp. 1995)
Utah	UTAH CODE ANN. § 76-5-106.5 (Supp. 1994)
Vermont	VT. STAT. ANN. tit. 13, §§ 1061-1063 (Law. Co-op. Supp. 1994)
Virginia	VA. CODE ANN. § 18.2-60.3 (Michie Supp. 1994)
Washington	WASH. REV. CODE 9A.46.110 (1994)
West Virginia	W. VA. CODE § 61-2-9a (Supp. 1994)
Wisconsin	WIS. STAT. ANN. 940.32 (West Supp. 1993)
Wyoming	WYO. STAT. § 6-2-506 (Supp. 1993)

²Information is for New York's menacing statute.

Appendix D: Case Law Review

State legislatures have had difficulty defining the criminal conduct addressed in stalking statutes. Many complexities exist in crafting language that encompasses the diverse forms of stalking behavior and, at the same time, excludes otherwise legitimate constitutional conduct.¹ Stalking statutes represent a new area of law, and as a result, many of these statutes have faced (or will face) challenges. Most often, statutes are challenged on grounds that they are unconstitutionally vague or overbroad (see chart in Appendix C).

In general, the overbreadth doctrine requires that a statute be invalidated if it punishes people for speech or conduct that is protected by the First Amendment of the U.S. Constitution.² Ordinarily, courts will give greater deference to statutes that proscribe *conduct* rather than those that proscribe *speech*.³

Furthermore, the vagueness doctrine requires that a statute be invalidated if it does not fairly describe prohibited conduct to people of common intelligence.⁴ This requirement prevents arbitrary enforcement by setting clear standards for laws governing citizens' behaviors. It also ensures that laws do not inhibit free speech under the First Amendment.

In reviewing such constitutional challenges, courts must first determine whether a defendant has standing. Courts will limit their inquiries of the statutory application to the facts of the instant case to prevent speculation on the many hypothetical situations in which the statute might be vague.⁵ Generally, courts will not invalidate a law merely because its language encompasses an extreme or far-fetched, hypothetical situation.⁶ A court will allow a facial challenge if it finds that the statute fails to clearly identify prohibited conduct or if the statute is vague in all of its applications.⁷ Courts will not uphold statutes if they do not clearly define the prohibited conduct.

Generally, a court will outline the statutory elements of the crime, then examine the case facts to determine whether the elements are satisfied.⁸ In determining vagueness and overbreadth, courts are guided by legislative history and intent.⁹ A court will also determine whether the statute in question notifies a reasonable person of the type of conduct proscribed.¹⁰ If a statute gives fair notice of the prohibited conduct, it will be upheld.¹¹

The following is a summary of case law from states in which issues involving stalking legislation have arisen. Most of the cases are based on constitutional challenges; however, some defendants challenged their convictions on the grounds of insufficient evidence.

ALABAMA

An Alabama defendant appealed his seven-year prison sentence on the grounds that the state stalking statute under which he was convicted was vague and overbroad. *Culbreath v. State*, No. CR-94-291, 1995 Ala. Crim. App. LEXIS 139. Relying on findings from appellate courts in Florida and California (states with similar stalking laws), the Alabama Court of Criminal Appeals found that the statute was neither vague nor overbroad. To be convicted under the statute (1) "the accused must intentionally commit the offense"; (2) "there must be a credible threat"; and (3) "there must be an 'act' of repeatedly following or harassing another person that places that person in reasonable fear of death or serious bodily harm." *Id.* at 7. The court held that since the statute has a specific intent requirement, it gives fair notice that the proscribed activity is criminal and creates an objective standard that the victim be placed in fear. Thus, the law was neither vague nor overbroad. *Id.* at 8-9.

For additional Alabama case law, see *Morton v. State*, 651 So.2d 42, 47 (Ala. Crim. App. 1994) (defendant's conviction for aggravated stalking upheld as court defines the term "course of conduct" as a "pattern of conduct composed of a series of acts over a period of time which evidences continuity of purpose").

ARKANSAS

After repeatedly harassing his ex-girlfriend, following her to her home, and threatening her life, Joe Wesson was convicted of the crime of stalking in the second degree. *Wesson v. State*, 896 S.W.2d 874, 875 (Ark. 1995). Stalking in the second degree is defined, in relevant part, as "... a course of conduct that harasses another person and makes a terroristic threat with the intent of placing that person in imminent fear of death or serious bodily injury." ARK. CODE ANN. 5-71-229(b)(1) (Michie 1994). Wesson alleged that the state failed to demonstrate that he made an "actual threat" of death or serious physical injury and claimed that he only intended to harm the victim on an emotional level. *Wesson*, 896 S.W.2d at 876-77. Based on the fact that Wesson told the victim he would hurt her and that the two no longer had any emotional ties, the appellate court agreed with the trial court's determination that the evidence was sufficient to support Wesson's conviction. *Id.* at 877.

CALIFORNIA

After stalking and eventually murdering his ex-girlfriend, Thomas Heilman alleged, among other things, that the stalking statute was unconstitutionally vague. *People v. Heilman*, 30 Cal. Rptr. 2d 422, 423 (Cal. Dist. Ct. App. 1994). At issue was the term "repeatedly" in section 646.9(a) of the California Penal Code, which reads, in pertinent part, "[a]ny person who

willfully, maliciously, and *repeatedly* follows or harasses another . . . is guilty of the crime of stalking." Cal. Penal Code 19-646.9(a) (Deering 1990) (emphasis added). The *Heilman* court held that "repeatedly" modifies the word "follows" and, when read in light of the entire statute, means that the offender must only follow the victim more than once and also must communicate a credible threat with the intent to place the victim in fear of death or serious bodily injury. *Heilman*, 30 Cal. Rptr. 2d at 426-27.

To require an offender to engage in a repeated series of acts over time is illogical, as the law is intended to penalize a single course of conduct of harassment. *Id.* at 427-8. Thus, the court held, the statute provides sufficient guidance to offenders and law enforcement and is not vague. *Id.* at 428.

Arguing that the state stalking statute was unconstitutionally broad, Warren Hudson appealed his conviction for stalking in *People v. Hudson*, 6 Cal. Rptr. 2d 690 (Cal. Dist. Ct. App. 1992). Specifically, Hudson argued that the statute was invalid, as it did not require an offender to possess a specific intent to carry out a threat. *Id.* at 693. The court held that the statute was a legislative proscription of "true threats." *Id.* It found that in order for a statement to constitute a "true threat," the person making the threat need not intend to carry it out. *Id.* Rejecting Hudson's contention, the court concluded that "the fact that the statute does not require an intent to carry out the threat does not affect its validity." *Id.*

In *People v. Carron*, 44 Cal. Rptr. 2d 328 (Cal. Dist. Ct. App. 1995), *review denied*, No. BO78892, 1995 Cal. LEXIS 7521, the defendant, in appealing his stalking conviction, contended that he never intended to kill or cause great bodily harm to his victim and, therefore, could not be found guilty of the crime. *Id.* at 329. In its

statutory construction, the court held that the crime of stalking does not require the intent to kill or cause great bodily harm but only a specific intent to make a *credible threat* to do so, making the victim reasonably fear death or great bodily injury. *Id.* at 331-3. See CAL. PENAL CODE § 19-649.9 (b) and (c). See also *People v. Allen*, 33 Cal. App. 4th 1149 (Ct. App. 1995) (fifteen minutes of fear of an offender who is armed and at large and who has threatened to kill the victim and her daughter is more than sufficient to constitute “sustained” fear in accordance with the stalking statute).

For case law in which the evidence was found to be sufficient to uphold the defendant’s stalking conviction, see *People v. Stanfield*, 38 Cal. Rptr. 2d 328 (Dist. Ct. App. 1995) (death threat specifying how the victim will die, a package containing papers and a “long-dead cat,” and a letter from the offender stating, “I’m not bluffing” provided substantial evidence to support the defendant’s conviction for stalking).

CONNECTICUT

A Connecticut defendant moved to dismiss his stalking indictment on the grounds that the statute was vague and overbroad, thus inviting abuse by those enforcing it. *State v. Culmo*, 642 A.2d 90, 92 (Conn. Super. Ct. 1993). Because the statute implicated Culmo’s First Amendment right to interstate travel, the court concluded that he had standing to challenge the statute’s constitutionality on vagueness grounds. *Id.* at 95-96. In reviewing the statute, the court found that it required the state to prove that the offender (1) acted with intent to cause another to fear for his or her personal safety, (2) acted willfully and repeatedly, (3) followed or lay in wait for another, and (4) caused another to reasonably fear for his or her personal safety. *Id.* at 98-100. The court

concluded that the statute provided adequate notice of what conduct is prohibited and that the statute criminalizing stalking is valid. *Id.* at 98-101.

The court also found that Culmo lacked standing to raise a constitutional claim that the law was overbroad. *Id.* at 102. Noting the difference between statutes that regulate conduct and those that regulate expression, the court stated that a defendant has standing “only in cases in which the words of the statute clearly implicate *expressive activity*.” *Id.* at 103 (emphasis added). Because words are not required to violate the statute and because a physical assault is not considered expressive conduct, the act of stalking is not protected under the First Amendment. *Id.* at 104. Finally, the court found that the statute was narrow in its scope and sufficiently explicit that those enforcing it do not have unfettered discretion in its enforcement. *Id.*

DELAWARE

A Delaware defendant filed a motion for judgment of acquittal of his stalking conviction, claiming that the evidence was insufficient to convict him. *Delaware v. Knight*, No. IN-92-12-0179, 1994 Del. Super. LEXIS 2. For almost three years, the defendant followed and harassed the victim by professing his undying love for her and his intention to marry her. *Id.* at 2-6.

The defendant first claimed that the state did not prove that the victim suffered “substantial emotional distress” because of his actions. *Id.* at 5. However, the victim testified that because of Knight’s behavior, she had difficulty sleeping and eating; experienced nightmares; twice changed residences; left her job and, eventually, gave up her career; and generally feared for her safety. *Id.*

at 6. The court stated that the defendant's behavior not only caused her substantial emotional distress but that her reactions were reasonable. *Id.*

Knicht next claimed that the state did not prove that he performed his actions maliciously.¹² The court found that the defendant's three-year rampage provided ample evidence that he "continued his actions in reckless disregard for the victim's fundamental right of privacy in spite of numerous attempts by the victim to stop his behavior." *Id.* at 7. Similarly, the court struck down Knight's claim that his course of conduct served the legitimate purpose of seeking "closure" to his "relationship" with the victim. *Id.* at 7-8. Here, viewing the evidence in the light most favorable to the state, the court disagreed with Knight and denied the motion. *Id.* at 2.

FLORIDA

After making harassing phone calls and threatening the lives of his estranged in-laws, John Pallas was convicted for aggravated stalking. He appealed his conviction on the grounds that the statute was vague and overbroad. *Pallas v. State*, 636 So.2d 1358 (Fla. Dist. Ct. App. 1994), *aff'd*, 654 So.2d 127 (Fla. 1995). The court affirmed the conviction, stating that the statute gave adequate notice of the proscribed activity through its "reasonably clear and specific" language. *Id.* at 1360. Similarly, the court held that the statute was not overbroad, since only a willful, malicious, and repeated course of conduct that would cause "substantial" emotional distress to a "reasonable person" is punishable under the law. *Id.* at 1362-3.

A Florida defendant called his victim at her home several times each day, beat her, and threatened to kill her. *Bouters v. State*, 634 So.2d 246 (Fla. Dist. Ct. App. 1994), *aff'd*, 659 So.2d

235 (Fla. 1995). Claiming that the law criminalized constitutionally protected activity and created a subjective standard that did not adequately notify him of the prohibited conduct, Bouters challenged that it was vague and overbroad. *Id.* at 247. The statute prohibits willfully, maliciously, and repeatedly following or harassing¹³ another person. FLA. STAT. ANN. § 784.048(3) (West 1994). Citing *Pallas*, the court stated that stalking falls outside of the First Amendment's protection and thus, rejected Bouters' claims. *Bouters*, 634 So.2d at 247.

For additional case law upholding the constitutionality of the statute, see *Gilbert v. State*, 659 So.2d 233 (Fla. 1995). For case law in which courts certified the question of whether the Florida stalking statute is vague or overbroad, see *Bryant v. State*, 644 So.2d 513 (Fla. Dist. Ct. App. 1994); *State v. Tremmel*, 644 So.2d 102 (Fla. Dist. Ct. App. 1994); and *Varney v. State*, 638 So.2d 1063 (Fla. Dist. Ct. App. 1994).

GEORGIA

In *Johnson v. State*, 449 S.E.2d 94 (Ga. 1994), the defendant appealed his conviction under a misdemeanor stalking provision, contending that the companion felony stalking law and the aggravated stalking law were unconstitutionally vague and overbroad. *Id.* at 95. Johnson claimed that the two statutes proscribed merely contacting another person without that person's consent. *Id.* at 96. The court held that merely contacting or communicating with another is not prohibited, but doing so for a "harassing or intimidating" purpose is. *Id.*

Johnson further contended that the statutes failed to properly require that the "harassing and intimidating" conduct caused substantial, emotional distress or constituted an overt threat. *Id.* The court held that the conduct need only

place the victim (or his or her family) in reasonable fear of death or bodily harm. *Id.* Thus, the court found the statutes to be constitutional. *Id.* at 96-97.

For case law in which the evidence was found to be sufficient to convict the offender, see *Robinson v. State*, 456 S.E.2d 68 (Ga. Ct. App. 1995) (after attempting to end their relationship, the victim feared for her life because the defendant repeatedly called her, left her threatening notes, and followed her in his car).

ILLINOIS

The Supreme Court of Illinois upheld the constitutionality of its misdemeanor and felony stalking statutes in *People v. Bailey*, 657 N.E.2d 953 (Ill. 1995). In this consolidated appeal, the defendants argued that the stalking statutes were facially overbroad and unconstitutional because they failed to include the words “without lawful authority.” *Id.* at 967, citing *People v. Wick*, 481 N.E.2d 676 (Ill. 1985). One defendant further challenged the statutes on overbreadth grounds, arguing that they reached constitutionally protected speech “by not requiring that the threat create a reasonable apprehension of imminent harm in the victim or incite imminent lawless action.” *Bailey*, 957 N.E.2d at 967. The court interpreted the statutes as prohibiting conduct performed “without lawful authority” and found this interpretation to be consistent with the intent of the state legislature. The court stated that “the stalking and aggravated stalking statutes’ proscriptions are reasonably related to the goal of protecting possible victims of stalking and aggravated stalking.” *Id.*

The court next addressed one defendant’s argument that the statutes were overbroad and reached constitutionally protected speech. The court rejected this argument, holding that the

stalking statute “does not impinge on any constitutionally protected right of free speech or any other fundamental constitutional right.” *Id.* Additionally, contrary to one defendant’s contention, the court found that the evidence was sufficient to show that the defendant was guilty of aggravated stalking. *Id.* at 989.

For additional Illinois case law addressing questions of sufficiency of the evidence, see *People v. Krawiec*, 634 N.E.2d 1173 (Ill. 1994) (by placing the victim under surveillance outside her home, defendant’s acts were in furtherance of his threat); *People v. Holt*, 649 N.E.2d 571 (Ill. 1995) (defendant’s surveillance of victim at an ice rink was sufficient to satisfy statutory requirement, and the evidence was sufficient to prove defendant’s guilt beyond a reasonable doubt); and *People v. Sowewimo*, 657 N.E.2d 1047 (Ill. App. Ct. 1995) (defendant’s conviction for aggravated stalking was upheld when, on two occasions, he committed two acts of surveillance by refusing to leave the premises of the victim’s workplace and, on another occasion, held a switchblade to her throat).

INDIANA

In *Johnson v. State*, 648 N.E.2d 666 (Ind. Ct. App. 1995), the defendant argued that the stalking statutes were void because of vagueness, since the statutes failed to inform a reasonable person of the conduct that was prohibited. The court ruled that the statutes only must inform a person of generally prohibited conduct, not itemize a list of specific conduct that is prohibited. *Id.* at 670. Reasoning that these statutes contained standards that distinguished between trivial and substantial conduct, the court found that the statutes prevented “erratic arrests.” *Id.* Thus, the statutes were not void for vagueness.

The defendant also argued that his conduct was constitutionally protected and therefore was not prohibited by the stalking statute. The court found sufficient evidence to demonstrate that the defendant repeatedly harassed the victim, causing her to suffer emotional distress. *Id.* at 669. In addition, the court determined that the defendant's conduct, including waiting outside the shelter that accommodated the victim and her children and questioning people who exited and entered the shelter, caused the victim to feel "terrorized, frightened, intimidated, or threatened." *Id.* The court concluded that the evidence was sufficient to support the defendant's stalking conviction. *Id.* at 670.

MASSACHUSETTS

In *Commonwealth v. Kwiatkowski*, 637 N.E.2d 854 (Mass. 1994), the court overturned the defendant's stalking conviction, holding that the stalking statute was unconstitutionally vague on its face. The statute provided that ". . . 'harasses' means a knowing and willful pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms or annoys the person." *Id.* at 857 n.3. The court found that this language could be construed to require proof of repeated patterns of conduct or series of acts, rather than a single pattern of conduct or acts. *Id.* at 857. Here, the defendant's course of conduct included making more than 150 threatening telephone calls in a seven-day period to the victim, who had obtained a restraining order against him. *Id.* at 856. The court determined that while the legislature probably did not intend this interpretation, the failure to state that a single pattern or series of acts was sufficient to constitute the crime left room for a vagueness challenge. *Id.* at 857. The court defined its role as that of interpreting the

"statute prospectively to eliminate uncertainties in its construction and in order to reflect the presumed intention of the Legislature" and found the statute unconstitutionally vague. *Id.* at 857.

The defendant in *Commonwealth v. Matsos*, 657 N.E.2d 467 (Mass. 1995), argued that the evidence was insufficient to prove that he made a threat with the intent to place the victim in imminent fear of death or bodily injury. *Id.* at 468. In the alternative, he argued that his conviction should be reversed, since the stalking statute subsequently was found to be facially vague in *Commonwealth v. Kwiatkowski*, *supra*. *Id.*

The defendant sent the victim hundreds of obsessive, harassing letters over a ten-month period and attempted to interfere with her employment. He followed her and made threats and references to guns and silencers. *Id.* at 469-70. The court concluded that this evidence was sufficient to show that the defendant intentionally placed the victim in imminent fear of death or serious bodily injury. *Id.* at 469.

Furthermore, the court noted that a defendant is entitled to retroactive application of a new rule only if the issue was raised at trial. *Id.* at 471. Here, the defendant failed to raise the issue of the constitutionality of the stalking statute at trial. Thus, he was not entitled to retroactive application of the rule announced in *Kwiatkowski*, *supra*. *Id.* The court then focused its inquiry on whether the defendant's conviction under the previous stalking statute created a substantial risk of a miscarriage of justice. *Id.* The court looked at the defendant's behavior and concluded that the defendant's conviction did not create a substantial risk of a miscarriage of justice. *Id.*

MICHIGAN

A Michigan defendant appealed the trial court's ruling, arguing that his felony stalking conviction violated double jeopardy principles and that the stalking law was unconstitutional. *People v. White*, 536 N.W.2d 876 (Mich. 1995). One year prior to the felony stalking conviction, the defendant pleaded guilty to misdemeanor stalking of the same victim. The defendant argued that double jeopardy prevented the felony prosecution, since both stalking charges arose out of the same course of conduct. *Id.*

The court determined that the defendant's double jeopardy challenge was "misplaced, however, because he was not convicted twice for the 'same offense.'" *Id.* at 880. Rather, the court found that the defendant was convicted of misdemeanor stalking for violating a township ordinance and subsequently convicted of felony stalking for conduct arising out of a separate incident. *Id.* at 881. The court found that the defendant's second conviction of felony stalking did not violate double jeopardy principles. *Id.*

The defendant also argued that the stalking statutes were unconstitutionally vague and infringed on his First Amendment right to free speech because they allow "a complainant to determine subjectively which telephone calls are acceptable and which are criminal." *Id.* at 882. The court found that the statutes prohibited the type of conduct that would cause a reasonable person to feel "terrorized, threatened or harassed," and concluded that the defendant's conduct did not constitute protected speech or conduct. *Id.* at 882-83. Next, the court determined that the statutes provided fair notice of the prohibited conduct, stating that "[a] person of reasonable intelligence would not need to guess at the meaning of the stalking statutes." *Id.* at 884. The court concluded that the statutes were not void for vagueness on the grounds of insufficient notice. *Id.*

MONTANA

The Montana Supreme Court upheld its state stalking statute in *State v. Cooney*, 894 P.2d 303 (Mont. 1995). Four years of "professing his love" for his former tenant through letters and sexually explicit telephone messages resulted in Cooney's conviction for stalking. *Id.* at 304-306. He claimed that his actions did not threaten the victim and that he only expressed his devotion to her. *Id.* He challenged his conviction on several grounds, one of which was that the statute deprived him of his right to free speech in violation of the First Amendment. *Id.* at 307.

Stating that the First Amendment does not protect all types of speech,¹⁴ the court found that Cooney's letters and phone calls caused the victim substantial emotional distress and were beyond that to which anyone should be subjected. *Id.* at 307. The stalking law, thus, was not unconstitutionally applied to Cooney, because "free speech does not include the right to cause substantial emotional distress by harassment or intimidation." *Id.*

In *State v. Martel*, 902 P.2d 14 (Mont. 1995), Martel challenged his stalking conviction, alleging that the statute was vague and overbroad. *Id.* at 16. First, Martel alleged that the statute was vague on its face, because it did not define the following terms: "repeatedly, harassing, intimidating, reasonable apprehension and substantial emotional distress." *Id.* at 18. The court held that the legislature need not include an exhaustive list of definitions as long as "the meaning of the statute is clear and provides an offender with adequate notice of what content is proscribed." *Id.* at 19. The offense occurs when an offender engages in a course of conduct that "repeatedly, purposely or knowingly" causes another to endure substantial emotional distress or reasonable apprehension of bodily injury. *Id.* The Montana Supreme Court upheld the lower courts' finding that Martel repeatedly followed

and harassed his victim and caused her to suffer substantial emotional distress and thus, the finding that he possessed the mental state necessary to be found guilty of stalking. *Id.* at 20. The court further held that the statute was not unconstitutionally broad, since Martel failed to make a specific argument of how the statute infringes on any First Amendment rights or how it may adversely affect the rights of others in both a "real and substantial way." *Id.*

NEW YORK

A New York defendant alleged that the crime with which he was charged under the newly enacted stalking law (N.Y. PENAL LAW § 120.14(2) (Consol. 1994)), menacing in the second degree, was not facially sufficient. *People v. Payton*, 612 N.Y.S.2d 815, 817 (N.Y. Crim. Ct. 1994). The court found that the prosecution was required to allege that Payton engaged in a "course of conduct" with the "intent" to place another in "reasonable fear" of physical injury. *Id.* Following at the entirety of Payton's conduct toward the victim, the court found that Payton's prior criminal activity toward the victim (forty-five days before the incident for which he was charged with stalking, he physically and sexually assaulted her and also threatened the victim and her family over the telephone), when considered with the incidents about which the victim filed stalking charges (he followed her on the street for two blocks and approached the victim on the street another time), was facially sufficient to support the state's stalking charge. *Id.* at 818-19. Thus, although Payton's activity of approaching and following the victim may alone not have been sufficient to allege a violation of the statute, because the incidents were part of a "course of conduct" with the "intent" to place the victim in "reasonable fear," the behavior was prohibited and violated the stalking statute. *Id.* at 819.

OHIO

The defendant in *State v. Benner*, 644 N.E.2d 1130 (Ohio 1994), filed a motion to dismiss a charge of menacing by stalking, arguing that the statute was void for vagueness in violation of the Fourteenth Amendment. The trial court granted the motion to dismiss, holding that the definition of "pattern of conduct" in the statute was unconstitutionally vague. The appeals court reversed the trial court's decision, finding that the defendant failed to meet the criteria necessary to raise a facial challenge. *Id.* at 1132.

The court stated that a facial challenge is appropriate if (1) a statute "chills" constitutionally protected conduct, and (2) a statute is impermissibly vague in all its applications. *Id.* at 1132. First, the court determined that this statute did not "chill" constitutionally protected conduct. *Id.* at 1132. Next, the court determined that the defendant did not show that the statute was "impermissibly vague in all its applications." *Id.* at 1132. A statute that is impermissibly vague in all its applications does not provide a standard to establish what conduct is included and excluded by its prohibition. *Id.* After considering the facts, the court concluded that the defendant's conduct would be prohibited under the statute "precluding a determination that the statute is vague in all its applications." *Id.* at 1133. Thus, the court concluded that Benner had no grounds to assert a facial challenge. *Id.*

For additional Ohio case law regarding vagueness and overbreadth issues, see *Dayton v. Smith*, 646 N.E.2d 917 (Ohio 1994) (defendant failed to prove the statute was vague in all its applications and failed to show that the statute did not clearly prohibit his conduct), and see also *State v. Bilder*, 651 N.E.2d 502 (Ohio 1994) (defendant did not have a constitutionally protected right to engage in the harassing behavior).

For additional Ohio case law regarding sufficiency of the evidence issues, see *State v. Wasmire*, No. CA00012, 1994 Ohio App. LEXIS 3866 (evidence that the defendant extended his middle finger and shouted “bitch” at the victim one time was insufficient to uphold defendant’s conviction of menacing by stalking).

OKLAHOMA

The Oklahoma Court of Criminal Appeals reversed a district court ruling and held that the stalking statute was constitutional. *State v. Saunders*, 886 P.2d 496 (Okla. Crim. App. 1994). Citing *Pallas* from Florida and *Heilman* from California,¹⁵ the court found that the statute gave fair warning to the proscribed activity. *Id.* at 495. Inclusion of the term “repeatedly” added to the specific intent required to commit the offense, since the conduct does not rise to the level of criminal activity unless the offender follows or harasses the victim more than once. *Id.* By using the terms “willfully and maliciously,” the legislature provided that the offender’s intent triggered the statute. *Id.*

OREGON

Oregon’s stalking statute was struck down by an appellate court in *State v. Norris-Romine*, 894 P.2d 1221 (Or. 1995). In this consolidated appeal, the defendants were convicted of violating stalking protective orders. The defendants challenged the stalking statutes, arguing that the phrase “without legitimate purpose,” as defined in the statute, was unconstitutionally vague. *Id.* A criminal statute must inform those who are subject to it of the prohibited conduct. *Id.* at 1224. While the state admitted that the phrase “legitimate purpose” was not self-explanatory, it argued that the legislative history of the statute clarified the meaning of the phrase. *Id.* The court

rejected this argument and found that the legislative history did not define what purposes, other than those related to a labor dispute, are legitimate. *Id.* The court reasoned that “a term that has no meaning to the ordinary person without reference to the legislative history cannot withstand a vagueness challenge.” *Id.* at 1224. The court ruled that the statutes provided no notice as to what conduct was prohibited and that the phrase “legitimate purpose,” as used in the statutes, was unconstitutionally vague. *Id.* at 1225.

PENNSYLVANIA

In *Commonwealth v. Schierscher*, 668 A.2d 164 (Pa. 1995), the defendant engaged in threatening behavior toward a judge in the local Court of Common Pleas. He continuously telephoned the judge’s chambers, referred to her in derogatory terms, and threatened her. *Id.* at 166-68. After his conviction for stalking and harassment, the defendant raised several issues on appeal, one of which was that the stalking statute violated his rights under the First and Fourteenth Amendments.

The court noted that an act of the legislature enjoys a presumption of constitutionality and will not be found unconstitutional unless it clearly violates the Constitution. *Id.* at 171. The court found that the defendant’s conduct was clearly prohibited under the statute at issue. *Id.* at 172. Among other activities, his repeated communications to the judge’s chambers and distribution of leaflets outside the courthouse constituted proscribed conduct under the statute. In addition, the court determined that the statute did not reach any constitutionally protected conduct and concluded that the statute was constitutional and reasonably restricted conduct without being vague or overbroad. *Id.*

The defendant in *Commonwealth v. Urrutia*, 653 A.2d 706 (Pa. Super. Ct. 1995), was convicted of stalking and making terroristic threats toward his ex-girlfriend. He argued that the evidence was insufficient to support his conviction for stalking. The defendant also objected to the admissibility of two prior violent episodes as prior bad acts. *Id.* at 707.

The defendant asserted that the evidence was insufficient to establish that he engaged in a "course of conduct" as defined by the stalking statute. The court disagreed and found that the commonwealth demonstrated that the defendant was involved in two violent episodes with the victim prior to his arrest and that the victim had obtained a protective order against him. *Id.* at 709. The defendant objected to the admission of evidence of these two prior violent episodes as evidence of prior bad acts. *Id.* While recognizing that evidence of prior bad acts generally is not admissible except to show the defendant's intent, the court found that in this case, the evidence of prior bad acts was properly admitted to establish the defendant's intent to stalk the victim. *Id.* The court noted that the prior bad acts were also admissible to show the defendant's "course of conduct." *Id.* The court stated that "where evidence of prior bad acts is necessary to establish the pattern, the evidence is admissible." *Id.* at 710.

SOUTH DAKOTA

In *State v. McGill*, 536 N.W.2d 89 (S.D. 1995), the defendant stalked the victim for over fifteen years. McGill repeatedly called the home of the victim's parents, wrote her frightening "love letters," went to the victim's workplace, threatened the victim's husband on several occasions, and followed her children to and from daycare. *Id.* at 89-91. In 1993, immediately after the stalking law

took effect, the victim filed stalking charges, and the defendant was convicted. *Id.* On appeal, the defendant objected to the admission of evidence of prior bad acts. *Id.* at 91. In its analysis, the court relied on *Commonwealth v. Urrutia*, *supra*, which held that evidence of prior bad acts was admissible to show a "course of conduct." *Commonwealth v. Urrutia*, 653 A.2d 706, 709 (Pa. Super. Ct. 1995). The court noted that in the case at bar, the trial court admitted the evidence to prove McGill's course of conduct, or in the alternative, to show proof of intent and absence of mistake. *McGill*, 536 N.W.2d at 92. The court then determined that the admission of the prior bad acts evidence had no undue prejudicial effect. *Id.* at 93.

McGill also questioned the constitutionality of the stalking statute. He argued that several words in the statute rendered it impermissibly vague. *Id.* at 94. The court concluded that a reasonable person easily could determine what type of conduct the statute prohibited, and thus, the defendant failed to meet his burden of proving that the statute was unconstitutionally vague. *Id.* at 96.

Finally, the defendant claimed that the evidence was insufficient to prove that he violated the stalking statute. He argued that the statutory elements of "malicious intent" and "repeated actions" were not fulfilled. *Id.* at 93. The court evaluated the facts and determined that the evidence was sufficient for a jury to find the defendant guilty of stalking. *Id.* at 94.

VIRGINIA

A Virginia defendant challenged his stalking conviction on two grounds. *Woolfolk v. Commonwealth*, 447 S.E.2d 530 (Va. Ct. App. 1994). First, he claimed that the evidence was insufficient to show that he acted with specific

intent to cause emotional distress by stalking his ex-wife. Second, he claimed that the stalking statute was unconstitutionally vague and overbroad. *Id.* at 531.

The appellant had followed his ex-wife, maintained surveillance on her home and made threatening phone calls to her. His activities caused her to be fearful, carry tear gas in her purse and install motion detector lights around her home. *Id.* at 531-32. Based on this information, the court found that the commonwealth proved that the defendant acted with the intent to cause emotional distress when he engaged in this pattern of behavior. *Id.* at 532.

The defendant also argued that the phrase “intent to cause emotional distress” rendered the stalking statute impermissibly vague. *Id.* at 533. The court first found that the defendant lacked standing to raise a vagueness challenge, since he engaged in conduct that was clearly prohibited by the statute. *Id.* at 533. The court also noted that “the term ‘emotional distress’ is a common and well-recognized legal term that has been judicially narrowed by existing Virginia law.” *Id.* Concluding that the stalking statute provided fair notice of the type of prohibited conduct, the court held that it was not unconstitutionally vague. *Id.* at 535. Finally, the court held that the stalking statute did not proscribe any constitutionally protected activities, and thus was not unconstitutionally overbroad. *Id.* at 536.

WYOMING

The defendant in *Luplow v. State*, 897 P.2d 463 (Wyo. 1995) challenged the constitutionality of the stalking statute, arguing that it was vague and overbroad. Finding that the statute provided fair and sufficient notice of the prohibited conduct to reasonable persons, the court stated that “sufficient specificity exists defining the conduct

proscribed to meet the test of vagueness.” *Id.* at 468. Furthermore, the court determined that the stalking statute did not have a “chilling” effect on First Amendment expression and concluded that the statute was not unconstitutionally overbroad. *Id.* at 468.

Endnotes

1. Robert P. Faulkner and Douglas H. Hsiao, *And Where You Go I'll Follow: The Constitutionality of Antistalking Laws and Model Legislation*, 31 HARV. J. ON LEGIS. 1, 6 (1993).
2. BLACK'S LAW DICTIONARY 664 (5th ed. 1979).
3. See Robert N. Miller, “Stalk Talk”: *A First Look at Anti-Stalking Legislation*, WASH. & LEE L. REV. 1303, 1316-17 (1993); see also *Broadrick v. Oklahoma*, 413 U.S. 601 (1973).
4. BLACK'S LAW DICTIONARY 1389 (5th ed. 1979).
5. *Culmo*, 642 A.2d at 94. See also *State v. Benner*, 644 N.E.2d 1130, 1132 (Ohio App. 1994).
6. See *Miller*, *supra* note 4, at 1322.
7. *Benner*, 644 N.E.2d at 1132.
8. *Culmo*, 642 A.2d at 97.
9. *Culmo*, 642 A.2d at 98.
10. *Id.* at 100.
11. *Id.*
12. The court defined the term “maliciously” as “a wish to vex, annoy or injure another or an intent to do a wrongful act without just cause or in reckless disregard of another’s rights.” *Knight*, No. IN-92-12-0179, 1994 Del. Super. LEXIS 2.
13. Harassment is defined as a “course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.” FLA. STAT. ANN. 784.048(3).

14. For example, the First Amendment does not protect classes of speech that are lewd and obscene, profane, libelous, or fighting words. *See Cooney*, 894 P.2d at 307.

15. *Pallas v. State*, 636 So.2d 1358 (Fla. Dist. Ct. App. 1994), *supra*, and *People v. Heilman*, 30 Cal. Rptr. 2d 422 (Cal. Dist. Ct. App. 1994), *supra*.

Appendix E: Telephone Survey Instrument

CASE MANAGEMENT

1. How are cases assigned in your office?
 - a. Are stalking cases assigned differently, for example:
(This question was included to determine whether they use a vertical or horizontal approach, but some people may not use or be familiar with that terminology.)
2. Has your stalking statute been amended in the last two years?
 - a. Do your statutes help or hinder you in the prosecution of these cases? How?
3. Have prosecutors received any training related to stalking cases? Please describe training currently received and training needs.
4. Have any formal policies or protocols been developed and used? Do they differ for misdemeanors and felonies? Are they multidisciplinary? Can we obtain a copy?
5. How are most stalking cases introduced to the system, victim or police?
6. What is the typical relationship between the defendant and the victim?
7. What are the most important reasons for typically choosing not to proceed in the prosecution of a stalking misdemeanor/felony?
8. Have you had a problem with "uncooperative witnesses" in stalking cases?
9. Does your office work with other organizations within and outside of the criminal justice system in handling misdemeanor/felony stalking cases? If so, which organizations and how?

PRETRIAL POLICIES

1. Do you have guidelines for bail recommendations in stalking cases? What are typical amounts and conditions? If decisions are made on a case-by-case basis, what factors are taken in consideration?

2. Are restraining orders used in stalking cases? How?
 - a. What are the penalties if an offender violates a restraining order? Are they being enforced?

DIVERSION

1. Is your office involved in a diversion program for stalking offenses? (If no, go to next section, Trials.)
2. Is this a pretrial or post-plea/conviction program?
3. Who administers the program?
4. Which defendants are eligible for the diversion program? What criteria are used?
5. Describe any types of treatment used in the program.
6. How is the defendant's compliance with the program monitored?
7. What happens to the defendant if he/she successfully completes the program?
8. What are the consequences for not successfully completing the program?
9. Do you consider the program to be effective? Explain.
10. Have there been any problems with the program? Explain.

TRIALS

1. What do you feel are the most serious obstacles to achieving convictions in stalking cases? How are these obstacles overcome?
2. Are the cases usually bench or jury trials? Who is more likely to convict: a judge or a jury? Is there a difference in the sentences handed down?
3. What are the typical defenses used in stalking cases?

4. Do stalking defendants routinely use expert testimony? If yes, in what context?
5. Does your office use expert witness testimony in these cases? If yes, in what context?

SENTENCING OPTIONS

1. In general, how do you view sentencing patterns of stalking offenders in your jurisdiction?
2. Does your office plea bargain on stalking cases? What factors does your office take into consideration in offering a plea bargain or negotiated plea?

VICTIM SUPPORT PROGRAMS

1. Have you incorporated a specialized stalking victim support program in your office, or are stalking victims handled in the regular victim/witness caseload?
 - a. What services are available to stalking victims?
2. Are victims informed when defendants are released? How?
3. Do you interact with local victim support programs operating outside of your office? If yes, how? Has the relationship proved helpful?

BACKGROUND INFORMATION

What is the estimated yearly volume of stalking felonies prosecuted by your office?

- 0-10
- 11-25
- 26-50
- 51-100
- over 100

What is the estimated yearly volume of stalking misdemeanors prosecuted by your office?

- 0-10
- 11-25
- 26-50
- 51-100
- over 100

Appendix F: Telephone Survey Results

CASE MANAGEMENT				
	Jurisdiction	Type of Prosecution /Assignment of Cases	Has Stalking Statute Been Amended /Brought Help or Hindrance?	Have Prosecutors Received Training?
	Santa Clara County, CA	vertical/specific=fel.	amended/helpful	no
	Los Angeles County, CA	vertical/random	amended/helpful	yes
	Rockville, CT	horizontal/random	amended/helpful	no
	Dade County, FL	vertical/specific	not amended/—	—
	Miami, FL	vertical/specific	amended/helpful	—
	Duval County, FL	vertical/specific	amended/helpful	yes
L	Honolulu, HI	vertical for fel./—	amended/helpful	no
A	Cook County, IL	vertical for fel./—	amended/helpful	yes
R	Brockton, MA	horizontal/—	not amended/helpful	no
G	Hampden County, MA	vertical/—	amended/hindrance	yes
E	Burlington County, NJ	horizontal/—	not amended/helpful	yes
	Bernalillo County, NM	vertical for fel.	—/helpful	yes
	Manhattan, NY	vertical/—	amended/hindrance	yes
	Syracuse, NY	vertical/specific	amended/helpful	yes
	Philadelphia, PA	vertical/specific	not amended/helpful	yes
	West Valley City, UT	vertical/random	amended/helpful	yes
	King County, WA	horizontal/specific	amended/helpful	yes
	Tuscumbia, AL	vertical/specific	not amended/helpful	yes
	Tuscola County, MI	— —/random	amended/helpful	yes
S	Cass County, MI	vertical/—	not amended/helpful	yes
M	Boone County, MO	vertical/—	not amended/helpful	yes
A	Morgan County, MO	vertical/—	amended/helpful	no
L	Livingston, MT	vertical/specific	not amended/helpful	yes
L	Fargo, ND	vertical/random	not amended/helpful	no
	Wahpeton, ND	vertical/specific	amended/helpful	no
	Dover, NH	vertical/specific	not amended/—	yes
	Pittsboro, NC	vertical/specific	not amended/—	no
	San Angelo, TX	vertical/specific	amended/helpful	yes

CASE MANAGEMENT (continued)						
	Jurisdiction	Does Office Have Formal, Written Protocol or Policy for Stalking Offenses?	Typical Victim/Offender Relationship	Reasons for Discontinuing Prosecution	Does Office Work With Outside Organizations on Stalking Cases?	Problems With "Uncooperative Witnesses"
	Santa Clara County, CA	none	dating relationship	insufficient evidence	no	yes
	Los Angeles County, CA	none	_____	false victimization	yes	yes
	Rockville, CT	none	boy/girlfriend	time between contacts	no	no
	Dade County, FL	protocol	boy/girlfriend	insufficient evidence	yes	no
	Miami, FL	policy	_____	_____	_____	no
	Duval County, FL	none	ex-boy/girlfriend	insufficient evidence	yes	no
L	Honolulu, HI	none	ex-spouse, boy/girlfriend	insufficient evidence	yes	no
A	Cook County, IL	none	ex-spouse, boy/girlfriend	insufficient evidence	yes	no
R	Brockton, MA	policy	_____	none	yes	no
G	Hampden County, MA	protocol	boy/girlfriend	insufficient evidence	_____	no
E	Burlington County, NJ	none	ex-boy/girlfriend	insufficient evidence	yes	no
	Bernalillo County, NM	none	ex-spouse, boy/girlfriend	insufficient evidence	no	no
	Manhattan, NY	none	ex-spouse, boy/girlfriend	uncooperative victim	yes	yes
	Syracuse, NY	none	boy/girlfriend	uncooperative victim	yes	yes
	Philadelphia, PA	protocol	_____	none	yes	no
	West Valley City, UT	none	spouse, boy/girlfriend	insufficient evidence	yes	yes
	King County, WA	policy	ex-spouse, boy/girlfriend	insuff. evid./victim safety	no	yes
	Tuscumbia, AL	_____	ex-spouse, boy/girlfriend	uncooperative victim	yes	yes
	Tuscola County, MI	none	live-in persons	uncooperative witnesses	yes	yes
S	Cass County, MI	none	ex-spouse, boy/girlfriend	insufficient evidence	yes	no
M	Boone County, MO	none	boy/girlfriend	victim invited contact	yes	no
A	Morgan County, MO	none	spouse, boy/girlfriend	insufficient evidence	yes	yes
L	Livingston, MT	none	spouse, boy/girlfriend	lack of witnesses	yes	no
L	Fargo, ND	none	spouse, boy/girlfriend	insuff. evid./ uncop. victim	yes	yes
	Wahpeton, ND	none	_____	insufficient evidence	yes	_____
	Dover, NH	protocol	boy/girlfriend	insufficient evidence	yes	_____
	Pittsboro, NC	none	ex-boy/girlfriend	can settle out of court	yes	no
	San Angelo, TX	policy	ex-boy/girlfriend	insufficient evidence	yes	yes

PRETRIAL				
	Jurisdiction	Are Guidelines for Bail Recommendations Used/What Factors Are Considered?	Are Protective Restraining Orders Used?	Penalties for Offender Violation of Restraining Order/Level of Enforcement
	Santa Clara County, CA	no/conditions/circumstances of case	yes	10 days to 2 years formal probation/1 year county jail/—
	Los Angeles County, CA	yes/\$150,000 bail to start	yes	contempt/inadequately enforced
	Rockville, CT	no/offender lvl. of dangerousness to comm.	no	—
	Dade County, FL	—/consider victim safety, child involvement	yes	jail/highly enforced
	Miami, FL	—	—	—
	Duval County, FL	no/high bonds and attempt to keep in jail	yes	2 years jail and/or \$1,000 fine/adequately enforced
L	Honolulu, HI	yes/whether defendant presents immediate danger or threat	yes	minimal penalties/inadequately enforced
A	Cook County, IL	yes/no bail under certain circumstances	yes	Class A misd./—
R	Brockton, MA	yes/use detention statute for more severe cases	yes	minimum mandatory 1-year jail sentence/—
G	Hampden County, MA	yes/ask for bail or a dangerousness hearing	yes	mandatory incarceration with no suspension/—
E	Burlington County, NJ	no/—	yes	felonious criminal contempt/highly enforced
	Bernalillo County, NM	yes/ask for stiff bonds, amount depends on prior record	yes	varies from judge to judge/—
	Manhattan, NY	no	yes	prosecution and jail/—
	Syracuse, NY	released on own recognizance with bail at approx. \$500	yes	Class A misd./highly enforced
	Philadelphia, PA	yes/high bail request	yes	misd. gets maximum 5 months and 29 days jail/—
	West Valley City, UT	yes/high bail requests from \$1,000, 5,000	yes	Class A misd. gets jail/—
	King County, WA	yes/no contact and cash bail if possible	yes	add violation to charges at trial/—
	Tuscumbia, AL	no/case-by-case basis	yes	raise offense to Class B fel./highly enforced
	Tuscola County, MI	no/—	yes	—
S	Cass County, MI	yes/ask for cash surety bond, no contact provision	yes	contempt of order/highly enforced
M	Boone County, MO	yes/\$5,000, no contact for fel., will request higher bond	yes	misd. gets 1 year prison/\$1,000, fel. max 5 years/\$5,000/—
A	Morgan County, MO	yes/\$1,000-5,000, no contact for misd.	yes	Class A misd. gets 1 year jail and/or up to \$5,000/adeq.enforced
L	Livingston, MT	no	yes	misd. gets 6 months jail and/or \$500, fel. up to 5 years and/or up to \$10,000/—
L	Fargo, ND	yes/\$1,000, 10,000 bonds, no contact	yes	Class A misd. gets maximum 1 year jail and/or up to \$1,000/—
	Wahpeton, ND	yes/trying to change bail stipulations	yes	Class A misd./—
	Dover, NH	yes/use electronic monitoring	yes	misd. gets up to 1 year and up to \$2,000/—
	Pittsboro, NC	no	yes	rearrest and another bond posted/—
	San Angelo, TX	yes/no contact	yes	Class A misd. contempt of court/—

DIVERSION						
	Jurisdiction	Is Office Involved in a Diversion Program?	Pretrial or Postplea	Who Administers the Program?	Criteria for Eligibility of Defendants	Types of Treatment
L	Dade County, FL	yes	either	program administrator	_____	subst. abuse treat. batterer intervention
A	Duval County, FL	yes	pretrial	department of corrections	first-time offenders	psychological evaluation, counseling
R	Burlington County, NJ	yes	pretrial	probation department	_____	counseling
G	Syracuse, NY	yes	postplea	community agency	case must inv. domestic viol.	_____
E	West Valley City, UT	yes	postplea	prosecutor's office	first-time offenders	_____
S	Tuscumbia, AL	yes	postplea	shelter	no violent offenders	_____
M	Livingston, MT	yes/never been used	_____	_____	_____	_____
A	Dover, NH	yes	postplea	prosecutor's office	no violent/suicidal offenders	counseling
L	Pittsboro, NC	yes	either	prosecutor's office	_____	_____
L	San Angelo, TX	yes	pretrial	shelter	_____	group therapy

DIVERSION (continued)						
	Jurisdiction	How is Program Compliance Monitored?	What Happens to the Upon Successful Completion of the Program?	Consequences for Unsuccessful Completion of the Program	Is the Program Effective?	Problems With the Program
L	Dade County, FL	_____	_____	_____	_____	_____
A	Duval County, FL	_____	_____	_____	_____	_____
R	Burlington County, NJ	probation department	_____	case returned to system	yes	identifying participants
G	Syracuse, NY	_____	_____	_____	_____	_____
E	West Valley City, UT	victim coordinators	charge is dismissed	offender serves sentence	yes	needs more staff
S	Tuscumbia, AL	shelter reports to court	_____	offender serves sentence	yes	_____
M	Livingston, MT	_____	_____	_____	_____	_____
A	Dover, NH	monitor offenders	suspend sentence	offender serves sentence	yes	_____
L	Pittsboro, NC	defendant shows court	_____	_____	yes	addressing uncooperative victims
L	San Angelo, TX	attendance is recorded	_____	_____	yes	_____

TRIALS					
	Jurisdiction	Most Serious Obstacles to Get a Conviction	How Are Obstacles Overcome?	Are Cases Bench or Jury Trials?	Who is Most Likely to Convict /Give Harsher Sentences?
	Santa Clara County, CA	element of credible threat	victim must get restraining order	bench	judge
	Los Angeles County, CA	judges don't take cases seriously	_____	either	_____
	Rockville, CT	proving defendant's mental state of intent	amending law	jury	_____
	Dade County, FL	proving defendant's mental state of intent	_____	jury	_____
	Miami, FL	_____	_____	_____	_____
	Duval County, FL	lack of physical evidence	credible victim, prior injunction	jury	_____
L	Honolulu, HI	_____	_____	either	judge
A	Cook County, IL	_____	_____	either	_____
R	Brockton, MA	_____	_____	_____	_____
G	Hampden County, MA	burden of proof, jury instruction, public attitudes	push for a dangerousness hearing	jury	_____
E	Burlington County, NJ	insufficient evidence, burden of proof	use of investigative resources	jury	_____
	Bernalillo County, NM	lack of resources, staff	_____	bench	judge
	Manhattan, NY	public attitudes	educate judiciary	bench	_____
	Syracuse, NY	insufficient evidence	use victim log of incidents	bench	jury
	Philadelphia, PA	_____	_____	bench	_____
	West Valley City, UT	uncooperative victims	use federal rules of evidence	bench	jury
	King County, WA	relaying evidence, convincing the jury	_____	jury	deps. on evidence
	Tuscumbia, AL	uncooperative victims	push prosecution	jury	depends on severity of case
	Tuscola County, MI	uncooperative witnesses, education of jurors	push prosecution, inform jurors on stalking issues	either	_____
	Cass County, MI	insufficient evidence, public education	_____	jury	_____
S	Boone County, MO	public education	_____	bench	_____
M	Morgan County, MO	insufficient evidence	educate law enforcement	bench	_____
A	Livingston, MT	insufficient evidence	push prosecution	jury	_____
L	Fargo, ND	victim credibility	prepare witnesses, detailed invest.	either	jury
L	Wahpeton, ND	insufficient evidence	_____	bench	judge
	Dover, NH	law is overcomplicated, burden of proof	_____	bench	_____
	Pittsboro, NC	burden of proof	_____	bench	_____
	San Angelo, TX	victim credibility	_____	_____	judge

TRIALS (continued)				
	Jurisdiction	Typical Defenses Used	Do Defendants Routinely Use Expert Testimony?	Does the Prosecution Use Expert Witness Testimony
	Santa Clara County, CA	victim encouraged conduct	no	no
	Los Angeles County, CA	blame victim	_____	_____
	Rockville, CT	no intent to cause fear	_____	_____
	Dade County, FL	establish defendant credibility	no	yes
	Miami, FL	_____	_____	_____
	Duval County, FL	deny conduct	no	no
L	Honolulu, HI	deny conduct, attack victim credibility, blame victim	_____	no
A	Cook County, IL	deny conduct	no	yes
R	Brockton, MA	prosecution has insufficient evidence	_____	no
G	Hampden County, MA	deny conduct, pretrial intimidation	_____	no
E	Burlington County, NJ	attack credibility of victim, lack of evidence	no	no
	Bernalillo County, NM	victim encouraged conduct, victim blamed for contact	no	no
	Manhattan, NY	deny conduct, victim harassing defendant	no	yes/psychiatric experts
	Syracuse, NY	bias/interest of victim, meetings were coincidental	no	yes/psychiatric experts
	Philadelphia, PA	_____	_____	no
	West Valley City, UT	deny conduct, conduct within defendant's rights	_____	_____
	King County, WA	deny conduct	yes/psychiatric experts	no
	Tuscumbia, AL	conduct within defendant's rights	_____	no
	Tuscola County, MI	victim encouraged conduct	no	no
	Cass County, MI	victim exaggerates, is incompetent	no	yes/domestic violence counselors
S	Boone County, MO	_____	_____	_____
M	Morgan County, MO	credibility of witnesses	no	no
A	Livingston, MT	victim has mental disorder	_____	no
L	Fargo, ND	deny conduct	no	yes
L	Wahpeton, ND	legitimate purpose defense	no	no
	Dover, NH	legitimate purpose defense	_____	no
	Pittsboro, NC	deny conduct	no	no
	San Angelo, TX	victim was harassing defendant	no	yes

SENTENCING OPTIONS

	Jurisdiction	Sentencing Patterns: Too Lenient, Too Strict, or Adequate?	Does Your Office Plea Bargain?	Factors Considered During a Plea Negotiation
	Santa Clara County, CA	adequate	yes	uncooperative victim, offender history, type/severity of conduct
	Los Angeles County, CA	_____	_____	_____
	Rockville, CT _____	_____	yes	circumstances of case
	Dade County, FL	too lenient	yes	victim input, victim safety
	Miami, FL	_____	_____	_____
	Duval County, FL	adequate	yes	offender history
L	Honolulu, HI	too lenient	yes	loss of witnesses during trial preparation
A	Cook County, IL	too lenient	yes	offender history
R	Brockton, MA	_____	no	_____
G	Hampden County, MA	too lenient	yes	offender's amenability to get treatment, type/severity of conduct, was there a restraining order
E	Burlington County, NJ	adequate	yes	circumstances of case
	Bernalillo County, NM	adequate	yes	how much time can be gotten
	Manhattan, NY	too lenient	yes	circumstances of case, offender history, likelihood of conduct stopping
	Syracuse, NY	too lenient	yes	circumstances of case
	Philadelphia, PA	_____	yes	victim safety
	West Valley City, UT	too lenient	no	_____
	King County, WA	adequate	yes	circumstances of case
	Tuscumbia, AL	_____	yes	serious physical injury, threat of serious injury or death
	Tuscola County, MI	adequate	yes	victim cooperation
	Cass County, MI	adequate	yes	circumstances of case
S	Boone County, MO	too lenient	yes	circumstances of case, conduct of offender, likelihood getting jail time
M	Morgan County, MO	adequate	no	_____
A	Livingston, MT	too lenient	_____	_____
L	Fargo, ND	too lenient	yes	circumstances of case
L	Wahpeton, ND	adequate	yes	circumstances of case
	Dover, NH	adequate	yes	victim input
	Pittsboro, NC	adequate	yes	offender history, type/severity of conduct, safety of victim
	San Angelo, TX	too lenient	yes	victim cooperation

VICTIM SUPPORT PROGRAMS				
	Jurisdiction	Is There a Specialized Stalking Victim Support Program in Your Office?	Are Stalking Victims Handled in the Regular or Domestic Violence Victim/Witness Caseload?	What Services Are Available to Stalking Victims?
	Santa Clara County, CA	no	yes, domestic violence	_____
	Los Angeles County, CA	no	yes, general	help get restraining orders, restitution
	Rockville, CT	no	yes, general	counseling, assist in obtaining restraining orders, inform victim on court decisions, attend court, assist with damages (restitution)
	Dade County, FL	no	yes, domestic violence	counseling
	Miami, FL	_____	_____	_____
	Duval County, FL	no	yes, domestic violence	advocates in each unit, crisis intervention, referrals for long-term counseling, crime compensation, support through court process
L	Honolulu, HI	no	yes, general	_____
A	Cook County, IL	no	yes, domestic violence	counseling
R	Brockton, MA	no	yes, domestic violence	assist victim in obtaining restraining order, counseling, referrals
G	Hampden County, MA	no	yes, domestic violence	counseling, support groups
E	Burlington County, NJ	no	yes, general	_____
	Bernalillo County, NM	no	yes, general	information, advocates
	Manhattan, NY no		yes, general	counseling
	Syracuse, NY no		no	referrals
	Philadelphia, PA	_____	_____	_____
	West Valley City, UT	no	yes, general	relocation, counseling, restitution
	King County, WA	no	yes, domestic violence	advocate services
	Tuscumbia, AL no		yes, general	_____
	Tuscola County, MI	no	_____	_____
	Cass County, MI	no	yes, general	domestic violence shelter services
S	Boone County, MO	no	yes, general	_____
M	Morgan County, MO	no	yes, domestic violence	referrals, counseling, shelter
A	Livingston, MT no		_____	_____
L	Fargo, ND no		yes, general	referrals, counseling, medical assistance
L	Wahpeton, ND no		no	_____
	Dover, NH no		yes, general	_____
	Pittsboro, NC no		yes, general	_____
	San Angelo, TX	no	no	referrals, restitution

VICTIM SUPPORT PROGRAMS (continued)

	Jurisdiction	Are Victims Informed of Defendant's Release?	By Whom Are Victims Notified?	Do You Interact With Local Victim Support Programs Outside of Your Office?	Has Interaction With Outside Agencies Proved Helpful?
	Santa Clara County, CA	yes	department of corrections	no	_____
	Los Angeles County, CA	yes	department of corrections	_____	_____
	Rockville, CT	yes	police department	no	_____
	Dade County, FL	yes	department of corrections	yes	yes
	Miami, FL	_____	_____	_____	_____
	Duval County, FL	yes	prosecutor's office	yes	yes
L	Honolulu, HI	yes	prosecutor's office	_____	_____
A	Cook County, IL	yes	department of corrections	_____	_____
R	Brockton, MA	yes	prosecutor's office	yes	_____
G	Hampden County, MA	yes	criminal history systems board	yes	yes
E	Burlington County, NJ	yes	victim-witness unit	yes	yes
	Bernalillo County, NM	yes	prosecutor's office	no	_____
	Manhattan, NY	yes	prosecutor's office	yes	yes
	Syracuse, NY	yes	prosecutor's office	_____	_____
	Philadelphia, PA	pending statute	_____	_____	_____
	West Valley City, UT	yes	_____	yes	yes
	King County, WA	yes	prosecutor's office	yes	yes
	Tuscumbia, AL	yes	prosecutor's office	yes	yes
	Tuscola County, MI	yes	_____	yes	yes
	Cass County, MI	yes	jail administrator	yes	yes
S	Boone County, MO	yes	parole board	yes	yes
M	Morgan County, MO	yes	sheriff's office	yes	yes
A	Livingston, MT	yes	court	yes	_____
L	Fargo, ND	yes	victim-witness coordinator	yes	yes
L	Wahpeton, ND	yes	jail or court personnel	yes	yes
	Dover, NH	yes	police department	yes	yes
	Pittsboro, NC	yes	prosecutor's office	yes	yes
	San Angelo, TX	yes	prosecutor's office	_____	_____

BACKGROUND INFORMATION			
	Jurisdiction	Estimated Yearly Volume of Stalking Felonies Prosecuted by Your Office	Estimated Yearly Volume of Stalking Misdemeanors Prosecuted by Your Office
	Santa Clara County, CA	under 100	about 100
	Los Angeles County, CA	60 including misdemeanors	_____
	Rockville, CT	about 10	10-20
	Dade County, FL	_____	_____
	Miami, FL	_____	_____
	Duval County, FL	_____	_____
L	Honolulu, HI	_____	_____
A	Cook County, IL	about 100	_____
R	Brockton, MA	about 25	_____
G	Hampden County, MA	10-15	10-15
E	Burlington County, NJ	75-100	_____
	Bernalillo County, NM	0	100 in 2 years
	Manhattan, NY	_____	_____
	Syracuse, NY	12-25	over 100
	Philadelphia, PA	1	40-50
	West Valley City, UT	0	112
	King County, WA	25-50	_____
	Tuscumbia, AL	1-2	0
	Tuscola County, MI	_____	20-30
	Cass County, MI	3	18
S	Boone County, MO	0-10	0-10
M	Morgan County, MO	0	under 5
A	Livingston, MT	1	3-4
L	Fargo, ND	3	24-36
L	Wahpeton, ND	0	2
	Dover, NH	1	15
	Pittsboro, NC	0	5-10
	San Angelo, TX	0	12-24