Thank you for joining us today!

Part II: Stalking Evidence: What to Look For and How to Get it Admitted
August 23, 2017
2-3:30pm Central Time

Elaina Roberts, Legal Director, Stalking Resource Center and TBD, Law Enforcement Consultant, Stalking Resource Center

This project was supported by Grant No. 2015-TA-AX-K027 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this document/program/exhibit are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Thank you for joining us today!

The materials are available on our website: http://www.bwjp.org/training/webinar-part-II-stalking-evidence-what-to-look-for-and-how-to-get-it-admitted.html

AUDIO OPTIONS
The audio component can be heard by VoiceoverIP (VoIP) or telephone:

VoIP: Select "connect" to internet audio on the Start tab to get your audio streaming through your computer.

Telephone: Select "I am dialed in" on the Start tab and dial in from you telephone. Your standard long distance charges will apply.

Dial-in: 641-715-3670
Passcode: 732746

AUDIO TROUBLESHOOTING for VoIP
• Verify you selected "connect" to the internet audio
• If your computer & speaker volume are turned all the way up, & volume is too low, run the audio wizard under "Tools" at the top of your screen.
• If still low volume, try a headset (which is recommended).
• Lastly, if all your troubleshooting attempts have failed please dial in from a telephone. Your computer &/or network don’t have the requirements (bandwidth, memory, etc) for VoIP on this webinar.

Investigating & Prosecuting Stalking
Battered Justice Women's Project Webinar Series Part II
August 23, 2017
Thank you OVW!

This project was supported by Grant No. 2015-TA-AX-K035 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

© National Center for Victims of Crime 2016 Content of this presentation may be reproduced for educational purposes with the permission of the Stalking Resource Center.

Please contact the Stalking Resource Center at src@ncvc.org or 202-467-8700 for permission.

Overview

• Investigative strategies
• Prosecution considerations & evidentiary issues
• Resources
Who has worked a case that involved stalking behaviors whether or not stalking was charged?

Raise Your Hand:

Use the chat box:

What type of case was it?

Raise Your Hand:

How many of you have worked a case that was charged as stalking?
Stalking is Rarely Charged

- Between 5 and 16% of stalking cases are actually charged as stalking when police already have all the information they need to charge


Identification of Stalking

The following may be a part of the stalking investigation

- Domestic violence
- OP violations
- Assault
- Harassment
- Trespass
- Home invasion
- Attempted murder
- Sexual assault
- Identity theft
- Kidnapping
- Vandalism
- Wiretapping or utility theft
- Burglary
- Theft
- Child Abuse
- Hate Crimes

Use the chat box:

What makes stalking cases challenging?
Stalking is Rarely Charged

- Contextual crime
- Individual acts may not be criminal
- Statutory elements required
  - Fear element
- Evidence/tech evidence
  - Connecting evidence to the offender
  - Authentication

Context

- Something may be frightening for the victim but not to you
- Stalking behaviors often have specific meaning that is only understood between offender & victim
- Stalking criminalizes otherwise non-criminal behavior

What About Stalking Can Make It Easy to Investigate?

- Known victim
- Known offender
  - in most cases
- Same locations
- Lots of evidence
Are there advantages to charging stalking?

Advantages of Charging Stalking

Charging stalking results in either:

- Stopping the stalking
- Being able to build a better case if stalking continues

Important for building the stalking case

- For now and the future

Recidivism

60% of cases

- Time between intervention and recidivism was about 2 months
- Stalkers reoffend from between 1 day to 6 years

If stalking is charged, the officer who responds to the next call will have a more accurate picture of the offender
Advantages of Charging Stalking

- Recognizes the risk of harm in stalking cases
- Approx. 25 – 35% of stalking cases involve violence
  – Includes ANY kind of physical aggression, pushing, kicking, punching through to weapon use and homicide
- 2% of stalking cases involved serious violence including homicide
- Intimate partner offenders are the most dangerous

- Meloy JR. The psychology of stalking: clinical and forensic perspectives (1998)

Advantages of Charging Stalking

- Increased plea bargaining options, sentencing options, including enhanced penalties in some situations and jurisdictions
- To prove a course of conduct, the state may introduce evidence that would otherwise be inadmissible under Fed. Rule 404b

VICTIM REPORTING
Reporting to Law Enforcement

37% of male stalking victims 41% of female stalking victims

Reasons For Not Reporting

- Thought it a minor incident (minimization)
- Private or personal matter
- Reported to another official
- Not clear a crime occurred
- Thought police wouldn’t think it was important or would be ineffective
- Couldn’t identify offender/didn’t have evidence
- Fears for the perpetrator/afraid of retaliation

Stalking Incidents Reported to Law Enforcement

- Reported to Law Enforcement
- Campus Police
- Municipal/Local City Police/911
- County Sheriff
- State Police
- Other

- Both On/Off-Campus Stalking
- Off-Campus Stalking
- On-Campus Stalking
Reporting

By the time victims report to police, the stalking behavior has been well established and... victim-initiated countermeasures have failed.


Stalking is one of the few crimes where early intervention can prevent violence and death.

Effective Investigations
First Response

Any time a victim reports any type of harassing behavior:

- Consider the possibility of a stalking case
- Determine whether this is an isolated incident or repeated conduct

Start at the Beginning

- The initial step is to determine whether:
  - A criminal stalking event has actually occurred, or
  - The incident might be a precursor to a stalking case, or
  - The incident is a continuation of prior occurrences that amount to a stalking situation.
- Keep in mind that it is not uncommon for a victim to experience stalking behavior for some time before reporting it to police.

First Call for Service

- First contact is critical!
  - You may determine how or if the victim continues to work with law enforcement
- Have resources on hand
  - Local victim assistance resources, brochures
- Preserve evidence right now
  - E.g. take pictures of text messages
- Prepare for the long haul
  - Doing a good job now helps others and the victim down the road
**Subsequent Calls for Service**

- Look for escalation
- Ask what has changed since the last call
- Connect the dots to previous calls
- Review safety plans and threat assessment
- Check in with other team members
- Remember – prepare for the long haul

**Context is Key**

Effective stalking investigations require gathering information from multiple sources to develop the “big picture” simply to identify the crime, let alone charge it, or provide effective safety planning for victims.

- AEquitas: The Prosecutors’ Resource on Violence Against Women

**What Does Stalking Feel Like?**

How the victim felt when the stalking began:

<table>
<thead>
<tr>
<th>Feeling</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annoyed/Angry</td>
<td>69%</td>
</tr>
<tr>
<td>Anxious/Concerned</td>
<td>53%</td>
</tr>
<tr>
<td>Frightened</td>
<td>42%</td>
</tr>
<tr>
<td>Helpless</td>
<td>22%</td>
</tr>
<tr>
<td>Depressed</td>
<td>16%</td>
</tr>
<tr>
<td>Sick</td>
<td>15%</td>
</tr>
<tr>
<td>Suicidal</td>
<td>1%</td>
</tr>
<tr>
<td>Other way</td>
<td>8%</td>
</tr>
</tbody>
</table>

In order to find out how the behaviors are affecting the victim, ask them!
Demonstrating Distress or Fear

- **Verbalize/communicate**
  - "I am afraid"
  - "They are creeping me out"
  - "I can’t sleep/eat/concentrate"

- **Change in behavior**
  - Changes routes to/from class
  - Changed sections
  - Skipping class
  - Staying at a friend’s

If they are reporting it...

---

Corroboration

- Victims often struggle with “proving” the stalking behaviors and it is helpful to provide guidance on collecting and preserving evidence

Can you prove it?

---

Ask Yourself:

- What can I do to help the victim corroborate their report?
  - Interview witnesses
  - Interview suspect
  - Seize the evidence
- Where can I guide the victim to look for that information?
  - Phone records, emails, stalking log, identify witnesses, etc.
**Corroboration**

- Rule of credibility—corroborate *some* of what the victim is reporting to increase credibility
  - the more you corroborate the stronger the case!

---

**Victim Interview**

---

**Best Practice – Victim Safety**

- Victim safety needs to be part of the preliminary investigation. Officers should candidly advise victims that they & their agencies cannot realistically guarantee the victim’s safety.
- The victim must be advised about the importance of safety planning and that he/she will need to take a proactive stance for their own safety, within the extent of their resources.
- Victims should be referred to victim services agencies for guidance on safety planning.
During the Interview

Be prepared for a confusing recounting of incidents - out of order and with mixed details.

Victims tell you events in the order based on the emotion or stress each event triggers.

Don’t stop victim in the middle of explaining an incident; you can always go back and ensure the correct timeline of events.

Victim Interview

• Obtain excited utterances
• Ask the basic interview questions:
  • Who, What, When, Where, and most importantly in stalking cases **WHY**
  • “Why are you afraid?”
    – Develops context!
• Ask open ended questions:
  – “And then what happened”
  – “Tell me more about that”

Victim Interview

• Identify areas to search for evidence
  – Phone logs
  – Email accounts
  – Computers
  – Social networks (Facebook, Twitter, Instagram, YouTube, etc.)
• Ask the victim to start a stalking log
  – This will help organize the incidents into chronological order
Victim Interview

- Precise notes - use quotes
- Handwritten signed statement
- Victim may change mind to prosecute
- Helps in evidence based prosecutions
- Conduct in private with or without advocate
- Interview should be non-judgmental
- Use interview techniques get out from behind the desk.... give the victim something to wipe the tears.... show you care

Victim Interview

- Establish a rapport and trust with the victim
- It's ok to say:
  - “How are you feeling”
  - “I’m sorry this happened to you.”
  - “I’m going to help you”
  - “You are in danger”
- Don’t say:
  - “Everything is going to be all right.”
  - “Don’t cry”
  - “You shouldn’t feel that way”
  - “I know how you feel”
  - “You must get on with your life”
  - “I promise I’ll get this guy and put him in prison for a long time”

Victim Interview

- Remember when interviewing stalking victims what we are looking for:
  - Repeated acts
  - Course of conduct acts (criminal/noncriminal)
  - Show of fear or suffering
  - Context of behaviors
Example of Context

Victim is reporting stalking behavior and the offender sends her a text message indicating that he fell and fractured his leg and other injuries. The offender sends a picture to the victim of his wrist, which has the hospital bracelet on it.

What Does This Mean to You?

Victim Interview

• Ensure victim’s safety put in contact with a victim advocate for a safety plan if one is not available you must do it.
• Get contact information on where they might be staying relative’s friend’s house etc.
• Suggest a minimum of two additional contact numbers besides victim’s home, cell and work number.
Witness Evidence

Ask the victim to identify
• Family
• Friends
• Co-workers
• Neighbors, etc.
Anyone able to offer additional information or otherwise corroborate any aspect of the incident in question and/or the on-going stalking situation

*Be cognizant of safety risk to those connected to the victim
Police Evidence

- Use search warrants for suspect's residence, vehicle and workplace
- Photograph any evidentiary items vandalized, damaged, or written on, such as walls, vehicles, etc., and process for fingerprints
- Collect any physical evidence such as items left for the victim, correspondence, etc.

Physical Evidence to Identify on Search Warrants

- Any photos of victim (may have words/drawing on them)
- Photographs, diagrams or drawings of victim's home or workplace
- Writings, journals or diaries of suspect that describe his activities and thoughts/fantasies of victim
- Books describing stalking techniques or having subject matter of stalking violence or harassment
- Keys that fit house or vehicle of victim
- Any equipment that appears to have been used to stalk victim (cameras, binoculars, video recorders, computers, fax machines)
- Video or still photos of suspect
- Security videos

Video Surveillance in Investigations

- Video surveillance is a cheaper option than physical surveillance
  - start up about $700
  - RISS
- Excellent evidence
- Easy to use
  - new systems can be installed by anyone
- Victims feel relief when video installed
  - May allow them to rest
- Findings of video can ease their mind
- Prove the situation exists
Suspect Evidence

Suspect Interviews

• Rule #1 - Interview the suspect!
• Stalkers want to talk about their victims and explain away what they are doing to convince others they are “right” in their behaviors
  – Tell me how what you’re doing is being misunderstood
• Interview the stalker in their home when possible and be observant
• Note what he drives, what kind of phone he uses, what computer is on his counter, what camera he has laying out, etc.

Suspect Background

• Prior threats
• History of violence against this victim or others
• History of mental illness
• History of substance abuse
• Possession and use of weapons
• History of protective order violations
• Acts of vandalism or trespass
Supporting Evidence

- Collect the EASY evidence first then move to the more elaborate evidence
- Capture it before it is gone
- Use your resources - don’t re-invent the wheel a lot of cases already employ these techniques!
- Don’t be blinded by the trees

Arrest & Charges

Pro Arrest Policy in Place?

- If probable cause exists - ARREST
- If suspect is not in custody place wanted or apply “AT LARGE”
  If this does not happen it puts the victim at risk
Arrest and Charging

- Establish PC
- Emails
- Phone records
- Networking websites Facebook/ Twitter/ Myspace
- Tech Evidence
- Witnesses

Charge all crimes relating to incident; including other crimes such as assault, property damage etc.
- Keep victim informed-empowered
- Utilize victim advocates especially when PC can not be established

If no arrest is made explain reasons to the victim
- Lacking probable cause
- Ensure that victims know they can continue to make reports and should do so each time there is a new incident
- Encourage victims to use a Stalking Log to ensure accuracy in documentation
Charging

Criminal Charges available to stalking victims:
- State Stalking Statute
- Federal Stalking Statute
- Tribal Stalking Codes
- UCMJ Article 120a Stalking
- Creative Charging

Follow-Up Investigation

- Witnesses
- Investigate suspect’s alibi (if any)
- Fingerprint, DNA, other forensic evidence
- Suspect’s phone, email, text message, Internet records
- Suspect’s prior criminal record or history of civil orders
- Surveillance
- Search warrant

Searches

Stalker’s residence and vehicle
- Photos of victim
- Photos, drawings, or sketches of victim’s home, work, or school
- Writings, logs, diaries describing thoughts, actions or fantasies
- Video or cassette tapes; memory cards; SIM cards
- Internet bookmarks and history
- Books relating to stalking or violence
- Any devices or objects that could be used to stalk (cameras, binoculars, GPS, night vision)
- Anything that belongs to or relates to the victim
Effective Law Enforcement Strategies

- Implement a strong stalking policy/protocol
- Involve victims and advocates
- Involve prosecutors
- Institutionalize training
  - Dispatch
  - Patrol
  - Investigators
  - Leadership

- Charge accomplices
- Work across jurisdictions
- Use all tools
- Use all laws
- Think outside the box!

Working With Your Statute

Common Stalking Elements

- **Course of Conduct**
  - How many acts? Continuity?
  - Tech and/or proxy stalking?

- **Intent**

- **Fear**
  - Level
  - Standard

- **Threat**
Tech Considerations

- Technology provides evidence where none existed before
- While generally reliable, it can allow for anonymous or fake evidence
- Nothing disappears online; it may just be challenging to locate
- Same rules of evidence apply

Types of Evidence

- Text
  - Phone
  - Email
  - SNS/online
- Voice
- Pictures/Videos

Tech Evidence: The Basics

- Is evidence relevant?
- If relevant, is evidence authentic?
- If offered for substantive truth, is it hearsay? (If so, is there an exception?)
- Is the evidence an original or duplicate?
- Does the probative value substantially outweigh the danger of unfair prejudice?
Authenticity

The proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

Federal Rules of Evidence (FRE) 901

Best Evidence Definition

An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout — or other output readable by sight — if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.

Federal Rules of Evidence (FRE) 1001

Admitting Text Evidence

- Screenshot or digital photo
- Phone or Computer
- Records from phone or managing company
- Print out, cut-and-paste, or handwritten transcript
**Authentication Considerations**

*Anyone* who can establish the identity and authorship of the exhibit!

- The bar for authentication is not particularly high
- Need not rule out all possibilities
- The standard is one of “reasonable likelihood”

*United States v. Gagliardi*, 506 F.3d 140 (2d Cir.2007)

**Resources for Professionals**

- access to intelligence databases
- equipment loans
- information sharing
- confidential funds
- analytical support
- training and publications
- investigative support and research
- field staff support
- technical assistance

*www.riss.net*
Mobile Phone Seizure Guide App

Available for iPhone

www.justnet.org
www.victimsofcrime.org/src/resources/publications#video
Can be downloaded at www.victimsofcrime.org/src

www.aequitasresource.org

http://www.appa-net.org
STALKING INCIDENT LOG

Date | Time | Description of Incident | Location of Incident | Witness Name(s) | Police Called | Officer Name |
--- | --- | --- | --- | --- | --- | --- |

Victimsofcrime.org/src

Thank you!

Elaina Roberts, J.D.
Legal Director, Stalking Resource Center
eroberts@ncvc.org

Mark Kurkowski, Detective
St. Louis Police Department
mikurkowski@SLMPD.org

For additional information and assistance:
202-467-8700
www.victimsofcrime.org/src