

## THWARTING THE STALKER: ARE ANTI-STALKING MEASURES KEEPING PACE WITH TODAY'S STALKER?

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*This note examines the ways in which stalkers can utilize technology, not only to pursue their victim, but also to evade the law. Although stalking behavior is prevalent throughout history, the Internet provides a new way in which to access the personal lives of potential victims. The author argues that the law must be vigilant in finding appropriate remedies for victims of the technologically savvy stalker.*

*Beginning with an historical overview of stalking, the author details the various types of stalkers and their typical behavior. Not only has traditional stalking been on the rise, so too has electronic stalking. The early 1990s saw the first state anti-stalking statutes and a federal initiative for the creation of a model anti-stalking law. Despite the advances in legislation, the enacted legislation fails to keep pace with technology. Meanwhile, technological innovations threaten to increase the occurrence and intensity of stalking.*

*The author proposes collaboration amongst federal, state, and local officials to outthink today's stalker. First, law enforcement officials must become familiar with the remedies already available to victims of stalking and create cyber-crime task forces. States should review their existing anti-stalking legislation to determine whether the statute addresses cyberstalking and amend laws that do not. Communities can also utilize emerging technology to target specific stalkers as well as stalking behavior in general. Finally, the public must be made aware of cyberstalking, its dangers, and the means to protect themselves and their communities.*

### I. INTRODUCTION

Everywhere that I went, he was there. I couldn't go anywhere. I couldn't work in peace. This man was forever threatening me, following me. I mean, he would sit outside my house at night. When I would leave at 11:00 at night to go to work, he's there sitting in the parking lot. I do not want to end up dead. . . . I am afraid of this man. I do not want to end up in the newspaper.<sup>1</sup>

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1. People v. Daniel, 670 N.E.2d 861, 862 (Ill. App. Ct. 1996).

Based on a National Violence Against Women Survey in the mid-1990s<sup>2</sup> and U.S. Census estimates, one out of every twelve U.S. women (or 8.2 million) has been stalked at some time in her life, and one out of every forty-five U.S. men (or 2 million) has been stalked at some time in his life.<sup>3</sup> Stalking generally refers to harassing or threatening behavior that an individual engages in repeatedly.<sup>4</sup> These actions (such as following a person, making harassing phone calls, leaving written messages, or vandalizing a person's property) may be accompanied by a credible threat of serious harm and may be precursors to an assault or murder.<sup>5</sup>

Stalking victims may suffer profound, long-term emotional injuries including "depression, generalized anxiety, obsessive-compulsive behaviors, and even symptoms of Post-Traumatic Stress Disorder."<sup>6</sup> Victims may also lose time from work or be unable to return to work.<sup>7</sup> Certainly, a more serious consequence is that stalking behavior often precedes more violent crimes.<sup>8</sup> Not until the late 1980s and early 1990s did celebrity-stalking cases attract the attention of the media and state legislatures, and highlight the potential severity of the problematic behavior.<sup>9</sup>

With advances in technology, stalking, too, is progressing. Electronic stalking via the Internet<sup>10</sup> or "cyberstalking"<sup>11</sup> brings new challenges for law enforcement and state legislatures alike. As more and better technology becomes available to ordinary citizens, stalkers take advantage of the ease of communications as well as increased access to personal information.<sup>12</sup> Also, with electronic communications, the stalker who would otherwise be unwilling to confront a victim in person

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2. The National Violence Against Women (NVAW) Survey, conducted during November 1995–May 1996, was a nationally representative telephone survey of 8,000 U.S. women and 8,000 U.S. men. For addition survey details, see PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, *STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 15–16* (1998) [hereinafter *STALKING IN AMERICA*].

3. See *id.* at 3. The NVAW survey defined stalking as "a course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal, written or implied threats, or a combination thereof, that would cause a reasonable person fear," with "repeated" meaning two or more occasions. *Id.* at 2.

4. See *id.* at 1.

5. See *id.*

6. Jennifer L. Bradfield, *Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?*, 21 *HARV. WOMEN'S L.J.* 229, 232 (1998).

7. See *id.*

8. See *id.* at 232–33.

9. Highly publicized cases include the stalking of David Letterman, Johnny Carson, Jodi Foster, Clint Eastwood, Michael J. Fox, Rebecca Shaeffer, Olivia Newton-John, and Teresa Saldana. See Brenda K. Harmon, *Illinois' Newly Amended Stalking Law: Are All the Problems Solved?*, 19 *S. ILL. U. L.J.* 165, 168 n.23 (1995).

10. See Mark S. Gill, *Terror On-Line*, *VOGUE*, Jan. 1995, at 162.

11. See U.S. DEP'T OF JUSTICE, 1999 REPORT ON CYBERSTALKING: A NEW CHALLENGE FOR LAW ENFORCEMENT AND INDUSTRY (1999) <<http://www.usdoj.gov/criminal/cybercrime/cyberstalking.htm>> [hereinafter *CYBERSTALKING: A NEW CHALLENGE*] (on file with *University of Illinois Law Review*).

12. See *id.*

or over the telephone may have little hesitation in sending a harassing or threatening electronic mail message (e-mail)<sup>13</sup> to a victim.<sup>14</sup>

Part II of this note explores the crime of stalking and its effects on the victim. This section also discusses the various types of stalkers. Although stalking behavior has been prevalent throughout history, psychologists have only recently identified particular types of stalkers. Next, part III examines the remedies available to a stalking victim through legislation with various anti-stalking provisions. Finally, part IV argues that this legislation, as well as other safeguards, must keep pace with technology. Technological advancements permit increased access to potential victims and victims' personal information, and the law must continue to afford an appropriate remedy to these victims.

## II. THE PROBLEM OF STALKING: A CRIME AND ITS AFTERMATH

The legal definition of stalking varies according to state statute. Most statutes generally define stalking as a course of conduct that places a person in fear for their safety.<sup>15</sup> The term "stalking" commonly encompasses nearly "any unwanted contact between a stalker and [his/her] victim which directly or indirectly communicates a threat or places the victim in fear."<sup>16</sup> Although difficult to define, stalking has a long history<sup>17</sup> and millions of Americans are victims each year.<sup>18</sup> The variety of psychological problems encountered by victims<sup>19</sup> and the lack of a single stalker profile<sup>20</sup> continue to present problems for law makers and law enforcement as they work to stop stalking.

### A. *History of Stalking*

Stalking is not a new phenomenon. Its roots can be traced through the rise of courtship and romance in Western culture.<sup>21</sup> Courtly love, which likely emerged in the twelfth century, typically was practiced by an aspiring male suitor, or troubadour, who expressed his feelings of love in

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13. "E-mail is a form of electronic communication that allows people to transfer messages from one computer to another instantaneously over many networks. These networks are commonly referred to as the Internet." Eileen S. Ross, *E-Mail Stalking: Is Adequate Legal Protection Available?*, 13 J. MARSHALL J. COMPUTER & INFO. L. 405, 410 (1995) (footnotes omitted).

14. See CYBERSTALKING: A NEW CHALLENGE, *supra* note 11.

15. See National Ctr. for Victims of Crime, *Stalking: What is Stalking?* (visited Jun. 24, 2000) <<http://www.ncvc.org/special/stalking.htm>> [hereinafter *Stalking*] (on file with the *University of Illinois Law Review*).

16. *Id.*

17. See *infra* Part II.A.

18. See *infra* Part II.B.

19. See *infra* Part II.C.

20. See *infra* Part II.D.

21. See generally BERNARD I. MURSTEIN, LOVE, SEX, AND MARRIAGE THROUGH THE AGES (1974) (chronicling from Biblical to modern times, the evolution of love, sex, and marriage).

lyrics and poems dedicated to his lady.<sup>22</sup> “The behavior of the medieval suitor may have been harmless and went unnoticed until he dared to confront his lady, but this ‘innocent’ practice easily paved the way for obsessive, and hence dangerous, stalking actions.”<sup>23</sup>

For example, in courtly love, a widely held belief was that the value of the love increased with the difficulty that it took for a man to attain it,<sup>24</sup> providing an incentive to pursue reticent women.<sup>25</sup> Suitors may have expected or even wanted a less-than-encouraging response from women and may have pursued the object of their affections without considering the woman’s true intentions.<sup>26</sup>

These notions of romantic pursuit continue to be advocated today. For example, a book entitled *The Rules: Time-Tested Secrets for Capturing the Heart of Mr. Right*<sup>27</sup> was recently published in which the two female authors instruct women to use misleading methods to attract men.<sup>28</sup> The authors counsel women that their “job now is to treat the man [they] are really, really crazy about like the man [they are] not that interested in.”<sup>29</sup> A commentator suggests that the authors go so far as to recommend that women act mysterious “and [do not] give away too much about [themselves] or [their] plans,” advising that they end phone conversations with men quickly because they are simply “busy.”<sup>30</sup>

### B. Scope of the Problem

In the United States, recent data suggest that stalkers terrorize approximately one million women each year.<sup>31</sup> Although stalking is not necessarily a gender-specific crime, seventy-five to eighty percent of stalking cases involve a male stalking a female.<sup>32</sup> In addition, only a minority of stalking victims are celebrities; the majority of targets are ordinary citizens.<sup>33</sup> Estimates from the early 1990s indicate ordinary citizens account for fifty-one percent of stalking targets but celebrities comprise only seventeen percent of all stalking victims; the remaining thirty-two percent of stalking victims are lesser-known entertainment figures.<sup>34</sup>

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22. See *id.* at 148–57.

23. Rebecca K. Lee, *Romantic and Electronic Stalking in a College Context*, 4 WM. & MARY J. WOMEN & L. 373, 390 (1998).

24. See MURSTEIN, *supra* note 21, at 160.

25. See *id.* at 148–49.

26. See *id.* at 149–50.

27. ELLEN FEIN & SHERRIE SCHNEIDER, *THE RULES: TIME-TESTED SECRETS FOR CAPTURING THE HEART OF MR. RIGHT* (1995).

28. See Elizabeth Gleick, *Playing Hard to Get*, TIME, Sept. 30, 1996, at 58.

29. FEIN & SCHNEIDER, *supra* note 27, at 8.

30. Lee, *supra* note 23, at 399; see also FEIN & SCHNEIDER, *supra* note 27, at 45.

31. See STALKING IN AMERICA, *supra* note 2, at 3.

32. See *Stalking*, *supra* note 15.

33. See Elizabeth A. Patton, *Stalking Laws: In Pursuit of a Remedy*, 25 RUTGERS L.J. 465, 470 (1994).

34. See Lee, *supra* note 23, at 377 n.25 (citing S. 2922, 102d Cong., at 5 (1992)).

Stalking frequently occurs in connection with domestic violence.<sup>35</sup> According to estimates in 1993, by the National Organization for Victim Assistance in Washington, D.C., seventy-five to eighty percent of stalking cases are related to domestic violence situations.<sup>36</sup> For example, once a battered woman leaves her abuser, the scorned lover or estranged spouse may be found to follow or harass the former partner.<sup>37</sup> In the early 1990s, it was estimated that ninety percent of women killed by their husband or boyfriend were also victims of stalking prior to their deaths.<sup>38</sup>

The Center for Policy Research in Denver, Colorado, conducted a National Violence Against Women Survey to collect data on stalking. From November 1995, to May 1996, the Center gathered data from eight thousand women and eight thousand men on issues related to violence.<sup>39</sup> For information on stalking, the Center investigated “the prevalence of stalking; the characteristics of stalkers and victims; the attributes of stalking behaviors; victims’ perceptions of the reasons they are stalked; victims’ experiences with the justice system; the connection between stalking and domestic violence; and the psychological consequences of stalking.”<sup>40</sup>

From the results of this survey, the Center estimated that approximately 1.4 million people are stalked each year in the United States.<sup>41</sup> This represents a five-fold increase over previous estimates that placed the number of victims at about 200,000 each year.<sup>42</sup> The Center also estimated that eight percent of women in the United States will be victims of stalking at some point in their lives.<sup>43</sup> Stalkers also primarily target young adults; on average, victims were twenty-eight years old when the stalking started.<sup>44</sup> Although these estimates shed some light on the prevalence of stalking crimes, accurate data on stalking is still largely unavailable; thus, these figures are likely under—rather than over—estimates, as many cases go unreported.<sup>45</sup>

As the Internet and other electronic communications technologies permeate virtually every aspect of society, electronic stalking has been

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35. See Harmon, *supra* note 9, at 169.

36. See *id.* (citing Tamar Lewin, *New Laws Address Old Problem: The Terror of a Stalker's Threats*, N.Y. TIMES, Feb. 8, 1993, at A1).

37. See *id.* at 169 & n.30 (explaining that approximately fifty percent of women who leave their abusive husbands are followed, harassed, or attacked by their former spouse).

38. See Melinda Beck et al., *Murderous Obsession*, NEWSWEEK, July 13, 1992, at 61 (adding that approximately one-third of all women killed are killed by their husbands or boyfriends).

39. See Bradfield, *supra* note 6, at 231 n.4.

40. *Id.*

41. See NATIONAL INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, DOMESTIC VIOLENCE AND STALKING: THE SECOND ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT 9 (1997).

42. See *id.*

43. See *id.* This is 1.6 times larger than previous estimates of five percent of women. See *id.*

44. See STALKING IN AMERICA, *supra* note 2, at 5 (noting also that 52% of the stalking victims were 18–29 years old and 22% were 30–39 years old when the stalking started, based on the NVAW survey results).

45. See Bradfield, *supra* note 6, at 231 n.4 & 232.

increasing as well,<sup>46</sup> although no detailed statistics have been developed for this phenomenon. However, both electronic harassment and stalking also seem to target women as victims. "In a 1993 survey of 500 members of Sysfers, an electronic mailing list for women in computer science, twenty percent of the respondents reported having been the targets of sexual harassment on-line."<sup>47</sup>

The term "cyberstalking" has been coined to refer to the use of the Internet, e-mail, or other electronic communications devices to stalk another person.<sup>48</sup> Because of the emerging nature of this form of stalking, the available evidence of cyberstalking is still largely anecdotal, but it suggests that the majority of cyberstalkers are men and the majority of their victims are women.<sup>49</sup> As in off-line stalking, in many on-line cases, the cyberstalker and the victim had a prior relationship, and when the victim attempts to end the relationship, the cyberstalking begins.<sup>50</sup>

Preliminary evidence on cyberstalking has come from incidents handled by state law-enforcement agencies. For example, the Stalking and Threat Assessment Unit of the Los Angeles District Attorney's Office has estimated that e-mail or other electronic communications were a factor in approximately twenty percent of the roughly 600 cases handled by the unit.<sup>51</sup> About twenty percent of the cases handled by the Sex Crimes Unit in the Manhattan District Attorney's Office involved cyberstalking.<sup>52</sup> Finally, by 1999, an estimated forty percent of the caseload in the Computer Investigations and Technology Unit of the New York City Police Department involved electronic threats or harassment, and "virtually all of these . . . occurred in the past three or four years."<sup>53</sup>

### C. *Effect on the Victim*

Although no two individuals necessarily react in the same manner to traumatic or violent stalking acts, stalking victims often exhibit several common responses to their ordeals. Many stalking victims present symptoms of "Post-Traumatic Stress Disorder" (PTSD),<sup>54</sup> which may continue although the stalking has stopped.<sup>55</sup> Those who suffer from PTSD typi-

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46. See Lee, *supra* note 23, at 377 (citing Amy Harmon, *Student's Expulsion over E-Mail Use Raises Concerns; Cyberspace: Caltech Harassment Case Illustrates Growing Problem*, L.A. TIMES, Nov. 15, 1995, at A1).

47. Mitch Betts & Joseph Maglitta, *IS Policies Target E-Mail Harassment*, COMPUTERWORLD, Feb. 13, 1995, at 12.

48. See CYBERSTALKING: A NEW CHALLENGE, *supra* note 11.

49. See *id.* However, "there have been reported cases of women cyberstalking men and of same-sex cyberstalking." *Id.*

50. See *id.*

51. See *id.*

52. See *id.*

53. *Id.*

54. See Kathleen G. McAnaney et al., *From Imprudence to Crime: Anti-Stalking Laws*, 68 NOTRE DAME L. REV. 819, 851 & n.147 (1993).

55. See *id.* at 851.

cally manifest reexperiencing, avoidance, and increased arousal symptoms for at least one month.<sup>56</sup>

Reexperiencing symptoms include having “recurrent and intrusive distressing recollections of the event”; suddenly “acting or feeling as if the traumatic event were recurring”; and “intense psychological distress at exposure to events that symbolize or resemble an aspect of the traumatic event.”<sup>57</sup> Avoidance symptoms include “efforts to avoid thoughts or feelings associated with the trauma”; efforts to avoid situations that cause recollections of the trauma; a “markedly diminished interest in significant activities”; and having a “sense of foreshortened future.”<sup>58</sup> Finally, arousal symptoms may include difficulty falling or staying asleep; having difficulty concentrating; being hypervigilant; and having an exaggerated startle response.<sup>59</sup>

In reviewing case examples of stalking victims, one commentator has found that “in cases where the stalking victim does not meet the full diagnostic criteria for PTSD, the victim may exhibit one or more post-traumatic symptoms[,]”<sup>60</sup> although the symptoms may vary in severity and duration.<sup>61</sup> At the extreme, victims may experience other reactions such as “depression, substance abuse, phobic anxiety, generalized anxiety, obsessive-compulsive behaviors, and dissociative disorders.”<sup>62</sup>

#### D. *Types of Stalkers*

At least four different categories of stalkers exist, according to a review of recent psychological, psychiatric, and forensic literature.<sup>63</sup> However, all stalkers do not have psychological problems.

There have been numerous cases in which the stalker does not exhibit any of the expected personality traits, but to all appearances is normal and perhaps even respected. A notable example is Chief Justice Sol Wachtler of the New York State Court of Appeals, the highest court in the state of New York. He was convicted of stalking as he repeatedly harassed and attempted to blackmail his ex-lover, Joy Silverman. . . . Other accused stalkers have included a male teacher who worked with special-education children and came from an affluent and conservative Mormon family, as well as a

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56. *See id.* (citing criteria for mental disorders as promulgated in AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 199 (3d ed. 1987)).

57. *Id.* at 851 n.147.

58. *Id.*

59. *See id.*

60. *Id.* at 852.

61. *See id.*

62. *Id.* at 852 & n.151.

63. *See id.* at 831.

highly accomplished undercover investigator for the United States Customs Department.<sup>64</sup>

Furthermore, one commentator has argued that by attributing stalking to individual psychology, stalkers (like domestic batterers) are being called victims themselves<sup>65</sup> and are pitied as such. Another commentator has contended that stalking does not arise exclusively from individual differences, but from “deeply embedded notions of romance found in Western culture.”<sup>66</sup> She has asserted that “[i]f society revises its notion of the ideal romantic paradigm to distinguish between healthy, mutual romantic interest and unwanted, one-sided pursuit, then the initial stages of stalking will neither be socially acceptable nor condoned, and will less likely degenerate into advance stalking actions.”<sup>67</sup> While recognizing that not all stalkers may fit into one of the four developed psychological categories, a brief description of these profiles follows.

### 1. *Stalkers Suffering from Delusional Erotomania*

A person with delusional erotomania has “a persistent ‘erotic delusion that one is loved by another[,]’”<sup>68</sup> even though this other individual may not even know of that person’s existence. “The erotomaniac individual often fantasizes the existence of an idyllic romantic or spiritual love with someone who is typically of a higher social status or in a position of authority relative to the erotomaniac individual.”<sup>69</sup> Although a diagnosis of erotomania does not require sexual attraction to the fantasized lover, erotomaniac people typically strive for an intimate and even permanent relationship with the object of their fantasy.<sup>70</sup>

A delusional erotomaniac exhibits several types of stalking behaviors. The erotomaniac may repeatedly endeavor to contact the fantasized individual by telephone or letter, may send gifts, may attempt to visit, and may engage in surveillance.<sup>71</sup> The goal of this behavior is to advance a relationship with the object of fantasy—a goal not unfounded in the erotomaniac’s mind because he “believes his target reciprocates his intensity of emotion and desire for union[,] despite the absence of any actual relationship or emotional reciprocity.”<sup>72</sup>

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64. Lee, *supra* note 23, at 387–88 (footnotes omitted) (citing Gill, *supra* note 10, at 166; Leslie J. Kurt, *Stalking as a Variant of Domestic Violence*, 23 BULL. AM. ACAD. PSYCHIATRY & L. 219 (1995); Richard Jerome, *The Night Caller*, PEOPLE, Feb. 26, 1996, at 40, 40–42).

65. See GEORGE LARDNER JR., THE STALKING OF KRISTIN: A FATHER INVESTIGATES THE MURDER OF HIS DAUGHTER 95 (1995).

66. Lee, *supra* note 23, at 388.

67. *Id.*

68. McAnaney et al., *supra* note 54, at 832 (citing AMERICAN PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 199 (3d ed. 1987)).

69. *Id.*

70. See *id.* at 832–33.

71. See *id.* at 833–34.

72. *Id.* at 834 (emphasis omitted). One of the most famous cases involving an erotomaniac individual is the murder of Tatiana Tarasoff by a male acquaintance, Prosenjit Poddar. See *id.* at 833.



## 2. *Stalkers Suffering from “Borderline Erotomania”*

The term “Borderline Erotomania” is used to describe “individuals who [develop] intense emotional feelings toward other individuals *who they know do not reciprocate* their feelings[.]”<sup>73</sup> This knowledge distinguishes these individuals from delusional erotomanics who do believe that their feelings are reciprocated. In addition to the lack of delusions, borderline erotomanics usually have had some type of actual emotional engagement with the object of fantasy, but such engagement may be extremely trivial, as in a friendly, but innocuous glance.<sup>74</sup> “These individuals are profoundly vulnerable to other’s trivial expressions of warmth and openness.”<sup>75</sup> Borderline erotomanics also have a tendency to vacillate between attitudes of love and hate towards the object of their attention.<sup>76</sup> However, the actual behavior of borderline erotomanics may not be significantly different from that of delusional erotomanics. Both will repeatedly write letters, make phone calls, send gifts, and follow their stalking targets.<sup>77</sup>

## 3. *Former Intimate Stalkers*

The Los Angeles Police Department characterizes former intimate stalkers as “individuals who ‘refuse to let go,’ [but] a more accurate understanding is that these individuals refuse to be rejected.”<sup>78</sup> These stalkers do not fantasize reciprocal, idealized love with their targets, as delusional erotomanics do, and they have had intimate relationships with their targets, in contrast to borderline erotomanics.<sup>79</sup> Psychological characteristics of former intimate stalkers include an intense emotional dependence on their partner, yet at the same time, an ambivalence over their dependence.<sup>80</sup> “They may also be jealous of real or imagined infidelities and exhibit a significant need to control their former partner.”<sup>81</sup> In many cases, these stalkers have a prior history of abusive relationships, and if so, they “regard their intimates as personal possessions that can be treated as such.”<sup>82</sup> Therefore, when one partner expresses a de-

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Poddar interpreted a New Year’s Eve kiss by Tarasoff as an indication that she loved him. *See id.* Then, after his repeated, but failed, attempts to gain Tarasoff’s attention and affection, Poddar attempted to arrange a dangerous situation from which he could rescue Tarasoff. *See id.* In his mind, he believed that his heroism would reveal to her the true depth of her feelings for him. *See id.* However, his plan failed, and he fatally stabbed Tarasoff. *See id.* (citing *Tarasoff v. Regents*, 551 P.2d 334 (Cal. 1976)).

73. *Id.* at 835.

74. *See id.* at 836.

75. *Id.*

76. *See id.* at 837.

77. *See id.*

78. *Id.* at 839.

79. *See id.*

80. *See id.* at 839–40.

81. *Id.* at 840.

82. *Id.* at 841.

sire for independence and a termination of the intimate relationship on which the “stalker” was emotionally dependent, this abandonment threatens the dominance of the other partner and may increase the risk of stalking and aggressive behavior.<sup>83</sup>

#### 4. *Sociopathic Stalkers*

Sociopathic stalkers include many serial murderers and serial rapists. In contrast to the other types, these stalkers do not appear to be seeking to initiate or maintain an interpersonal relationship with their victim.<sup>84</sup> Also, they typically seek individuals that fit their assault criteria, first formulating the characteristics of the “ideal victim” and then seeking an “acceptable example” to fit the criteria.<sup>85</sup> In one study of the life histories of four serial murderers (Ted Bundy, Albert De Salvo, Edmund Kemper, and Jerome Brudos), the researcher concluded that “after repressing their childhood rage (at being abused or rejected) for many years, finding themselves unable to control their environment, and then experiencing rejection again as an adult, some individuals displace their anger onto their victims in adulthood.”<sup>86</sup>

Although the crime of stalking is hardly new or easily defined, the rising number of victims and the potential for stalking to lead to more violent crimes call for increased awareness of the crime, both from potential victims and from those who work to combat the problem. Successfully rehabilitating stalkers or preventing them from acting will keep others from experiencing the trauma of stalking. This note will next consider the legislative attempts to fight stalking and the benefits and drawbacks that these statutes provide.

### III. RESPONDING WITH ANTI-STALKING LEGISLATION: DO THESE MEASURES ADEQUATELY PROTECT STALKING VICTIMS?

“Before stalking was recognized by mental-health professionals and law enforcement as criminal behavior, victims were left in the position of calling police when a stalker slashed their tires, or broke into their houses or left threatening messages.”<sup>87</sup> Now, police are becoming better educated so that when they are called out for vandalism, burglary, or assault, they can ask the right questions (i.e., what else has occurred, is there a pattern to the behavior, and can a stalking case be put together).<sup>88</sup>

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83. *See id.* at 840–41.

84. *See id.* at 842.

85. *See id.*; *see also* Cheryl Laird, *Stalking: Laws Confront Obsession that Turns Fear into Terror and Brings Nightmares to Life*, HOUS. CHRON., May 17, 1992.

86. McAnaney et al., *supra* note 54, at 842–43 (citing Faith H. Leibman, *Serial Murderers: Four Case Histories*, 53 FED. PROBATION 41, 42 (1989)).

87. Mark Sauer, *Stalkers Pose Both a Physical and Emotional Threat to the Target of Their Mislabeled Affections*, THE SAN DIEGO UNION-TRIB., Dec. 13, 1998, at D1.

88. *See id.*

The problem of stalking may be difficult to define, but with the enactment of state anti-stalking statutes beginning in the early 1990s<sup>89</sup> and the U.S. congressional mandate for the creation of a model anti-stalking law,<sup>90</sup> additional attention has been focused on this crime. Currently, all fifty states and the District of Columbia have some type of anti-stalking legislation,<sup>91</sup> although the definition of stalking and the penalties imposed can vary greatly.<sup>92</sup> Despite these advances in legislation, if the enacted legislation fails to keep pace with technology, then technological innovations threaten to make stalking even more pervasive.<sup>93</sup> This section will analyze the adequacy of state and federal laws in the fight against stalking and will examine the problems that current laws may present for a case of cyberstalking.

### A. Criminal Anti-Stalking Legislation

California enacted the nation's first anti-stalking statute in 1990, following the stalking and murder of actress Rebecca Schaeffer.<sup>94</sup> Soon thereafter, Congress asked the National Institute of Justice to conduct a study of then-current stalking laws, draft a model stalking law, and report its findings to state officials and Congress.<sup>95</sup> The Model Anti-Stalking Code for the States (Model Code) was presented to Congress in October 1993, with copies distributed to the states.<sup>96</sup> Although most federal laws

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89. See Bradfield, *supra* note 6, at 244 & n.76 (citing NATIONAL INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, DOMESTIC VIOLENCE, STALKING, AND ANTI-STALKING LEGISLATION: AN ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT 4 (1996)).

90. See Harmon, *supra* note 9, at 176.

91. See Bradfield, *supra* note 6.

92. See *id.* at 247–55.

93. See Lee, *supra* note 23, at 375–77; Gene Stephens, *Crime in Cyberspace*, FUTURIST, Sept. 19, 1995, at 24, 27.

94. See Mike Tharp, *In the Mind of a Stalker: The Man Who Killed Actress Rebecca Schaeffer is a Symbol of the Spreading National Menace*, U.S. NEWS & WORLD REP., Feb. 17, 1992, at 28. Rebecca Schaeffer, an actress on the television sitcom *My Sister Sam*, was stalked and killed by Robert Bardo, an obsessed fan. See *id.* at 30. Bardo wrote love letters to the actress and attempted to gain access to her television studio. See *id.* He obtained Schaeffer's home address from the Department of Motor Vehicles, and later fatally shot her at home on her doorstep. See *id.* In Schaeffer's case, as with other celebrity-stalking cases, she may have unwittingly fueled her stalker's delusion by answering her fan mail. She reportedly mailed Bardo a handwritten card and autographed photo that he completely misconstrued. See Sauer, *supra* note 87, at D1. "Then [Bardo] saw her in a TV movie, in bed with another actor, and it infuriated him—now he considered her a slut. He went from being enamored with her to becoming furious over what he perceived as her rejecting him by being sexual with someone else." See *id.* (quoting J. Reid Meloy, an associate clinical professor of psychiatry at the University of California at San Diego).

95. See Harmon, *supra* note 9, at 176 & n.76.

96. See NATIONAL INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, DOMESTIC VIOLENCE, STALKING, AND ANTI-STALKING LEGISLATION: AN ANNUAL REPORT TO CONGRESS UNDER THE VIOLENCE AGAINST WOMEN ACT 4 (1996). The Model Anti-Stalking Code for the States provides, in part, the following definitions:

Section 1. For purposes of this code:

(a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person;

concerning stalking currently provide only limited assistance to stalking victims and have yet to cover cyberstalking adequately, the anti-stalking statutes enacted by the states are more widely used and developed.<sup>97</sup>

### 1. *State Legislation and the Model Anti-Stalking Law*

To combat stalking, the Model Code, as well as many state statutes, contain requirements for a course of conduct, the presence of a threat or threats, and the intent to cause fear.<sup>98</sup> These elements and their relation to cyberstalking cases are considered below.

#### a. Course of Conduct

The condition that a stalker engage in a “course of conduct” usually entails “a series of acts that, taken together, present a pattern of behavior evidencing a continuity of purpose.”<sup>99</sup> Some states mandate how many acts must occur. For example, Illinois requires only two such acts,<sup>100</sup> but Delaware determined that more than three acts on different occasions is enough to constitute stalking.<sup>101</sup> Statutes also vary on the specificity of the required type of conduct. By 1996, forty states specifically prohibited pursuing or following;<sup>102</sup> twenty-five states prohibited harassment;<sup>103</sup> eighteen states prohibited nonconsensual communications;<sup>104</sup> eight states prohibited surveillance;<sup>105</sup> six states prohibited trespass;<sup>106</sup> and three states prohibited lying in wait.<sup>107</sup> Anti-stalking statutes in four states

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(b) “Repeatedly” means on two or more occasions; and

(c) “Immediate family” means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.

Section 2. Any person who:

(a) purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family;

(b) has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to himself or herself or a member of his or her immediate family or will be placed in reasonable fear of the death of himself or herself or a member of his or her immediate family; and

(c) whose acts induce fear in the specific person of bodily injury to himself or herself or a member of his or her immediate family or induce fear in the specific person of the death of himself or herself or a member of his or her immediate family; is guilty of stalking.

*Id.*

97. *See id.* at B-1.

98. *See* Bradfield, *supra* note 6, at 247.

99. *Id.*

100. *See* 720 ILL. COMP. STAT. ANN. 5/12-7.3(a) (West Supp. 2000).

101. *See* DEL. CODE ANN. tit. 11, § 1312A (1998).

102. *See* Bradfield, *supra* note 6, at 248 (citing NATIONAL INST. OF JUSTICE, *supra* note 96, at 6).

103. *See id.*

104. *See id.*

105. *See id.*

106. *See id.*

107. *See id.*

(Maine, New Hampshire, Ohio, and Wisconsin) did not enumerate proscribed acts.<sup>108</sup>

Less than one-third of the states currently have anti-stalking laws that explicitly cover stalking via electronic communications, such as the Internet, e-mail, or pagers,<sup>109</sup> yet this language is imperative as e-mail becomes a more ordinary form of personal communication.<sup>110</sup> For example, California's recently amended statute, which now covers cyberstalking,<sup>111</sup> was used in 1998 to prosecute a fifty-one-year-old security guard who posed as his ex-girlfriend (using her real name, address, and telephone number) and went into electronic chat rooms to solicit "rough sex."<sup>112</sup> At least six men did show up at her apartment before the cyberstalker was identified and charged.<sup>113</sup>

The Model Code prohibits "a course of conduct that would cause a reasonable person fear."<sup>114</sup> For the conduct itself, the Model Code does not specify a list of acts, out of concern that a list might be interpreted as exhaustive by the courts.<sup>115</sup> However, a detailed list of specific acts, which includes cyberstalking acts, may be a better approach.<sup>116</sup> Such a list would place potential stalkers on notice as to what types of behavior are restricted, and help law enforcement officers, prosecutors, and judges determine if certain conduct constitutes stalking.<sup>117</sup>

#### b. Threat

The threat requirements articulated in anti-stalking statutes can be categorized in three ways: (1) the requirement of threat or conduct; (2) the requirement of threat and conduct; or (3) the requirement of threat,

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108. *See id.* at 248 & n.95.

109. *See* CYBERSTALKING: A NEW CHALLENGE, *supra* note 11, n.7. The states covering electronic communications include Alabama, Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New York, Oklahoma, and Wyoming. *See id.* Outside of stalking statutes, Arkansas and Maryland have enacted statutes that cover harassment via electronic communications. *See id.*

110. *See generally* Ross, *supra* note 13.

111. *See* CAL. PENAL CODE § 646.9 (West 1999). This statute provides in part that "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with 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 family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. Also, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. *See id.*

112. *See* Valerie Alvord, *Cyberstalkers Must Beware of the E-Law*, USA TODAY, Nov. 8, 1999, at 22A.

113. *See id.*

114. Bradfield, *supra* note 6, at 248.

115. *See id.*

116. *See id.* (criticizing the Model Code's approach to the subject of conduct).

117. *See id.*

conduct, and the intent or apparent ability to carry out the threat.<sup>118</sup> A majority of states have adopted the first category, requiring either a threat or conduct.<sup>119</sup> Moreover, this requirement recognizes that, in many cases, a stalker will not make an overt threat. In the National Violence Against Women survey, the findings indicated that less than half of the stalking victims interviewed were directly threatened by their stalker, although they were either “very frightened of their assailant’s behavior or feared their assailant would seriously harm or kill them or someone close to them.”<sup>120</sup> This first category may also be most useful for cyberstalking cases. Threats may be easily communicated over e-mail, for example, without any physical conduct (i.e., following or showing up at the victim’s place of work) from the stalker.

The second category, requiring a threat and conduct, has been adopted by a handful of states.<sup>121</sup> For example, Colorado’s statute states that people commit stalking if they “make[] a credible threat to another person and, in connection with that threat,” either “repeatedly follow[] that person or a member of that person’s immediate family” or “repeatedly make any form of communication with that person or a member of that person’s family, whether or not a conversation ensues.”<sup>122</sup> However, these types of statutes pose problems for victims who are not overtly threatened by their stalkers. No matter what conduct occurs, without an explicit threat, the conduct will likely be lawful. In addition, cyberstalking cases may encounter problems with the “credible” threat requirement, should that term be used in the statute. If the cyberstalker is actually located far from the victim, the threats, whether overt or implied, may not be credible.<sup>123</sup> In addition, many statutes also use an objective, “reasonable person” standard when assessing the threat,<sup>124</sup> ignoring the victim’s subjective understanding of it.<sup>125</sup> Some comments may “appear harmless to a judge, but direct a very specific threat to the victim.”<sup>126</sup>

Finally, a few states have adopted the requirements of the third category—a threat, conduct, and intent or apparent ability to carry out the threat.<sup>127</sup> These statutes again are problematic for victims who are not explicitly threatened or who have no evidence of conduct. Furthermore, this category poses problems in cyberstalking cases where the

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118. *See id.* at 249.

119. *See, e.g.*, ALASKA STAT. § 11.41.270 (Michie 1999); GA. CODE ANN. § 16-5-90 (1999); NEV. REV. STAT. § 200.575 (1999).

120. STALKING IN AMERICA, *supra* note 2, at 6.

121. *See, e.g.*, ARK. CODE ANN. § 5-71-229(a)(1) (Michie 1999); COLO. REV. STAT. § 18-9-111 (1999); MASS. GEN. LAWS ch. 265, § 43(a) (2000).

122. COLO. REV. STAT. § 18-9-111(4)(b).

123. *See* CYBERSTALKING: A NEW CHALLENGE, *supra* note 11.

124. *See* Bradfield, *supra* note 6, at 250.

125. *See id.*

126. *Id.*

127. *See, e.g.*, KAN. STAT. ANN. § 21-3438 (2000); N.M. STAT. ANN. § 30-3A-3 (Michie 1996); R.I. GEN. LAWS § 11-59-1 to 11-59-3 (1999).

stalker may be located a great distance away from the victim, and therefore the stalker may not have the intent or apparent ability to carry out the threat. This approach fails to include threats implied by conduct and again ignores the victim's subjective understanding of the threats.<sup>128</sup>

### c. Intent

The requisite intent of a stalker is described by a majority of the states as the intent to cause reasonable fear, whether it be "willful," "purposeful," "intentional," or "knowing," and most of these states also require that the stalker actually cause reasonable fear.<sup>129</sup> However, some states specify only that the stalker intend to commit the act that causes fear.<sup>130</sup> The Model Code requires that the stalkers know or should know that their actions cause fear in order to prosecute the stalkers.<sup>131</sup> By including "should know," this type of intent requirement "reach[es] delusional stalkers who believe either that their victims are in love with them or that they can win their victims' love by pursuing them."<sup>132</sup>

## 2. Federal Anti-Stalking Provisions

Aside from state statutes, stalking victims have also found some assistance in federal law. In 1994, Congress enacted the Violence Against Women Act.<sup>133</sup> Based on the high incidence of stalking in domestic violence cases, the Act included a section entitled "National Stalker and Domestic Violence Reduction."<sup>134</sup> This section provides additional funding to the states that enables them to fight stalking and domestic violence in their communities.<sup>135</sup>

To confront stalking directly, in 1996, Congress passed the Interstate Stalking Punishment and Prevention Act,<sup>136</sup> which made it a federal

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128. See Bradfield, *supra* note 6, at 251.

129. See *id.* at 254; see, e.g., GA. CODE ANN. § 16-5-90 to 16-5-93 (1999); N.J. STAT. ANN. § 2C:12-10 (West 2000); W. VA. CODE § 61-2-9a (1999).

130. See Bradfield, *supra* note 6, at 254.

131. See NATIONAL INST. OF JUSTICE, *supra* note 96, at B-1.

132. Bradfield, *supra* note 6, at 254.

133. Pub. L. No. 103-322, tit. IV, 108 Stat. 1796, 1902-55 (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.). However, in *United States v. Morrison*, 120 S. Ct. 1740 (2000), the Supreme Court held that a section of the Violence Against Women Act was unconstitutional. The Court determined that Congress lacked authority to enact 42 U.S.C. § 13981 (providing a civil remedy for victims of gender-motivated violence), under either the Commerce Clause or Section 5 of the Fourteenth Amendment.

134. 42 U.S.C. §§ 14031-14040 (1994).

135. See *id.*

136. 18 U.S.C. § 2261A (Supp. II 1996). In fact, Senator Kay Bailey Hutchison, a sponsor of the bill, understands first-hand the nightmare that stalking victims experience. See Joan Lowy, *U.S. Anti-Stalking Bill to Extend Protections*, THE PLAIN DEALER (Cleveland), Sept. 24, 1996, at 5A. Hutchison has been stalked and harassed for 25 years by a man she calls "George." See *id.* After he first began threatening her, George was hospitalized in a mental institution for 60 days. See *id.* However, since then George has repeatedly attempted to contact her over the years, and Hutchison has learned to live with it, trying to take the appropriate precautions. See *id.*

offense for a stalker to cross state lines in order to intimidate or threaten a victim.<sup>137</sup> This Act extends protection to a victim's immediate family, and makes the FBI's tracking capabilities available during attempts to apprehend interstate stalkers.<sup>138</sup>

Electronic or cyberstalking has fewer federal protections. "Because computer networks de-emphasize physical or temporal boundaries, e-mail harassment does not conform to conventional notions of jurisdiction, choice of law, and enforcement."<sup>139</sup> One proposal in 1994, entitled the Electronic Anti-Stalking Act,<sup>140</sup> would have amended the Federal Telephone Harassing Statute<sup>141</sup> to include electronic communications. The proposal expanded the meaning of "telephone" and "telephone call" to include "communications by means of computer modem or any other two-way wire or radio telecommunications device."<sup>142</sup> However, critics of this change successfully argued that the analogy between harassing via telephone and stalking via e-mail fails.<sup>143</sup> They argued, in part, that the

137. See Lowy, *supra* note 136, at 5A. The Act provides:

Whoever travels across a State line or within the special maritime and territorial jurisdiction of the United States with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury . . . to, that person or member of that person's immediate family . . . shall be punished as provided in section 2261 of this title.

18 U.S.C. § 2261A (Supp. II 1996).

138. See Lowy, *supra* note 136, at 5A.

139. David K. McGraw, *Sexual Harassment in Cyberspace: The Problem of Unwelcome E-mail*, 20 RUTGERS COMPUTER & TECH. L.J. 491, 515 (1995) (citing Eric Schlachter, *Cyberspace, The Free Market, and the Marketplace of Ideas: Recognizing Legal Differences in Computer Bulletin Board Functions*, 16 HASTINGS COMM. & ENT. L.J. 87, 116 (1993)).

140. H.R. 5015, 103d Cong. § 223 (1994) (Congressman Mfume's proposed amendment).

141. 47 U.S.C. § 223 (1999). This statute provides and prohibits in part:

Whoever (1) in interstate or foreign communications

(A) by means of a telecommunications device knowingly (i) makes, creates, or solicits, and (ii) initiates the transmission of, any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

(B) by means of a telecommunications device knowingly (i) makes, creates, or solicits, and (ii) initiates the transmission of, any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

(C) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communications;

(D) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(E) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity, shall be fined under title 18, United States Code, or imprisoned not more than two years, or both.

*Id.*

142. H.R. 5015, 103d Cong. § 223 (1994) (proposed amendment).

143. See generally Ross, *supra* note 13 (arguing that the proposed amendment to the Federal Telephone Harassing Statute is an inadequate remedy to e-mail stalking).



impact of the stalker's words differs when the victim hears them over a telephone from when the victim reads them in an e-mail message.<sup>144</sup>

### 3. *Problems Unique to Cyberstalking Cases*

"Stalkers harness the tremendous power of the Web to learn about their prey and to broadcast false information about the people they target. And the Internet—the same tool they use to investigate and spread terror—provides stalkers with almost impenetrable anonymity."<sup>145</sup> In cyberspace, stalking and harassment may occur via e-mail and through user participation in news groups, bulletin boards, and chat rooms.<sup>146</sup> One major difference from off-line stalking is that cyberstalkers can also dupe other Internet users into harassing or threatening victims.<sup>147</sup> For example, a cyberstalker may post an inflammatory message to a bulletin board using the name, phone number, or e-mail address of the victim.<sup>148</sup> Each subsequent response to the victim, whether from the actual cyberstalker or others, will have the intended effect on the victim, but the cyberstalker's effort is minimal.<sup>149</sup>

The veil of anonymity offered by the Internet also puts the cyberstalker at an advantage. Internet users can conceal their true identity by using different Internet Service Providers (ISPs) and/or by adopting different screen names.<sup>150</sup> When an individual creates an electronic mailbox through a web site on the Internet, most ISPs request some identifying information from the user, but rarely do the ISPs authenticate or confirm this information.<sup>151</sup> If the services require payment, the user can typically pay in advance with a nontraceable form of payment, such as a money order.<sup>152</sup> As long as payment is received in advance, the ISP has little incentive to verify any information given and will simply provide service to the account holder.<sup>153</sup> Cyberstalkers can also change their screen names

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144. *See id.* (citing *Can We Talk? Can We Ever*, FORTUNE MAG., July 11, 1994, at 54).

145. Alvord, *supra* note 112, at 22A.

146. *See generally* CyberAngels, *Internet Safety Program* (visited Jan. 29, 2000) <<http://www.cyberangels.org/safetyandprivacy/stalking.html>> (on file with the *University of Illinois Law Review*) (discussing what cyberstalking is and how to prevent it).

147. *See* CYBERSTALKING: A NEW CHALLENGE, *supra* note 11.

148. *See id.* For example, when one Joliet, Illinois, family could not understand why they were receiving phone calls for their nine-year-old daughter from strange men at all hours of the day and night, they eventually turned to the Internet for clues. *See* Ethan Wallison, *Couple Tell How Internet Preyed on Their Family*, CHI. TRIB., May 1, 1998, Metro Southwest, at 1. There, they found that someone had posted "Internet messages claiming the girl was sexually active with her father and wanted to have sex with other men. The messages appeared on [14] different Web sites, and included the family's phone number." *Id.* The family worked with local police to investigate the source of the postings and claimed to have traced them to a neighbor. *See id.* At one point during the investigation, police found that a description of the young girl's outdoor activities appeared on the Internet about an hour after she went outside to play. *See id.*

149. *See* CYBERSTALKING: A NEW CHALLENGE, *supra* note 11.

150. *See id.*

151. *See id.*

152. *See id.*

153. *See id.*

and use "mail servers that purposefully strip identifying information and transport headers from electronic mail."<sup>154</sup> Stalkers can make the message nearly perfectly anonymous by first forwarding their mail through several of these types of servers.<sup>155</sup>

Although ISPs are beginning to receive more complaints about harassing and threatening behavior on-line,<sup>156</sup> they have yet to pay much attention to these types of complaints.<sup>157</sup> On-line industry associations assert that providing more attentive protection to their customers (informing them as to the ISP's complaint procedures, the policies as to what constitutes prohibited harassment, and the ISP's follow-up procedures) would be costly and difficult.<sup>158</sup> They argue that "no attempt to impose cyberstalking reporting or response requirements should be made unless fully justified," yet they assert that "the decentralized nature of the Internet would make it difficult for providers to collect and submit such data."<sup>159</sup>

The anonymity of the cyberstalker's threat and potential lack of direct conduct between the stalker and the victim can be particularly ominous to a cyberstalking victim,<sup>160</sup> and make it more difficult for ISPs and law enforcement to identify, locate, and arrest the stalker.<sup>161</sup> Also, with the knowledge that they are anonymous, cyberstalkers might be more willing to pursue their victims, using additional information easily gleaned from the Internet.<sup>162</sup> Furthermore, Internet web sites provide great assistance and resources to off-line stalkers and cyberstalkers alike.<sup>163</sup> Web sites can teach an individual how to stalk a woman and how to research her social security number, her home address, and her driver's license number.<sup>164</sup>

Stalking, and particularly cyberstalking, is a growing social problem. Criminal anti-stalking statutes have provided a first-step toward eradicating this behavior. By using anti-stalking statutes in the criminal justice system, the state controls the prosecution of the stalker and must prove

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154. *Id.*

155. *See id.*

156. *See id.*

157. *See id.* (noting, in this September 1999 report, that one major ISP received approximately 15 complaints of cyberstalking per month during recent months, compared with virtually no complaints of cyberstalking just one or two years ago).

158. *See id.*

159. *Id.* (reporting the Commercial Internet Exchange's arguments against instituting cyberstalking reporting requirements). The members of the Commercial Internet Exchange carry approximately 75% of U.S. backbone Internet traffic. *See id.*

160. *See id.* (observing that the perpetrator could be "in another state, around the corner, or in the next cubicle at work").

161. *See id.*

162. *See id.*

163. *See* Tanya Ho, *Internet Can Target Women, Forum Told*, THE TORONTO STAR, Mar. 22, 1999, at 1.

164. *See id.* (quoting Gail Stern, who was the director of the University of Illinois at Chicago Campus Advocacy Network, an advocacy program for victims of hate crime, domestic violence, stalking, and sexual assault, for seven years beginning in 1991).

its case beyond a reasonable doubt.<sup>165</sup> The primary benefit for a victim of stalking is that, with a conviction after a criminal trial, a judge or jury can sentence the stalker to prison.<sup>166</sup> Jailing a defendant provides at least temporary safety for the victim.<sup>167</sup> However, for some victims, their stalkers are able to escape direct prosecution for stalking by skirting the language of the state's stalking statute and engaging in some form of cyberstalking. Until broader language is implemented to cover the use of new information technologies and methodologies in stalking cases, victims may have to search for alternative solutions.

### B. Civil Legislation to Assist Stalking Victims

When criminal statutes fail to stop stalkers, an alternate remedy for victims of stalking is the use of statutes that provide for civil damages. A few state statutes<sup>168</sup> (and for a short time, the federal Violence Against Women Act of 1994<sup>169</sup>) provide for the recovery of civil damages in stalking cases. Generally, civil suits can be used either in addition to or in place of criminal charges.<sup>170</sup>

#### 1. State Legislation

A few states have expressly provided a stalking victim with the added ability of pursuing the stalker in civil court. Certain provisions in the statutes from four states appear to be key in victims' cases against their stalkers. First, each of these four statutes allows recovery of both compensatory and punitive damages.<sup>171</sup> The possibility of punitive damages provides additional punishment for the defendant and sends a message of intolerance to prospective stalkers.<sup>172</sup> Moreover, losing defendants cannot escape paying punitive damages by declaring bankruptcy, which makes the inclusion of these damages especially crucial to victims.<sup>173</sup>

Three of these state statutes also allow for the recovery of "reasonable attorney fees" if the plaintiff prevails in the civil suit.<sup>174</sup> This recov-

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165. See Kristin J. Bouchard, *Can Civil Damage Suits Stop Stalkers?*, 6 B.U. PUB. INT. L.J. 551, 556-57 (1997) (discussing direct stalking prosecution at Part III.A.).

166. See *id.* at 556.

167. See *id.*

168. See, e.g., CAL. CIV. CODE § 1708.7 (West Supp. 1999); MICH. COMP. LAWS ANN. § 600.2954 (West Supp. 1999); OR. REV. STAT. § 30.866 (1999); WYO. STAT. ANN. § 1-1-126 (Michie Supp. 1999).

169. Pub. L. No. 103-322, tit. IV, 108 Stat. 1796, 1902-55; see also *supra* note 133.

170. See Bouchard, *supra* note 165, at 559-60 (reviewing statutes that provide for civil damages for stalking); see also *infra* Part III.B.

171. See CAL. CIV. CODE § 1708.7(c); MICH. COMP. LAWS ANN. § 600.2954(1); OR. REV. STAT. § 30.866(4); WYO. STAT. ANN. § 1-1-126(a).

172. See Bouchard, *supra* note 165, at 561-62.

173. See *id.*

174. MICH. COMP. LAWS ANN. § 600.2954(1); OR. REV. STAT. § 30.866(4); WYO. STAT. ANN. § 1-1-126(a).

ery provision means that if the victims succeed in court against their stalkers, then victims' awards will not be reduced to pay their own attorney's fees.<sup>175</sup> The possibility of recovery may provide an incentive for victims to bring a civil suit against their stalkers, whether or not the stalkers face charges in a criminal trial.<sup>176</sup>

Finally, these state statutes also permit stalking victims to bring a civil suit against their stalker, regardless of whether the stalker faces a criminal prosecution.<sup>177</sup> This flexibility will assist victims whose stalkers avoid criminal charges or avoid conviction with a reasonable doubt standard.<sup>178</sup> In a civil setting, with a preponderance of evidence standard, it becomes easier for victims to meet their burden of proof.<sup>179</sup>

## 2. *Federal Legislation*

Part of the federal Violence Against Women Act, now held to be unconstitutional,<sup>180</sup> provided for "Civil Rights Remedies for Gender-Motivated Violence."<sup>181</sup> This statute shared a few characteristics with the state statutes. The Act allowed for recovery of both compensatory and punitive damages,<sup>182</sup> and did not condition the victim's civil suit on whether criminal charges were brought against the stalker.<sup>183</sup>

Although the Commerce Clause in the U.S. Constitution<sup>184</sup> limited the federal government's power in enacting anti-stalking legislation, the commitment to stopping stalking at a national level is crucial, if only as a policy matter.<sup>185</sup> With few federal remedies to provide relief for victims, state anti-stalking statutes, both criminal and civil, must adequately cover all types of stalking scenarios, regardless of the technology the stalker uses; moreover, those who enforce the statutes must have the tools to do so.

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175. See Bouchard, *supra* note 165, at 562.

176. See *id.*

177. See *id.*; CAL. CIV. CODE § 1708.7(e) (West Supp. 1999); MICH. COMP. LAWS ANN. § 600.2954(2); OR. REV. STAT. § 30.866; WYO. STAT. ANN. § 1-1-126(b)-(c).

178. See Bouchard, *supra* note 165, at 562.

179. See *id.*

180. See *supra* note 133.

181. 42 U.S.C. § 13981 (1994). This statute provided in part:

[a] person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the rights declared in subsection (b) [the right to be free from crimes of violence motivated by gender] . . . shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

*Id.* § 13981(c).

182. See *id.*

183. See *id.* § 13981(d)(2)(A).

184. U.S. CONST. art. I, § 8, cl. 3.

185. See Bouchard, *supra* note 165, at 561.

#### IV. A PROPOSED COURSE OF ACTION: REQUIRING WIDE-SPREAD COLLABORATION TO OUT-MANEUVER TODAY'S STALKER

Cyberspace has become a fertile field for illegal activity. By the use of new technology and equipment, which cannot be policed by traditional methods, cyberstalking has replaced traditional methods of stalking and harassment. In addition, cyberstalking has led to off-line incidents of violent crime. Police and prosecutors need to be aware of the escalating numbers of these events and devise strategies to resolve these problems through the criminal justice system.<sup>186</sup>

Despite some improvements in law enforcement training and the creation of anti-stalking laws, police and prosecutors still face a difficult task in forcing stalkers to stop terrorizing their victims. The primary problem is determining what course of action has a real chance of succeeding with the particular stalker at issue without exacerbating the problem.<sup>187</sup> For example, obtaining a restraining order may only infuriate a domestic stalker, while arrest and trial may only encourage a celebrity stalker.<sup>188</sup> By first recognizing that stalking and cyberstalking are serious problems, and then by working together to develop the appropriate skills and expertise to combat the perpetrators, law enforcement, prosecutors, the Internet industry, and victims can fight to stem any further growth of this crime.

##### A. *Improved Training and Collaboration in Law Enforcement*

Communities with more successful stalking investigations have two elements in common. First, law enforcement officials have recognized the prevalence of stalking and are familiar with the requirements of the available anti-stalking statutes. Second, the communities also have created stalking task forces or crime units, whose mission also includes combating cyberstalking. These task forces have the technological resources and trained personnel (or access to both) to handle cyberstalking investigations.

Before a task force can be successful, it must be armed with the proper legislative authorization. At the outset, states should review their existing anti-stalking statutes to determine whether the statutes address cyberstalking, and if not, the laws should promptly be expanded to confront this problem.<sup>189</sup> States should impose a subjective standard for the threat requirement of the statute, thus criminalizing threats that the

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186. CYBERSTALKING: A NEW CHALLENGE, *supra* note 11 (quoting Linda Fairstein, Chief of Sex Crimes Prosecution Unit for the Manhattan District Attorney's Office).

187. *See* Sauer, *supra* note 87, at D1.

188. *See id.* Wells also noted that Robert Dewey Hoskins, the man who was convicted of stalking singer Madonna, "totally got off sitting in the courtroom with Madonna." *Id.*

189. *See* CYBERSTALKING: A NEW CHALLENGE, *supra* note 11 (detailing both state and federal legislative recommendations to combat cyberstalking).

stalker knows or should know cause fear in the victim.<sup>190</sup> Other changes that will help protect victims include an amendment to the threat requirement in the statute to encompass implied threats,<sup>191</sup> and threats performed through the use of an electronic communications device (whether verbal or written).<sup>192</sup> This broadening of the statutory language will reach the nuances of today's stalking behavior.<sup>193</sup>

Next, the task forces or crime units that are assembled to combat stalking must include violent-crime specialists, computer-crime investigators and prosecutors, computer-forensic specialists, and victim-witness coordinators.<sup>194</sup> These groups must work more closely with victims to identify cyberstalking patterns and to encourage more victims to report incidents to the authorities.<sup>195</sup> Victim advocates must also help train task-force members and domestic violence and other victim-service providers on Internet technology and on how to respond to the specific needs of cyberstalking victims.<sup>196</sup>

Law enforcement agencies and criminal justice officials should also receive training on the most effective techniques to investigate and prosecute stalking and cyberstalking crimes. By quickly and reliably sharing information about cyberstalking incidents with other law enforcement agencies, a cyberstalker may be less likely to escape prosecution simply because officials in neither the jurisdiction of the sender nor the jurisdiction of the victim believe that they can prosecute the offender.<sup>197</sup>

### B. *Increased Use of Technology to Protect Victims*

Other types of technology could be used to shield victims once their stalker has been identified. Examples of the use of technology in domestic violence cases demonstrate that electronic innovations can protect victims by providing law enforcement with faster access to critical information.<sup>198</sup> Because stalking is often associated with domestic violence cases,

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190. See Bradfield, *supra* note 6, at 250–51.

191. See *id.* at 251 (citing Elizabeth A. Patton, *Stalking Laws: In Pursuit of a Remedy*, 25 RUTGERS L.J. 465, 466 (1994) for examples of implied threats such as sending the victim a dead rat and kicking the victim's car while driving alongside her on a motorcycle). "Because stalkers often engage in obscure methods of terror, a more flexible definition that includes threats implied by conduct is necessary to prosecute successfully stalkers that engage in such methods." *Id.* at 251.

192. See, e.g., CAL. PENAL CODE § 646.9(g) (West 1999) (including "electronic communications" language in anti-stalking statute).

193. See, e.g., CYBERSTALKING: A NEW CHALLENGE, *supra* note 11 (asserting that, to address cyberstalking, the amended legislation should be technology neutral and should apply to all forms of communication techniques).

194. See *id.* (recognizing the need for law enforcement agency training on the nature and extent of stalking problems and the need for coordination among law enforcement agencies to address these issues).

195. See *id.*

196. See *id.*

197. See *id.*

198. See *infra* notes 202–08 and accompanying text.

these types of programs could also provide a certain amount of peace-of-mind for stalking victims as well.

One program launched by the Safehouse of Seminole shelter, Seminole County Sheriff's Office, and ADT Security Inc. provides a pendant, worn around the neck of domestic violence victims, that when activated in the home, signals the local police that the wearer is in danger.<sup>199</sup> "The pendant system eliminates frantic, often time-consuming 911 calls. The system also circumvents the potential of phone lines being cut or phones ripped from walls by an assailant."<sup>200</sup> ADT is also developing a wireless version for the automobile that would bounce the alarm signal off a satellite.<sup>201</sup>

Another example of additional protection for victims is a program from Sangamon County, Illinois, that adopted a computerized response system developed by HTE, Inc. "HTE's software enables police dispatch computers to send an immediate alert to a computer in the squad car nearest the incident of domestic abuse, [in addition to transmitting] an entire data file giving patrol officers all the background on the woman, her abuser and past incidents of violence."<sup>202</sup>

Some communities have turned to other technologies to assist generally in researching the crime of stalking. For example, in New York state in 1999, the New York Police Department's (NYPD) domestic violence unit was beginning to track the movement of stalkers, after receiving a \$130,000 state grant that paid for night-vision goggles for surveillance, overtime for investigators, and additional recording and tracking equipment from the NYPD's elite technical-assistance unit.<sup>203</sup> The NYPD will also begin to work with FBI agents from the Critical Incident Response Unit at the FBI Academy in Quantico, VA, to create "stalker profiles."<sup>204</sup> Then, the high-tech equipment will be used to monitor those who fall into the newly defined category.<sup>205</sup>

### C. Expanded Education and Public Awareness Campaigns

Most importantly, the public must be better informed on how they can prevent stalking and cyberstalking and what to do if they become a victim. To this end, the Internet and electronic communications industry should establish an industry-supported web site containing information

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199. See Richard Burnett, *Pendant Aids Against Abusers, Stalking Victims Can Feel Safer Now, Thanks to a New Silent Panic Button Worn Around the Neck*, THE ORLANDO SENTINEL, Jan. 28, 1996, at K1.

200. *Id.*

201. *See id.*

202. *Id.*

203. See John Marzulli, *Cops Go Hi-Tech to Net Stalkers*, DAILY NEWS (New York), Oct. 21, 1999, at 32.

204. *Id.*

205. *See id.*

about cyberstalking and what to do if confronted with this problem.<sup>206</sup> The site should include contact information for various ISPs so that Internet users can easily report cyberstalking cases.<sup>207</sup> Although the Internet has been recognized as an important tool for protected-speech activities,<sup>208</sup> the industry must still take proactive efforts to educate and protect its users. These efforts could also include developing additional means to enable Internet users to protect themselves against cyberstalking, such as more effective electronic filtering and blocking options.<sup>209</sup> An industrywide code of conduct should also be developed that includes clear policies prohibiting cyberstalking and related behaviors.<sup>210</sup>

Community efforts must also be expanded to bring together local allies, such as law enforcement, prosecution, the judiciary, and the medical community, to address the specific safety needs of cyberstalking victims and to hold offenders accountable for their actions.<sup>211</sup> For example, the Los Angeles Commission on Assaults Against Women recently introduced a "Love-Me-Not" program, focused on college campuses, that combines education about stalking with increased assistance from the district attorney's office.<sup>212</sup> Love-Me-Not posters, billboards, and book-marks were sent to five Los Angeles County campuses,<sup>213</sup> and a toll-free, twenty-four-hour hotline and Internet site were created to educate and assist students.<sup>214</sup> In addition, the district attorney's office pledged to train police and campus security departments to recognize stalking and to prosecute aggressively those charged with the crime.<sup>215</sup> While making students generally more aware of stalking, the commission also will offer victim support groups, self-defense workshops, and security-awareness training.<sup>216</sup>

## V. CONCLUSION

Both stalking and, with the advent of the Internet, cyberstalking present challenges for law enforcement, prosecutors, ISPs, and victims. Although types of stalking or pursuit behavior have existed throughout

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206. See CYBERSTALKING: A NEW CHALLENGE, *supra* note 11.

207. See *id.*

208. See, e.g., *Reno v. American Civil Liberties Union*, 521 U.S. 844, 850–52, 870–74 (1997); *American Civil Liberties Union v. Reno*, 31 F. Supp. 2d 473, 476, 493 (E.D. Pa. 1999); see also CYBERSTALKING: A NEW CHALLENGE, *supra* note 11 (discussing the First Amendment and other legal considerations surrounding anti-stalking statutes and the Internet).

209. See CYBERSTALKING: A NEW CHALLENGE, *supra* note 11 (noting that some major ISPs already provide such options, but that others do not).

210. See *id.*

211. See *id.*

212. See Jessica Garrison, *D.A. Unveils Anti-Stalking Campaign*, L.A. TIMES, Feb. 15, 2000, at B1.

213. See *id.* (noting that the University of Southern California; the University of California at Los Angeles; California State University, Long Beach; California State University, Northridge; and California State Polytechnic University, Pomona, had joined the program as of February 14, 2000).

214. See *id.*

215. See *id.*

216. See *id.*



history, the number of victims continues to grow in the United States, resulting in the potential for scores of victims experiencing long-term disabling effects. However, without a clear stalker profile or defined circumstances that trigger the offensive behavior, it is difficult to know exactly how to prevent the crime.

A stalking victim now has various anti-stalking provisions (both criminal and civil) that provide some assistance and relief. Still, as stalking behavior evolves to take advantage of new technologies, the laws must also change if, and when, they become inadequate. In addition, those charged with enforcing the laws must work to become and remain technologically savvy. Their ability to combat cyberstalking may depend on the degree to which they can electronically track today's stalker.

When stalkers make use of advances in technology, victims must do the same. New technological protections, both on- and off-line, must afford victims the security and peace of mind they lack. Finally, the public must be made aware of these crimes and the assistance that is available so that they may take the appropriate steps to thwart the stalkers and put an end to the intrusive behavior.

