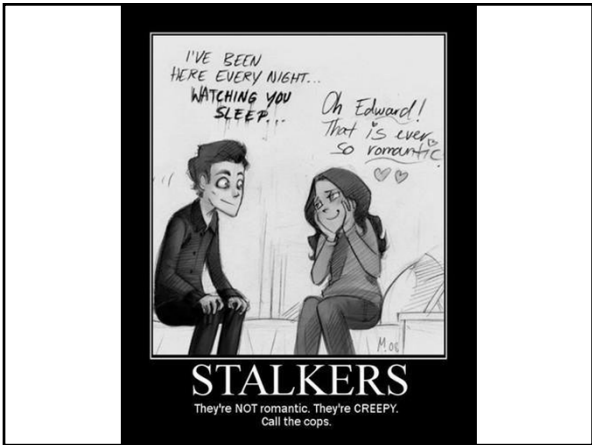


Law Overview
Getting Your Case Off the Ground

STALKING



STALKING

- × 18-3-602(1)(a)
 - + Directly or indirectly through another person
 - + Knowingly
 - + Makes a credible threat to another person
 - × And in connection with threat
 - × Repeatedly
 - × Follows, approaches, contacts, or places under surveillance
 - × That person
 - × A member of that person's immediate family
 - × Or someone with whom that person has had a continuing relationship

STALKING (CONT.)

- × 18-3-603(1)(b)
 - + Directly or indirectly through another person
 - + Knowingly
 - + Makes a credible threat to another person
 - × And in connection with threat
 - × Repeatedly
 - × Makes any form of communication with
 - × That person
 - × A member of that person's immediate family
 - × Or someone with whom that person has had a continuing relationship
 - × Regardless of whether a conversation ensues

STALKING (CONT.)

- × 18-3-602(1)(c)
 - + Directly or indirectly through another person
 - + Knowingly
 - + Repeatedly
 - + Follows, approaches, contacts, places under surveillance, or makes any form of communication with
 - × Another person
 - × A member of that person's immediate family
 - × Or someone with whom that person has had a continuing relationship
 - + In a manner that would cause a reasonable person to suffer serious emotional distress and does cause
 - × That person
 - × A member of that person's immediate family
 - × Or someone with whom that person has had a continuing relationship
 - + To suffer serious emotional distress

STALKING (CONT.)

- × Class 5ER Felony - §18-3-602(3)(a), §18-3-602(4)
 - × Class 4ER Felony if:
 - + Second or subsequent offense within seven years - §18-3-602(3)(b), §18-3-602(4)
 - + At the time of the offense there was a:
 - × Temporary or permanent protection order, injunction or condition of bond, probation, or parole; or
 - × Any other court order in effect against such person prohibiting stalking behavior
- §18-3-602(5), §18-3-602(4)

LEGAL TERMS

× Conduct “in connection with” a credible threat means acts which further, advance, promote, or have a continuity of purpose, and may occur before, during, or after the credible threat.

LEGAL TERMS (CONT.)

× “Credible threat” means a threat, physical action, or repeated conduct that would cause a **reasonable person** to be in fear for the person’s safety or the safety of his or her immediate family or of someone with whom the person has or has had a continuing relationship.
 + Not animals or property

Such threat need not be directly expressed if the **totality** of the conduct would cause a reasonable person such fear.

LEGAL TERMS (CONT.)

× Credible Threat/In Connection With
 + People v. Carey, 198 P.3d 1223 (Colo.App.2003)
 × Phone call: “when I go to jail, I get out, and then you’re dead.”
 × Next day “you are dead” or “you are toast” said to her at her place of work
 × Voicemail 4 days later “It’s come to my attention that you’ve been fucking with two of my brothers. One that owes you money and one you put in jail. The one that owes you money, I’d forget. The one that put you in jail, I would drop the charges. If you don’t do this, I guess we’ll meet. I don’t want that. You don’t want that. Thank you very much. Just an informative call.”

LEGAL TERMS (cont.)

- × Credible Threat/In Connection With (cont.)
 - + People v. Cross, 114 P.3d 1 (Colo.App 2004), *reversed in part by* 127 P.3d 71 (Colo.2006)
 - × Victim repeatedly stared at and daily observed the victim at work over period of several weeks
 - × Defendant was only present at the mall when victim was working despite changes in her schedule
 - × He approached her and made eye contact with her
 - × He discovered where she attended church and began to follow her there as well
 - × Found threat **did not** have to be **separate** from harassing conduct or that it needed to be **verbal**

LEGAL TERMS (cont.)

- × Credible Threat/In Connection With (cont.)
 - + People v. Suazo, 87 P.3d 124 (Colo.App. 2003)
 - × Defendant told victim “if you don’t see me, I am going to kill you.”
 - × Defendant called victim repeatedly one day and threatened that he would kill her if she did not see him
 - × Following this threat, defendant contacted victim in person and by telephone and repeatedly asked to see her

LEGAL TERMS (cont.)

- × Credible Threat vs. Free Speech
 - + Some threat have no 1st Amendment protections
 - + Other threats are protected speech
 - × Constitutionally protected speech may be threatening - Aguilar v. People, 886 P.2d 725, 728 (Colo.1994)
 - × Threats of violence which are not true threats, but which are “political hyperbole” are protected speech - Watts v. United States, 394 U.S. 705, 706-08, 89 S.Ct. 1399 (1969)

LEGAL TERMS (CONT.)

- × “Immediate Family” includes:
 - + Spouse
 - + Parent
 - + Grandparent
 - + Sibling
 - + Or child

- + Important to note no in-laws, no aunts/uncles, and no grandchildren

LEGAL TERMS (CONT.)

- × “Repeated” or “repeatedly” means more than once

LEGAL TERMS (CONT.)

- × Serious Emotional Distress means “?”
 - + People v. Carey, 198 P.3d 1223 (Colo.App.2008)
 - × “Language indicates that the General Assembly did not intend that “serious emotional distress” required to establish harassment by stalking had to rise to the level of “severe emotional distress” required to establish the tort of outrageous conduct.” See CJl-Civ 4th 23:4 (Cum.Supp.2004); 198 P.3d at 1236.
 - × No need to give instruction on what Serious Emotional Distress means – it is understandable to persons of common intelligence Id.
 - + Serious emotional distress does not require proof of therapy or other mental health treatment by victim

LEGAL TERMS (cont.)

- × Serious emotional distress
 - + People v. Carey, 198 P.3d 1223 (Colo.App.2008)
 - × After phone call of first day she was “really beside herself and didn’t know what to do”
 - × Left her house and went to a neighbors
 - × After next calls was “very much” afraid and increased her level of awareness of her surroundings
 - * “cars go by the restaurant, your heart jumps, you’re always panicking”
 - × “very fearful” and “very stressed”

LEGAL TERMS (cont.)

- × Serious emotional distress (cont.)
 - + People v. Cross, 114 P.3d 1 (Colo.App.2004) *rev’d in part on other grounds*, 127 P.3d 71 (Colo.2006)
 - × Victim testified she changed her work schedule, took days off from work, felt unsafe
 - × She said she was nervous and had trouble sleeping
 - × She felt she was constantly being watched

LEGAL TERMS (cont.)

- × Serious emotional distress (cont.)
 - + People v. Cross, 127 P.3d 71 (Colo.2006)
 - × Element of “knowingly” applies only to the conduct, not knowledge that the acts would cause a reasonable person to suffer Serious Emotional Distress
 - × Definition has both the objective element and the subjective element which allows it to survive constitutional attack

LEGAL TERMS (cont.)

- × Serious emotional distress (cont.)
 - + People v. Sullivan, 53 P.3d 1181 (Colo.App.2002)
 - × Evidence wife took alternate routes to her destinations
 - × She was afraid
 - × She felt she was constantly being watched
 - × Had stomach aches because of her feelings
 - × Had trouble sleeping
 - × She went to safehouse
 - × Defendant used GPS device – meets definition of “under surveillance”
 - × He removed the GPS chip twice to download the info – counts as “repeated”; the device also repeatedly stored info on her whereabouts.

LEGAL TERMS (cont.)

- × Serious Emotional Distress (cont.)
 - + People v. Richardson, 181 P.3d 340 (Colo.App.2007)
 - × Defendant claimed he was exercising his 1st Amendment right of access to the courts by filing 13 lawsuits in three separate counties without notice to victim
 - × Court found the term “serious emotional distress” was not overbroad and was not unconstitutional as applied.

LEGAL TERMS (cont.)

- × Serious emotional distress (cont.)
 - + People v. Yascavage, 80 P.3d 899 (Colo.App.2003)
 - × Defendant knew the victim had sought a restraining order against him
 - × Defendant called the victim numerous times saying “he would never stop trying to resume his relationship with her.”

CHARGING

- × Jurisdiction
 - + State wide jurisdiction to prosecute a person in Colorado if
 - × Conduct constitutes an offense and is committed either wholly or partly within the state; or
 - × Conduct outside the state constitutes an attempt to commit an offense within the state; or
 - × Conduct outside the state constitutes a conspiracy to commit an offense within the state, and an act in furtherance of the conspiracy occurs within the state; or
 - × Conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited under the laws of this state and such other jurisdiction

§18-1-201, C.R.S.

CHARGING (CONT.)

- × Jurisdiction (cont.)
 - + Offense is committed partly within Colorado if:
 - × Conduct in this state which is an element of an offense
 - × If result of conduct on this state is such an element

§18-1-201(2), C.R.S.

- + Serious emotional distress...where does it happen?
- + What if some surveillance is in the state?
- + Watch out for border conduct
 - × Possible federal involvement

CHARGING (CONT.)

- × Federal Stalking Statute
 - + 18 USC 2261A(1)
 - + “Whoever travels in interstate or foreign commerce or within the special maritime and territorial jurisdictions to the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate 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, or causes substantial emotional distress to that person, a member of the immediate family of that person, or the spouse or intimate partner of that person.”

CHARGING (CONT.)

- × Federal Stalking Statute (cont.)
 - + 18 USC 2261A(2)
 - + "Whoever, with the intent (A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotional distress to a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or (2) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of death of, or serious bodily injury to (a) that person; (b) a member of the immediate family of that person; or (3) a spouse or intimate partner of that person; uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to and of the person described above."

CHARGING (CONT.)

- × Venue
 - + Criminal actions to be tried:
 - × Where the offense was committed - §18-1-202(1)
 - × In any other county where an act in furtherance of the offense occurred - §18-1-202(1)
 - × Where an offense commenced outside of the state is consummated within this state - §18-1-202(5)
 - × Where multiple crimes are committed based on the same act or series of acts in several counties, trial will occur in any of the counties where one of the crimes happened - §18-1-202(7)

CHARGING (CONT.)

- × Venue (cont.)
 - + Trump cards:
 - × If offender is in one county and victim is in another county at the time of the commission of an act constituting an element of the offense, trial can be in either county - §18-1-202(2)
 - × Remember violation of protection order, §18-6-803.5(9)
 - * Trial where the offense was committed or where the court that issued the order is located (in Colorado)

CHARGING (CONT.)

- × Venue (cont.)
 - + Attacking venue
 - × Written motion within 20 days of arraignment **except for good cause shown**, §18-1-202(11)
 - × If the court grants motion for change of venue, that is an appealable “final decision” under §16-12-102(2), C.R.S.

CHARGING (CONT.)

- × Dates of offense
 - + Range of dates?
 - + Can stalking happen in one day?
 - + What about res gestae?
 - + What about other transactions evidence?
 - + Think ahead as to whether you are going to need a “unanimity instruction” at trial

CHARGING (CONT.)

- × Other crimes going along with stalking
 - + Computer crimes, §18-5.5-102
 - × Usually the class 2 misdemeanor of unlawful access unless there is damage in excess of \$500
 - + Violation of Protection Order, §18-6-803.5
 - × Class 1 misdemeanor if criminal protection order or repeat offense
 - × Class 2 misdemeanor if civil protection order
 - × Strange sentencing requirement of consecutive sentencing to underlying offense (Stalking or other)
 - + Second Degree Burglary, §18-4-203
 - × Remember the case of People v. Johnson, 906 P.2d 122 (Colo.1995) (finding burglary where estranged husband who owned the home was properly convicted of 2nd degree burglary when he unlawfully entered the residence of his estranged wife when they had established separate residences)

CHARGING (CONT.)

- × Other charges going along with stalking (cont.)
 - + Locating protected persons, §18-13-126
 - × Class 1 misdemeanor
 - + Tampering with a motor vehicle, §42-5-103
 - × Usually a misdemeanor (M1 for damage less than \$1000)
 - × But a class 3 felony if there is bodily injury to the person as a result of the tampering
 - + Animal Cruelty, §18-9-202
 - × M1 or F6

I woke up in the middle of the night with that line in my head, sat down at the piano and had written it in half an hour. The tune itself is generic, an aggregate of hundreds of others, but the words are interesting. It sounds like a comforting love song. I didn't realise at the time how sinister it is. I think I was thinking of Big Brother, surveillance and control.

Sting later said he was disconcerted by how many people think the song is more positive than it is. He insists it's about unrequited love (the song was written at the time he and his then wife divorced), about the obsession with the lost lover, the jealousy and surveillance that followed. "One couple told me 'Oh we love that song; it was the main song played at our wedding!' I thought, Well, good luck." When asked why he appears angry in the music video Sting told BBC Radio 2, "I think the song is very, very sinister and ugly and people have misinterpreted it as being a gentle, little love song."

Offender Characteristics

- × Jealous and extremely possessive
- × Manipulative
- × Blames others
- × Unable to take no for an answer
- × Sense of entitlement
- × Unable to cope with rejection
- × Dependent on victim for sense of self
- × Narcissistic
- × Views himself as a victim
- × Mood swings
- × Deceptive
- × Needs to be in control

Slide courtesy of the National Center for the Prosecution of Crimes Against Women
National District Attorneys Association

Stalking Categories

- × Four categories:
 - + Simple obsessional
 - + Love obsessional
 - + Erotomania
 - + False victimization syndrome

Slide courtesy of the National Center for the Prosecution of Crimes Against Women
National District Attorneys Association

Simple Obsessional

- × The most dangerous type of stalking case
- × Involves interpersonal relationships, e.g., spouses, ex-spouses, boy/girlfriend, coworkers, neighbors
- × Danger can increase from stalking through phone calls and letters to physically following and approaching the victim
- × Personality disorder
- × Short duration
- × Volatile

Slide courtesy of the National Center for the Prosecution of Crimes Against Women
National District Attorneys Association

Love Obsessional

- × Involves no personal relationship between the parties, e.g., unknown admirer in workplace in neighborhood
- × Stalker can target celebrity
- × Stalker's usual first contact with target is via correspondence
- × Delusional disorders common
- × Long duration
- × Offenders mostly male

Slide courtesy of the National Center for the Prosecution of Crimes Against Women
National District Attorneys Association

Erotomania

- ✘ Stalking can develop through a casual or business relationship, or no relationship at all
- ✘ Stalker usually will not engage in face-to-face contact, but will engage in a variety of contact behaviors
- ✘ Stalker believes he is loved by his victim:
 - + Because he believes the victim loves him, stalker not inclined to harm his target
 - + However, a communication which shows a change of tone, frustration, anger, or intent to harm should be considered as posing a significant risk to the target
- ✘ Delusional disorder
- ✘ Long duration
- ✘ Offenders mostly female

Slide courtesy of the National Center for the Prosecution of Crimes Against Women
National District Attorneys Association

False Victimization Syndrome

- ✘ Victim becomes suspect
- ✘ Fictitious
- ✘ Attention and/or attempt to re-establish existing relationship primary motives
- ✘ Rare

Slide courtesy of the National Center for the Prosecution of Crimes Against Women
National District Attorneys Association

Stalking and Domestic Violence

- ✘ 81% of women stalked by a current or former intimate partner are also physically assaulted by that partner
- ✘ 59% of female victims and 30% of male victims are stalked by an intimate partner
- ✘ 73% of intimate partner stalkers verbally threatened victims with physical violence, and almost 46% of victims experience one or more violence incidents by the stalker

The Stalking Resource Center, <http://www.ncvc.org/src>

Slide courtesy of the National Center for the Prosecution of Crimes Against Women
National District Attorneys Association

Stalking and Lethality

- × 76% of intimate partner homicide victims had been stalked by their intimate partner
- × 67% had been physically abused by their intimate partner
- × 89% of female homicide who had been physically abused had also been stalked in the 12 months before the murder

The Stalking Resource Center, <http://www.ncvc.org/src>

Slide courtesy of the National Center for the Prosecution of Crimes Against Women
National District Attorneys Association

Proving the Impossible Case

Investigations

- × Protocols with local agencies
 - +Not the same as investigating an assault or other domestic violence related crime
 - +What is the level of investigation that goes into these crimes
 - +Are the line officers fulfilling the elements of the statute?

Investigations tips

- ✘ Take the report seriously
 - +Often a victim is hoping to be believed
- ✘ Ask victim to begin logging stalking behavior
- ✘ Don't automatically recommend protection orders, as they sometimes increase the risk
- ✘ Verify and corroborate the facts you learn about

- ✘ Take detailed statement from victim
 - +about personal background
 - +about relationship with stalker
 - +about actions of stalker
 - +about serious emotional distress
 - +about all changes in routines as a result of stalking
 - +about all incidents or suspected incidents of stalking. (victim may be in denial and not tell you important details)
 - +about if her family or friends are being targeted by stalker

Investigation tips (cont.)

- ✘ Develop protocol between DA's office and Law Enforcement on the review of these cases
- ✘ Develop standards on arrest (probable cause or something more than PC)
- ✘ Balance safety for victim with investigation
- ✘ Develop investigation for serious emotional distress
 - +Checklist
- ✘ Investigate those people around the victim to develop the serious emotional distress

Search Warrants

- ✘ Aggressive use of search warrants
 - + Understand that often stalking is a pattern of conduct
 - + Perform surveillance to try and learn of pattern of conduct
 - ✘ Cars in and out of neighborhood
 - ✘ Sightings of suspect by neighbors
 - + Proactive search warrants to track suspect's movement
 - ✘ GPS

Search Warrants (cont.)

- ✘ Use language of legislative declaration in statute:
 - + "A stalker will often maintain strong, unshakable, and irrational emotional feelings for his or her victim, and may likewise believe that the victim either returns these feelings of affection or will do so if the stalker is persistent enough. Further, the stalker often maintains this belief, despite a trivial or nonexistent basis for it and despite rejection, lack of reciprocation, efforts to restrict or avoid the stalker, and other facts that conflict with this belief....Because stalking involves highly inappropriate intensity, persistence, and possessiveness, it entails great unpredictability and creates great stress and fear for the victim."

Court Ordered Production of Records

- ✘ As soon as practical, try to corroborate the victim's account
 - + Cell phone towers
 - + Cell phone records
 - + Use of credit cards
- ✘ Court ordered production of records can take time
 - plan accordingly
- ✘ They are often time sensitive
 - + Especially with cell tower locations

Victim meetings

- ✘ Best practices: Meet with your victim early on in the case
 - +Build a rapport with the victim
 - +Talk realistically about the case
 - +Talk about the length of the case
 - +Talk about possible mental health defenses
 - +Instill the idea that the victim is believed (that the victim isn't "crazy.")

Aggressive Motions Practice

- ✘ Role of the District Attorney
 - +Responds to attacks on the case
 - +Files responsive pleadings
- ✘ What the role of the DA should be with motions
 - +Takes the offensive
 - +Forces the defense to abide by the same rules
 - +Use of other acts evidence

Aggressive Motions Practice (cont.)

- ✘ Other transactions evidence
 - +Res gestae
 - +Other transactions CRE 404(b)
 - +DV – evidence of similar transactions - §18-6-801.5
 - +SA – evidence of similar transactions - §16-10-301

Trial

× Preparation

- +Who are you doing the trial for?
- +What are the goals of trial?
- +Plan out attack plan in advance of trial
- +Anticipate defense arguments
 - × Bad divorce
 - × Mixed signals
 - × Reciprocating contacts

Voir Dire

× Depends on the jurisdiction

- +Popular movies
 - × As Good as it Gets
 - × Sleeping with the Enemy
 - × Silence of the Lambs
 - × Fatal Attraction
- +Popular songs
 - × Every breath you take
 - × Blonde
- +Discussion of idea that if someone is persistent, it will pay off

Voir Dire (cont.)

× Time to anticipate defenses

- +Is your victim contacting the Defendant?
 - × Think about the Godfather II
 - × "You keep your friends close, but your enemies closer"
 - × Echo-location by schools of dolphins tracking sharks in the ocean
 - * Why do they do this?
- +Is there a divorce or child custody case pending?
 - × Talk to the jury about what evidence they would expect to hear in a stalking case
 - × Try to talk about how things in the media are often different from reality

Themes

- ✘ “If he can’t have her, no man shall”
- ✘ “One way or another...” (Blonde)
- ✘ “Obsession” (Animation)
- ✘ Look for quotes during suspect interviews
- ✘ What has worked for you?

Case presentation

- ✘ Exhibits
 - +Use of maps
 - +Aerial photography (GIS surveys)
 - ✘ Google maps
 - +Audio and video recordings
 - +Charts for phone calls
 - +Plan in advance on how things should look

Experts

- ✘ What experts might you need to have
 - +Computer/forensic expert
 - +Domestic Violence dynamics
 - +Talk about offender tactics with stalking
 - ✘ Good experts may include law enforcement or shelter personnel
 - ✘ Plan well in advance what an expert should testify about
 - +Are you calling a mental health expert to talk about serious emotional distress and how it can affect a person?
 - ✘ Trauma response
 - +Might not be needed in all cases

Jury Instructions

- ✘ These are often complicated
 - + Large range of dates
 - + Use of other transactions limiting instructions
 - + Use of special interrogatories
 - ✘ Presence of protection order during only part of charged period?
 - ✘ Multiple acts which constitute the stalking
 - * Need for unanimity instruction?
- ✘ Draft instructions well in advance of trial
 - + Maintain database specifically for stalking
 - + Need a definition of serious emotional distress?
 - ✘ People v. Carey, 198 P.3d 1223 (Colo.App.2008) says "no"

Goals of prosecution

- ✘ First goal should be to help enhance safety for victim
 - + Weigh the benefits and costs of going to trial
 - + In rare circumstances, going to trial may increase risk to victim
 - + Keep in contact with victim
 - + Safety planning with victim
 - + Remember that often if charges are not pursued, it sends a message to the perpetrator that the conduct is okay or it emboldens them

Technology and Stalking

Questions to Ask

- ✘ Do you have the resources to:
 - + Analyze Computers?
 - + Analyze Cell phones/Smart phones?
 - + Do GPS tracking?
- ✘ Do you understand:
 - + Computers
 - + Software/hardware/Internet
- ✘ What training is available?

Technology used by Stalkers and Law Enforcement

- ✘ Information gathering - www.pipl.com
- ✘ Cell phone monitoring
 - + Access of records via Internet
- ✘ Can keep the stalker "anonymous"
 - + Anonymous e-mailers
 - + IP spoofing
http://en.wikipedia.org/wiki/IP_address_spoofing
 - + www.spoofcard.com
- ✘ Can monitor your every move
 - + Webcams <http://www.raidentech.com/miwispyca.html>
 - + Key-stroke loggers <http://www.keystrokeloggers.net/>
 - + Spyware <http://www.spectorsoft.com/>
 - + GPS

On-line Community Boards aka Social Networking Sites



Dating Sites



- ✗ Despite their claims, there is no way for these companies to “screen” their applicants
- ✗ Be cautious putting too much information on the site
- ✗ This isn’t a “virtual bar” because anyone and everyone can see your information

Passwords

- ✗ What are yours?
- ✗ Where do you keep them?
- ✗ Who knows you?
 - + How well do they know you?
 - + Did they help you set up your computer?
- ✗ Keystroke loggers

Fight Technology with Technology

- ✗ C-PIBB
- ✗ Area experts
 - + University
 - + High Tech

Questions?
