Internet Stalking by Child Molesters

Ann Wolbert Burgess, DNSc.

The following case involves a school counselor who stalked his young students on malls, parking lots, and on the Internet. It illustrates the bold, obsessive behavior of a child molester and the initial denial by school authorities until multiple victims came forward.

The Offender

Bett was a high school counselor, in his 30's, married twice, with several children. He was first accused of sexual impropriety at high school. In 1987, Bett admitted to the school principal that he had made inappropriate comments about a nine-year-old male student's physique, and a physical examination of the boy's mother during a home visit. In conjunction with this admission, a claim was also made that Bett had molested this child in the school setting. The superintendent was notified that Bett was "removed from the classroom and placed in a position where he would be working on records away from students." He was also notified that the County Superintendent of Schools was not going to "risk having him anywhere near students," because he was "... concerned something might happen in the future." Nonetheless, Bett was permitted to continue his deviant criminal behavior at a new school and a new site.

Brett's sexual victimization of high school boys is documented on March 4, 1997, when Josh tells students he had a sexual relationship with Bett. The principal investigated the allegation, and the student recants; an administrative decision is to transfer Josh to another school.

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Internet Crimes Against Women

By Diana M. Riveira, J.D.

While the Internet is a wonderful resource of information and a way to quickly connect people around the globe, it can also be a source of fear and threats. Regrettably, while criminal justice professionals are making real strides in the tangible world, the widespread use of the Internet has given domestic violence offenders, stalkers, and rapists new virtual frontiers and a new set of tools with which to inflict terror and violence on their victims. On January 10, 2000, in a keynote speech, Attorney General Janet Reno described the Internet and other information technologies as bringing enormous benefits to society, yet also providing new opportunities for criminal behavior. She also proposed a round-the-clock cyber crime network, regional computer forensic labs, and a sexual on-line clearinghouse for law enforcement to share information about cyber-cases. (DOJ Press Release, 2000).

Internet violence against women takes many forms and is only limited by parameters that are constantly enlarged by ever-developing technology. A woman can be stalked through e-mail, can become a target for sexual assault by being featured in a sexually explicit website [unknown to the victim], or can be controlled and harassed by an estranged intimate who "steals" her identity, thus potentially depriving the victim of credit, job opportunities, or the ability to relocate.

Women at first may feel shielded from danger because of the supposed anonymity of chat rooms and bulletin boards on the Internet. Likewise, some women may feel immune from cyber-based crimes because they do not have access to the Internet. However, databases of personal information available on the Internet can, for example, enable a potential stalker to trace a victim's user name to her real name, address, and telephone number or enable a potential rapist to impersonate the victim online and seek out "rape fantasies" and invite them to the victim's home. Thus, the offender can harass a victim on the computer via e-mail or at home through mail, telephone calls, or even by appearing at the victim's home.

How States Have Addressed the Problem

States have reacted by adding provisions to their stalking and harassment statutes that criminalize "stalking by electronic means" or "the use of computer equipment for the... See INTERNET CRIMES, next page

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The most pressing issues in prosecuting Internet crimes against women are the lack of an adequately trained workforce and state-of-the-art technology to investigate these cases, and a lack of prosecutors with relevant experience to try them.

What the Federal Government Has Done

On the national level, Representative Sue Kelly introduced The Stalking Prevention and Victim Protection Act of 1999 (H.R. 1865), which passed by the U.S. House of Representatives. It contains language on the "use of the mail or any facility in interstate or foreign commerce" that could be read to encompass e-mail communications as stalking behavior. The bill was re-introduced to the U.S. Senate on January 27, 2000, and referred to the Senate Committee on the Judiciary. If it does not pass the Senate and get signed into law, it will have to be reintroduced next year.

Probably the most pressing issues for police and prosecutors faced with cases involving Internet crimes against women are the lack of an adequately trained workforce and state-of-the-art technology to investigate these cases, and a lack of prosecutors with relevant experience to try them. All criminal justice professionals and community-oriented victim advocates need to understand the genuine threat that Internet crime poses, become familiar with the technology utilized by these cybercriminals, and be able to gather sufficient information and evidence to successfully charge a cybercriminal and prove it beyond a reasonable doubt.

The Link Between Stalking Behavior and Other Violence Against Women

To adequately identify the link between stalking and other violence against women, stalking behavior must first be understood. Approximately 1,400,000 Americans are victims of stalking every year and the majority of those cases, over one million, involve victims who are women. One in every twelve women are stalked at some point in their lifetime. (Tjaden & Thoennes, 1999)

This disproportionate representation of Internet CRIMES, page 12

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Editor:
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The most likely group of stalkers to be violent are the simple obsessinals who have had a prior sexually intimate relationship with the victim.

There is some evidence to consider stalking, at least for some individuals, a courtship disorder (Feind, Scher, & Hucker, 1983). There is usually a history of failed intimate relationships, and usually the stalker is not in a sexual pair bond at the time of the criminal behavior. Stalking for some individuals, like domestic violence, is a maladaptive response to social incompetence, social isolation, and loneliness (The Psychology, 1996).

The frequency of violence among stalkers toward their objects averages in the 25-35% range, suggesting a quite high rate for violence when compared to other criminally violent online and are more likely to use angry and abusive language. [The researcher] derives such conclusions from the different socialization of men and women. Men tend to behave more aggressively and women more politely.” “Chat room cybersex is another area men seemed more attracted to than women... While men and women alike enter such rooms looking for erotic chat, it is men who remark how addicting such sexual entertainment is to them. The addiction grows from the ability to cruise such chat rooms looking for uninhibited erotica—things they would never do or say with their wives or girlfriends.” (National White Collar Crime Center, at 20.)

To facilitate discussion, Internet crime can be divided into three areas:

- Computers utilized to commit traditional crime: examples include stalking, theft of identity, or impersonating a victim (e.g., by constructing her website);
- Computer use as incidental to offense: examples include sexual assault (measuring victim on-line and arranging a meeting where the victim is sexually assaulted), stalking (stalking victim both in person and online), or drug-facilitated rape (video-taping victim during sexual assault and later downloading the illicit video clip to the World Wide Web);
- Technology used to attack a computer or computer system: examples include sending viruses, hacking, or spamming.

Legal discussion surrounding cyberstalking is not theoretical postulating on the potential occurrence of a future crime, but rather it is a very real discussion about existing criminality.

Recent Examples of Internet Crimes

Below are recent cases of Internet crimes against women.

Murder-Suicide. Offender constructs webpage to express love for victim. Lian Youens' webpage contained pictures of the victim and love poetry he had written for Amy Boyer, 20. Youens, 21, ambushed and shot Ms. Boyer on the afternoon of Friday, October 15, 1999, as she was leaving to go to work. Youens then shot himself.

Cyberstalking. Andrew Archambau pleads no contest to a stalking charge. He met a woman through a computer dating service and had two in-person dates with her. After the second date, the woman attempted to terminate the relationship, but Archambau continued to send her e-mail.
messages and leave phone messages. (Michigan, Oakland County Assistant Prosecutor’s Office, 47th Judicial District, plea on January 1995.)

Impersonating the Victim by Scanning Victim’s Photographs. “Stephanie Willman, a forty-one year old New Jersey woman, could not understand why she was receiving letters from men offering sex. She later learned that her ex-boyfriend had scanned her nude Polaroid photographs and uploaded them to a sexually explicit newsgroup, along with her address.” (Krebs, at 677.)

Incidental to Attempted Sexual Assault & Impersonating the Victim. In the first case in California to be prosecuted under the State’s new cyber-stalking law, defendant Gary Dellapenta portrayed a woman, who he had met at church but who had rejected his romantic overtures on the Internet, as someone with fantasies of being raped. The defendant, a former security guard, also posted (online) the woman’s physical description, her address, phone number, and how to bypass her home security system. The woman, who had never been on-line, discovered the cyber-impersonation when six men appeared at her apartment responding to her Internet “personal ad.” (California Case Presses “Cyberstalking” Case, Jan. 22, 1999). Dellapenta was charged with using the Internet in an attempt to set up a rape. He was found guilty and sentenced on July 22, 1999 to six years in California.

Incident to Sexual Assault. Oliver Jovanovic was convicted of kidnapping, assaulting, and sexually abusing a female Columbia University student he had met online. Jovanovic’s conviction was overturned in December 1999, and a new trial was ordered because the New York trial judge misapplied the State’s Rape Shield Law. See, New York Court Concludes Rape Shield Law Inapplicable to Saamamisitic E-Mail, 3 SAR 69 (May/June 2000.)

Nature and Extent of the Cyberstalking Problem

The Problem Generally. Many in the field of law enforcement and the study of criminology agree that most cyberstalking cases go unreported. Consequently, there is a glaring absence of empirical data regarding the prevalence of Internet crime. In August 1999, Attorney General Janet Reno apprised Vice President Gore as to the status of cyberstalking in an official report which stated that “[a]ssuming the proportion of Cyberstalking victims is even a frac-
tion of the proportion of [the one percent of all women and 0.4 percent of all men] who have been victims of offline stalking within the preceding 12 months, there may be potentially tens or even hundreds of thousands of victims of recent Cyberstalking incidents in the U.S.” (Cyberstalking, 1999).

Eric W. Hickey, Ph.D., a Professor of Criminal Psychology who teaches at California State University, Fresno, and lectures and consults in various criminal and civil cases involving Internet stalking, has been studying stalkers for more than 20 years. Dr. Hickey has amassed a database of over 200 enforcement views offender typologies, victim/offender relationships and victim characteristics. According to Dr. Hickey, most serial offenders and sexual predators engage in stalking behaviors. Internet predators include the socially dysfunctional, psychopaths, sexual predators including pedophiles, child molesters and rapists, and other paraphiliacs.

“Stalking and Intimate Partner Femicide,” an article in the November 1999 issue of Homicide Studies, supports Dr. Hickey’s findings. In the study it is reported that 65% of murder victims and 85% attempted mur-

Actions that are characterized as stalking in a non-electronic context are interpreted as more like romance and less like stalking in an Internet context.

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erased to prevent later access by anyone, even law enforcement.

A second example is Strager's Shredder, a new software program for Windows 95 that acts like an electronic paper shredder and "automatically overwrites deleted files, including all the backups that are routinely created by the computer every time a new file is created." (Id.) Consequently, while computer forensic examiners in the past felt relatively certain that information in a computer could be recovered even if "deleted" by the suspect, this type of electronic shredder could make recovering deleted information almost impossible. Deleted files can be retrieved by computer forensics as long as they are not overwritten. While overwriting information in a 1.44 MB floppy disk may be achievable, the task is not so easily accomplished if the offender saved the illicit information to his hard drive. Some software even offer "panic buttons" which expel the deletion of a series of designated files in one keystroke. (Gale, 2000).

Ease of Accessing Personal Data Online. Also challenging for law enforcement is the relative ease with which personal data can be accessed online. For example, E-Commerce marketing groups collect "cookies" left by the buyer while browsing or shopping online. A "cookie" is a "message given to a Web browser by a Web server. The browser stores the message in a text file called a cookies.txt and the message is sent back to the server each time the browser requests a page from the server." (Computer & Internet Dictionary, at 121). Marketing groups then sell these vast consumer lists to companies or entrepreneurs, e.g., if a gift is purchased online, not only does the company have information about the buyer, but also about the recipient of the gift.

Other areas of potential access are schools and hospitals. Because of funding restrictions, they construct inexpensive databases online that do not have the high-tech security features in place to make them resistant to hackers, i.e., people "who gain unauthorized access to computer systems for the purpose and stealing and corrupting data." (Computer & Internet Dictionary, at 245).

In addition, international arrest warrants are not guaranteed to work, and it is often difficult to locate the actual individual who has been arrested. For example, Intel came under fire for designing its Pentium III chips with serial numbers that can be identified remotely on the Web. This makes it easier for a user to be tracked. Two months later, privacy buffs hammered Microsoft Corp, because its Windows 98 software, used on a network, creates identifiers that are collected during registration. The result is a vast database of personal information about Microsoft customers. . . . But fearing a backlash, Microsoft has promised to modify the feature. (Baig et al., 1999).

Some Internet Service Providers (ISPs) have also been reluctant to provide access to records of their subscribers' accounts. This reluctance to cooperate increases the amount of paperwork and time a police officer has to spend investigating each individual cybercrime case. Ordinarily, telephone records can be easily obtained by subpoena, but officers have encountered difficulty when attempting to obtain Internet (dial up) records in the same manner. Some Internet service providers consider their toll records to be "transactional data" (as opposed to subscriber information), which under the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 (ECPA) is available only via a search warrant. This requires police officers to draft affidavits and to appear before judges and obtain search warrants in each and every cybercase that is investigated.

Jurisdictional Issues

One of the threshold decisions that needs to be made in cyberstalking cases is to identify the jurisdiction in which the crime occurred. Obviously, law enforcement is not only dealing with state and federal jurisdictional issues, but may be faced with international jurisdictional issues as well. The following are just a few of the jurisdictional issues that may arise:

• A person who e-mails harassing messages to a woman in state A could live in state B, or in a reservation or a foreign country.

• If a cyberstalker lived in a state where the act of physically harassing someone was an element of the offense, and the cyberstalker only sent harassing e-mails, but did not engage in traditional forms of stalking his victim in person (e.g., following his victim), would the cyberstalker have violated the stalking laws in his state (which require physical harassment)? (Jensen, 1996).

• Since most states consider a first stalking offense to be a misdemeanor, would a state realistically devote the financial resources to extradite a misdemeanor cyberstalker from another state, for a maximum penalty of one year in jail? (Id.)

• Assume that your state law reads that a search warrant must be issued in the district where the property is physically located. A situation arises where an employee of a company is sending harassing e-mails to a co-worker whom he formerly dated. Where would their records be seized, if the cyberstalker's "computer was part of a wide area network (WAN) whose server—the computer on which these records were stored—was actually located" (see Charney & Alexander, 1996) in a different state, or if the company was multinational and the server was physically located in a different country?

Many of these jurisdictional issues can be resolved by establishing strong networks of communication between local police departments, prosecutor offices, federal law enforcement agencies and U.S. Attorney's Offices. These networks can be achieved informally through national multi-disciplinary trainings, and formally by establishing "Cyberstalking Task Forces" at the state level.

Conclusion

Probably the most pressing issues for criminal justice professionals and community-based victim advocates faced with cases involving cyberstalking and other Internet crimes against women are the lack of an adequately trained workforce to screen these cases, inaccessible state-of-the-art technology to investigate these cases, and a lack of prosecutors with relevant experience to try them. Prosecution and police need training to understand what is electronic evidence, how chat rooms operate, where the evidence is stored and how to get to it once it is sent, how to draft search warrants and subpoenas, and how to preserve electronic evidence once a computer is seized. Currently there are some efforts in the law enforcement community to self-train their investigators. However, financial constraints within the public sector make it difficult for local police departments and district attorneys' offices to afford equipment that would make prosecution of these types of cases immensely easier.

In the ever-changing field of crimes against women, it is important to arm criminal justice professionals with the weapons necessary to identify and apprehend Internet predators. With the proper training and equipment, criminal justice professionals and community-based victim advocates will begin to work together as a team, being responsive to victims by aggressively prosecuting offenders they would otherwise be helpless to pursue.

See INTERNET CRIMES, next page.
ceedings regarding the content of the records, the court took the opportunity to introduce a new rule. In the time since Oliveira’s original trial, there was a revision of the procedures for the discoverability of treatment records in Massachusetts. The state supreme court had imposed a greater burden on the defendant with respect to obtaining sexual assault counselor treatment records. The court concluded that this more stringent standard also applied when a defendant seeks privileged psychotherapist-patient records. Commonwealth v. Oliveira, 728 N.E.2d 320 (Mass. 2000). The court found “no sound reason” to differentiate such records from sexual assault counseling records and annulled the earlier heightening of relevance applies “when a defendant seeks access to any privileged records.”

WASHINGTON: Court Lifts “Profit From Publishing” Restriction From Sixth Grade Teacher Who Had Sexual Relations With Student. Mary K. Letourneau, a 35-year-old sixth grade teacher, was charged with second-degree rape of a child for having sexual intercourse with a 13-year-old boy who was a student at the school where she taught. Letourneau had two children fathered by her victim. Her seven-year sentence was suspended on a number of conditions, including sexual deviatory treatment, a no-contact order for the term of life with her victim, no contact with any minors without adult supervision, and a prohibition on profiting from any commercialization or publication related to her crime. Less than two weeks after her release, Letourneau was found alone in her car with the victim and her suspended sentence was revoked. At a hearing to clarify her sentence, the trial court ordered that the prohibition on profiting from commercialization related to the rape was a condition of her judgment and sentence, and not merely a provision of her earlier suspended sentence. The court also ordered that contact with minor children, including her own minor biological children, was to be supervised by an adult approved by the Department of Corrections. Letourneau appealed those provisions of her judgment and sentence, and the Court of Appeals of Washington agreed to strike them.

The court struck the financial gain prohibition as it was not a “crime-related treatment” or otherwise related to her rape of a child conviction. State v. Letourneau, 997 P.2d 436 (Wash. Ct. App. 2000). This prohibition was recommended by one of Letourneau’s evaluators who found that the personality disorders that led her to commit these crimes also led her to aggressively seek media attention as a means of further seducing and exploiting her victim, as well as exploiting her own children and other family members. Media attention undermined her treatment which increased the likelihood of recidivism. However, the court observed that Letourneau was not prohibited from seeking media attention, simply from profiting from it, so the restriction could not be viewed as a treatment-related prohibition. There was also no showing that Letourneau committed her crimes in order to profit from telling her story or that her motivation for telling her story was connected to a desire for financial gain. However, the court did note that Letourneau would be subject to the “Son of Sam” statutes, which seize properties acquired by a convicted’s criminalization of the crime and distribute the funds to crime victims. The court reasoned that a prohibition on financial gain in the first place would frustrate the purposes of the “Son of Sam” statutes.

The court also overturned the provision requiring Letourneau to have only supervised contact with her own minor children because there was insufficient evidence that such a restriction was necessary. There was no showing that Letourneau was a pedophile or that she posed a danger of sexually molesting her own children. Moreover, the court believed that the best interests of the children would be best determined by the family court which had jurisdiction over the children born to her marriage and the juvenile court in the course of dependency proceedings related to the children fathered by her victim. The sentencing court’s order was modified as to these two provisions.

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Diarr. M. Rinaldi is a Senior Attorney and Program Manager for the Violence Against Women Unit at the American Prosecutors Research Institute (APRI), this is also former prosecutor out of Florida’s 17th Judicial Circuit in Miami Fl., and can be reached at APRI (23) 465-253 or through APRI's website: http://www.rinaldin.com/gov/News/links.html.