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## The Double Edged Sword: An Examination of the Global Positioning System, Enhanced 911, and the Internet and Their Relationships to the Lives of Domestic Violence Victims and Their Abusers

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**THE DOUBLE EDGED SWORD:  
AN EXAMINATION OF THE GLOBAL POSITIONING  
SYSTEM, ENHANCED 911, AND THE INTERNET AND  
THEIR RELATIONSHIPS TO THE LIVES OF DOMESTIC  
VIOLENCE VICTIMS AND THEIR ABUSERS**

BY LAURA SILVERSTEIN<sup>1</sup>

**INTRODUCTION**

Amy Lynn Boyer had no idea that with just a few simple computer keystrokes, it would take only minutes for a man she barely knew to get a lifetime's worth of information about her. Amy did not know that her home address, her social security number, and her credit information were fair game to anyone who wanted them and was willing to pay. It never crossed her mind that someone would even want that information. But someone did. Between July 29, 1999 and October 15, 1999, Liam Youens, a man Boyer had met briefly at a party, paid over \$300 to purchase her date of birth, social security number, credit report, employment information, home address, and work address.<sup>2</sup> Armed with her information, and a gun, Youens drove to Boyer's workplace and, as she left, fatally shot her and then himself.<sup>3</sup> Upon investigation, police found Youens had created a website dedicated to Boyer, with statements threatening her life and "references to stalking" her.<sup>4</sup>

Boyer's mother brought suit against Youens' informant, Docusearch.com, an "Internet-based investigation and information service"<sup>5</sup> with its own website. For various fees, Docusearch

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<sup>1</sup> Laura Kim Silverstein received her Juris Doctor from Albany Law School of Union University in May 2005 and her Bachelor of Arts from Washington University in St. Louis. Ms. Silverstein would like to thank her parents for a lifetime of love and support.

<sup>2</sup> See *Remsburg v. Docusearch, Inc.*, 816 A.2d 1001, 1005-06 (N.H. 2003).

<sup>3</sup> See *id.* at 1006.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1005.

provided Youens with all the information he needed to hunt down Amy Lynn Boyer. Calling itself an "information broker,"<sup>6</sup> Docusearch sold private details to Youens without having any personal contact with him. All the transactions were conducted over the Internet, and the only thing Youens had to supply was his credit card number.<sup>7</sup> No safety measures were taken by Docusearch to screen its customers, and there was no way for potential victims, like Boyer, to know their information was being accessed.<sup>8</sup>

In its decision, the New Hampshire Supreme Court stated that Docusearch's lack of screening made this incident all the more dangerous because the website actually *made it easier* for stalkers to access their victims.<sup>9</sup> The court said, "it is undisputed that stalkers, in seeking to locate and track a victim . . . use an investigator to obtain personal information,"<sup>10</sup> and with the advent of the Internet, and Internet-based investigation services, stalkers now have another avenue from which to get information, an avenue that is both faster and easier than ever before.

Online investigation services are just one example of Internet offshoots that create negative consequences for domestic violence victims. Internet-based companies such as Docusearch, are on one side of a double-edged sword that is threatening domestic abuse victims by allowing batterers to get closer than ever. But the Internet is only one of several ever-evolving technological advances that has the potential to produce both great benefits and harms to victims of domestic violence. This paper will explore three such technological advances: global positioning

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<sup>6</sup> See *id.* at 1005-06 (stating that Youens contacted Docusearch via website paying \$20 for Boyer's date of birth, \$45 for her credit card numbers, \$109 for employment information, and \$30 for her home address).

<sup>7</sup> See *Remsburg*, 816 A.2d at 1005-06 (stating that Youens paid for each of his transactions with a credit card and had little or no actual contact with Docusearch staff. Although there was one phone call between Youens and Docusearch, it lasted for less than one minute, and there is no record of what was discussed).

<sup>8</sup> See *id.* at 1008 (illustrating that there was no evidence presented that Docusearch did any background search on Youens).

<sup>9</sup> See *id.* at 1007.

<sup>10</sup> *Id.*

systems, enhanced 911, and the Internet. After examining the uses of each device, and the ways in which they have both helped and harmed domestic violence victims, suggestions will be made as to how to keep victims informed and protected.

In the past decade, many technological innovations have significantly altered the resources available to domestic violence victims. Tracking systems, enhanced 911, and the Internet are changing the law's response to domestic violence on both an enforcement and legislative level. These devices allow law enforcement to find and respond to domestic violence incidents with an ever-increasing speed, and they also provide victims with an array of resources from which to seek help. However, although the modernization of technology has created such benefits, it also presents a significant amount of dangerous repercussions as well. While technology helps victims learn about available resources, it can also increase the danger to them by allowing their abusers to: track their every movement, obliterate their privacy, and maintain an even tighter vise of control than ever before. As a result, courts and legislatures have been forced to re-examine domestic violence and stalking laws and adjust them to cover the newest technological advances.

### **DOMESTIC VIOLENCE BACKGROUND AND STATISTICS**

Before examining the tools that both help and harm abuse victims, it is necessary to explore the issue of domestic violence itself. Only after the prevalence of the problem is realized, can an understanding of what is being done to remedy the situation be attained.

Domestic violence is a crime that knows no boundaries; it affects every gender, race, ethnicity, geographic location and socio-economic group.<sup>11</sup> It is the leading cause of crime against women; in fact, each year, intimate violence accounts for more

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<sup>11</sup> See AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, *at* <http://www.abanet.org/domviol/stats.html> (last visited Nov. 19, 2003) (detailing an excerpt from a January 1994 Bureau of Justice Statistics Special Report: National Crime Victimization Survey of Violence Against Women) [hereinafter ABA].

than twenty-eight percent of violence against women.<sup>12</sup> There are thousands of victims afflicted by domestic violence; “on average each year from 1992 to 1996, there were more than 960,000 violent victimizations of women age 12 or older by an intimate,”<sup>13</sup> and in 2001, the number reached almost 700,000.<sup>14</sup> An “intimate” is a current or former, spouse, boyfriend, or girlfriend – someone with whom the victim is personally acquainted.<sup>15</sup> According to a 1995 Department of Justice report, approximately one million women are affected by nonfatal intimate violence each year, and the number continues to grow.<sup>16</sup> This does not mean that *all* of the violence is nonfatal; however, in 2000, more than 1,247 women were murdered by their intimate partners.<sup>17</sup>

Intimate violence includes physical and emotional abuse, and isolation. A 1996 study by the American Psychological Association estimates that in one year, over four million women are seriously assaulted by an intimate partner.<sup>18</sup> By 2001, “intimate partner violence made up 20% of violent crime against

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<sup>12</sup> *See id.*

<sup>13</sup> LAWRENCE A. GREENFIELD ET AL., BUREAU OF JUSTICE STATISTICS FACTBOOK: VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS 12, (Mar. 1998), <http://www.ojp.usdoj.gov/bjs/abstract/vi.htm> [hereinafter GREENFIELD].

<sup>14</sup> *See* CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001, (Feb. 2003), <http://www.ojp.usdoj.gov/bjs/abstract/ipv01.htm> [hereinafter RENNISON] (stating estimates from the National Crime Victimization Survey).

<sup>15</sup> *See* GREENFIELD, *supra* note 12 (defining the relationship between victims and their abusers in order to clarify who was included in the Department of Justice Report).

<sup>16</sup> *See* ABA, *supra* note 10 (providing statistics on the prevalence of Domestic Violence. These estimates are conservative and, in fact, the numbers may be higher. Proving that domestic violence can afflict any age group, a Bureau of Justices Statistics Report stated that women, ages nineteen to twenty-nine, reported the highest amount of intimate violence. This corresponds to a 1990 study that found two thirds of abusers were between twenty-four and forty years old).

<sup>17</sup> *See* RENNISON, *supra* note 13 (illustrating the premise that women's lives are in danger; “in recent years 33% of female murder victims were killed by intimates”).

<sup>18</sup> *See* ABA, *supra* note 10 (describing a 1996 survey done by the American Psychological Association on Violence and the Family).

women.”<sup>19</sup> In fact, “nearly 1 in 3 adult women experience at least one physical assault by a partner during adulthood.”<sup>20</sup> Domestic violence is not a crime that affects one particular racial or ethnic group, and furthermore, “[it] is statistically consistent across racial and ethnic boundaries.”<sup>21</sup> It is however, predominantly a crime that affects females. In 2001, eighty-five percent of intimate partner victimizations were against women.<sup>22</sup>

Most important is the lack of women who seek help fighting their abuse. Women injured by their intimate partners reported the violence less than fifty-five percent of the time, and the number is even less for those not injured by the abuse.<sup>23</sup> Only about one in six women sought help from victims’ services, and out of the nearly one million women victimized between 1992 and 1996, approximately 411,000 did not report their abuse.<sup>24</sup>

### HOW TECHNOLOGICAL ADVANCES AFFECT DOMESTIC VIOLENCE VICTIMS

Based on the preceding statistics, it is obvious that domestic violence victims are everywhere, and many different resources must be made available to suit each victim’s particular needs. Moreover, because domestic violence is such a personal and private issue, victims need resources that are easily accessible, comfortable, and *safe*. Technology has responded to these demands. In order to increase accessibility, many domestic violence organizations are making their resources available online, by offering counseling services and information to victims that can be accessed via email, chat rooms, and bulletins posted on the organizations’ websites. Unfortunately, as technology expands to

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<sup>19</sup> See RENNISON, *supra* note 13 (providing information from CRIMINAL VICTIMIZATION 2001, CHANGES 2000-1, WITH TRENDS 1993-2001, NCJ 194610. The most common type of violence against women was assault).

<sup>20</sup> See ABA, *supra* note 10.

<sup>21</sup> *Id.* (proving the conclusion that domestic violence is not concentrated in a specific ethnicity by examining an August 1995 Bureau of Justice Statistics Special Report).

<sup>22</sup> See RENNISON, *supra* note 13.

<sup>23</sup> See ABA *supra* note 10 (excerpting a 1995 Bureau of Justice Statistics Special Report: Violence Against Women).

<sup>24</sup> See GREENFIELD, *supra* note 12.

benefit the needs of domestic violence victims, it is simultaneously exploited by abusers.

Abusers do not stand still while the advancements around them improve; they use every piece of technology to further harass their victims. "Abusers are getting more sophisticated . . . in our digital age, [they] have learned to use technology to further harm and control their victims."<sup>25</sup> The fact that many of these technological advancements were never meant to reach the hands of abusers is irrelevant, because "you can depend on batterers to go to any length and use any tool to stalk and terrorize their victims."<sup>26</sup>

### GLOBAL POSITIONING SYSTEMS (GPS)

One such technological advancement that has found its way into the hands of batterers, contrary to the goal of its intended use, is the Global Positioning System (GPS).<sup>27</sup> GPS is a "satellite-based radio-navigation system"<sup>28</sup> that was originally created by the United States Department of Defense to track the weather.<sup>29</sup> Made up of twenty-seven satellites that orbit the earth forming a "worldwide navigational system,"<sup>30</sup> the satellites transmit radio signals from their positions in space, back to earth, allowing anyone with a device "determine [his or her] . . . position, velocity, and time 24 hours a day, in all weather, anywhere in the world, with a precision and accuracy far better than [any] other . . . system available today or in the foreseeable future."<sup>31</sup> In other words, the Global Positioning System is a highly specialized tracking device

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<sup>25</sup> Cindy Southworth, *Technology's Dark Side*, WASH. POST, June 8, 2003, at B08, available at [www.washingtonpost.com](http://www.washingtonpost.com) [hereinafter *Dark Side*].

<sup>26</sup> *Id.*

<sup>27</sup> See RICHARD RAYSMAN ET AL., EMERGING TECHNOLOGY: FORMS & ANALYSIS §1.03, at §1.03(3)(a) (2002) (detailing background information of the Global Positioning System including its creation, intended use, and specifications) [hereinafter EMERGING TECHNOLOGY].

<sup>28</sup> *Frequently Asked Questions: Global Positioning System (GPS)*, <http://gps.faa.gov/FAQ/faw-gps.htm> (last visited Nov. 13, 2003) [hereinafter *FAQ*].

<sup>29</sup> See EMERGING TECHNOLOGY, *supra* note 26, §1.03(3)(b).

<sup>30</sup> *Id.* §1.03(3)(a).

<sup>31</sup> *FAQ*, *supra* note 27.

that easily pinpoints any person's location wherever he or she is. GPS was not created for civilian hands though; it is "owned and operated by the U.S. government as a national resource."<sup>32</sup>

Once an instrument used solely by the military, GPS is now common place in the private sector.<sup>33</sup> For example, by installing GPS receivers into their automobiles, rental car companies can track their vehicles anywhere in the United States.<sup>34</sup> The technology informs the rental companies "when . . . vehicles have left . . . and arrived, if they pulled into areas not on their designated route; and provides rental companies with more detailed information about the [car's] location."<sup>35</sup> Additionally, the travel industry uses GPS technology, in conjunction with wireless communications, to keep track of the travel plans of its customers.<sup>36</sup> This allows travel agents to know exactly where their customers are, at any time, so they can be contacted in case of emergency. Many law enforcement agencies have also followed suit, and are now using 'bumper beepers,'<sup>37</sup> tiny, inexpensive GPS monitors, to track a suspect without "physically tailing"<sup>38</sup> him. This same technology allows law enforcement to follow a person twenty-four hours a day, seven days a week.

As GPS technology becomes more prevalent in the commercial world, it also becomes easier for ordinary citizens to obtain as well. In fact, "pager-sized" GPS devices are now being used by parents to monitor their children.<sup>39</sup> "POMALS" or 'Peace

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.* (stating that there are two types of service provided by GPS. The first type, an "encoded Precise Positioning Service" is used by the military and Department of Defense, and the second, the "Standard Positioning Service" is used by the civil sector).

<sup>34</sup> See EMERGING TECHNOLOGY, *supra* note 26, §1.03(3)(b)(i) (showing that rental car companies use GPS to monitor a driver's speed, find abandoned cars, and disable stolen cars).

<sup>35</sup> *Id.*

<sup>36</sup> See *id.* (combining GPS with cell phones allows travelers to be continuously apprised of "changing travel conditions").

<sup>37</sup> *Id.* §1.03(3)(b)(iii).

<sup>38</sup> *Id.*

<sup>39</sup> See Elisa Batista, *A Kiddie GPS For the Masses?* (Oct. 12, 2002), at <http://www.wired.com/new/business/0,1294,55731,00.html>.



of Mind at Light Speed' are "hard plastic sleeve[s] embedded with GPS that slip over cell phones."<sup>40</sup> When activated, these "sleeves" allow parents to keep track of their children's movements, and at less than one hundred dollars each, POMALS are affordable to many people.<sup>41</sup> Unfortunately, these devices can be sold to anyone, not just parents, and although the purpose behind the POMAL is to protect, there is also a distinct probability it could create a dangerous situation for domestic violence victims. Even the company that makes the device acknowledges it cannot control the hands the device may fall into, 'we are taking GPS to the streets,' said Coppy Holzman, president of the POMALS company, '[but for] every technology we have ever invented, there is a person with mal-intent.'<sup>42</sup>

The POMALS technology, in the hands of a stalker or batterer, has dire consequences for victims of domestic abuse. Now, without being detected, an abuser can track a victim anywhere in the world, wherever the victim goes. As a result, a device that was never even thought of in connection with domestic violence, but was instead specifically designed to support "navigation, surveying, geophysical exploration, [and] mapping,"<sup>43</sup> is now being used by civilians to "[monitor] the movements of people."<sup>44</sup>

It is this monitoring that is especially dangerous for domestic violence victims who are stalked by batterers they cannot find, using technology they cannot see. For example, batterers are installing GPS devices in their victims' cars and personal belongings in order to keep track of the victims' movements. Once an abuser tags his victim with a GPS monitor, he can track his prey's "geographic location with an accuracy of between 10 – 100 meters."<sup>45</sup> This means that no matter where a victim goes, the abuser is not far behind. In fact, if the victim is mobile, "a GPS receiver may calculate [his or her] speed and direction of travel,

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<sup>40</sup> *See id.*

<sup>41</sup> *See id.*

<sup>42</sup> *See id.*

<sup>43</sup> *FAQ, supra* note 27.

<sup>44</sup> EMERGING TECHNOLOGY, *supra* note 26, §1.03(3)(b).

<sup>45</sup> *Id.* §1.03(3)(a).

and may also be able to provide an estimated time of arrival to specific destinations.”<sup>46</sup> As a result, a batterer could know where a victim is, and be able to meet her, at any location - or even get there before her, effectively taking away any chance she may have to escape. Using GPS technology, batterers can literally hunt down their victims. Furthermore, since the victim is unaware she is being followed, it is almost impossible to protect herself against the threat.

As GPS becomes a favorite tool of stalkers and batterers, many states are unsure of how to characterize its use. State legislatures are under pressure to re-evaluate, and often re-write, stalking laws to accommodate technological advancements. Although every state has laws against stalking, few have stalking laws that specifically include the use of specialized technological advancements, such as GPS. Those states that do have technology based stalking laws are focused more on the location of the device rather than its actual usage. For example, stalking statutes in Alaska and Wisconsin only apply to devices that were specifically “plac[ed] . . . on . . . property owned . . . or occupied by [the victim].”<sup>47</sup>

As courts find themselves facing defendants who will go to any means possible to keep track of their victims, they are forced to re-interpret stalking laws according to the ever-evolving status of technology. *People v. Sullivan*, is one of the first recorded cases of GPS technology being used as a stalking device.<sup>48</sup> Robert Sullivan’s wife was in the process of filing for a divorce and had obtained a full stay away order of protection against him.<sup>49</sup> In addition to violating the court order,<sup>50</sup> Sullivan installed a global

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<sup>46</sup> *Id.*

<sup>47</sup> STALKING RESOURCE CENTER, *at*

[http://www.ncvc.org/src/main.aspx?dbID=DB\\_State-byState\\_Statues](http://www.ncvc.org/src/main.aspx?dbID=DB_State-byState_Statues) 117 (last visited Mar. 11, 2004) (showing the Wisconsin stalking statute 940.32(1)(a)(8) and Alaska’s stalking in the second degree law §11.41.270(b)(3)(G)).

<sup>48</sup> *See* 53 P.3d 1181, 1182 (C.O. Cir. Ct. App. 2002) (documenting a July 2002 decision, and the only decision of its kind, available at this time).

<sup>49</sup> *See id.* (describing the circumstances under which the defendant and his wife were living when he installed the GPS tracking device in her car).

<sup>50</sup> *See id.* (stating that the wife had a full stay away order of protection against Sullivan after he burned her clothing in their backyard).

positioning system under the hood of his wife's car, without her knowledge, to "check on her whereabouts."<sup>51</sup> The GPS device registered every move she made, and recorded the data on a microchip, which Sullivan then removed so he could retrieve the information.<sup>52</sup> Sullivan admitted that the reason he used the device was to, "[maintain] a watch over [her] and [gather] information about her activities."<sup>53</sup> He repeated the process at least twice, and used the information to tell his wife that he knew where she had been and what she had been doing.<sup>54</sup> Sullivan intended to frighten his wife and to make sure that she knew wherever she went, he could and *would* find her.

Sullivan was convicted of domestic violence and harassment by stalking,<sup>55</sup> but was sentenced to only four years of *supervised probation*.<sup>56</sup> This case forced the Colorado Court of Appeals to examine the language of its stalking law, which said that a person is guilty of harassment by stalking if he ". . . places [another person] *under surveillance*."<sup>57</sup> The court found that despite the fact the defendant was neither present for the recording of his wife's movements, nor was the term "global positioning system" specifically written into the statute as a method of stalking, Sullivan's actions constituted surveillance under the law. The judge reasoned that if the legislature intended to require a stalker's physical presence during the commission of the crime, it would have written such a condition into the statute.<sup>58</sup> Additionally, because the GPS did not need a concurrent operator as it worked, it was irrelevant whether or not the perpetrator was actually present at the scene of the crime. Furthermore, the court ruled:

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<sup>51</sup> *Id.*

<sup>52</sup> *See id.* at 1184.

<sup>53</sup> *See id.*

<sup>54</sup> 53 P.3d at 1184.

<sup>55</sup> *See id.* at 1181 (establishing that Sullivan effectively put his wife under repeated surveillance which caused her to suffer "serious emotional distress" because she never felt safe and thought she was being stalked).

<sup>56</sup> *See id.* at 1182 (emphasizing that Sullivan received no jail time for his use of GPS).

<sup>57</sup> *Id.* at 1183.

<sup>58</sup> *See id.*

We perceive no significant difference between gaining this type of personal information by physically following the wife, and by using a device designed to achieve the same result. In either case, the motive to instill fear in his victim, by demonstrating that he had the ability to know where she was and what she was doing at any time, was accomplished.<sup>59</sup>

The *Sullivan* court also expanded the language of the Colorado stalking statute to include GPS as well as other electronic surveillance devices. Now, being under surveillance includes “electronic surveillance that records a person’s whereabouts as that person moves from one location to another.”<sup>60</sup> The court reiterated that the purpose of the stalking law was to “[encourage] and [authorize] effective intervention,”<sup>61</sup> and to stop a defendant’s behavior from escalating into a more dangerous situation.

States that are unsure of how to deal with the use of GPS to stalk domestic violence victims are creating computer-based crime laws. In 2004, Peter Schiffmacher became the first person in New York to be convicted of using computer technology to cyberstalk his wife.<sup>62</sup> Schiffmacher, a former cable technician, installed GPS in his wife’s car after she began divorce proceedings against him.<sup>63</sup> Using his parent’s computer, he downloaded the information from the device.<sup>64</sup> Schiffmacher cloned his wife’s cell phone<sup>65</sup> so that all her calls “were [automatically] forwarded to 911.”<sup>66</sup> He also re-wired her home security system so that her alarm would go off, at random intervals, bringing the police to her home.<sup>67</sup> When

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<sup>59</sup> *See id.*

<sup>60</sup> 53 P.3d at 1184.

<sup>61</sup> *Id.* at 1183.

<sup>62</sup> *See Cheektowaga Man Faces Jail Time in High-Tech Stalking Case*, at <http://www.wivb.com/global/story> (Feb. 6, 2004) [hereinafter *Cheektowaga*].

<sup>63</sup> *See* Matt Gyrtta, *Man Convicted of Stalking Wife With Technology*, THE BUFFALO NEWS, Feb. 5, 2004, at B1 [hereinafter Gyrtta].

<sup>64</sup> *See id.*

<sup>65</sup> *See Cheektowaga*, *supra* note 61.

<sup>66</sup> *See* Gyrtta, *supra* note 62.

<sup>67</sup> *See Cheektowaga*, *supra* note 61.

Schiffmacher appeared as a defendant, the New York Court did not have a statute that specifically addressed GPS; instead, the court chose to read the use of technology into its law and found Schiffmacher guilty of stalking in the fourth degree.<sup>68</sup>

Paul Seidler, of Kenosha, Wisconsin found himself the recipient of a jail sentence when he installed a GPS device under the hood of his ex-girlfriend, Connie Adams', car.<sup>69</sup> Labeled, "man who could not let go," by the presiding judge, Seidler stalked Adams 'with a sense of entitlement like she was property,' which, according to the judge, was 'completely unacceptable.'<sup>70</sup> Seidler also sent Adams over one hundred emails stating, 'if you want me to get nasty, Connie, I will . . . please don't push me over the [edge].'<sup>71</sup> After asking him 'what part of no, what part of reject, don't you understand,' the judge sentenced Seidler to nine months in prison and five years probation.<sup>72</sup>

The fact that courts are increasingly deciding these types of cases is indicative of the dangerous path domestic violence victims are traveling. If the information that comes from these tiny devices is specialized enough for the military, the details it can provide ordinary citizens, especially batterers and stalkers, is mind-boggling. No matter where victims are, no matter how far they run, or how safe they think they are, with the help of GPS, there is literally no way for victims to escape.

The question remains as to why technology that was specifically created for the government is getting into the hands of private citizens, and for such a small price tag. It is extremely disturbing that this device has become connected with domestic violence. The simple fact is that along with every benefit each technological advancement produces, creators must also look at the possible ramifications, and prepare for what could happen if the technology got into the wrong hands. If the negative consequences were examined, those who create this technology might be more

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<sup>68</sup> See Gyrta *supra*, note 62.

<sup>69</sup> See Meg Jones, *Kenosha Man Sentenced for Stalking*, MILWAUKEE J. SENTINEL, June 6, 2003, at B3.

<sup>70</sup> See *id.*

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

able to install safeguards to prevent such dangers, or to at least provide some type of warning to those people who could be in danger.

The companies that manufacture and sell GPS are aware that their devices do fall into the wrong hands. 'It does happen,' stated John Phillips, president and CEO of Satellite Security Systems, a GPS manufacturer, 'we don't promote it. We hope it's used more for safety for wives and husbands than spying on them.'<sup>73</sup> But hoping is not enough. Satellite and other companies do not screen their buyers, and their devices are "so inexpensive and easily hidden that they many even tempt a suspicious spouse who pinches pennies."<sup>74</sup> When distributing devices that have such dangerous potential, companies, and state and federal governments, need to be more rigorous about whose hands receive these devices.

In order for a person to own a gun, or drive a car, he or she must take tests, apply for permits, purchase licenses, and go through extensive background checks. However this is not the case for a device that has no necessary purpose in the hands of private citizens; anyone can buy a global positioning device for *any* reason. In fact, GPS devices are sold in electronics stores everyday. The immediacy of this process must change. State legislatures need to regulate the dispensation of GPS devices so that anyone wishing to buy one should be required to submit to a substantial screening process that would deny access to anyone with a history of domestic violence or an order of protection for domestic violence against him or her. Furthermore, in order to make sure the device has not fallen into the wrong hands, the background check should be repeated after a legislatively mandated time has passed. If a background check was done on everyone who wanted to buy a GPS device, fewer victims would find themselves at the mercy of their batterers. A screening process would aid domestic violence victims in another way. If

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<sup>73</sup> See Randy Dottinga, *Spying on Snookums With GPS*, at <http://www.wired.com> (Jan. 3, 2003) (illustrating that the price of GPS is not cost-prohibitive for those willing to go to any lengths to follow an intimate partner).

<sup>74</sup> *Id.*

victims knew their abusers had one less stalking tool available to them they might begin to feel safer and be able to lead more secure lives.

Not only should state legislatures implement a screening procedure, but each state must draft its laws to either explicitly include GPS as a means of stalking, or make the language of their statutes broad enough to allow courts to construe that intent into the meaning. For example, in December 2003, Wisconsin introduced amendments to its stalker laws to cover "using . . . global position system devices to monitor people."<sup>75</sup> New York has also enacted similar changes to its stalking laws. In February 2003, the New York State Assembly introduced an amendment to its stalking laws to incorporate the use of technological devices.<sup>76</sup> Included in the definition of technological devices are "the Internet, cameras, Global Tracking Devices and any other tracking devices."<sup>77</sup> But New York goes one step further, and leaves the language broad enough to encompass new technologies, by stating that the definition is not limited to the aforementioned devices.<sup>78</sup>

Victims must be responsible for their own safety as well. They must educate themselves, and be aware of the dangers that GPS poses; they must know what to look for, how these mechanisms work, and their legal rights. Victims can no longer plead ignorance to these devices. They have to learn how to protect themselves. The information is out there, and victims have to learn the newest stalking technologies in order to be one step ahead of their batterers.

### **ENHANCED 911 (E911)**

The use of GPS technology is a double-edged sword though because there *are* some beneficial aspects to its use. Used simply as a tracking device, it can have dire consequences for domestic violence victims; but GPS combined with other

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<sup>75</sup> Tom Sheehan, *Bill Aimed at High-Tech Stalking*, WISCONSIN ST. J., Dec. 23, 2003, at B3.

<sup>76</sup> H.R. A05444, 2003 N.Y. Assemb. 26<sup>th</sup> sess. (N.Y. 2003).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

technologies, such as emergency response systems and cellular telephones, has the potential to save lives.

The 911 emergency systems receive over fifty million calls from cellular telephone users each year.<sup>79</sup> Unfortunately cellular phone calls are not as easy to trace as land line phones, because wireless telephones are actually radios that use “frequencies or channels – instead of telephone wire – to connect callers.”<sup>80</sup> As a result of their mobility, cellular telephones do not have a fixed location, and it is extremely difficult to determine the specific place from which the person is calling.<sup>81</sup> When a call is made to 911 by a cellular phone, the radio frequencies only allow for a general determination of the caller’s location, which is often too indeterminate for emergency personnel to reach the caller as quickly as possible.<sup>82</sup>

The consequences of this problem are especially dangerous for domestic violence victims who receive cell phones through shelters or community outreach programs. Cell phones are distributed to victims because batterers are likely to appear at anytime, and victims must be able to call for help wherever they are. However, if it takes too long to pinpoint a victim’s location, law enforcement may not be able to get to a victim in time. That is where GPS becomes a potential lifesaving tool.

The Federal Communications Commission (FCC) has mandated the creation of Enhanced 911, (E911), a directive that requires all cellular phones be equipped with GPS; a provision that will ultimately allow 911 operators to pinpoint the location of callers to within 100 meters.<sup>83</sup> This means cellular phone companies will “[install] a transmitter device which will allow

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<sup>79</sup> See WIRELESS 911 SERVICES, at <http://www.fcc.gov/dgb/consumerfacts/wireless911srvc.html> (last visited Nov. 3, 2003) (giving background information on the use of cellular telephones).

<sup>80</sup> *Id.*

<sup>81</sup> See *id.* (stating that the mobility of a cellular telephone, although considered an advantage, also creates difficulties for emergency personnel who are trying to determine a fixed location for a caller in need of help. “A caller using a wireless phone could be calling from anywhere”).

<sup>82</sup> See *id.*

<sup>83</sup> See EMERGING TECHNOLOGY, *supra* note 26, at §1.03(3)(b)(ii).



GPS tracking of 911 calls.”<sup>84</sup> With the addition of GPS to cellular phones, emergency personnel will be able to locate callers faster and route the calls to the correct law enforcement department.

There are two types of E911 systems used by the cell phone companies.<sup>85</sup> Nextel and Sprint PCS are “piggybacking” the GPS system, which means that GPS chips are installed in the new cellular phones.<sup>86</sup> The downside of this feature is that it is relatively new, and people must purchase new phones to take advantage of it.<sup>87</sup> The second type of E911, which is used by Verizon Wireless, works on any phone.<sup>88</sup> The carrier “place[s] sensors inside the towers where mobile signals are routed. When a call for help is sounded, the three or four closest phone towers measure how long it takes for the signal to arrive, then triangulate the victim’s coordinates.”<sup>89</sup> The pitfall of this feature is that it is not as accurate as the other system.<sup>90</sup>

Unfortunately though, just like a GPS tracking device, E911 has the potential to be mishandled. A batterer in possession of a phone equipped with E911, or the bills of one with it, which list with exactitude the caller’s location, will be able to track his victim, just as he could with a simple GPS device. In fact, because cellular phones are less expensive than GPS devices alone, those equipped with E911 may prove to be a more attractive alternative for batterers. As long as batterers are aware of the advances in technology, they will remain one step ahead of their victims. However, if victims keep themselves informed, by learning how to turn the GPS trackers on their phones on and off, and prohibit the locations of their calls from being shown on their bills, they can take advantage of the technology without being at the mercy of their abusers.

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<sup>84</sup> *Id.*

<sup>85</sup> *See Your Phone Knows Where You Are, at* <http://www.popsci.com/popsci/science/article/0,12543,266052,00.htm> (last visited Feb. 17, 2004).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *See id.* (illustrating the pros and cons of both features).

## THE INTERNET

GPS is not the only technological advancement that has the potential to both help and harm domestic violence victims. The Internet has been, and continues to be, a tremendous source of information and support for domestic violence victims. Yet, it also provides batterers with another access route into the lives and privacy of their victims.

### WHY IS THE INTERNET SO ATTRACTIVE TO BOTH VICTIMS AND ABUSERS?

The Internet is an entity that has invaded the homes of more than 168 million Americans.<sup>91</sup> Unlike times past, its use is no longer male dominated. In fact, “women have surpassed men in online usage, representing a little over half of the total web population.”<sup>92</sup> A large part of that female Internet population is comprised of domestic violence victims; “given the rates of female web usage and estimated levels of victimization, it is possible to extrapolate that up to 7,560,000 women (16.8% of the United States Internet population) are current or former survivors of intimate violence.”<sup>93</sup>

As the number of Internet users continues to rise, it is only logical that the number of survivors looking for help online will also increase.<sup>94</sup> Consequently, more and more domestic violence organizations are embracing the web, creating their own sites and email addresses, to offer better access to people. In fact, domestic

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<sup>91</sup> See Ann L. Kranz, *Helpful or Harmful? How Innovative Communication Technology Affects Survivors of Intimate Violence*, at

<http://www.vaw.umn.edu/documents/5survivortech/5survivortech.html> (May 8, 2002) [hereinafter *Helpful or Harmful*] (emphasizing the premise that increased numbers of domestic violence victims are turning to the Internet because, “if half of the web population is female, and one-third of all women are victims of intimate violence then it is reasonable to conclude a significant percentage of Internet users are victims of domestic violence”).

<sup>92</sup> Ann L. Kranz, *Survivors of Intimate Violence Seek Help Online: Implications of Responding to Increased Requests*, at

<http://vaw.umn.edu/documents/10vawpaper/10vawpaper.html>

(Mar. 19, 2001) [hereinafter *Survivors*].

<sup>93</sup> *Id.*

<sup>94</sup> *See id.*

violence organizations say that as a result of their online presence, they are able to increase: "agency visibility, direct service, community education, and advocacy."<sup>95</sup> Having an Internet presence allows organizations to access all types of people.<sup>96</sup>

The Internet offers a number of attractive qualities for people affected by domestic violence. In a 1998 study done by the Department of Justice, one in three domestic violence victims did not report their abuse because they considered it to be a 'private or personal matter.'<sup>97</sup> In fact, lack of privacy was the reason most often given by women who did not want to report their abusers.<sup>98</sup> The Internet provides survivors of intimate violence with an alternative to revealing their identities, and "offers the ability to create a seemingly anonymous presence."<sup>99</sup> It is understandable why women who are hesitant to reveal their abuse history would turn to the Internet.<sup>100</sup> The Internet offers help to those survivors not able to afford other avenues. It can "break down barriers to some underserved populations, reduce costly and cumbersome outreach methods, and communicate critical [information] in a timely manner."<sup>101</sup> The Internet is an immediate source of information; websites are able to post and update data twenty-four hours a day, seven days a week. While printed material becomes obsolete quickly, and can therefore relay inaccurate information, the web allows for instantaneous change and is an "attractive alternative for communicating time-sensitive matters."<sup>102</sup>

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<sup>95</sup> *Id.* (reporting from a survey done of 166 Domestic Violence Organizations, each with a web presence, and their responses, when asked about the particular ways in which having a website aided domestic violence survivors).

<sup>96</sup> See *Helpful or Harmful*, *supra* note 90 (denoting that the "foundation of the battered women's movement is to provide services that are accessible to all people so that no one is denied access").

<sup>97</sup> GREENFIELD, *supra* note 12, at 10.

<sup>98</sup> See *id.* (illustrating that women kept their abuse a secret because they were afraid of embarrassment).

<sup>99</sup> *Survivors*, *supra* note 91.

<sup>100</sup> See *id.* (reasoning that the Internet is an easier means for domestic violence victims to reveal themselves and their stories because they do not have to put a face to their accounts. The Internet allows victims to namelessly confess).

<sup>101</sup> *Helpful or Harmful*, *supra* note 90.

<sup>102</sup> *Id.*

Additionally, the Internet removes barriers of both time and distance from its users because almost anyone, anywhere, and at any time, can access the Internet.<sup>103</sup> “It is available to those who might not otherwise seek information due to time constraints, caregiving responsibilities, lack of transportation, physical or social isolation, and physical or psychological disabilities.”<sup>104</sup> The Internet is an immediate source of support for those people who have tried to access other avenues, such as shelters, but have been either turned down or turned away. It “supplement[s] . . . in-person services [and acts] as a source of support during wait-list conditions when other options may not be available.”<sup>105</sup> For those organizations that offer online counseling, the Internet provides psychological help for victims who may be isolated by their abusers and unable to seek medical attention.

In a study done by Violence Against Women Online Resources to determine the needs of domestic abuse victims seeking help online, electronic requests made via the Internet were examined based on the requestor, the content of the email, and the number of requests made.<sup>106</sup> Although the website offers information dealing with domestic violence, sexual assault, and stalking, the study found that sixty-six percent of its requests for information came from people whose primary concern was

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<sup>103</sup> Jerry Finn, *Domestic Violence Organizations Online: Risks, Ethical Dilemmas, and Liability Issues*, at

[http://www.vaw.umn.edu/documents/commissioned/online\\_liability/online\\_liability.pdf](http://www.vaw.umn.edu/documents/commissioned/online_liability/online_liability.pdf) (Aug. 2001) [hereinafter Finn] (explaining that the Internet is available on a “twenty-four hour basis from any computer with Internet access . . . and thus provides a stable source of support in an increasingly mobile society”).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* (substantiating the claim of support because the Internet provides email counseling, online contact with counselors and support groups, and referral services).

<sup>106</sup> See *Survivors*, *supra* note 91 (laying the foundation of the study. The Violence Against Women website was created in August 1997, and during this year long study, 427 information requests were examined. Prior to the report, the website showed a 267% increase in the amount of users from 1997 to 2001. In 1997 there were an estimated fifty users a day, but as of January 2001, there were an average of 700 users each day).

domestic violence.<sup>107</sup> The study concluded that increased numbers of people are accessing the site each day, with more than 700 users a day.<sup>108</sup> This equates to over 100,000 visitors per month<sup>109</sup> who are looking to the site to provide: information, counseling, legal advice, and a way to express their fears and personal experiences.<sup>110</sup> As a result of the study, it is obvious that "changing technology requires new methods of response."<sup>111</sup> By recognizing the need for alternate forms of aid, domestic violence organizations can further increase the number of people helped.

### THE INTERNET AND EMAIL

While the Internet creates a whole new world of aiding domestic violence victims, its use simultaneously opens the door to many dangers as well. Victims must be aware that even in cyberspace, it is possible to leave footprints, creating a trail that an abuser can easily follow. Anyone accessing the Internet must be aware that "any response made with Internet communication . . . has the potential to endanger the safety of a victim if intercepted or read by someone other than the victim."<sup>112</sup> As a result, domestic violence victims must learn how to use their computers so as not to create a more dangerous situation for themselves, and they must be

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<sup>107</sup> See *id.* (noting that ninety-nine out of 153 email messages examined by the study were sent by survivors of domestic violence, indicating that the website is highly trafficked by people affected by domestic violence).

<sup>108</sup> See *id.* (revealing that out of 427 information requests catalogued by the report, primary victims accounted for 114 requests (twenty-seven percent) while secondary victims totaled thirty-nine requests (seven percent). In fact, "survivors of intimate violence . . . accounted for the largest group of information seekers").

<sup>109</sup> See *id.* (stating that the "overall site usage jumped 267% from 35,518 hits for the month of October 1999, to 94,879 hits for the month of September 2000." Based on these numbers, one can conclude that Internet usage by domestic violence victims is on the rise and will continue to increase).

<sup>110</sup> See *generally id.* (looking at messages in which primary victims disclosed "their personal experiences of abuse, expressed a fear of imminent harm, informed of a protective order, or named their victimization").

<sup>111</sup> See *id.*

<sup>112</sup> See *Helpful or Harmful*, *supra* note 90 (emphasizing the fact that most Internet users are unaware that each time they use the computer, there can be negative safety consequences).

aware of the concerns that come with using the Internet. The most important safety issues involved in using the Internet are: the openness of communication, the risk of false information being spread, and online stalking.<sup>113</sup> Domestic violence survivors can use the Internet to access a multitude of resources. However, they are not the only ones becoming technologically savvy, because “the World Wide Web is far and away abusers’ best tool for finding and continuing to harm their victims.”<sup>114</sup> Batterers are adept at discovering their victims’ actions through the use of email tampering and by monitoring their victims’ internet activities.

Email provides domestic violence victims with an increased ability to receive help. In fact, the advancing technology gives “survivors of abuse . . . a greater sense of security, [increased] support, and [decreased] isolation.”<sup>115</sup> As they begin to feel safer, survivors use email to reach out to family and friends “to ask . . . for help in leaving an abusive partner, searching for shelters and new housing online, and restraining order options on the Internet.”<sup>116</sup> For example, as of October 2001, Central California Legal Services Domestic Violence advocates could file “emergency restraining order applications [and] domestic violence and child abuse claims for domestic violence victims over the Internet.”<sup>117</sup> Advocates can fill out the forms and send them over a secured website, where they go to a court commissioner, who can

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<sup>113</sup> See *id.* (listing the safety issues that are involved with online usage. Other issues include the violation of privacy, harassment, and the fact that many domestic violence users are unfamiliar about the way to use technology).

<sup>114</sup> Jan Pudlow, *Concerns Raised About Posting Domestic Violence Records Online*, FLA. BAR NEWS, May 15, 2003, at 21 [hereinafter Pudlow].

<sup>115</sup> See *Safety on the Internet*, at

<http://hands.dreamhost.com/english/archives/000052.php> (last visited Oct. 30, 2003) [hereinafter *Safety*] (proving that batterers will go into email accounts and read their contents in order to track their victims’ movements).

<sup>116</sup> *Id.*

<sup>117</sup> Press Release, E-Filing, Tulare Courts Accept Domestic Violence Filings Over Internet, at <http://www.e-filing.com/news/Tularerelease.htm> (Oct. 12, 2000).

immediately issue a restraining order.<sup>118</sup> As soon as the order is filed, the victim receives an electronic copy.<sup>119</sup>

However, because "email tends to be a medium of short messages and quick answers,"<sup>120</sup> many of its users do not pay close attention to what information they reveal while typing. Unfortunately, as victims learn how to take advantage of technology, their abusers are not far behind. The truth is, that while the advanced technology creates a helpful resource for domestic violence victims, many victims still do not understand the risks involved in its use. Until victims can navigate the waters of technology safely, they will remain in danger.

Batterers are now accessing their victims' email accounts to find out what messages are being sent. A victim finds herself in very a dangerous situation when her abuser gains access to her email and then finds out she is using the Internet to contact domestic violence organizations, or family members for support. An abuser's anger over such a situation leads to "real danger of escalating violence and further monitoring and controlling of the abused partner's life."<sup>121</sup> In fact, some batterers, who do not know their victims' email passwords, assault the victims and force disclosure so they can more effectively monitor the emails, and victims who change their passwords risk another beating, or worse.<sup>122</sup>

For many victims, realizing that their accounts have been accessed by their abuser is next to impossible. Batterers such as Matthew Haldeman, of Shippensburg, Pennsylvania, are able to invade email accounts for months before they are detected.<sup>123</sup> For over a month, Haldeman was able to decipher his ex-girlfriend's

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<sup>118</sup> *See id.*

<sup>119</sup> *See id.*

<sup>120</sup> Finn, *supra* note 102.

<sup>121</sup> *Id.* (reasoning that domestic violence victims are isolated by their partners, and "attempts to find help or even other social networks are met with an increase in threatened or actual violence").

<sup>122</sup> *See id.*

<sup>123</sup> Matt Miller, *Invaded E-mail Files Lead to Charges*, PATRIOT NEWS (Nov. 7, 2003), <http://www.pennlive.com/news/patriotnews/west/index.ssf?/base/news/1068201143262540.xml>.

email and Internet passwords, which he then used to open her accounts, delete files and email messages, and change her passwords so she could not access her other accounts.<sup>124</sup> Although the charges against him did not include either stalking or harassment, Haldeman was charged with “unlawful use of a computer, computer theft, computer trespass, and two counts of disruption of computer service.”<sup>125</sup> Haldeman’s possible sentence ranges from probation, to three years in jail.<sup>126</sup> Although crimes like these often go unreported, law enforcement officials are not surprised at their existence. According to the District Attorney who prosecuted the case, “[we] are going to see a whole lot more of this . . . [type of] case [and it] is certainly a precursor of what is to come since people are relying more and more on the Internet.”<sup>127</sup>

But email is not the only way for a batterer to track his victim. An abuser can easily find records of his victim’s activities in “temporary internet files, document histories . . . and deleted folders, [which] all . . . [document] the computer’s activity. Even if these histories are deleted, there are many other places that store a record of computer activity.”<sup>128</sup> Cache files, which automatically save any websites or graphics viewed, allow an abuser to see what sites the victim has visited.<sup>129</sup> It is also dangerous for victims to view certain sites on their own because many computers save a list of sites recently visited, allowing the abuser to see that the victim is trying to seek help which may, in turn, anger the abuser, escalating the dangerousness of the situation.<sup>130</sup> Victims must be wary of deleting histories from the computer, because an empty history file may actually arouse suspicion in the batterer.

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<sup>124</sup> See *id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> See *Safety*, *supra* note 114 (listing many of the places an abuser can look to find a record of a victim’s travels on the Internet).

<sup>129</sup> See AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE: HOW AN ABUSER CAN DISCOVER YOUR INTERNET ACTIVITIES, at <http://www.abanet.org/domviol/internet/html> (last visited Oct. 21, 2003).

<sup>130</sup> See *id.*



## THE INTERNET AND CYBERSTALKING

Domestic violence victims are no strangers to stalking. More than fifty-nine percent of female stalking victims (and thirty percent of male stalking victims) are stalked by an intimate partner, or a former intimate partner, and of those women, more than eighty-one percent were physically assaulted by the person stalking them.<sup>131</sup> What makes matters worse, is that stalking is only a precursor to more dangerous behavior. In fact, approximately one third of stalkers who “commit violent acts such as sexual assault and murder were intimate partners.”<sup>132</sup> For example, seventy-six percent of women murdered in the United States were initially stalked by their intimate partners.<sup>133</sup> Among those killed, more than sixty-seven percent suffered physical abuse at the hands of their stalkers.<sup>134</sup> With the advent of internet technology, stalkers are becoming more proficient at keeping watch over their victims’ movements, creating a whole new world of high-tech stalking, or cyberstalking.

Cyberstalking is “the use of the Internet, email, and other electronic communication devices to stalk another person.”<sup>135</sup> It is “the Information Age crime in which victims are bombarded with threatening electronic messages while the stalker hides behind the Internet’s veil of anonymity.”<sup>136</sup> Cyberstalking includes such acts as: “flooding a victim’s email box with unwanted mail,” sending computer viruses to victims, “using a victim’s email address to

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<sup>131</sup> See STALKING FACT SHEET, at [www.ncvc.org/src](http://www.ncvc.org/src) (last visited Oct. 22, 2003) [hereinafter FACT SHEET] (detailing the background statistics of stalking in the United States).

<sup>132</sup> STALKING: A GUIDE FOR VICTIMS, at [www.mcasa.org](http://www.mcasa.org) (last visited Oct. 22, 2003).

<sup>133</sup> See FACT SHEET, *supra* note 130 (noting a statistic from a 1999 Homicide Study).

<sup>134</sup> See *id.*

<sup>135</sup> *Stalking and Domestic Violence*, Rept. to Congress, May 2001 [hereinafter *Congressional Report*].

<sup>136</sup> Doug Simpson, *Feds Find Dangerous Cyberstalking Hard to Prevent*, at <http://www.cnn.com/2000/TECH/computing/06/12/cyberstalkers.idg/index.html> (July 12, 2002) [hereinafter Simpson].

subscribe her to multiple list servers,” sending out false information about the victim, and identity theft.<sup>137</sup>

As the Internet becomes more prevalent in our everyday lives, the numbers of cyberstalking cases are rising because it is a crime that is both inexpensive and relatively easy. In fact, cyberstalking is one of the most rapidly growing online crimes. Free email accounts are available all over the Internet, and although most Internet Service Providers (ISPs) require personal information to create accounts, few ISPs actually verify the validity of the information supplied.<sup>138</sup> Consequently, a stalker only has to forward messages through several email accounts, for the email to become virtually untraceable. A victim can receive messages from a stalker who never uses the same email address twice; even if the victim has blocked the previous email addresses, she cannot prevent future emails because she has no idea where the next message will come from. Moreover, is that even if the victim can trace the email back to a certain location, many ISPs refuse to release their clients' information.<sup>139</sup>

The law remains apathetic to cyberstalking for several reasons. Since there is no physical contact involved, people see a lack of physical danger, because, “the fact that cyberstalking does not involve physical contact may create the impression that it is more benign than physical stalking.”<sup>140</sup> But that belief is very dangerous because the “lack of direct personal contact gives . . .

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<sup>137</sup> Jerry Finn & Mary Banach, *Victimization Online: The Downside of Seeking Human Services for Women on the Internet*, 3 CYBERPSYCHOLOGY AND BEHAVIOR 276 (2000), <http://www.unh.edu/social-work/SW810/Downside.htm> (last visited Nov. 19, 2003) [hereinafter *Victimization Online*].

<sup>138</sup> See Joseph C. Merschman, *The Dark Side of the Web: Cyberstalking and the Need for Contemporary Legislation*, 24 HARV. WOMEN'S L.J. 255 (2001) [hereinafter Merschman] (examining the fact that in creating an email account, users are often asked to supply their names, addresses, dates of birth, and phone numbers. However, anyone opening an account could supply information that is false, and when that user is a stalker, he can open an infinite number of accounts without once having to supply any real information about himself).

<sup>139</sup> See Simpson, *supra* note 135.

<sup>140</sup> Ashley Packard, *Does Proposed Federal Cyberstalking Legislation Meet Constitutional Requirements?*, 5 COMM. L. & POL'Y 505, 513 (2000) [hereinafter Packard].

the misrepresentation that cyberstalking is not truly threatening.”<sup>141</sup> Not only can high-tech cyberstalkers get to their victims through the Internet, but they can also use the Internet to learn more information *about* those victims. In fact, the real danger of electronic stalking is that left unchecked, it has the potential to become ‘real-world’ stalking that may result in actual physical harm to the victim.”<sup>142</sup> Amy Lynn Boyer is the perfect example.<sup>143</sup> “Stalkers can take advantage of the ease of communication as well as increased access to an enormous amount of personal information that is available through the Internet.”<sup>144</sup>

Domestic violence victims face an increased risk as a result of the amount of information available through the Internet. This is because “during times of crisis, women are more likely to reveal personal information and be less able to assertively respond to cyberstalking behavior.”<sup>145</sup> As of 2000, there were more than 15,000 non-profit websites devoted to domestic violence, and cyberstalking is a very real threat for victims who use those resources, because many sites archive the messages sent to them, and an Internet search can easily reveal information that can locate a victim who is trying to hide from her abuser.<sup>146</sup> A stalker can then use the information gained to post false information about his victim on the Internet.

For example, in 1998, California security guard, Gary Dellapenta, posed as his ex-girlfriend, and used her name, address, and telephone number to enter chat rooms, and online bulletin boards to post an advertisement for sex.<sup>147</sup> Dellapenta posted information that the woman “fantasized about being raped” and

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<sup>141</sup> Merschman *supra*, note 137.

<sup>142</sup> Packard *supra*, note 139, at 513.

<sup>143</sup> See generally, 816 A.2d 1001 (citing *Rensburg v. Docusearch*, a case where internet stalking resulted in the murder of the stalking victim).

<sup>144</sup> *Congressional Report*, *supra* note 134.

<sup>145</sup> *Victimization Online*, *supra* note 136.

<sup>146</sup> See generally *id.* (showing that many victims have no idea that even though they are looking for help, their steps can easily be traced).

<sup>147</sup> See e.g., Amy C. Radosevich, *Thwarting the Stalker: Are Anti-Stalking Measures Keeping Pace With Today's Stalker?*, 2000 U. ILL. L. REV. 1371, 1383; Ashley Packard, *Does Proposed Federal Cyberstalking Legislation Meet Constitutional Requirements?*, 5 COMM. L. & POL'Y at 517.

gave “instructions on how to bypass [her] security system.”<sup>148</sup> Six men came to the woman’s apartment to answer the ad before the cyberstalking was uncovered.<sup>149</sup> Dellapenta pled guilty to cyberstalking and soliciting sexual assault.<sup>150</sup> There is also a website, “The Stalkers Homepage,” which “consolidates resources for uncovering a variety of personal information including . . . maps to residence[s], phone number[s] . . . and social security number[s].”<sup>151</sup> Cyberstalkers take their job of harassment very seriously, and because sites like the Stalker’s Homepage remain available on the Internet, domestic violence victims are in very real danger.

Unfortunately, laws are slow to catch up to the speed of technology. Only a few states classify the posting of personal information for illicit purposes as illegal. Michigan has a law that makes it illegal to “[post] a message through the use of . . . the Internet . . . computer[s] . . . or other electronic medium . . . without the victim’s consent.”<sup>152</sup> Nevada goes one step further and charges a person with stalking if he uses the Internet or email to “publish, display, or distribute information in a manner that substantially increases the risk of harm or violence to the victim.”<sup>153</sup> It is imperative that every state have similar laws.

Thanks to the Internet, batterers have a wealth of information available at their fingertips. They find this technology appealing, not only because it is easy to use and relatively inexpensive, but because there is little, if any, punishment involved. Online stalkers are extremely difficult to track down, and not enough law enforcement agencies are equipped to deal with finding high-tech stalkers. These:

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<sup>148</sup> Packard *supra*, note 139, at 518.

<sup>149</sup> *See id.*

<sup>150</sup> *See id.*

<sup>151</sup> *Victimization Online*, *supra* note 136.

<sup>152</sup> *Stalking Technology Outpaces State Laws*, available at

[http://www.ncvc.org/src/features/sum2003\\_stalkingTechnology.html](http://www.ncvc.org/src/features/sum2003_stalkingTechnology.html)  
(last visited Oct. 22, 2003).

<sup>153</sup> *Id.*

Sophisticated stalking technologies are [baffling] local [law] enforcement. Many police chiefs and sheriffs are in their 40's and 50's and missed the computer education that is now standard in elementary school; they never caught the wave of information technology, yet they are the ones who determine . . . policy, training, and emphasis . . . [and] now that there is an epidemic of cyber crime, state and federal agencies can't keep up and the burden has fallen back on the local police to handle problems such as cyberstalking.<sup>154</sup>

Consequently, 'with the use of new technology and equipment which cannot be policed by traditional methods, cyberstalking has replaced traditional methods of stalking and harassment.'<sup>155</sup>

#### CYBERSTALKING AND ONLINE COURT DOCUMENTS AND DATABASES

One of the newest ways batterers are able to obtain information about their victims is through the online posting of court documents. In an effort to streamline the amount of paperwork from court proceedings, jurisdictions are using the Internet to manage their overflowing caseloads.<sup>156</sup> Increasing numbers of federal, state, and local courts are putting their records on the Internet, and in 2000, the National Center for State Courts and the Justice Management Institute developed a policy of creating electronic access to court records.<sup>157</sup> The documents

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<sup>154</sup> Kristin Ohlson, *Someone's Watching You*, at <http://www.salon.com/mwt/feature/2003/10/06/stalking/print.html> (Oct. 6, 2003) [hereinafter Ohlson].

<sup>155</sup> *Congressional Report*, *supra* note 134.

<sup>156</sup> See *A Quiet Revolution in the Courts: Electronic Access to State Court Records*, at <http://www.cdt.org/publications/020821courtrecords.html> (last visited Aug. 10, 2005) [hereinafter *Revolution*].

<sup>157</sup> See *Public & Internet Access to Court Records: Safety & Privacy Risks for Victims of Domestic Violence & All Citizens Using the Justice System*, THE NATIONAL SAFE & STRATEGIC PROJECT AT THE NATIONAL NETWORK TO END DOMESTIC VIOLENCE, at

available online include; divorce petitions, custody agreements, and orders of protection.<sup>158</sup> For example, in Montgomery County, Pennsylvania, courts publish the names and addresses of anyone who obtains a protective order.<sup>159</sup> County clerks in Virginia post the contents of sealed orders on the Internet, and although “filing under a pseudonym may be possible, [it is] difficult . . . and not sufficient protection for victims.”<sup>160</sup> But court records are not the only documents that batterers can use to find their victims.

In Maricopa County, Arizona, over thirty-two million public documents are online, including real estate records and superior court cases; San Diego County lists real estate purchase records online and plans to include tax assessor documentation in the future.<sup>161</sup> With just a few key strokes, it is easy to find: “lists of citizens’ personal assets, addresses, children’s names and ages . . . facsimiles of signatures . . . social security numbers, [and] health insurance policy numbers.”<sup>162</sup> This does not bode well for the safety of domestic violence victims.

Although courts are using the Internet as a tool to give the public increased access, they have single-handedly “created a new threat to [domestic] abuse victims [by publishing] their records on the web, often without taking privacy or safety into enough consideration.”<sup>163</sup> Posting these documents on the Internet puts domestic violence victims in a very precarious situation. First,

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<http://www.nnedvfund.org/pdf/NNEDVDataSecurity.pdf> (last visited Aug. 10, 2005) [hereinafter *Access*] (citing from an informational packet put together by the NNEDV with information regarding the availability of court documents online).

<sup>158</sup> See e.g., Dan Goodin, *Public Data Online Raises*, at <http://news.com.com/2100-1023-206038.html?legacy=cnet> (Dec. 5, 1997); James Borland, *Virginia Counties’ Plans to Put Citizens’ Documents Online Run Into a Whirlwind of Opposition*, at <http://www.fauquiernews.com/010103issue.htm> (Jan. 7, 2003).

<sup>159</sup> See *Dark Side*, *supra* note 24.

<sup>160</sup> *Access*, *supra* note 156, at 1.

<sup>161</sup> Dan Goodin, *Public Data Online Raises*, at <http://news.com.com/2100-1023-206038.html?legacy=cnet> (Dec. 5, 1997) [hereinafter Goodin].

<sup>162</sup> James Borland, *Virginia Counties’ Plans to Put Citizens’ Documents Online Run Into a Whirlwind of Opposition*, at

<http://www.fauquiernews.com/010103issue.htm> (Jan. 7, 2003).

<sup>163</sup> *Dark Side*, *supra* note 24.

increased access to court documents makes available “personally identifiable and sometimes sensitive information that . . . used to be practically obscure.”<sup>164</sup> All a batterer has to do is conduct a few simple searches, through virtually any Internet search engine, from anywhere in the world, and he can find this documentation. For example, a widely-known internet search engine, www.Google.com, has an option called “Phonebook” where a user can “discover someone’s name and address by typing her . . . phone number into the search function.”<sup>165</sup> Some of these searches even provide a map and directions to the person’s house.<sup>166</sup>

Google is only one of thousands of search engines that have this feature.<sup>167</sup> In moving from paper access to online files, “victims of domestic violence face possible fatal consequences from common court proceedings such as minor filings and sensitive victim cases becoming web searchable from anywhere in the world.”<sup>168</sup> Even if a court’s website is password protected, it is still linked to a national search engine, which can be hacked.

Secondly, posting court information online actually allows a batterer to *find* his victim. This leaves a victim open to more violence from an abuser she is trying to escape. A victim who has fled from her abuser and started a new life, obviously wants to keep her location a secret, and “the mere existence of a victim’s name on a court website could lead a batterer or stalker to a victim’s new community, if not exact address.”<sup>169</sup> If the jurisdiction lists real estate transactions, or court documents online, a technologically savvy batterer could find his victim in no time. For example, “if a victim of domestic violence flees her abuser in Virginia, relocates to Texas, buys property, and files her land

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<sup>164</sup> *Revolution*, *supra* note 155.

<sup>165</sup> *Concerns Rise About Online Privacy*, at <http://endabuse.org/newflash/index.php3? Search= Article&NewsFlashID=435> (last visited Jan. 29, 2004).

<sup>166</sup> *See id.* (showing that as of Feb. 2004, this feature on Google was tested and still worked).

<sup>167</sup> *See id.*

<sup>168</sup> *Access*, *supra* note 156, at 1.

<sup>169</sup> *Id.* at 2 (illustrating this point, courts in Pennsylvania post the names and addresses of both suspects and victims in abuse cases).

record with a court that posts such records on the web, her abuser can find her with a simple search.”<sup>170</sup> More importantly, would a victim even know to ask whether or not the jurisdiction posts documents online? Courts do not always let people know their records will be posted on the Internet, and by the time they do, the documentation is already available.

Once victims become aware that the information is online, one of two results occurs. Many domestic violence survivors forgo the option of seeking the aid of the justice system, because it leaves them open to further attacks. As a result, “the most vulnerable members of our communities may choose not to use the court system for protection or common court services to protect their privacy . . . [and] it is entirely likely that the necessary notice will prevent many who desperately need help [from receiving it.]”<sup>171</sup> On the contrary, those that continue to use the justice system, may be jeopardizing their current safety and anonymity; “for immediate safety, victims of violence may feel forced to compromise their long-term privacy and safety needs by using a court that publishes records to the Internet.”<sup>172</sup> This creates the potential for survivors of domestic violence to be victimized all over again. Unfortunately though, jurisdictions seem to be disregarding the potential dangers of posting documents on the Internet. The “fear is that it will take a horrific murder – because some court put something on the Web that [was not] supposed to be there for people to begin taking this seriously.”<sup>173</sup>

Once the documents are posted online, they become available as part of an Internet database, where these nuggets of information can literally be ‘mined’ by a batterer, and “what emerges is a detailed portrait of an individual . . . constructed . . . from court records documenting a nasty divorce case, liens placed

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<sup>170</sup> *Id.* (supporting this is the fact that there are archiving sites that “document and preserve websites,” including court sites, whether or not the information is correct).

<sup>171</sup> *Id.* at 3 (substantiating this claim is the fact that people may suffer from humiliation when intimate personal details are disseminated through court websites, and in order to prohibit this, they will not use the system).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 2 (quoting an excerpt from a 2003 article in the Boston Globe).



on property, and mountains of other government information available.”<sup>174</sup> In order to prevent this from happening, victims must protect themselves, and to do so they must learn to ask the right questions.

When they relocate to a new town, victims must know to check with the local courts and the town legislatures to find out what the jurisdiction's policy is.<sup>175</sup> It is virtually guaranteed that victims are not going to get the notice they need, so they must take responsibility for themselves. Jurisdictions must realize that they *do* have a responsibility to make sure their residents are aware of the policy towards online documentation, and as such, periodic updates should be sent to residents. If online documentation is an inevitable step, there are ways to make the process less invasive. For example, courts could just use internal databases, without providing public access, or they could simply list a “docket number . . . with no name and a note [saying that the] case [is] restricted or sealed.”<sup>176</sup>

### SPYWARE AND COMPUTER PROGRAMS

Unfortunately, a batterer can track his victim using avenues other than online court documents and databases. Employing the latest computer technology, a batterer can actually monitor every keystroke his victim types. By installing computer software called “spyware,” a batterer can monitor any and all activity that takes place on a victim's computer.<sup>177</sup> Using a spy software program called “eBlaster,”<sup>178</sup> Steven Brown configured his estranged wife's

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<sup>174</sup> Goodin, *supra* note 160.

<sup>175</sup> See *Access*, *supra* note 156, at 9.

<sup>176</sup> *Id.* at 5 (reasoning that these solutions would benefit both victims and witnesses whose personal safety is at risk because of possible retaliation by the perpetrator).

<sup>177</sup> See *Helping Hands Against Violence :Cyberstalking, Technology, & Domestic Violence*, at

<http://hands.dreamhost.com/english/archives/000025.php> (last visited Oct. 30, 2003) [hereinafter *Helping Hands*] (discussing background information about spyware programs).

<sup>178</sup> See *Man Accused of Installing Software to Monitor Use of Computer by Estranged Wife*, JEFFERSON CITY NEWS TRIB. ONLINE ED. (Sept. 6, 2001), at

computer so that it would send him daily reports about her Internet activities.<sup>179</sup> The reports came in the form of emails, which detailed everything his wife was doing on the computer, from instant messages to online shopping.<sup>180</sup> Brown “track[ed] her every keystroke and read every file and every message.”<sup>181</sup> To make matters worse, not only was the program relatively inexpensive, costing a mere sixty-nine dollars,<sup>182</sup> but it was virtually undetectable. Had Brown not shared with his wife the information he collected about her private purchases, the program might never have been discovered.<sup>183</sup> Brown was arrested for “illegally accessing his estranged wife’s computer and eavesdropping on her every keystroke,”<sup>184</sup> and for his actions, he faces up to five years in prison.<sup>185</sup>

Batterers’ use of spyware is proving to be very dangerous because it is both thorough and undetectable. When installed on a computer, spyware can monitor every keystroke, including emails, Internet sites visited, and downloaded information.<sup>186</sup> These computer programs were not created with this intent though. In fact, they were originally marketed as a tool for parents to follow their children’s internet activities and as a way for businesses to keep track of their employees’ activities.<sup>187</sup> But just like GPS, this technology is abused by batterers, and with the added impetus of vendors promoting the software as a spying device, these programs are taking on a role they were never intended to play.

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[http://newstribune.com/stories/090601/wor\\_090610962.asp](http://newstribune.com/stories/090601/wor_090610962.asp) [hereinafter *Man Accused*].

<sup>179</sup> See generally, Mike Wendland, *State Targets Cyber Spies: Belleville Man Accused of Electronic Voyeurism*, THE DETROIT FREE PRESS (Sept. 6, 2001), [http://www.freep.com/money/tech/spy6\\_200110906.htm](http://www.freep.com/money/tech/spy6_200110906.htm) [hereinafter Wendland] (stating the means by which Steven Brown was able to gain access to his wife’s computer).

<sup>180</sup> See *id.*

<sup>181</sup> *Man Accused*, *supra* note 177.

<sup>182</sup> See Wendland, *supra* note 178.

<sup>183</sup> See *id.*

<sup>184</sup> *Id.*

<sup>185</sup> See *Man Accused*, *supra* note 177.

<sup>186</sup> See *Helping Hands*, *supra* note 176.

<sup>187</sup> See *id.*

For example, Steven Brown's device of choice, eBlaster, markets itself by saying: 'Are you concerned with what your spouse . . . [is doing] on the Internet while you're away? You can't always be around to watch over their shoulders, so hire a second pair of eyes with eBlaster.'<sup>188</sup> Spyware programs will even send the user email updates of the victim's activities, as often as every hour. In fact, eBlaster boasts that it "lets you know EXACTLY what your . . . family members are doing on the Internet, even if you are thousands of miles away . . . [including an] Activity Report of their latest chats, instant messages, keystrokes, and web sites visited, plus a summary of all emails."<sup>189</sup> Spyware presents another danger in that users do not have to be physically present at the victim's computer to either install the program or get the email updates, because the programs offer a "Remote Install Add-on," allowing the user to actually email the program to the victim's email address.<sup>190</sup> Unbeknownst to the victim, when he or she opens the email, the spyware program instantly attaches to the computer's hard drive. The danger does not stop there however. Once installed, the technology is hidden, and "generally cannot be deleted on a computer . . . [because it] is attached directly to the computer and looks like an innocuous piece of equipment."<sup>191</sup> Spyware programs have saturated the computer software market, and are affordable to almost anyone.

In Philadelphia, Robert Douglas was arrested for installing spyware on his wife's computer that retraced her keystrokes, allowing him to read her emails.<sup>192</sup> With the help of a program called "SuperSave," Douglas was able to view his wife's email and instant messages, and "when asked how he got that information, he replied: 'You have no idea what I can do on a computer.'"<sup>193</sup> Although he was charged with "unlawful use of a computer,

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<sup>188</sup> *Man Accused*, *supra* note 177.

<sup>189</sup> [www.eBlaster.com](http://www.eBlaster.com) (last visited Dec. 2003).

<sup>190</sup> *Id.* (taking the actual verbiage from eBlaster's website).

<sup>191</sup> *Helping Hands*, *supra* note 176.

<sup>192</sup> See Kathleen Brady Shea, *Husband Faces Trial in E-mail Dispute* (Aug. 28, 2003), at <http://www.philly.com/mld/inquirer/news/local/6634614.htm?template=contentModules/printstory.jps>.

<sup>193</sup> *Id.*

access-device fraud and interception,”<sup>194</sup> he was *not* charged with either stalking or harassment. This evidences an even greater problem faced by domestic violence victims who find themselves being victimized by spyware programs – a lack of punishment for their abuser.

### THE LEGAL RAMIFICATIONS OF CYBERSTALKING

With the advent of the Internet, the act of stalking has become much more anonymous, and states are struggling to keep up with the pace. In fact, “computer technology and the Internet have opened up a whole new world for stalkers. When legislators were drafting the first stalking laws in the early 1990’s, few could have foreseen the current widespread use of email, the Internet, chat rooms, [and] websites . . . to stalk.”<sup>195</sup> Only seven states have laws that specifically address cyberstalking.<sup>196</sup> Twenty-two states have chosen to just expand their stalking statutes to include cyberstalking.<sup>197</sup> Kansas, Louisiana, California, and Massachusetts currently have stalking laws that interpret a “threat” to be one ‘performed through the use of an electronic communication device, or threat implied by a pattern of conduct of a *combination of verbal, written, electronically communicated statements and conduct.*’<sup>198</sup> Other states, such as Montana, are not changing the language of their stalking laws, but instead are interpreting them more broadly, so as to include current forms of technology.<sup>199</sup> The most comprehensive statutes were enacted by Alaska, Virginia, and Wisconsin, and prohibit “unlawful computerized

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<sup>194</sup> *Id.*

<sup>195</sup> *Stalking Technology Outpaces State Laws*, 3 STALKING RESOURCE CENTER: THE NATIONAL CENTER FOR VICTIMS OF CRIME NEWSLETTER (Summer 2003), [http://www.ncvc.org/src/features/sum2003\\_stalkingTechnology.html](http://www.ncvc.org/src/features/sum2003_stalkingTechnology.html).

<sup>196</sup> See Packard *supra*, note 139, at 514 (showing that the seven states are Alaska, California, Massachusetts, Michigan, Oklahoma, Washington and Wyoming).

<sup>197</sup> See Shonah Jefferson and Richard Shafritz, *A Survey of Cyberstalking Legislation*, 32 U. WEST. L.A. L. REV. 323, 329 (2001).

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

communications.”<sup>200</sup> To prove this crime it must be shown that the perpetrator:

Meant to frighten, intimidate, threaten, abuse . . . another by sending a message via e-mail or computerized communication system, and that message threatens to cause physical injury . . . or with the same intent, [the perpetrator] sends the message via e-mail or other computerized communication system with the reasonable expectation that another person will receive that message and that message threatens physical injury.<sup>201</sup>

Looking to the federal government for guidance has also proved to be unfruitful. What little help is provided, comes with a multitude of problems. The Interstate Stalking Punishment and Prevention Act falls under the Federal Domestic Violence Offenses,<sup>202</sup> however, this stalking statute only applies to stalkers who physically follow their victims across state lines.”<sup>203</sup> The law specifically “focus[es] on travel and [effectively] excludes any prosecution for cyberstalking.”<sup>204</sup> This leaves victims, who are stalked by people in the same state, powerless, and without legal remedy. The laws that *do* deal with cyberstalking concentrate on stalking cases where the victim does not know his or her stalker, and not on cases where the stalker is a former intimate partner or batterer of the victim. This puts domestic violence victims at a distinct disadvantage when dealing with cyberstalking.

Another problem is that without a federal law that specifically addresses cyberstalking, “the closest alternative to law

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<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 330.

<sup>202</sup> James M. Peters, *Federal Domestic Violence Laws*, 44 AUG. ADVOCATE IDAHO 15 (Aug. 2001) (showing that the Domestic Violence Cyberstalking law is 18 U.S.C. §2261(A)).

<sup>203</sup> Packard *supra*, note 139, at 508.

<sup>204</sup> Merschman, *supra* note 137.

enforcement is the Federal General Threats Statute.”<sup>205</sup> The statute, which itself is “technologically neutral,” makes it a crime to “transmit any communication in interstate . . . commerce containing a threat to injure the person of another.”<sup>206</sup> But not every victim of cyberstalking is threatened. A person who has had spyware attached to her computer, information posted about her in a chatroom, or had her email account broken into, is no less a victim of cyberstalking than someone who was threatened online. The General Threats Statute makes that distinction, and as a result, leaves many victims of cyberstalking out of luck.

Although there have been attempts to create federal cyberstalking laws, they have proven unsuccessful. Two “bills were introduced into the 103<sup>rd</sup> . . . and 104<sup>th</sup> Congress[es] that addressed cyberstalking, but both . . . [died] in committee.”<sup>207</sup> Once again in 2000, a bill was introduced into the Senate that would amend the Federal Interstate Stalking Act to include cyberstalking.<sup>208</sup> The bill would have made it illegal “to use the mail *or any facility* of interstate commerce to place [a] person in reasonable fear of death . . . or serious bodily injury.”<sup>209</sup> Like the prior bills, this too never left Senate committees.<sup>210</sup>

But the creation of federal and state cyberstalking laws is crucial. If we “[assume that] the proportion of cyberstalking victims is even a fraction of the number of offline stalking victims, there potentially may be tens or even hundreds of thousands of cyberstalking incidents occurring in the United States.”<sup>211</sup> The Federal government must create a statute that specifically deals with cyberstalking. The law should have provisions for both interstate and intrastate cyberstalking, so that victims who live in

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<sup>205</sup> Packard, *supra* note 139, at 519 (stating that the General Threats Statute is 18 U.S.C. §875(c)).

<sup>206</sup> *Id.* (providing the elements of the General Threats Statute).

<sup>207</sup> *Id.* at 523 (showing that the 103<sup>rd</sup> Congress was 1993-1994, and the 104<sup>th</sup> Congress was 1995-1996).

<sup>208</sup> Just Punishment for Cyberstalkers Act of 2000, S. 2991 IS, 106<sup>th</sup> Cong. §A (2000).

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* (citing the Bill Summary and Status Report of the Just Punishment for Cyberstalkers Act of 2000).

<sup>211</sup> Packard, *supra* note 139, at 510.

the same state as their stalkers are not left without redress. The law should not be limited to only threatening actions. What legislators must realize, is that spyware, posting false information online, and breaking into email accounts instills the same fear as a specific threat of injury. When there is no specific threat, a victim has no idea where the next attack is coming from. Instead of looking at the victim's reaction, state and federal governments must examine the cyberstalker's behavior and make it a crime because:

It is imperative that the camera lens of the stalking law be focused on the perpetrator of the crime of stalking rather than on the intended target. Statutes which emphasize the emotional reaction of a victim rather than the behavior and intent of the stalker inadvertently further the offender's aim of scrutinizing the victim.<sup>212</sup>

By deciding cases such as *Docusearch* and *Sullivan* in favor of the victims, and against online perpetrators, courts have shown legislatures that they want to punish online acts. Now, it is up to the legislatures to write the laws that explicitly make these acts crimes.

Furthermore, domestic violence victims also face the same problem that other cyberstalking victims have been confronted with – law enforcement agencies that are ill-equipped to investigate the crime. “Until all states pass cyberstalking laws, investigators will spend too much time getting search warrants while cyberstalkers continue terrorizing their victims . . . [law enforcement] can't do cyber investigations at Pony Express speed.”<sup>213</sup> Not only are law enforcement officers uninformed about the crime of cyberstalking itself, but there is not a lot of information for them to go on:

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<sup>212</sup> Carol E. Jordan et al., *Stalking: Cultural, Clinical and Legal Considerations*, 38 BRANDEIS L.J. 513, 576 (2001).

<sup>213</sup> Simpson, *supra* note 135.

Of the entire population of law enforcement – some 800,000 people – maybe 10 percent are trained to deal with these crimes. Only 5 percent have the funds to have a computer forensically examined. And because all the cyberstalking laws are so new and there is so little case law history, only a few of those cops are going to have a prosecutor who knows what to do.<sup>214</sup>

In an effort to combat crimes of cyberstalking committed against domestic violence victims, some advocates recommend the establishment of a nationwide “training center” to teach both victims and advocates the safe way to use technology and inform them of the dangers technology presents.<sup>215</sup> Advocates caution that just as batterers continue to use the most current forms of technology, victims and law enforcement must not fall far behind them, and “due to continual upgrades and changes in technology, training and technical assistance needs will evolve with technology.”<sup>216</sup>

## CONCLUSION

Victims need to be aware of every step forward in technology, as well as the steps backward. They must educate themselves the same way batterers do:

The sad truth is that victims of domestic violence are never truly safe. Even if a victim manages to escape her batterer, and relocate to a new city or state, she constantly looks over her shoulder to ensure that she’s not found. And she has good reason – batterers devote tireless energy to seeking

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<sup>214</sup> Ohlson, *supra* note 153.

<sup>215</sup> Ann L. Kranz, *Changing Practice: How Domestic Violence Advocates Use Internet and Wireless Communication Technologies*, VIOLENCE AGAINST WOMEN ONLINE RESOURCES, at <http://www.vaw.umn.edu/documents/2casestudies/2casestudies.html> (May 13, 2002).

<sup>216</sup> *Id.*



out victims who have fled. Some abusers want to locate their victim so that they can continue to inflict physical injury. Others want to emotionally abuse their victims by stealing their identities and wreaking havoc in their lives.<sup>217</sup>

Victims must get inside the heads of their abusers and anticipate, as much as possible, the batterers' next actions. If the batterer can get the necessary information, so too can the victim. She must know what is out there, how it works, and where to get it. As soon as she learns the information, she empowers herself to no longer be a victim, but a *survivor*.

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<sup>217</sup> Pudlow, *supra* note 113.