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# Your host today:



**Gael Strack, JD  
Chief Executive Officer  
FJC Alliance**

[www.familyjusticecenter.org](http://www.familyjusticecenter.org)





*"Local Services, Global Reach"*

**Thank you to the US Department of Justice,  
Office on Violence Against Women  
for making this training possible!**

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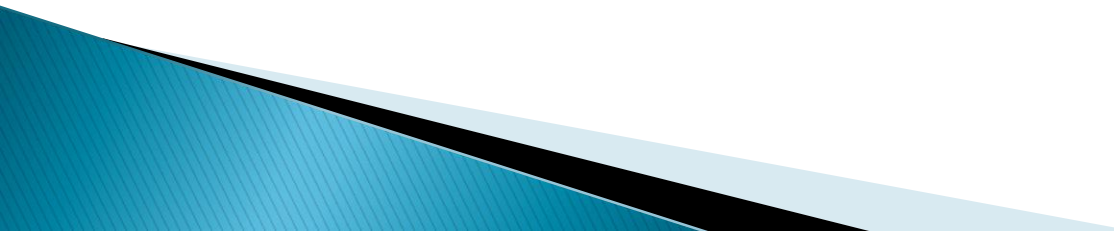
# **Your presenter today:**



**Rachel Solov**  
**Deputy District Attorney**  
**San Diego County District Attorney's Office**

# Prosecuting Stalking Cases

DDA Rachel Solov  
San Diego District Attorney's Office  
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[Rachel.Solov@sdcd.org](mailto:Rachel.Solov@sdcd.org)

- ▶ Part 1: Why specialized Stalking Units?
  - ▶ Part 2: The Importance of Threat Assessment in Stalking Cases
    - Case Study Exercises
  - ▶ Part 3: Prosecution Tips & Skills
    - Case Studies
- 



# Why Threat Assessment?

DV murders are not random or spontaneous, they are predictable...

- \* if they are predictable, they are preventable

- \* not heat of passion...rather the final culmination of possessive control & escalating violence within the relationship

- Normal prosecution is reactive...stalking must be proactive
- 

# Homicide Prevention Unit

- \* *It takes a good prosecutor to win a murder case. It takes a great prosecutor to prevent one.*
- 2006 DVFRT Annual Report in SD:
  - 2004–2005 IP murders:
    - 50% murders preceded by stalking behavior
    - 50% murders preceded by graphic threats to kill
- 2008 DVFRT Annual Report in SD:
  - 2006–2007 IP murders:
    - 38% murders preceded by stalking behavior
    - 40% murders preceded by graphic threats to kill

# Stalking Is Unique

- ▶ Victims likely to be repeatedly victimized (contrast with other crime victims)
- ▶ Long-term cases
  - Victim education is critical
- ▶ The stakes are high if you lose

# Stalking Is Challenging

- ▶ Crimes are not always obvious, and therefore can be difficult to explain/prove to a jury.
- ▶ Stalkers are often stealth...no wits or corroboration make cases hard to issue/prosecute
- ▶ Jurisdictional Issues
  - Law Enforcement Agencies
  - Legal: Where is the best place to prosecute?
- ▶ Victims are often very frustrated because case has often gone on for a long time.
  - Rarely have recantation (compare with non-stalking DV cases)
  - V often put in position of building her/his own case



# Prosecutor's Role with Threat Assessment & Management

- ▶ Must become knowledgeable in area of threat assessment and threat management
  - Read books, go to training, get involved in threat assessment organizations: RAGE-V
  - Ultimate goal is to make and keep the victim safe.
  - Do not want to make the situation worse...do no harm.
- ▶ Stalking Case Assessment Team
  - Mental health, LE, civil (family law), probation, parole, victim advocate, etc.
- ▶ Shortfalls in the Law...Stalking behavior doesn't always equal stalking crime.

# Dedicated Stalking Unit

- ▶ Implementing a stalking unit
  - Vertical Prosecution
  - Dedicated Investigator & Advocate
  - Website/Hotline/Resources & Materials
- ▶ Developing Partnerships
  - Getting Law Enforcement
  - Training
  - Importance of multi-disciplinary approach
    - Stalking Case Assessment Team

# Vertical Prosecution Is Imperative

- ▶ Victim comfort
  - Often they are severely traumatized
- ▶ Victim education– safety planning.
  - V must take some personal responsibility for her safety
- ▶ Case history– revocations
- ▶ Accurate threat assessment
- ▶ Assures appropriate punishment
- ▶ Sends message to victim, stalker, courts & community that we take this seriously

# Threat Assessment Basics:





# Danger...risk factors

- ▶ Access to weapons (especially guns) (when gun present in house, abused woman is 5–8 times more likely to be killed) (Adams 2007)
- ▶ Stalking
- ▶ Threats to kill or threats of suicide
- ▶ Jealous & Possessive behavior
- ▶ Alcohol/Drug Abuse
- ▶ Prior Strangulation Attempts
- ▶ Unemployment
- ▶ Narcissistic traits
- ▶ Criminal History (but...lack of crim hx not determinative...21 of 30 killers in Adams study had no crim hx at all.)
- ▶ TRO history
- ▶ Sense of ownership over victim
- ▶ Sexual Abuse of the Victim

# Inhibitors

- ▶ Employment (gives D stake in conformity)
- ▶ Education
- ▶ Lack of weapon access
- ▶ Support systems
- ▶ Prior prosecution for DV
  - DVRP dropouts are 1 ½ to 3 times more likely to re-offend. Program non-completion is significant predictor of new & escalating levels of violence (Aldarondo 2002, Moyer 2004, Bennett 2005, Gondolf 2002)
  - Strength & consistency of court monitoring key
  - Contrast with Recent DOJ Study

# Decreasing Victim Vulnerability

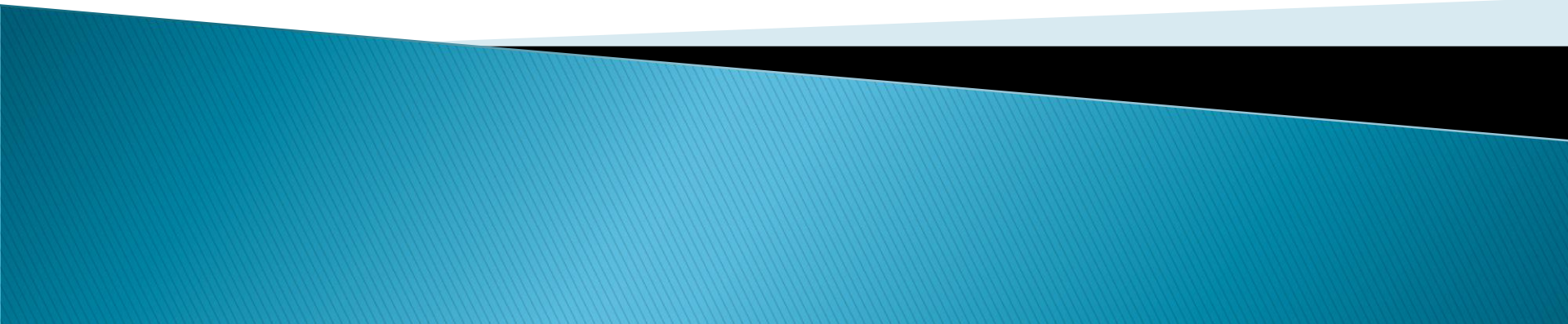
- ▶ Often easier to minimize victim vulnerability than to change the nature of the threat.
- ▶ In this business, we don't always know when we are successful, but we sure know when we fail.

# Pre-incident Behavior

- ▶ Risk increases significantly when contact becomes more personal (approach behavior)
- ▶ W/I 3 months of IPH, these are often present:
  - Loss of control over V (SDDVFRT 2006 76% IPH V's recently left or expressed intent to leave)
  - Emergence/escalation stalking behavior (Some studies have it as high as 87%)
  - Threats
  - Escalation in severity of abuse (Adams: 85% of attempt IPH V's reported this w/i 3 mos of attack)
  - Deterioration (hygiene, sleep, diet, isolation, job loss, job loss, paranoia, etc.)



# Part 3: Prosecution Tips & Skills



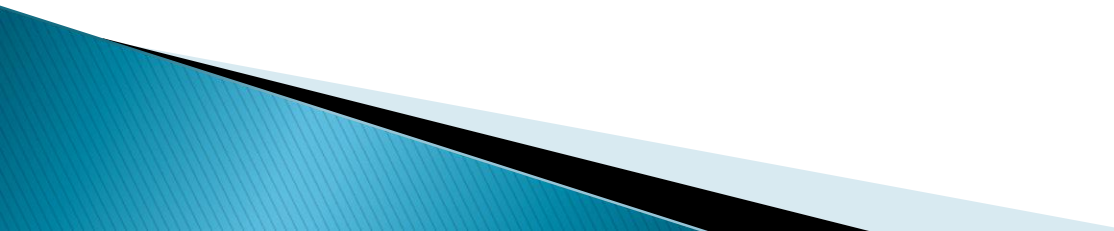
# Relocation

- ▶ DAI Team coordinates complete relocations upon approval of DDA, DDA supervisor & DAI supervisor.
  - Temporary
  - Permanent
  - Combination of temporary and permanent

# Settlement

- ▶ Continuances– my theory is OK if case is likely to settle before the victim must testify
  - But...consider benefits of preserving testimony, Crawford/Giles issues, etc.
- ▶ Some Cases Require Creativity in Settlement
- ▶ Consider future reduction ONLY if appropriate
  - In the appropriate case, can provide D with incentive to behave
- ▶ Banishment: can be a legitimate probation condition (P v. Watkins (1987) 193 Cal.App.3d 1686)
  - D prohibited from returning to SD, CA absent a court order
  - D prohibited from going to Las Vegas, Nevada
  - D prohibited from living at her house

# Stalking is a Crime of Psychological Trauma

- ▶ It is your job to convey to the jury that this conduct is terrifying. It is very real. It has life altering and life long affects on people.
  - ▶ Game of Cat & Mouse
  - ▶ Convey this through jury selection, opening, questioning, and closing.
    - Without telling the jury to put themselves in the shoes of the victim, that is what you want them to do. They must feel the fear.
    - Often, we don't have severe physical injuries in these cases. Injury is often intangible. It is internal.
- 



# Effective Advocacy

- ▶ Case preparation and presentation is key:
  - Diagrams & Exhibits
  - CAD printouts can help you prepare a timeline when timing is crucial.
  - Cell phone records and cell towers can help make your case.

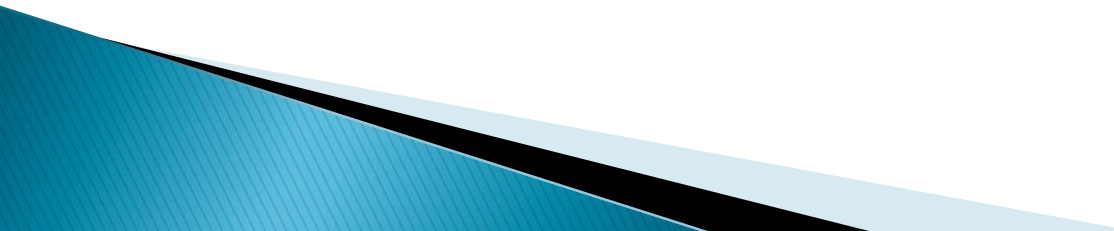
# Calendars

- » Can be very helpful to you and your victims/witnesses in presenting your case to the jury


# Dealing with Pro Per Defendants

- ▶ New set of discovery (Redact, paginate)
- ▶ In Limine motions setting out ground rules
  - Does D get to move around courtroom
  - If D testifies: format
  - Pro per status can be revoked if abused
- ▶ Prepare victim & witnesses
- ▶ Voir Dire
  - Tell jury this is his absolute right & choice

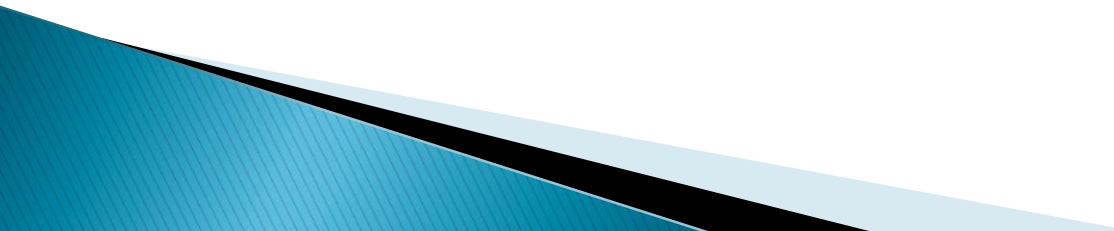
# Sentencing

- ▶ Determine appropriate sentence based upon instant conduct and future threat
  - ▶ Request as long a probationary term as possible (5 years in CA)
  - ▶ Request as long a protective order as possible (10 year protective order in CA per 646.9(k).)
  - ▶ Coordinate Victim notification of release
  - ▶ Victim Impact Statement (pros & cons)
  - ▶ Stay on top of it...jail calls, jail mail, etc. to rebut D's remorse & rehabilitation, character witnesses, etc.
- 

# Actions Which May Create Civil Liability

- ▶ Failure to honor express or implied promises to warn
  - ▶ Failure to honor express or implied promises to protect
  - ▶ Making statements which minimize the actual danger to a v/w who detrimentally relies on such statements
  - ▶ Placing an unprotected v/w near someone who poses a foreseeable threat to that person
  - ▶ Requesting that a citizen perform an official fxn which involves foreseeable risk of danger.
  - ▶ Searching for and presenting a person as a “prosecution witness” against a defendant who is known to threaten witnesses.
- 

# Obtaining Assistance From victims or witnesses in gathering evidence.

- ▶ Often, victim is only person who can obtain corroborating evidence
  - ▶ Sometimes suggested to victims they attempt to record, video, photograph incidents.
  - ▶ Must make clear to V:
    - Under no obligation to assist
    - Advise this is potentially dangerous
    - Should only be done from a position of safety and ONLY if stalker is unaware of their efforts to document the incident.
- 



# Solon: the Law Maker of Athens

- ▶ *“There can be no justice until those uninjured by crime become as indignant as those who are.”*
- ▶ Circa 500 B.C.

**Please submit your questions via your  
question feature on your toolbar**



**Questions?**

# Save The Date

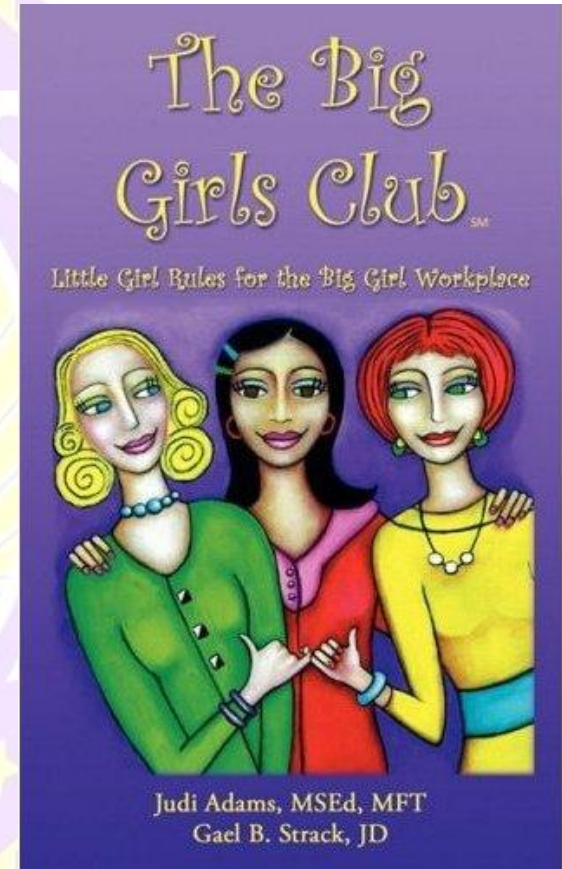
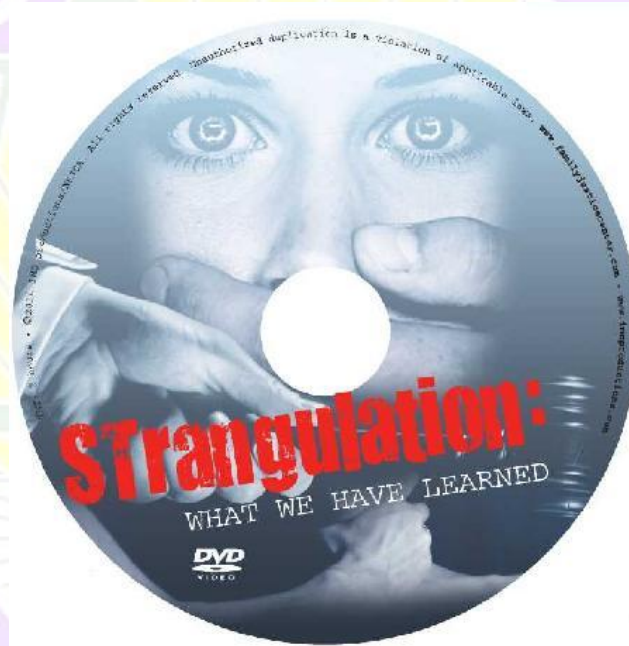
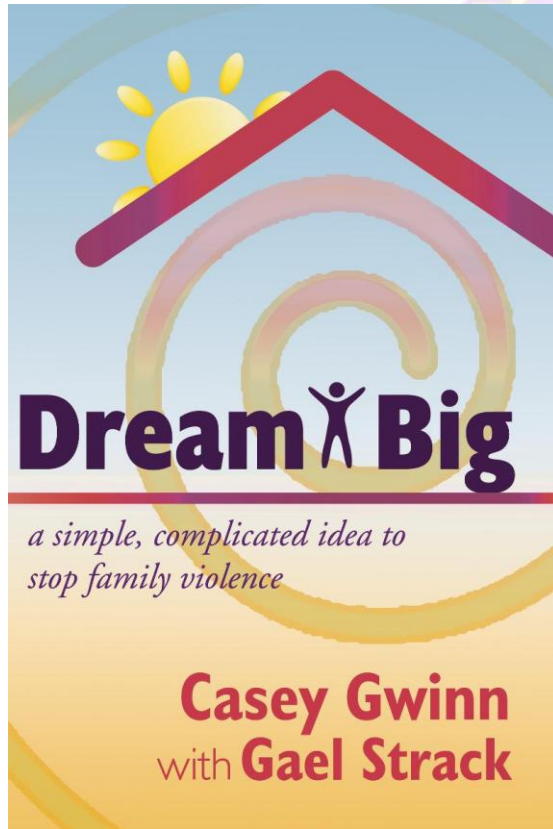
**2011 International Family Justice Center Conference**

**April 5-7 2011 in San Diego, CA**



The three-day conference will include discussions on issues related to the handling of domestic violence, child abuse, sexual assault, and elder abuse cases in the context of the Family Justice Center model. The conference faculty includes nationally & internationally recognized subject matter experts, advocates, and survivors. During the conference participants will have the opportunity to meet with survivors and professionals who currently work in Family Justice Centers in the United States and internationally.

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*Thank you for joining today's  
presentation*



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## Prosecuting Stalking Cases Webinar Question & Answer

Monday, November 29, 2010

1. Are the wives of James actual victims that you have dealt with while prosecuting stalking cases?
  - a. No.
2. How does one deal with family courts that keep ordering shared custody, visitation with frequent contact, etc.?
  - a. I don't practice at all in family courts so I am not qualified to answer this question.
3. Can you discuss what a prosecutor could have done to make Judith's homicide preventable?
  - a. I am not sure a prosecutor could have done anything. Law enforcement might have undertaken greater efforts to get Cain into custody based on what was known about his prior history.
4. What do you as a prosecutor think of the Lethality Assessment that is being done by Law Enforcement Departments in Maryland & other states?
  - a. I am not familiar enough with what Maryland does to comment.
5. What is the "line" over which a person crosses from "stalking behavior" to "stalking crime"? Is it different by jurisdiction?
  - a. It differs between jurisdictions. Generally speaking, stalking is made up of a course of conduct and a credible threat that places the victim in fear for his/her safety.





6. I had a case that was reduced from Stalking to attempted Stalking in Orange County California. The jury found fear was not sustained because in court victim said she was not afraid. Is there California case law that defines how long a person needs to be afraid for 646.9PC?
  - a. I am not aware of any case law that defines this as there is no “sustained fear” element as there is with a PC 422. There just needs to be some fear and it needs to be reasonable.
7. Are there statistics on the incidence of female stalkers against male victims and do the same guidelines apply?
  - a. Check out Dr. Kris Mohandie’s RECON research. If I recall correctly, he has this statistic in his research. In my experience, most female stalkers have greater degrees of mental illness, so they often require different management strategies.
8. You didn't mention David Adams' risk factor of speed of committing in a relationship. Is that because it was a statistical anomaly of his cases, or is there another reason?
  - a. There is no particular reason I didn’t include this. I included what stood out to me the most when I read the book and compared it to my own experiences.
9. Are trainee lawyers/prosecutors told or instructed that great prosecution is preventing homicides?
  - a. They are if I am teaching them. I can’t speak to what others do or do not.



10. What would you recommend for a victim who is being stalked to do? Especially when the police is not taking her seriously and there is lack of prove.
- It depends on the specific facts of a situation. Generally speaking, however, I would recommend continuing to document and report everything and take steps to make herself safe.
11. I reviewed a case just this morning where a defendant violated a restraining order about 6 times since July after a DV conviction. Some of violations were by email wherein the defendant says he wants no harm to come to the victim. She is very afraid of him but I am not seeing a threat, even implied. Anything I can look at based on the RO violations themselves?
- See *People v. Falck* (1997) 52 Cal.App.4<sup>th</sup> 287
12. Testifying may decrease safety for stalking victims. This is sometimes true for victims of domestic violence where stalking is not present. But, is the risk the same for stalking and DV victims without stalking both absolutely and in terms of proportions of cases that are at risk when the victim testifies?
- I'm sorry...I don't really understand the question. However, every case needs to be looked at and assessed individually because every case has different dynamics and can't be fit into a cookie cutter. Also, keep in mind that the threat level can increase or decrease in an instant based upon changing external and internal factors.



13. If you could give a victim only one piece of advice what would you say? In other words, is there one thing you feel is most important for a victim to know?

- a. Denial is the enemy. Take your personal safety very seriously and don't rationalize away the danger.

### **Resources:**

To download a "Safety Plan for a Friend, Relative, or Co-Worker Who Is Being Abused by an Intimate Partner", go to the Domestic Violence Report web page at [www.civicresearchinstitute.com/dvr.html](http://www.civicresearchinstitute.com/dvr.html), then click on the Safety Plan at the bottom right under the picture of the newsletter <http://www.civicresearchinstitute.com/pdfs/DVR1601-SA4-SafetyPlanForAFriend.pdf>

- a. I am not familiar with this website, but that doesn't mean anything....I would direct people to the stalking resource center or the SD District Attorney's website.

<http://www.sdcda.org/preventing/stalking/index.html>

- b. David Adams Why do they kill? Men who murder their intimate partners
- c. J. Reid Meloy Violence Risk and Threat Assessment (available through Specialized Training Services in San Diego) <http://www.specializedtraining.com/c-1-books-manuals.aspx>

