



Using Threat Assessment to Promote Safety in Intimate Partner Violence, Stalking and Active Shooter Cases on Campus

Jeffrey J. Nolan, J.D.

July 23, 2019

Jeffrey J. Nolan, J.D. – Relevant Background

- » 27 years working with colleges and universities
- » Admitted to Practice in MA, NY, TX, VA and VT
- » Practice in other states in accordance with applicable rules
- » Holland & Knight has 25 US-based offices in 14 states and D.C., including Stamford, Chicago, Boston, NYC, Philadelphia (with attorneys admitted in NJ) and VA

Jeffrey J. Nolan, J.D. – Relevant Background

- » Participated in curriculum development and as faculty for nationally-presented multi-day training programs:
 - U.S. DOJ-sponsored national programs on campus threat assessment (2009-2011) and trauma-informed investigation and adjudication (2014-2018)
 - United Educators “Title IX, VAWA and Threat Assessment” (2015)
- » Participated in curriculum development and as faculty for trauma-informed investigation and adjudication program sponsored by Virginia Department of Criminal Justice Services (2017-2019)

Jeffrey J. Nolan, J.D. – Relevant Background

- » Published and commented frequently on use of threat assessment in intimate partner violence and stalking cases on campus, e.g.:
 - “Addressing Intimate Partner Violence and Stalking on Campus: Going Beyond Legal Compliance to Enhance Campus Safety,” Chapter in *Emerging Issues in College and University Campus Security* (Aspatore 2015) (see <https://www.hklaw.com/en/professionals/n/nolan-jeffrey-james>)
 - February, 2019 Inside Higher Ed Commentary (with Marisa Randazzo, Ph.D.):
 - <https://www.insidehighered.com/views/2019/02/04/colleges-should-use-threat-assessment-teams-deal-intimate-partner-violence-and>
- » Work frequently with Sigma Threat Management Associates (www.SigmaTMA.com)



Information About Intimate Partner Violence and Stalking

- » Violence Against Women Reauthorization Act (“VAWA”) of 2013 amended Clery Act “to improve education and prevention related to
 - campus sexual violence
 - domestic violence
 - dating violence and
 - stalking”

- » Regulations effective July 1, 2015

Clery Act Definition – Domestic Violence

- » **Domestic Violence.** (i) A felony or misdemeanor crime of violence committed:
 - (A) By a current or former spouse or intimate partner of the victim;
 - (B) By a person with whom the victim shares a child in common;
 - (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
 - (E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Clery Act Definition – Dating Violence

- » **Dating Violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
 - (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - (ii) For the purposes of this definition—
 - (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - (B) Dating violence does not include acts covered under the definition of domestic violence.

» **Stalking.**

- (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - (A) Fear for the person’s safety or the safety of others; or
 - (B) Suffer substantial emotional distress.

Clery Act Definition – Stalking

- » (ii) For the purposes of this definition—
 - (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Ensuring Fairness to All Parties

- » The information below about statistics should be viewed in context of college and university disciplinary proceedings, in which:
 - Individual cases are not about statistics
 - Decision in every case must be based on preponderance of evidence presented
 - Cannot fill in evidentiary gaps with statistics, advocacy orientations or personal beliefs
 - Process must be fair and impartial to each party

A Note on Language

- » Research findings on reported or adjudicated cases, abstract case studies and examples, typologies and even statutes (e.g., Clery Act) often use “perpetrator”, “victim” and “target”-type language
- » Those terms are used in this presentation where unavoidable
- » However, in all individual cases, whether or not person is responsible for misconduct is never presumed until investigation / adjudication procedures are completed
- » “Complainant”/”Respondent” language should always be used in individual college and university cases

NIPSV Survey Results

- » 2010 CDC National Intimate Partner and Sexual Violence Survey of 16,507 adults (9,086 women, 7,421 men) (“NIPSV”) found:
 - About 1 in 4 women (24.3%) and 1 in 7 men (13.8%) have experienced severe physical violence by IP at some point in lifetime
 - Nearly half of all women (48.4%) and men (48.8%) have experienced psychological aggression by IP in their lifetime

NIPSV Survey Results

- » 2010 CDC National Intimate Partner and Sexual Violence Survey of 16,507 adults (9,086 women, 7,421 men) (“NIPSV”) found:
 - Among those who experienced rape, physical violence, or stalking by an intimate partner, 47.1% of female victims and 38.6% of male victims were between 18 and 24 when they first experienced violence by an intimate partner

Cultural Depictions of “Stalking”

- » “Every Breath You Take” (The Police)
- » Sting: “One couple told me ‘Oh we love that song; it was the main song played at our wedding!’ I thought, ‘Well, good luck’. I think the song is very, very sinister and ugly and people have actually misinterpreted it as being a gentle little love song, when it's quite the opposite.”
- » Plots of Dozens of Rom/Com Movies:
 - perseverance means you really care, pursued person eventually relents, and they live happily ever after

Stalking Statistics

- » 7.5 million people are stalked in one year in the United States
- » Over 85% of stalking victims are stalked by someone they know
- » 61% of female victims and 44% of male victims of stalking are stalked by a current or former intimate partner
- » 25% of female victims and 32% of male victims of stalking are stalked by an acquaintance

Matthew J. Breiding et al., "Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011", Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, Vol. 63, No. 8 (2014): 7, or

Katrina Baum et al., (2009). "Stalking Victimization in the United States," (Washington, DC: BJS, 2009)

Stalking Statistics

- » About 1 in 5 of stalking victims are stalked by a stranger
- » Persons aged 18-24 years experience the highest rate of stalking
- » 11% of stalking victims have been stalked for 5 years or more
- » 46% of stalking victims experience at least one unwanted contact per week

Matthew J. Breiding et al., "Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011", Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, Vol. 63, No. 8 (2014): 7, or Katrina Baum et al., (2009). "Stalking Victimization in the United States," (Washington, DC: BJS, 2009)

Stalking Typologies

- » Putting typologies in context:
 - Typologies should not be used in determining whether an individual is responsible for violating institutional anti-stalking policy
 - Cases should be decided based on specific facts and elements delineated in institutional policy
 - Typologies can however be helpful in threat assessment and management

Example Stalking Typology – RECON Typology

- » RECON Typology: Focuses on **RE**lationship and **CON**text (based on review of 1005 cases)
 - **Intimate Stalkers**: Prior intimate relationship
 - "Most malignant"
 - Often have criminal records, abuse stimulants/alcohol
 - Rarely psychotic
 - Often no major mental illness (except depression)
 - Approach targets

Mohandie, Meloy, et al., "The RECON Typology of Stalking," J. Forensic Sci, Vol. 51, No. 1 (2006); Available at: http://victimsofcrime.org/docs/default-source/src/mohandie-k-meloy-r-green-mcgowan-m-_williams-j-2005.pdf?sfvrsn=2

Example Stalking Typology – RECON Typology

» Intimate Stalkers:

- Insult, interfere, threaten and are violent
- In sample of 1005 cases, over one-half physically assaulted target, and one-third evidenced suicidal ideation or behavior
- Prior sexual relationship increases risk of violence
- Heightened danger days/weeks after separation
- **Risk management:** intensive supervision

Mohandie, Meloy, et al., "The RECON Typology of Stalking," J. Forensic Sci, Vol. 51, No. 1 (2006); Available at: http://victimsofcrime.org/docs/default-source/src/mohandie-k-meloy-r-green-mcgowan-m-_williams-j-2005.pdf?sfvrsn=2

Risk Factors for (Further) Violence in IPV/Stalking Cases

- » “Most important predictive factor of violence in stalking cases may be the presence of a prior sexually intimate relationship between the perpetrator and the victim.”
- » Most common motive for murder of spouse by her husband is her leaving abusive relationship
- » Most women murdered by husbands are stalked before murder

Meloy, et al., “Risk Factors for Violence Among Stalkers,” in *Scientific Pursuit of Stalking* (2006)

Risk Factors for (Further) Violence in IPV/Stalking Cases

- » Greatest risk of spousal homicide is in days and weeks following separation
- » Explicit threats are significantly related to violence, but should not be used as major predictive factor in violence risk among stalkers:
 - » Most stalkers threaten
 - » Most threats are not acted upon

Meloy, et al., “Risk Factors for Violence Among Stalkers,” in *Scientific Pursuit of Stalking* (2006)

Example Stalking Typology – RECON Typology

» Acquaintance Stalkers:

- No prior intimate relationship
- In study of 1005 cases:
 - 21% of stalkers were women
 - One-third assaulted target or damaged their property
- **Risk management:** interdiction and mental health treatment

Mohandie, Meloy, et al., “The RECON Typology of Stalking,” J. Forensic Sci, Vol. 51, No. 1 (2006); Available at: <http://victimsofcrime.org/docs/default-source/src/mohandie-k-meloy-r-green-mcgowan-m--williams-j-2005.pdf?sfvrsn=2>

Example Stalking Typology – RECON Typology

» Public Figure Stalkers:

- Vast majority have major mental disorder
- In study of 1005 cases:
 - 27% were women
 - Very low frequency of violence (2%)

Mohandie, Meloy, et al., “The RECON Typology of Stalking,” J. Forensic Sci, Vol. 51, No. 1 (2006); Available at: <http://victimsofcrime.org/docs/default-source/src/mohandie-k-meloy-r-green-mcgowan-m--williams-j-2005.pdf?sfvrsn=2>

» **Private Stranger Stalkers:**

- In study of 1005 cases:
 - Many were mentally ill men
 - One-third violent toward person or property
- **Risk management:** interdiction and mental health treatment

Mohandie, Meloy, et al., “The RECON Typology of Stalking,” J. Forensic Sci, Vol. 51, No. 1 (2006); Available at: <http://victimsofcrime.org/docs/default-source/src/mohandie-k-meloy-r-green-mcgowan-m-williams-j-2005.pdf?sfvrsn=2>

Stalking and ASDs

- » Some research has found that some individuals with Autism Spectrum Disorders:
 - May have lack of empathy, understanding in social contexts, difficulty in reading social cues
 - May pursue romantic interest longer than typical despite no response or negative reaction
 - May develop obsession, perseveration
- » Social skill development may help address these behaviors

Source: “Understanding Stalking Behaviors by Individuals with [ASDs] and Recommended Prevention Strategies for School Settings,” J. of Autism and Dev. Disorders Dec. 2012 (citing Stokes et al. 2007)



Using Threat Assessment and Management in College and University Intimate Partner Violence and Stalking Cases



I gratefully acknowledge the contributions of Marisa Randazzo, Ph.D. and Dorian Van Horn of Sigma Threat Management Associates (www.SigmaTMA.com) to the following threat assessment and management slides

Summary of Threat Assessment Process



- 
- » Threat assessment involves asking: Is this person on a pathway toward violence?

 - » Using a team can be particularly effective for gathering and evaluating information, and intervening if necessary

 - » Threat assessment and case management is not an adversarial process
 - Engagement with a person of concern can be critical to preventing violence or harm.



The primary goal of threat assessment is the safety of all persons involved

Counseling, support, confrontation, disciplinary action, termination, arrest, prosecution, etc., are tools to reach that goal

- » “Addressing Intimate Partner Violence and Stalking on Campus: Going Beyond Legal Compliance to Enhance Campus Safety” in *Emerging Issues in Campus Safety* (Thomson Reuters/Aspatore, 2015), available at:
 - <https://www.hklaw.com/en/professionals/n/nolan-jeffrey-james>

IPV, Stalking / Threat Assessment Interaction

- » May be Threat Assessment and Management Team (“TAM”) overlap in IPV and stalking cases
- » TAM team can be valuable resource
- » Institutions should avoid a silo mentality
- » Institutions should utilize TAM team as necessary in conjunction with disciplinary processes

- 
- » **IPV and stalking disciplinary cases can involve ongoing safety concerns:**
 - To complainant(s)
 - To others on campus
 - To other campuses
 - To college/university personnel
 - » Remember research findings on when abused person is most at risk
 - » Homicides can occur despite reporting prior stalking to law enforcement

- 
- » **Title IX Coordinator need not be solely responsible for determining, in potentially dangerous situations:**
 - Whether to investigate due to safety concerns, over objection of complainant
 - How to best implement no-contact orders
 - How to best implement interim measures and accommodations
 - Whether/how to impose interim suspension
 - How to best time steps in disciplinary process
 - » Decisions about these complex, high-stakes issues can benefit from TAM team input

- » **Threat assessment investigations that involve dating violence, domestic violence, sexual assault, and/or stalking should involve:**
 - Trauma-informed interviewing
 - Referral to Title IX coordinator
 - Parallel investigations

- » These investigations can benefit from expertise of Title IX investigators and others

Need for Collaboration

- » Failure to coordinate can lead to compartmentalized information, disjointed safety or intervention efforts
- » Lack of coordination can also result in multiple unnecessary contacts with complainant to obtain the same information
- » Coordinated efforts can yield enhanced information-sharing and integrated safety efforts

Strategies for Enhancing Collaboration

- » Engage in liaison-building efforts
- » Share information first, then ask for information
- » Invite other teams' members to your meetings
- » Access legal counsel for confidentiality and jurisdiction questions
- » Meet face to face outside of a case

Using Knowledge of IPV/Stalking Interaction in TAM

- » Understand power and control at root of many IPV, stalking and sexual assault behaviors, and that cases may involve all three types of behaviors
- » TAM inquiries should gather information about all such behaviors
- » Knowledge about typologies and risk factors can inform threat management strategies

Fairness in IPV, SA & Stalking-Related Threat Assessments

- » TAM is not an adversarial process
- » TAM investigations should occur in parallel to, and not instead of, Title IX/Clery investigations
- » TAM investigations should not determine outcome of Title IX/Clery investigations
- » Information gathered in TAM investigations that are not directly relevant to whether policy violation occurred in Title IX/Clery case under investigation should not be used against respondent

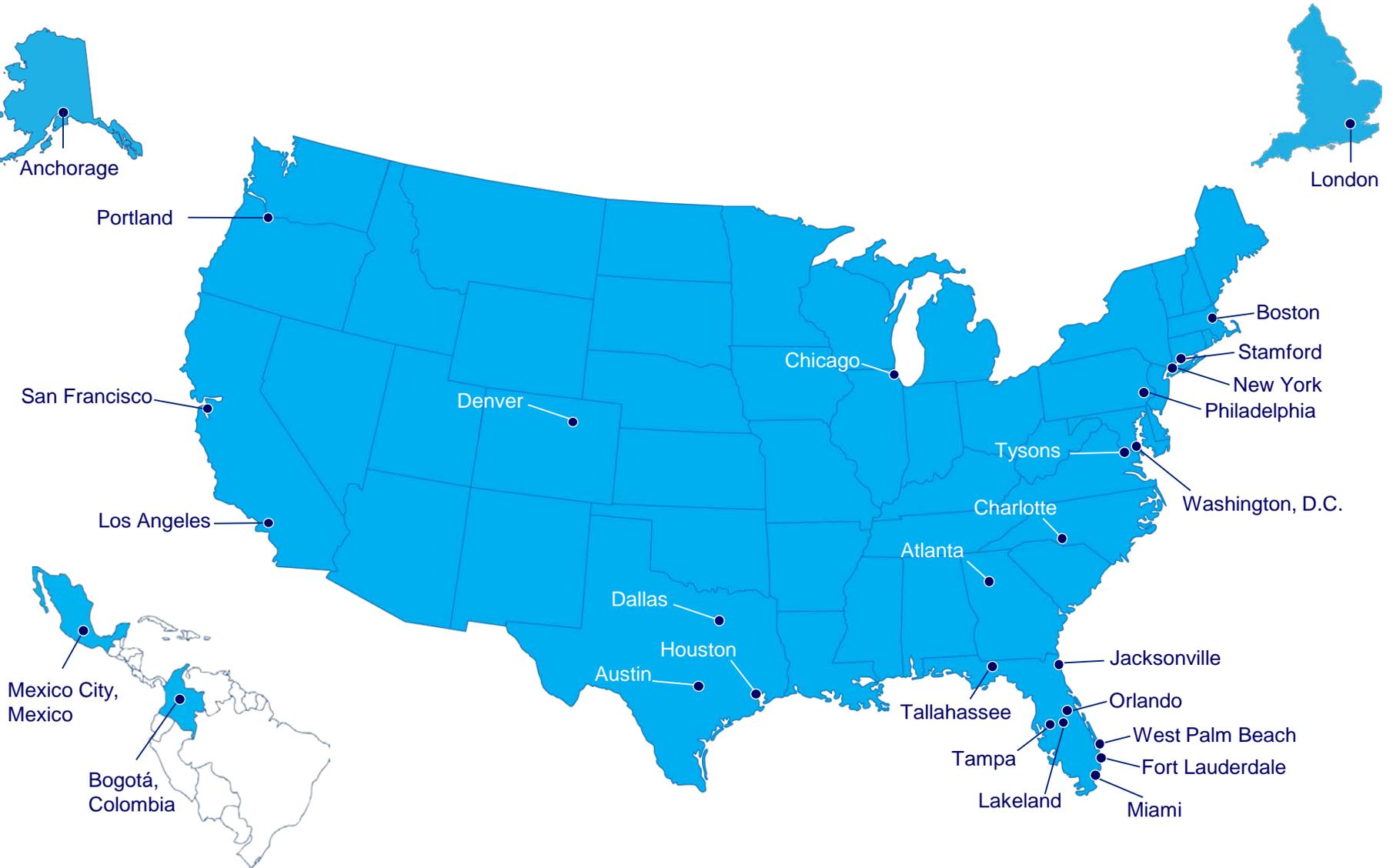
Use of TAM in Potential “Active Shooter” Situations

- » Campus TAM processes were generally adopted in response to Virginia Tech shootings
- » Many post-Virginia Tech task force reports and governmental and risk management publications promote use of TAM processes
- » *Regents of University of California v. Rosen* decisions (Cal. Supreme Court and Cal. Appellate Court, 2018) emphasize role that TAM now plays in seeking to prevent violence on campus

Use of TAM in Potential “Active Shooter” Situations

- » Do not hesitate to reach out to TAM Team if you have any concerns about safety of parties, witnesses, or Title IX/Clergy personnel
- » Promoting fair process does not require you to ignore personal safety concerns
- » Again, TAM process and Title IX/Clergy process can and should be conducted in parallel with each other, not in conflict or in any way that would compromise safety or fairness

Holland & Knight Offices



Questions?

- » **Jeffrey J. Nolan, J.D.**
- » **Senior Counsel**
- » **Holland & Knight, LLP**
- » **10 Saint James Avenue**
- » **15th Floor**
- » **Boston, MA 02116**
- » **jeffrey.nolan@hklaw.com**
- » **Direct Office: 617.854.1459**
- » **Mobile: 802.343.2621**
- » **<https://www.hklaw.com/en/professionals/n/nolan-jeffrey-james>**