

NIWAP

CONFERENCE

Strengthening Community and Organizational Responses: Serving
Immigrant Victims of Domestic Violence, Sexual Assault, and Stalking

AMERICAN UNIVERSITY
WASHINGTON
COLLEGE OF LAW

Electronic Evidence in Domestic Violence Criminal Investigations and Prosecutions and in Family Court Domestic Violence Cases

Workshop 4B
August 2023

NIWAP

National Immigrant Women's Advocacy Project
American University Washington College of Law

Introductions



**Hon. Ramona
Gonzalez**
La Crosse County
Circuit Court La
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Jennifer Landhuis
Director
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Staff Attorney, Virginia
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Thank You to OVW

This project was supported by Grant Nos. 15JOVW-21-GK-02208-MUMU; 15JOVW-22-GK-04002-MUMU and 2017-TA-AX-K074, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Learning Objectives

By the end of this workshop participants will be better able to:

- Discuss the role of electronic evidence in proving domestic violence, sexual assault, and stalking
- Examine how to document financial abuse and how “following the money” techniques used in criminal investigations can also document abuse and uncover crimes present in family court domestic violence cases
- Use audio recordings, GPS monitoring, texts, email, and other electronic evidence in more successful outcomes in criminal and family cases involving immigrant victims

Core Concept:

There is no
such thing as a
“he Said, She
said.”

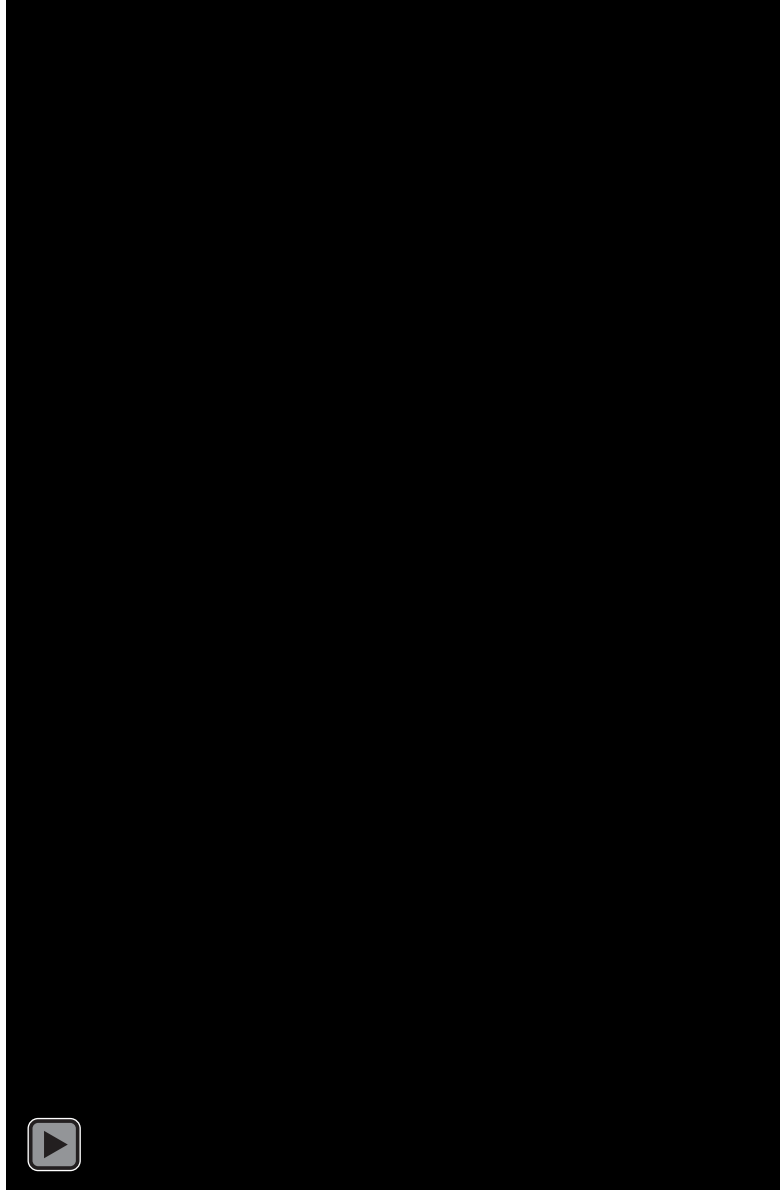
There are only
Cases where
we did not
look for
corroboration

How Can I Use Electronic Evidence?

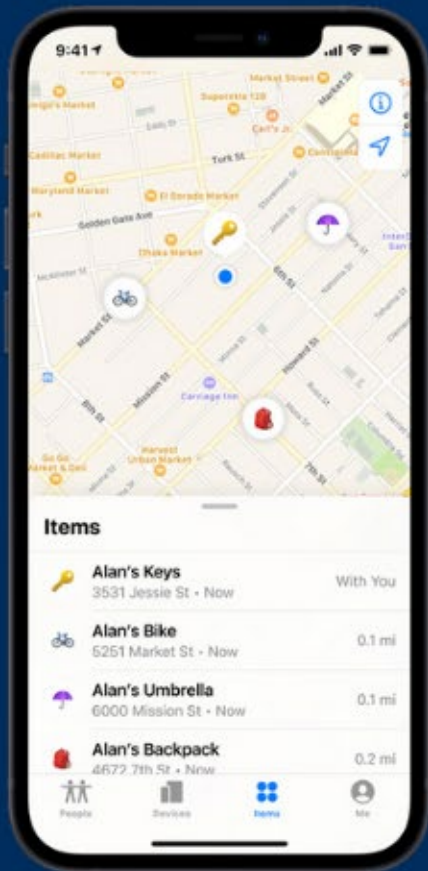
- Illustrate offender's manipulative behavior & the "cycle of abuse"
- Focus on offender's prior bad acts to show intent, absence of mistake or accident, or attitude toward victim (404(b) evidence)
- Highlight power differences between offender and victim
- Rebut offender's claims (victim merely regrets sex, victim seeks revenge, victim is lying to gain advantage)
- Demonstrate contemporaneous complaints and prior consistent statements
- Explain counterintuitive behavior (e.g. failure to report, returning to an abuser, or socializing with an abuser)

EMERGING TECHNOLOGIES

AirTags / Title Devices

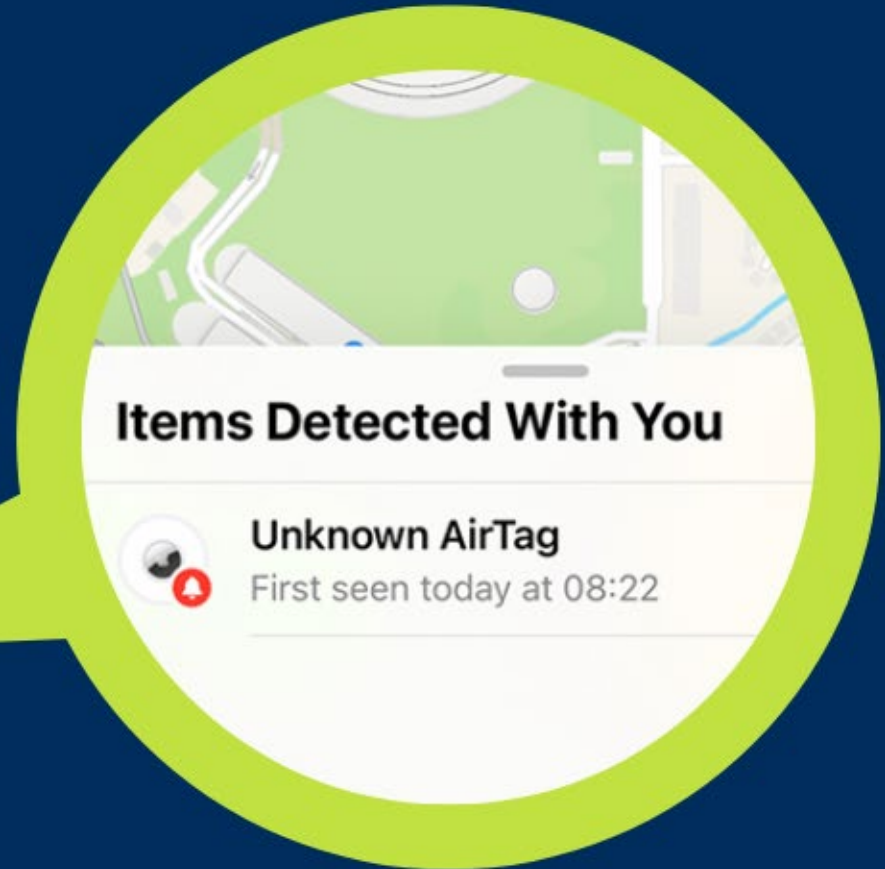
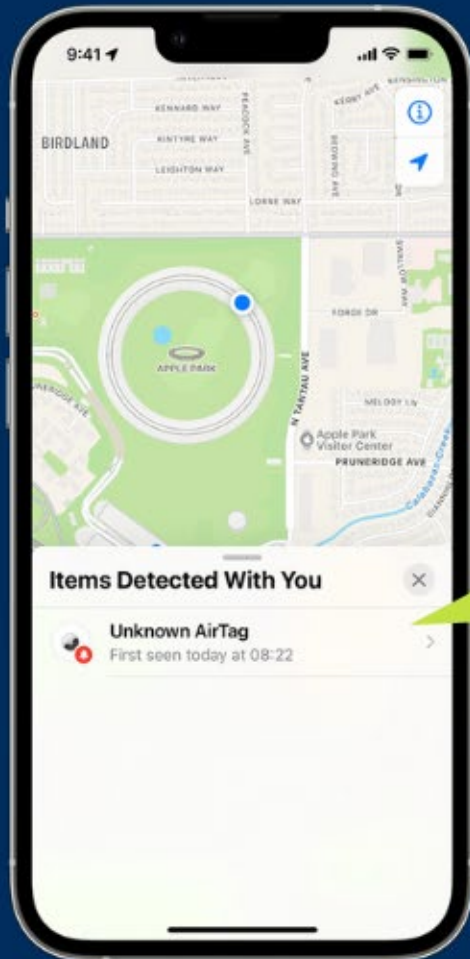


Understanding AirTags

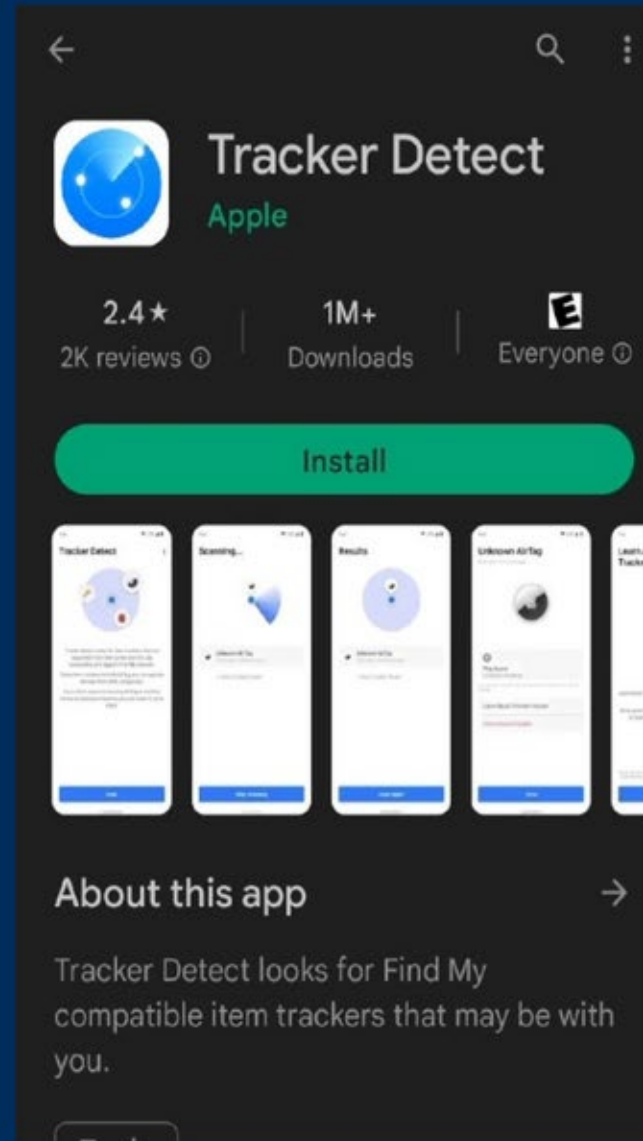
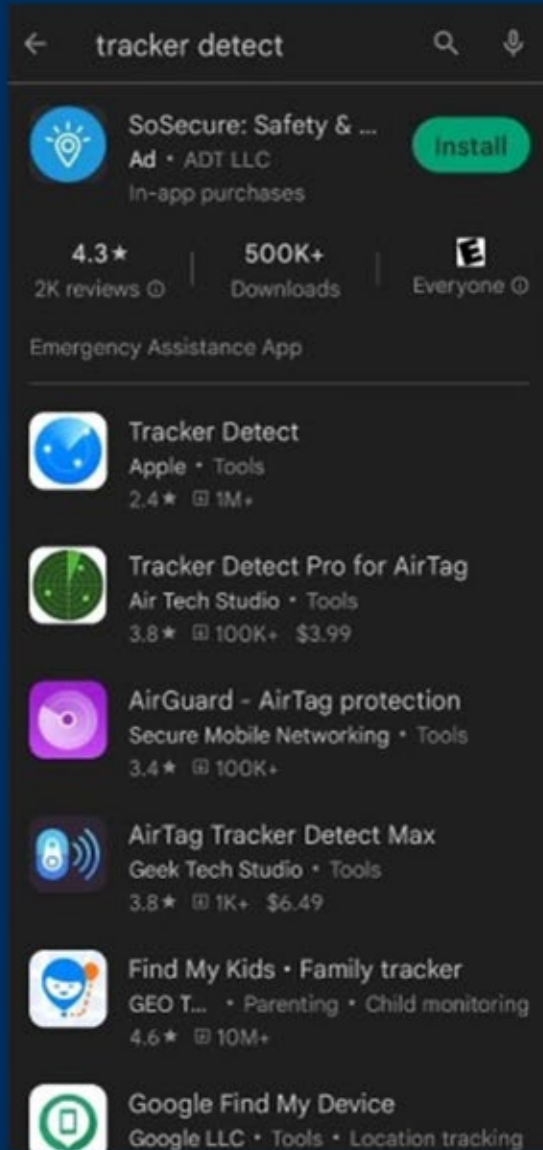


- Shows current location, not location history
- Frequency of the location update varies
 - Depends on other devices in range
- While Tile requires people to have downloaded the Tile app for the location tracking to "ping," AirTag "pings" off any Apple device within 800 feet

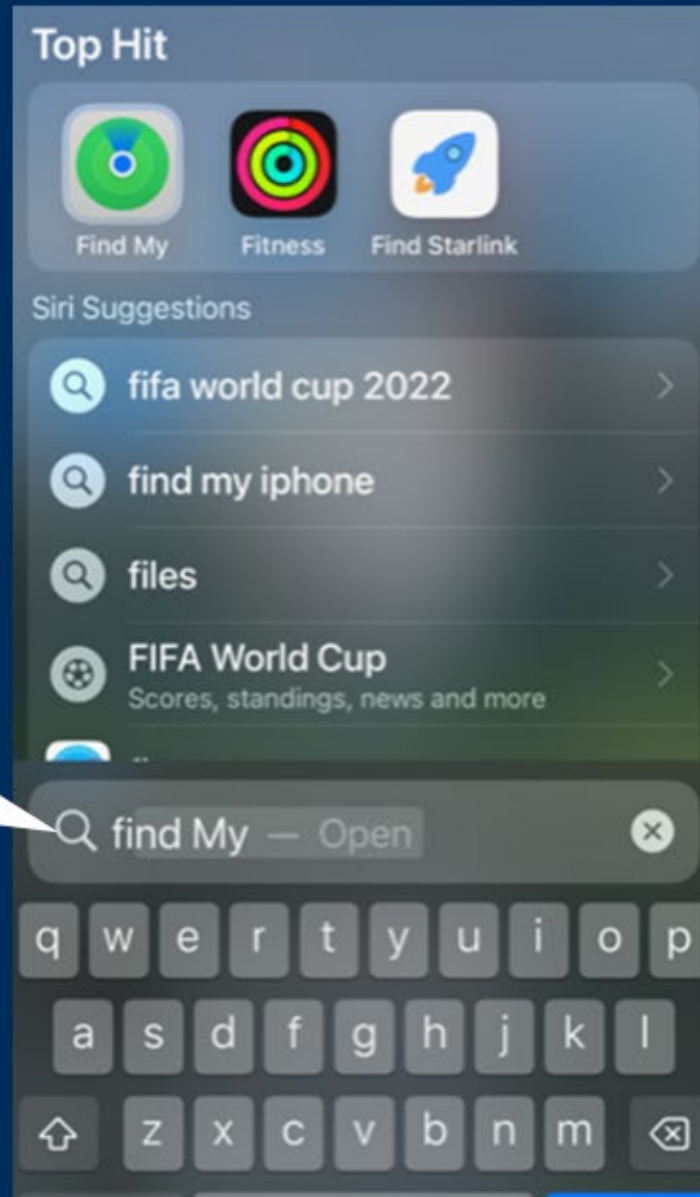
AirTag Alert: Apple



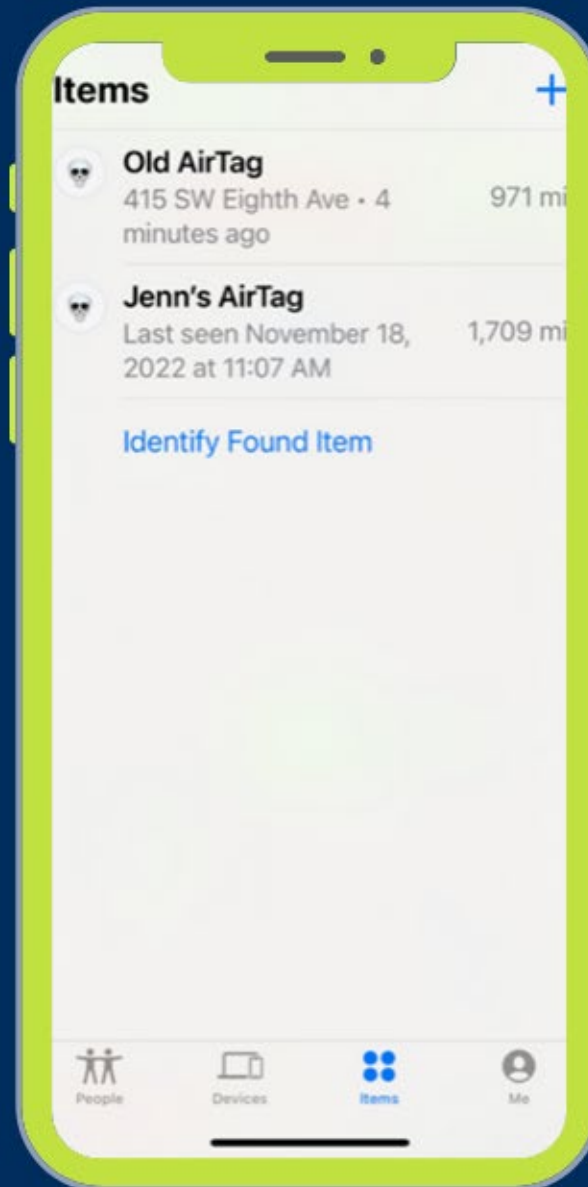
AirTag Alert: Android



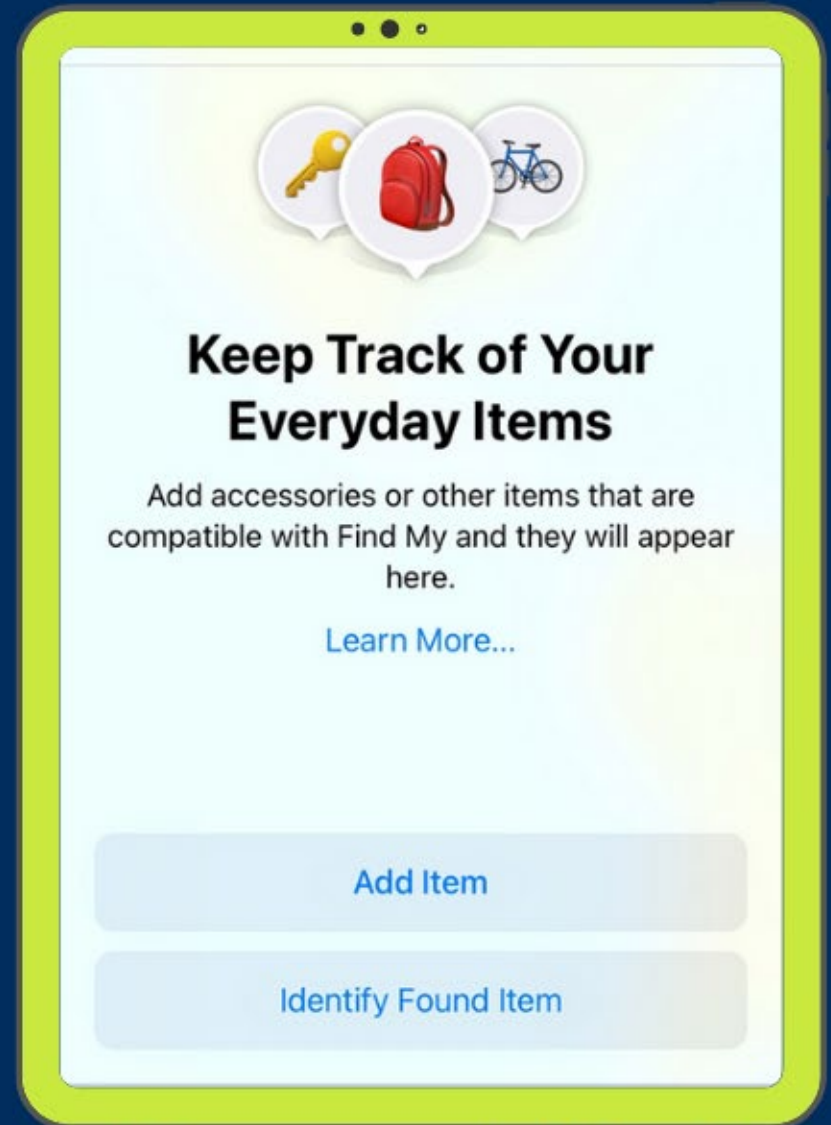
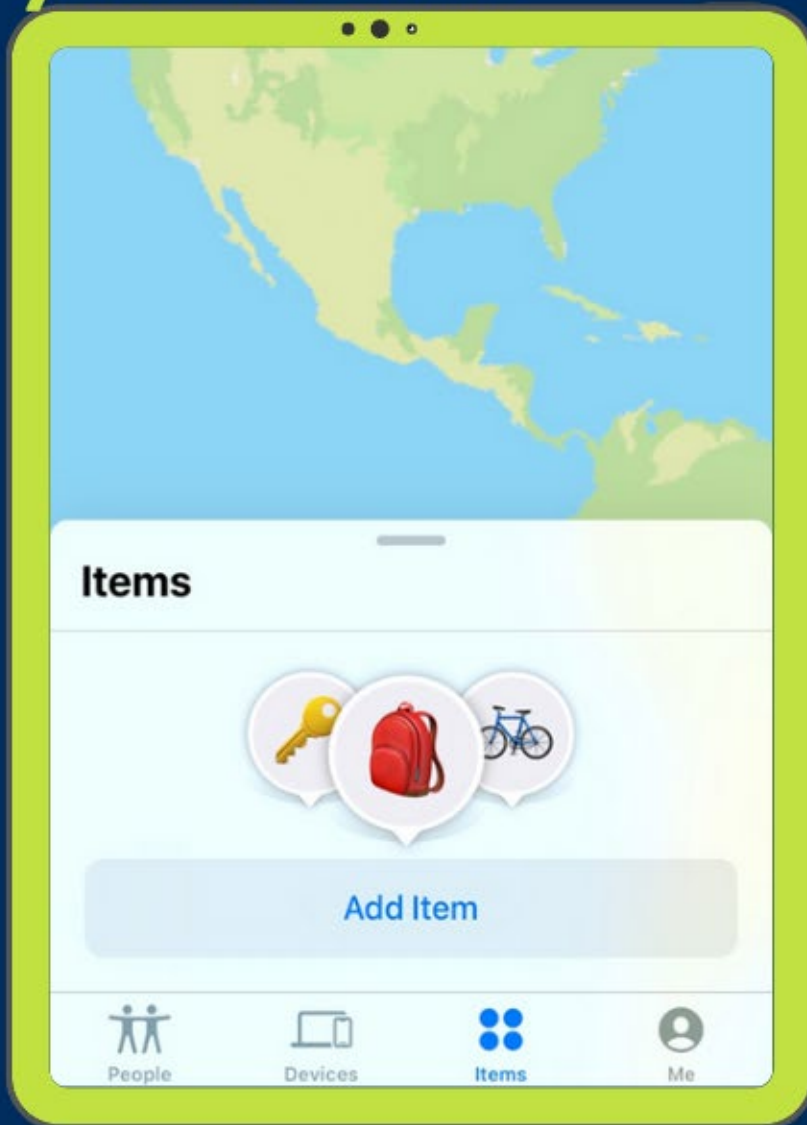
Apple: Search for "Find my" App



If you have items associated with your account



If you DO NOT have items associated with your account



Swipe up to make "Identify Found Item" option appear

9:41



About This AirTag

Serial Number: ABCDE12FG345

Owner: (***) ***-6789



An AirTag is used to keep track of everyday items like keys or a bag.

The serial number is registered to the owner of this AirTag. If this AirTag is not familiar to you, learn how to disable it and stop sharing your location.

[Instructions to disable >](#)

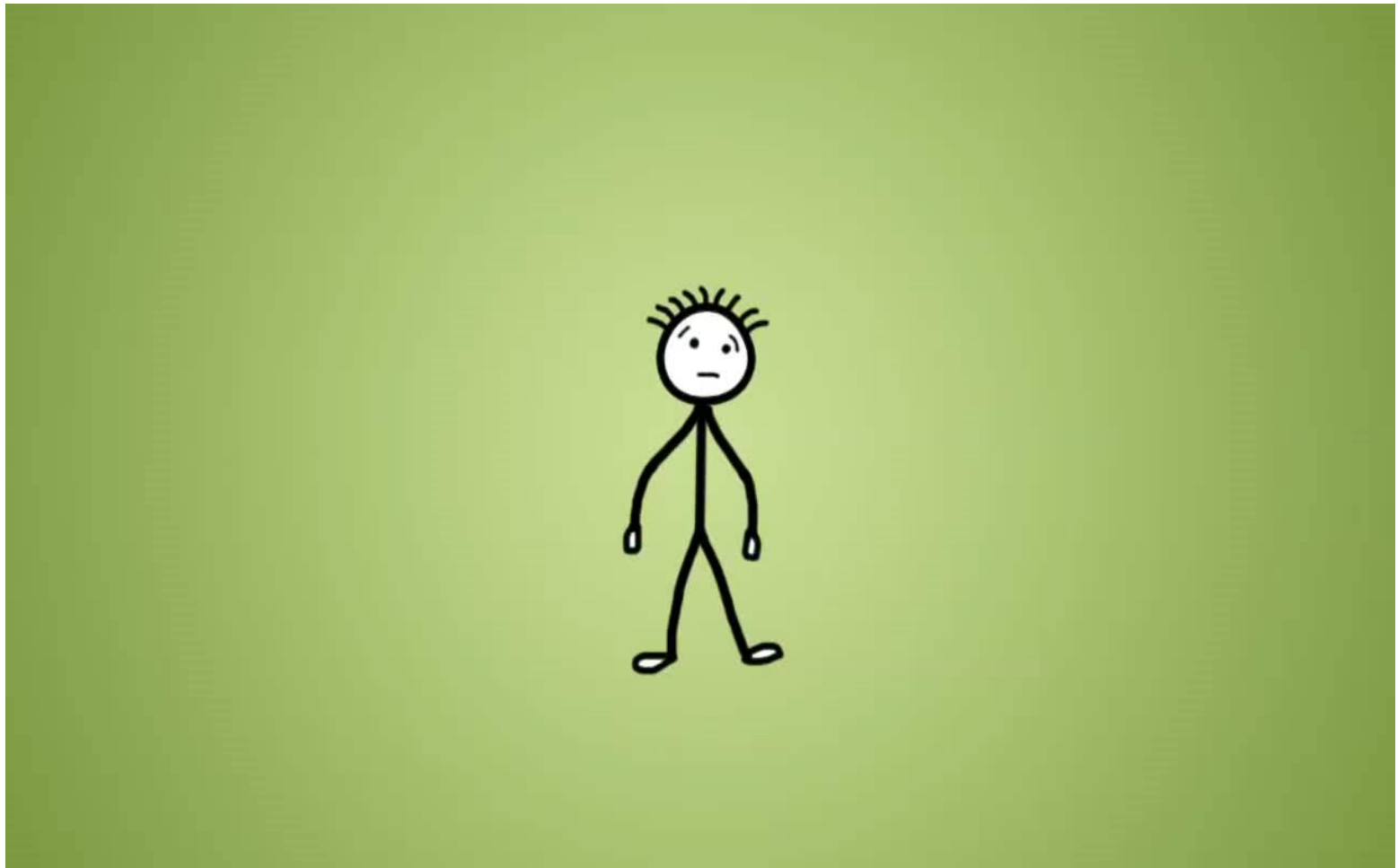
AA

found.apple.com



Cell Phone Stalkerware

Cell Phone Spyware



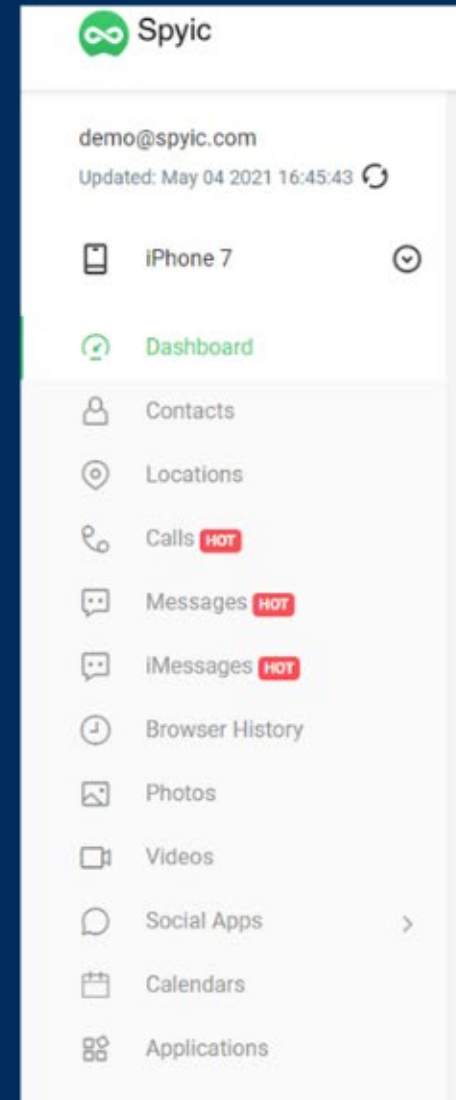
What is Stalkerware?



- Commercially available software used for spying
- Made for individual use
- Typically hides itself from the list of installed programs and does not display any activity notifications

About Stalkerware

- Physical access to the device is almost always required for installation
- Can be on both Apple and Android devices, but more common on Android
- Best to assume all activities on device are being monitored



What You May Hear:

- “Numbers I don’t recognize call and harass me.”
- “I keep getting hang-up calls from random numbers.”
- “It shows up as my mom/friend/someone I know, but it is the offender calling.”
- “I know it’s the offender, but it doesn’t sound like them.”
- “I blocked the offender, but they just keep calling me from different numbers.”
- “People are saying I called them, but I didn’t.”





Large Group Discussion

What is Digital Evidence?

Fundamentals of Digital Evidence in Domestic Violence, Sexual Assault, and Stalking Cases

Digital Evidence

Computer

Emails

Internet History

Synced Information

Cell Phone

Text Messages

Photographs

3rd-Party Applications

Social Media

Online Posts & Comments

Photos, Videos, & Memes

Direct Messages

Internet of Things

GPS

Fit Bit

Gaming Systems

3rd-Party Applications

- Facebook
- Instagram
- WhatsApp
- Clubhouse
- TikTok
- Tinder
- Fitness Trackers
- Snapchat
- LinkedIn
- Twitter
- Dropbox
- Google
- Uber / Lyft
- Venmo
- Dating Apps
- Pinterest
- WeChat
- Telegraph

Judicial Perspective

- What are some suggested digital evidence best practices lawyers should use in court?
- Examples of approaches to avoid?

Large Group Discussion

**How do you secure and preserve
digital evidence?**

Foundations of Evidence Collection

Tools

Subpoenas

- Subscriber information
- Transaction history
- IP Addresses

Court Orders

- Wiretaps
- GPS tracking
- Non-disclosure Orders

Search Warrants

- Cell phones
- Computers
- Social Media
- Cell-Site Location Information (CSLI)

Preservation Letters

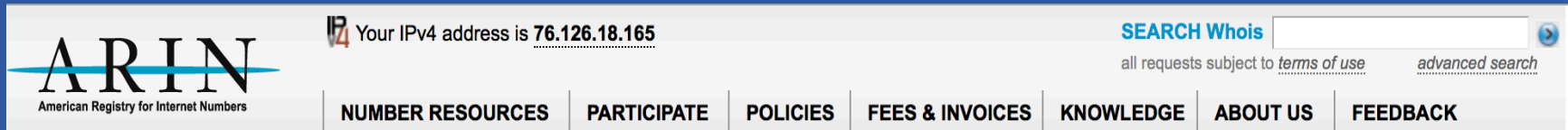
- **IMPORTANT:** If you are going to seek records through a court order or a search warrant, generally speaking, you should send a preservation letter as soon as you are reasonably certain you are going to seek the order or warrant
- The federal code requires the provider to honor your preservation letter, so long as your request is not unusually onerous
- Unless your state has “opted-out” by law, your state can take advantage of this tool, which may be used by any “governmental entity”
- **18 USC 3077(6)** means: “the Government of the United States, any State or political subdivision thereof, any foreign country, and any state, provincial, municipal, or other political subdivision of a foreign country”

Preservation Letters

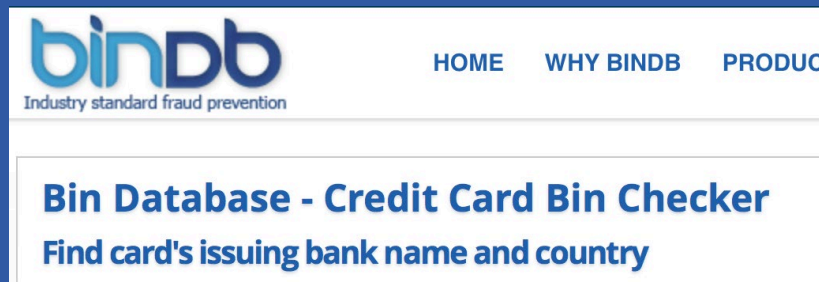
- In general— A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process
- Period of retention.— Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity

Online Resources

- Arin.net for IP Address information



- BinDB.com for credit card information



IP Addresses

Challenges & Emerging Trends

- IP Address may be assigned to residence, business, hotspot, or cell phone
- Cell phones have historically used dynamic IP addresses making it harder (if not impossible) to determine identity of user
- New IPv6 addresses are rolling out and that may help identify cell phone users
 - IP4 example: 12.23.45.567
 - IP6 example:
2001:0DB8:0234:AB00:0123:4567:8901:ABCD

Financial Records

Bank accounts, credit cards, and prepaid debit cards

- Account information
- Linked accounts
- Transactional history
 - Purchases
 - Transfers
- Signature(s) on file

Purchase History

- Subpoena transaction history from known purchase points
 - Apple App Store
 - Amazon
- Example: GPS tracker found was the #1 search results on Amazon; sent subpoena to Amazon for defendant's order history

Prepaid Debit Card

Example

<u>Date</u>	<u>Process Code</u>	<u>Txn Amount</u>	<u>Original Txn Amount</u>	<u>Acquirer Name</u>	<u>Acquirer Address</u>	<u>Acquirer City</u>
12/20/2013 05:28 AM	160100	\$45.00		SCOOTERS SOUTH BEACH L		MIAMI BEACH , FL
12/20/2013 12:06 AM	160100	\$12.00		BACKPAGE.COM		866- 4566877 , AZ
12/19/2013 08:06 PM	360100	\$45.00		SCOOTERS SOUTH BEACH L		MIAMI BEACH , FL
12/19/2013 04:01 PM	360100	\$12.00		BACKPAGE.COM		866- 4566877 , AZ

Identity of the Defendant

RENTAL AGREEMENT	
SCOOTERS SOUTH BEACH LLC 1520 COLLINS AVE Miami Beach, FL 33139 305-672-4346	DATE _____ TIMEOUT _____ UNIT # _____ TIME DUE IN _____ RETURNED _____
NAME <u>M. [REDACTED] C. [REDACTED]</u>	HOTEL <u>NE W</u>
ADDRESS <u>160-81 B. [REDACTED] Blvd</u>	HOTEL ADDRESS _____
CITY <u>Adventure</u> STATE <u>FL</u> ZIP <u>33160</u>	DATE OF BIRTH _____
PHONE <u>786 506 [REDACTED]</u> CELL _____	D.L. # _____
REFERRED BY _____	COUNTRY _____



Small Group Activity: Ride Share Records

- Offenders may use rideshare apps to avoid using a known vehicle
- Example: Subpoena sent to Uber in a case where the stalking defendant did not own a car; results showed that the defendant made multiple midnight trips to the victim's home

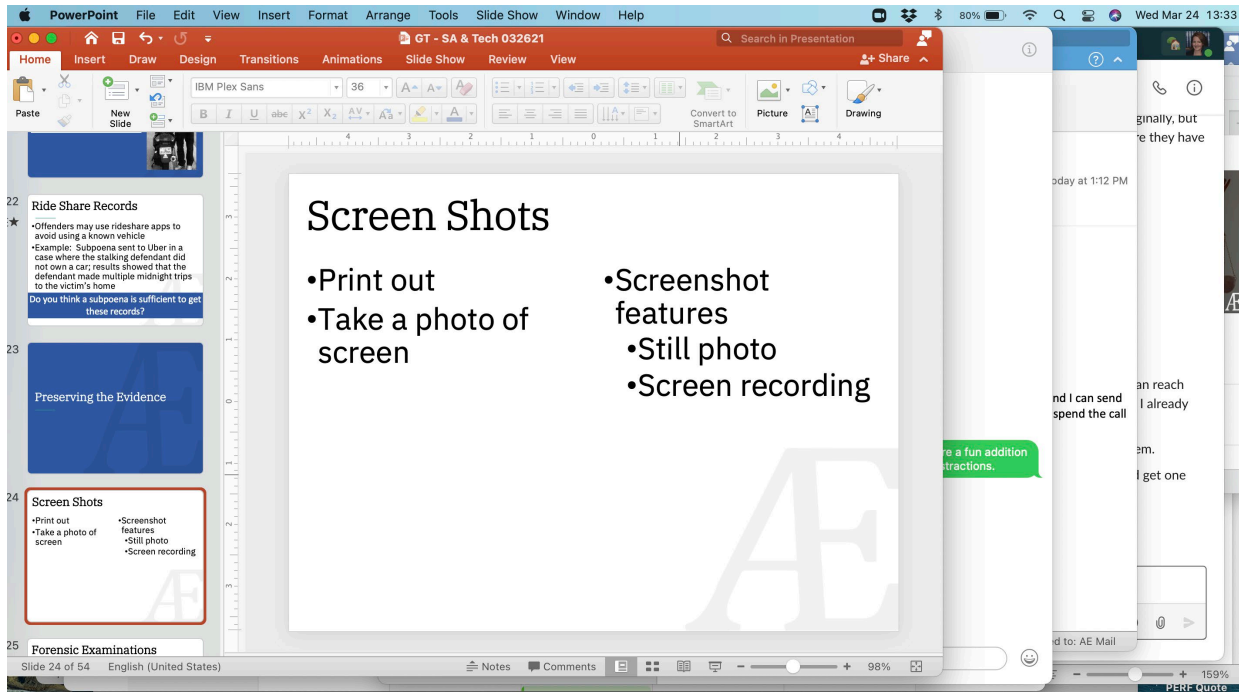
Do you think a subpoena is sufficient to get these records?

Preserving the Evidence

Building a Case

Screen Shots

- Print out
- Take a photo of screen
- Screenshot features
 - Still photo
 - Screen recording



Forensic Examination Basics

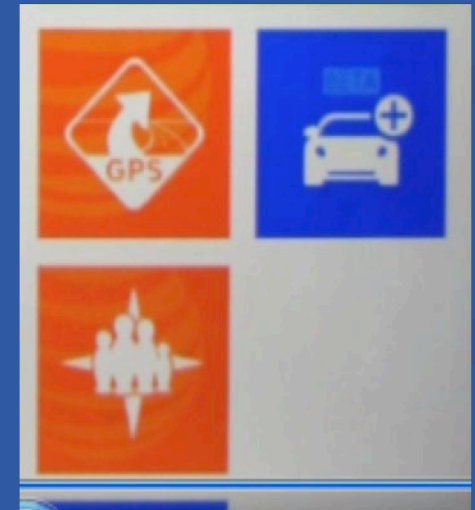
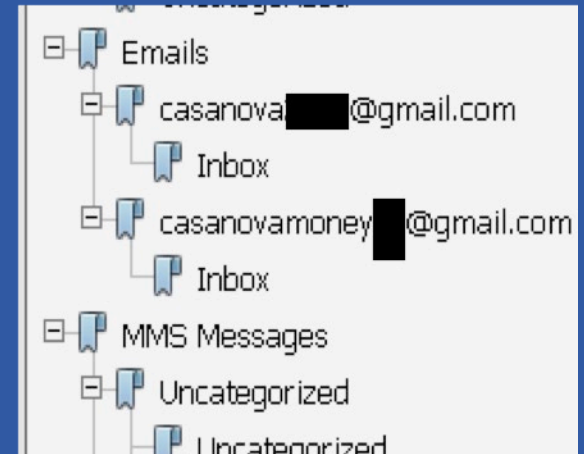
- Preserve the evidence
- Warrant or consent
- Request access via passcode or biometrics
- Speak with examiner
- Manual examination

Cell Phone Examinations

- Contact list
- Call logs
- Text & multimedia message (MMS) content
- Photos & videos
- Calendars
- Task lists
- Browser history
- Linked accounts
 - Facebook
 - KIK, Skype
- Email
- Chats
- Wi-Fi
- Location data

Other Items of Value

- Linked accounts & chats
- Calendars
- Task lists
- Browser history
- Wi-Fi and location data



Manual Examinations



Where do you look for Digital Breadcrumbs?

Collecting Crucial Evidence

Follow the Trail...

- Victim
- Offender
- Friends of the victims
- Others at the bar, party, game...
- Social media posts

How Is Digital Evidence Used At Trial?

Electronic Evidence as a Tool of Accountability

@ Trial

- Business Records
 - FRE 803(6) Records of a Regularly Conducted Activity
- Screenshots as photographs
 - Witness able to say it is a “fair and accurate” depiction of the screen

@ Trial

- Establish ownership & use
 - Where was the phone found
 - Content of the phone
- Pretrial motions and redactions
 - Probative v. prejudicial
 - Victim privacy
- Forensic examiner
 - Expert or not?

Judicial Perspective

- Tips from a Judge
- Pros and cons of these strategies

How Can I Use Electronic Evidence for Corroboration?

- Demonstrate contemporaneous complaints and prior consistent statements
- Explain counterintuitive behavior (e.g. failure to report, returning to an abuser, or socializing with an abuser)
- Illustrate offender's manipulative behavior & the "cycle of abuse"
- Focus on offender's prior bad acts to show intent, absence of mistake or accident, or attitude toward victim (404(b) evidence)
- Highlight power differences between offender and victim
- Rebut offender's claims (victim merely regrets sex, victim seeks revenge, victim is lying to gain advantage)

Demonstrating Contemporaneous Complaints and Prior Consistent Statements

- Texts/emails may constitute recent complaints that demonstrate victim's veracity. For example:
 - Contemporaneous statements of pain in a physical abuse case
 - Contemporaneous statements of lack of memory in an intoxication-facilitated abuse case
 - Contemporaneous statements of fear or concern about offender's intent or the victim's own fate
- Prior consistent statements in messages can rehabilitate the victim when confronted with inconsistent statements

Explaining Counterintuitive Behavior (e.g. failure to Report, Returning to an Abuser, or Socializing with an Abuser)

- Prior chains of messages can demonstrate a cycle of abuse to a jury in a concrete set of exhibits.
- Communications may demonstrate:
 - Shame, embarrassment, shock, denial
 - Victim's feelings of self-blame
 - Victim unsure because assault/abuse didn't fit a stereotype
 - Victim did not think anyone would believe them
 - Victim did not want family/friends to find out what happened
 - Victim intimidated by the police
 - Victim afraid of the consequences, how it will affect their life

Illustrating Offender's Manipulative Behavior & the "Cycle of Abuse"

- Texts/Emails may help demonstrate predatory behavior: how the offender selected or "groomed" the victim
- Offender's own communications may demonstrate conflicting statements about the incident, the victim, or his intentions
- Texts/Messages that reflect offender's manipulation through promises, threats, or false statements can explain failure to report

Offender's Prior bad acts to Show Intent, Absence of Mistake or Accident, or Attitude Toward Victim (404(b) evidence)

- Examples:
 - Economic threats regarding victim's job, property, or status
 - Threats against the victim's immigration status
 - Physical threats or physical violence – especially when corroborated by photos, messages, GPS data, etc.
- Offender's statements prior to incident may show intent
- Admissions (apologies, explanations, etc.) about past conduct might echo or mirror the offender's claims in the incident
- Look for patterns, not just with this victim, but prior victims as well

Highlighting Power Differences Between Offender and Victim

- Texts/Messaging can demonstrate the how the offender exploited his power over the victim to overcome her will in the past
- Texts/Messaging during time of assault can demonstrate victim's intoxication or mental state
- Victim's texts/messages can demonstrate lack of ill intent, or lack of sophistication
- Offender's own statements to others about the victim may demonstrate a lack of fear on the offender's part, or a feeling of power or superiority

Rebutting Offender's Claims (Victim Merely Regrets Sex, Victim Seeks Revenge, Victim is Lying to Gain Advantage)

- The absence of communication from the victim may demonstrate lack of desire for "revenge" or retaliation
- Victim's statements to offender or others can demonstrate victim's lack of deception or motive to deceive
- Examine victim's Internet Search history for corroboration
- Look for corroboration of victim's physical trauma – such as "selfies" before the incident, GPS data demonstrating movement or the lack thereof, or any change in behavior (using a different route home, not purchasing regular items, etc.)

RESOURCES

NEW GUIDANCE FOR JUDICIAL OFFICERS



A. FRAMEWORK FOR UNDERSTANDING STALKING

It is
stalk
insto
fram
Dr.
belo

JUDICIAL OFFICER GUIDE: RESPONDING TO STALKING

SPARC

Stalking
Prevention,
Awareness,
and Resource
Center

Stalking Prevention, Awareness, and Resource Center (SPARC)

1000 Vermont Avenue NW, Suite 1010 | Washington, DC 20005 | (202) 558-0040 | info@stalkingawareness.org
www.StalkingAwareness.org

NCJFCJ

NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

National Council of Juvenile and Family Court Judges

P.O. Box 8970 | Reno, NV 89507 | (775) 507-4777 | contactus@ncjfcj.org
www.ncjfcj.org

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NEW GUIDANCE FOR JUDICIAL OFFICERS



SLII STALKING TACTICS

JUDICIAL OFFICER BENCH CARD: STALKING

SPARC SPRINGFIELD PROSECUTOR ASSOCIATION NIWAP NATIONAL INDEPENDENT WOMEN'S ADVISORY PANEL WASHINGTON COLLEGE - EWU WOMEN'S ADVISORY PANEL NCTFCJ NATIONAL COURT TRAINING CENTER FOR JUDICIAL OFFICERS

This bench card is designed for use in conjunction with the more comprehensive [Judicial Officer Guide for Responding to Stalking](#) and as a reference when considering the role of stalking in Federal courts; Tribal courts; immigration courts; state family, juvenile, civil, and criminal court cases; and administrative law adjudications including immigration and Equal Employment Opportunity Commission adjudications. Judicial officers are strongly encouraged to read [the full Guide](#) prior to using this bench card during proceedings.

This bench card serves as a reference for judicial officers on stalking behaviors and how these behaviors relate to other crimes, to be better able to identify stalking in any type of case. Judicial officers are encouraged to make specific findings of fact regarding stalking and issue detailed orders designed to stop stalking behaviors, hold offenders accountable, and prevent dangerous consequences.

CONSIDERING/IDENTIFYING STALKING



Stalking can appear in any type of case and it is particularly important to look for indicators when the parties know one another and/or there is evidence of ongoing harmful contact. Stalking can occur in the context of other crimes and other crimes can occur in the context of stalking.



Stalking should be considered in protection order and domestic violence hearings because intimate partner stalkers are more likely (than stalkers with other relationships to their victims) to physically approach the victim; be interfering, insulting, and threatening; use weapons; escalate behaviors quickly; and re-offend.



Technology-facilitated stalking (cyber-stalking) needs particular consideration and concern in stalking cases. Perpetrators of stalking use and misuse technology to facilitate their stalking. They use computers, social media, mobile phones, and other devices in their stalking behaviors to monitor, contact, control, and isolate their victims, as well as to damage their victims' credibility or reputation. The impact of technology-facilitated stalking is vast and may be just as threatening and fear-inducing as in-person stalking. Victims of technology-facilitated stalking report being just as concerned for their safety as those who experience in-person stalking.

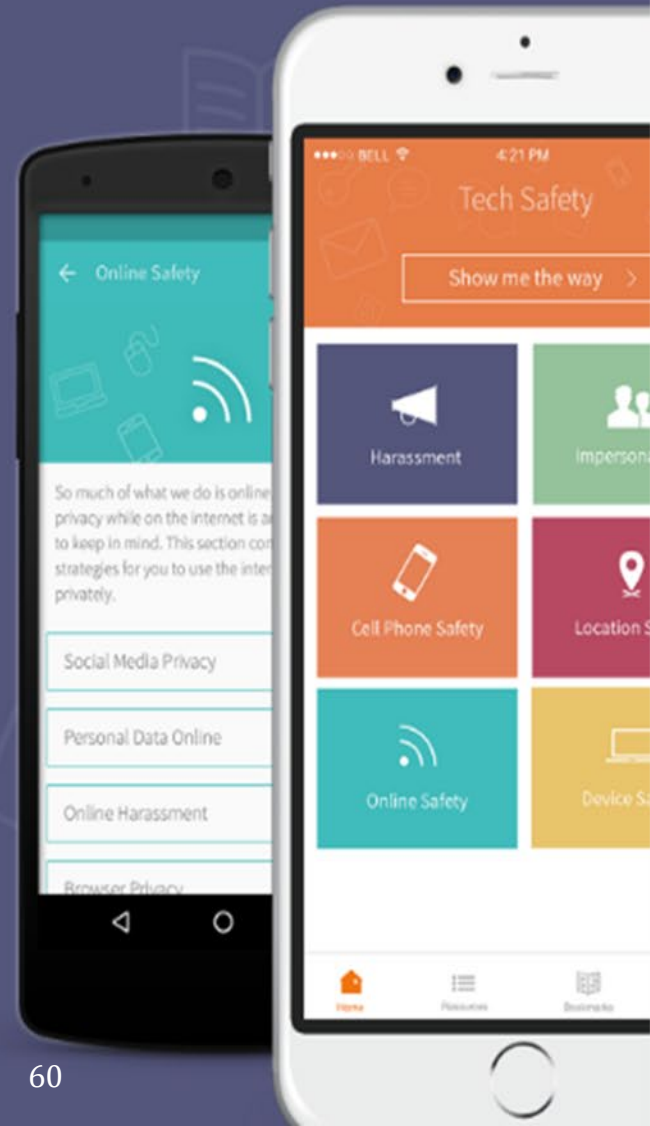
ASSESSING STALKING



NNEDV
Tech Safety

Tech Safety

Welcome to the Tech Safety App. This app contains information that can help someone identify technology-facilitated harassment, stalking, or abuse and includes tips on what can be done.



Questions?

The Honorable
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Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
 - Web Library: www.niwaplibrary.wcl.american.edu
- Jennifer Landhuis, Director, SPARC
jlandhuis@aequitasresource.org
- Elliott Casey Staff Attorney, CASC ejc2s@icloud.com
- Materials for this Workshop:
 - <https://niwaplibrary.wcl.american.edu/BostonElectronicEvidence>
- Contact NIWAP to provide training for your jurisdiction