

CALIFORNIA

# LAW BUSINESS

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## Fear Factor

**A proposed change to California's anti-stalking law could help celebrity lawyer Michael Plonsker better protect his famous clients from overzealous — and sometimes dangerous — fans.**

# Stage Fright

**California's anti-stalking statute does little to protect celebrities from obsessed and sometimes dangerous fans, Hollywood lawyers claim. They're hoping to strengthen the law to change that.**

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**S**talking cases, especially those involving celebrities, have caught the attention of the state and the media for years.

The stalking rogue's gallery includes the man who creeps in and stands by a victim's bed, watching her sleep. The man who leaps over the wall of a gated estate, carrying a knife. The strange woman who waits in the movie star's house for him to return.

Or even the man who hires a private investigator to obtain a star's home address and then shows up at her doorstep.

A stalking incident like the one above led to the death of television actress Rebecca Schaeffer in 1989 and was one of the inspirations for California's current anti-stalking law, Penal Code Section 646.9.

**By Katherine Gaidos**

Schaeffer was shot in her Los Angeles home after she opened her front door and came face to face with Robert Bardo, who had been sending her harassing letters for two years. Bardo had obtained Schaeffer's address from a private investigator, who got it from the Department of Motor Vehicles.

Shortly after Schaeffer's death, California enacted an anti-stalking law, the first of its kind in the nation.

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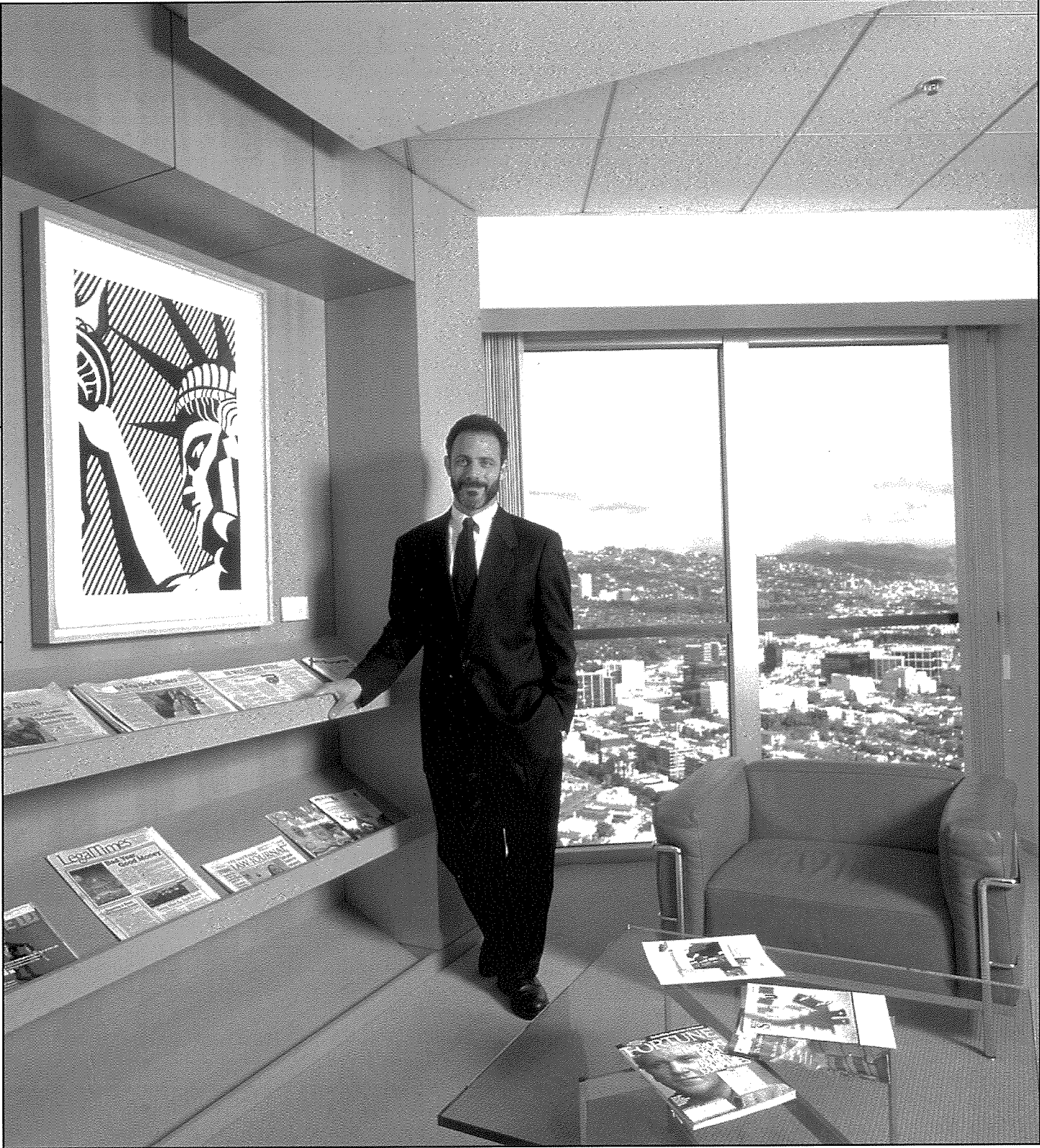


Photo by Hugh Williams



Concerned legislators and lawyers have worked to broaden the law since its inception, adding new language that makes it possible to prosecute if a stalker threatens the victim's family, for instance. The law also has been changed so that a first offense may be a felony charge, at the discretion of the district attorney's office. And now, in the wake of another celebrity stalking incident involving actress Meg Ryan, the law might be broadened again so that prosecutors can apply it to more kinds of dangerous behavior.

"The whole state has been called to attention by the case of Meg Ryan," says Robin Podolsky, press deputy for state Sen. Sheila Kuehl, D-L.A.

Kuehl introduced a stalking bill to the State Senate, SB1320, in late January. The bill, which was amended earlier this month after the Ryan incident, would make it easier to apply stalking charges to what prosecutors and lawyers consider stalking behavior.

'Under an easier standard, you would only have to prove one occurrence,' says attorney Nicholas DeWitt, below. 'The drawback is that it can lead to the issuance of these restraining orders. And that's something which **affects the rights** of the person against whom its being sought,' adds DeWitt, who represented Madonna in 1996.

Stalking, as it's defined by current law, involves following or harassing a person, threatening a person and putting the person in fear for his safety or his family's safety. To protect the accused, as well as the accuser, all of these elements — the following or harassing, the threats, the victim's fear — must be met before a prosecutor can prove a stalking case.

In addition, the law requires that the threat be a "credible threat" established by a "pattern of conduct" (multiple acts or statements). "Credible threat," also requires the intent to make the person afraid and an apparent ability on the stalker's part to carry out the threat.

**K**uehl's change would sidestep the whole issue of a "credible threat." The law instead would say that anyone who follows or harasses someone else, makes him or her afraid, and who knew or should have known that the person was

afraid, is guilty of stalking.

"They're taking an element out of the offense," says Malibu public defender William Misener. "The making of this credible threat, that's a big deal."

The bill is currently before the State Senate's public safety committee, which will review it, vote on it and then probably pass it on to the State Assembly.

Lawyers say the change has the potential to make a big difference. California's anti-stalking laws were intended to give people like Schaeffer a solution to their problems — before the suspect puts threats into action. But some attorneys worry that under the current laws, a stalking victim will be harmed before the stalker's actions meet all the elements of the crime, such as repeated following or harassment, or a pattern of conduct, which all require multiple incidents.

"The way the law is written now, there has to be a pattern of conduct over a period

of time ... it creates a long period of danger for the potential victim," Podolsky says.

"You kind of have to show more than one incident," attorney Nicholas DeWitt adds.

DeWitt of DeWitt & Roberts in downtown Los Angeles represented Madonna in her 1996 stalking ordeal.

"For some people, by the time the second or third incident has occurred, the concern that exists [is that the stalker] may have already done something," DeWitt says.

Comparatively few celebrities, who make up 17 percent of all stalking cases, have been physically harmed by a stalker: George Harrison was stabbed by a stalker; John Lennon was fatally shot by a stalker, British newscaster Jill Dando was killed by a stalker who had been hanging around her house.

**B**ut nonfamous stalking victims, who make up the other 83 percent and usually don't have personal security forces, are often entangled in do-

mestic or workplace violence situations that the stalking law is meant to defuse.

"The majority of the stalking cases that we see not only here in California but across the country involve some sort of domestic violence or workplace violence," says Los Angeles County Deputy District Attorney Rhonda Saunders, who has prosecuted many stalking cases.

One of the most recent, high-profile stalking situations, Ryan's was not prosecuted as a stalking incident

In early January, a 30-year-old Florida resident named John Michael Hughes broke into a Malibu home owned by Andrea and Thomas Ryan because Hughes thought the actress lived there. While the home's occupants were at a wedding in San Diego, Hughes cooked himself meals in the home, rearranged patio furniture and drank non-alcoholic Milwaukee's Best beer. When the Ryans, who are not related to the actress, came home, they found Hughes wearing a black fishing cap with a chin strap. They called the police, and Hughes was arrested.

But he wasn't charged with stalking.

Deputy District Attorney Loni Petersen, in the Malibu satellite office, says that Hughes couldn't be tried on stalking charges because he hadn't intended to cause fear to the actress. He was delusional, Petersen says, and thought they were engaged.

In addition, Hughes arguably had not met the first element for a stalking conviction — a jury could decide he had not repeatedly followed or harassed the actress. However, Petersen says that was "a more tryable issue."

Under Kuehl's original change to the anti-stalking law, prosecutors still would have needed to prove that the stalker had made multiple attempts to follow or harass the victim — but there need only be one instance of conduct that implied a threat.

"Under an easier standard, you would only have to prove one occurrence," DeWitt says. "The drawback is that it can lead to the issuance of these restraining orders. And that's something which affects the rights of the person against whom it's being sought."

But Podolsky is not worried.

"We don't think that there's going to be frivolous prosecutions. We think that this law is still stringent enough that it only penalizes really bad conduct," Podolsky says.

The bill was changed by Kuehl and a State Senate committee last Monday, still in the wake of the Meg Ryan incident, and

now suggests a stalking law broad enough that it might have applied to the Ryan situation. The proposed change deletes the “credible threat” language entirely, saying instead that person who “willfully engages in a course of conduct to harass or follow another person” and who, by words or actions, “intentionally commits an act” that makes the other person afraid is guilty of stalking.

The new change also provides that when the stalker “knew or reasonably should have known, that his or her conduct would place the other person in reasonable fear for his or her safety,” the suspect can be guilty of stalking.

Under the new law, Hughes’ belief that he was engaged to Ryan would not save him from a stalking charge; a prosecutor could argue that he “should have known” his behavior would scare the actress. The same would hold true for any other suspected stalker who normally would have escaped a stalking prosecution because of a mental disorder, even if he or she didn’t technically have the intent to cause fear.

The proposed change, Podolsky says, would help both regular people and celebrities.

“What we’ve learned from prosecutors now is that it’s very difficult to bring and prosecute a stalking charge. And, of course, it shouldn’t be the easiest thing in the world, but we think that as the law is now written, victims don’t get sufficient protection,” Podolsky says.

But public defender Misener is worried that defendants won’t have enough protection under the new law. Misener, who represented a crazed fan of rock star Axl Rose when the district attorney almost charged the female fan with stalking in 2000, says the law could target people who are behaving strangely but not necessarily dangerously.

“Coming up with crimes like these that are defined broadly, it sweeps up a lot of people that have probably behaved inappropriately but not traditionally in a criminal fashion,” Misener says. “It sweeps up a lot of people that may not be really criminal types and are facing serious charges.”

Ryan, who was represented by Michael Plonsker of Alschuler Grossman Stein & Kahan, obtained a three-year restraining order Jan. 14 against Hughes. Hughes was charged with aggravated trespassing and held for psychiatric evaluation.

Plonsker, who also has represented celebrities such as Michael Jackson in connec-

tion with stalking incidents, declines to discuss the specifics of the Ryan case. But he says that, in general, a criminal prosecution under the stalking law is a preferable outcome.

“You can hope to get the district attorney involved to see if they can prosecute under the stalking laws, which I think is the best remedy because if the person is convicted, then they’re off the streets for a period of time,” Plonsker says. “Even though the penalties are not hugely significant, they certainly are off the street.”

With a stalking charge, the district attorney’s office has an arsenal of ways to keep a stalker away from the victim.

The penalty for a felony stalking charge, for instance, can reach five years in prison if the defendant has been convicted of previous crimes, says Deputy District Attorney Carol Chizever.

In addition, a stalking conviction comes with a 10-year restraining order against the stalker, once he or she is released from jail. Civil restraining orders, on the other hand, last a maximum of three years.

“With people that are stalkers, particularly if they’re fixated on one victim, the best thing the criminal justice system can do in going through the courts is just keeping them away from the victims for as long as possible,” Chizever says.

**H**owever, attorneys do have other options to protect a client if they can’t prove a stalking charge. Sometimes a stalking suspect can be charged with other crimes — as with Hughes, who was charged with trespassing.

Very often, a nervous stalking victim will have his or her lawyer get a restraining order in civil court. The restraining order can be good for two or three years and requires the stalker to keep 150 feet away from the victim. Sometimes, such an order is a quick solution to the problem.

“There are probably a lot of situations where celebrities have gotten those, but once they’ve gotten them they haven’t had to act any further,” DeWitt says.

“Sometimes a restraining order would be effective ... especially if it was served by a police officer,” Saunders adds.

But if the stalker ignores the restraining order, he or she can be arrested — even by the celebrity’s security staff. The individual can then be hauled into criminal court for violating a court order and potentially sent to jail for up to a year, which would provide some protection for

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the harassed celebrity.

“Someone who violates that order subjects themselves to criminal penalties as well. So that when the order is violated the person who got the protective order has the ability to say, ‘I want this person prosecuted criminally as well,’” DeWitt says. “It’s the mechanism and the reason why people do that.”

And occasionally, Plonsker says, the best course of action is to ignore the stalker altogether, especially if the stalker hasn’t exhibited any signs that he or she will physically harm the celebrity.

“Sometimes we do nothing, and we’re successful,” Plonsker says. “Which is sometimes the best thing. Because if you validate the actions of the person that is seeking to gain access, then sometimes you ... empower them, and they try even harder to gain access because they are gaining notoriety.”

**I**n a few high-profile situations, celebrities have managed to land their crazed fans behind bars on a stalking charge. Saunders handled many of the prosecutions, including stalking convictions on behalf of Madonna and Steven Spielberg.

In 1996, she prosecuted Robert Dewey Hoskins after he stalked Madonna. Hoskins, 38 at the time, twice scaled the wall surrounding the pop singer’s Hollywood Hills estate and had threatened to slit her throat. The second time he scaled the wall, he got into a tussle with her bodyguard, who shot him in the arm and stomach.

No one besides Hoskins was injured during the incident, and Hoskins received 10 years in prison.

Saunders also prosecuted Spielberg's stalker in 1998 under the stalking law. Jonathan Norman, who had threatened Spielberg for a year, was found with a "rape kit" that included duct tape and razor blades outside Spielberg's Los Angeles compound.

Spielberg and his family were in Europe when the man was arrested. Spielberg learned about Norman's attempt five days later, which didn't hinder the prosecution, Saunders says.

"Norman thought that Spielberg was

there, and that was criminal intent," Saunders says. "And the Court of Appeal upheld the verdict, saying that, No. 1, the victim does not have to be physically present when the stalking is taking place."

Norman had caused fear in Spielberg, even though Norman had been arrested by the time Spielberg returned to the States. That the stalker had caused reasonable fear in his victim was enough to uphold the conviction.

The majority of celebrity stalking situations, however, don't result in stalking charges.

For instance, actor Brad Pitt's stalker, Athena Marie Rolando, who was 19 at the

time, was put on probation in 1999 after she pleaded no contest to a count of trespassing — not stalking. Rolando had allegedly been haunting the area around Pitt's Hollywood Hills house for years and in January 1999 finally broke in, put on the actor's clothes and slept in a guest bed. Pitt also got a three-year restraining order against Rolando.

But most stalking cases don't go the way of Spielberg and Madonna's cases. And that, Podolsky says, is a problem Kuehl is hoping to solve.

"We want to make this a tool that a district attorney can actually employ," Podolsky says.

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