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Cyberstalking

As technology continues to take over the world as we know it, a number of issues have arisen from societies increased use of the Internet. As more and more people join the world wide web and consequently start to build their own digital footprint, the internet has become home to vast amounts of people's personal information. This can be both good and bad. On one hand, it allows people to rekindle relationships with old friends or keep in touch with relatives who live far away. But on the other hand, it can be used for more unsettling reasons like cyberstalking. According to freedomforuminstitute.org, cyberstalking can be defined as: a pattern of harassing or threatening behavior communicated through electronic means that places a victim in reasonable fear of bodily harm. As this becomes an increasingly more prevalent issue in society scholars have begun to argue whether cyberstalking laws criminalize protected speech or if they are necessary because the type of conduct/speech they aim to regulate can be deemed a true threat. I believe that cyberstalking laws are in fact constitutional because they restrict speech from escalating into serious acts of violence, made possible by the true threats doctrine, and as society continues to technologically progress changes to free speech laws are inevitable.

Although cyberstalking is a relatively new issue, stalking in itself is not. Before the internet, stalking personified itself in more physical forms. Stalkers would show up at victims' homes, workplaces, gyms, etc. This made stalking in a lot of cases feel more tangible for the victims because instead of being watched or followed through a screen, victims in most cases

knew their stalker was more likely to be physically close to them at any given time. In a way, this may seem like being stalked used to be a lot more threatening because a stalker had to be in close proximity to their victim in order to ever commit the crime, but that is not necessarily true. In fact, stalking now could be considered more dangerous because the internet allows these heinous acts to be committed invisibly.

Social media has been used by many to cyberstalk individuals. Apps like Instagram, Twitter, Facebook, and Snapchat have been used by many to update others on miniscule and major changes in their lives. Social media for many, can act like an alternate universe where typical boundaries do not apply and at times could solicit reckless behavior. Furthermore, many of these apps have access to people's locations and feature tools that allow people to post their current location at any given moment. This means that anyone who has access to an individual's social media profiles can see where a person is at potentially any point in time. Shockingly, the app Snapchat, even has a "SnapMap" feature which allows fellow friends on the app to track your movements and see where you are whenever they please. This obviously can become very dangerous as many social media users are ignorant to the possible harmful effects these posts could ignite. Similarly, posts and apps like snapchat that include location tags can allow stalkers to keep tabs on their victims from the comfort of their own homes. It is also important to note that some people post on social media so regularly and throughout the day, that those who are tracking these individuals' movements are practically being fed the same amount of information they would be receiving if they were watching them with their own eyes.

Since it is typical for stalkers to repeatedly call their victims, follow their victims, and spy on their victims, social media has made all of these behaviors easier to complete. Stalkers can look at a social media post, easily drive to the location the post is tagged at and spy on their

victim. Stalkers can find their victims phone numbers and addresses through social media pages or comments and use that information to call or stalk at risk individuals further. This type of accessibility is especially concerning because those who the stalkers are stalking may be completely unaware that someone is constantly watching or tracking them online. This also does not stop the stalkers behavior from possibly escalating and turning physically harmful.

Part of the reason why many people fail to take cyberstalking seriously is because they think that the act fails to inflict real violence onto those who are being stalked. However, when left unaddressed, cyberstalking can turn physical. This sadly happened to be the case for Christine Bedford. According to Randall Chase's September 7, 2018 news release, Christine Bedford had been cyberstalked by her ex-husband David T. Matusiewicz and other former in-laws. Her former husband and other former family members created a slew of emails, websites, and internet postings falsely alleging that Christine abused her children, suffered from mental illness, and attempted to harm David's mother, Lenore Matusiewicz. Christine and her children suffered from severe emotional distress and feared for their life because of this defamatory information. The Matusiewicz's kept close tabs on all of Christine's movements via online surveillance and had knowledge of where she lived and worked. According to Randall Chase's September 7, 2018 news report, on the morning of February 11, 2013 Christine Bedford was scheduled to appear in the New Castle County Courthouse. She was actually there because David had filed a petition to reduce the amount of child support he had to pay Christine each month. As she walked in though, she was sadly shot multiple times and killed by David's brother, Thomas Matusiewicz.

This particular case is both a tragedy and a testament to the ways cyberstalking can escalate into producing real bodily harm. It is hard to understand why nothing was done to

protect Christine that morning when it was clear her former husband was seeking some kind of vengeance. The truth is, sometimes it is just not enough for stalkers to attack their victims online. Sometimes the use of physical harm is the only thing that can satisfy these people's sick and twisted impulses. In his article, *The Dark Side of the Web: Cyberstalking and the Need for Contemporary Legislation*, Joseph Merschmen notes that it is typical for stalking crimes to be coupled with other crimes such as assault, rape, and murder. In fact, it is estimated that violence occurs in stalking cases "between 25% and 35% of the time" (Merschmen, 2001). This statistic becomes even more worrisome when paired with the fact that more than half of all stalking victims are directly threatened by their stalker (Merschmen, 2001). A true threat can be deemed as: "expression directed towards specific individuals or groups, with the intent of causing them to fear for their safety" (Tedford & Herbeck, 467). Although, one can never be sure a threat may turn into action or just remain an empty promise until the act being threatened is ultimately committed, it is important the law air on the side of caution in these cases to protect victims of stalking from potentially being harmed.

The courts first recognized the issue of internet hate speech in the *United States v. Machado* case. In this case, a 21-year-old man was prosecuted for sending a racist email to just under 60 Asian students from a computer lab at the University of California Irvine (Tedford & Herbeck, 66). He then even went a step further and sent that same email to those same students twice. Due to this, the court recognized that Machado provided a true threat to the safety of those 60 students and he became the first person to be convicted of committing a hate crime via the Internet (Tedford & Herbeck, 66). Similar to those 60 students, victims of cyberstalking are subject to threatening emails as well. I believe that this type of speech and conduct should not be tolerated as it could potentially lead to even more dangerous circumstances.

Even though it seems clear to me why cyberstalking laws are constitutional and necessary to prevent acts of violence from being committed, many scholars would beg to disagree. Many academics and people alike think that cyberstalking laws are overbroad and too vague; meaning they could be used against people who use the internet to discuss things such as a dissenting political views. In her article, *Threading the First Amendment Needle: Anonymous Speech, Online Harassment, and Washington's Cyberstalking Statute*, Sarah Smith argues that Washington's cyberstalking statute is far too broad and could be used to criminalize people who criticize politicians on social media applications, like Facebook. Her biggest problem with Washington's statute seems to be that it only requires the challenged speech to be anonymous in order for it to be considered unconstitutional (Smith, 2018). She believes this statute could wrongfully target individuals who message politicians disapprovingly and used against those who never communicated any threats (Smith, 2018). Although I understand where she is coming from, I think her argument is flawed in many ways.

Like many laws and statutes that deal with concepts that fall under freedom of speech, it is up to the discretion of the courts to interpret whether particular speech or conduct like cyberstalking, should be criminalized. This is the case for laws that deal with hate speech and obscenity since these ideas are completely subjective. So, going back to Smith's argument, if a politician were to be messaged anonymously on Facebook, and was so bothered by these messages, they could decide to use Washington's cyberstalking statute to unfairly charge the person anonymously messaging them with cyberstalking. I think that if this case was ever brought into a court it would be automatically dismissed. The judges should be able recognize that in this instance the politician was not being cyberstalked and their life was not in any immediate danger. Furthermore, there will always be people who try to twist the constraints of the law to

their advantage, but this scenario has nothing to do with why the statute was originally created.

Although it does not explicitly say threats in Washington's state statute, other cyberstalking statutes are aimed to protect those whose life could be put in immediate danger based on the type of messages or actions that are being inflicted upon them by their stalker. For example, the state of Kansas defines stalking as: "an intentional, malicious and repeated following or harassment of another person *and* making a *credible threat* with the intent to place such person in reasonable fear for such person's safety" (Merschmen 268). This definition proves to be much narrower and more specific compared to Washington's and helps alleviate confusion surrounding perceptions of cyberstalking.

I also believe that the protections cyberstalking statutes grant, outweigh the limitations imposed on first amendment rights. Coming forward about being stalked can be an intimidating process for victims. This may be because a survey done by NVAW concluded that only 23% of females who had been stalked were stalked by a stranger, but a whopping 77% had identified their stalker as being a former or current intimate partner or acquaintance (Merschmen, 2001). This statistic implies that most of those who are being stalked would have good reason to fear coming forward because their stalker could very well find out. This could make the stalker angry and result to physically harming their victim. This explains why most victims of stalking result to other coping strategies before ever coming to the police. A 2014 study found that only 5% of victims of cyberstalking reported their experience to the police (Duggen et al. 2014). Instead of going to the police, victims were found to use more common coping strategies including trying to reason with the perpetrator, denying the problem, and seeking escape through drug or alcohol abuse (Todd, Bryce & Franqueira, 2021). However, even though going to the police is not normally the first thing victim's do, they tend to when the situation escalates, and they become

more desperate for help. This is why it is so critical to have these kinds of statutes in place. I believe that if one may think there is a possibility they may be assaulted, injured, raped, or murdered they should have enough reason to be granted legal protection, and at the very least are in more need of justice compared to a politician's ego.

I also believe that scholars who think cyberstalking statutes are unconstitutional need to take into consideration the truth that is stalking requires there to be a pattern in the stalker's behavior. On average, those who are being stalked by someone they know report the stalking to last about two years and three months. Those who are stalked by strangers report being stalked for an average of one year and nine months (Merschmen, 2001). Additionally, those who are being stalked do not report the first instance their stalker was in contact with them. It is rather after their behavior fails to cease and becomes more and more threatening that victims go to the police. This is important to note because it not only shows the kind of dedication and discipline it takes to stalk someone, but also how resolving these kinds of issues is completely outside of the victim's control. This repeated behavior is threatening within itself and could have other negative implications on the victim's psyche.

Another reason I believe cyberstalking statutes to be constitutional is because as society continues to progress both socially and technologically, unavoidable changes to our laws and civic life will have to follow. This has already proven to be the case for other free speech related concepts such as obscenity and hate speech, both in which present themselves in instances of stalking. Obscenity's definition and related laws have had to go through many changes, so it can be applicable to today's standards and societies changing attitudes. *Hicklin's Rule* was the first test created to help identify obscene items. Then it was replaced by the *Roth Test* after proving to be outdated. Then the *Roth Test* was replaced by the *Miller Test* and *SLAPP test* (Tedford &

Herbeck, 2017). The reason I bring this up is because it shows how laws that fall under the umbrella of free speech sometimes have to be changed. In addition to this, it proves the fact that the courts are usually having to play catch up as societal beliefs begin to change, or new problems arise.

Although physical stalking has been a known crime with more transparent laws and limitations, cyberstalking has only recently become an issue. This is due to the Internet's recent rise in popularity. Moreover, Merschmen notes, that there is "a systematic lack of understanding among judges and law enforcement officials about the nature of stalking and its harmful effects" (Merschmen 257). Judging by the fact that other related freedom of speech concepts have had to go through many changes before they could be fairly applied, cyberstalking statutes are likely to follow suit. Technology is bound to keep advancing as well. Who knows if in the future social media applications will allow the public even more access to people's private information, and consequently increase instances of cyberstalking. Whatever the case maybe, cyberstalking does not look like will it be stopping soon. According to ourworldindata.org, in 2016, there was 3.4 billion global internet users, a number that has had to of significantly increased in the last five years. This is why it is so important the justice system and the public alike begin to recognize cyberstalking as an issue that warrants protection, even if it means making changes to past statutes and laws.

Although some people believe cyberstalking infringes are on our first amendment right to protected speech, I believe that cyberstalking laws are constitutional because they restrict speech from escalating into potentially violent acts, which has already been made possible by the true threats doctrine. In addition to this, I believe cyberstalking will only become a more pervasive issue as we enter into a more technologically advanced society. It is important we air on the side

of caution when human lives could be potentially at risk. Ultimately, the implications cyberstalking has and will continue to have on civic life, outweighs certain protected free speech rights.

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