

RANE Commentary

Legal Issues With Fighting Online Harassment

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There is no denying that advances in technology have made communicating easier and faster. Letters have been replaced with email, phone calls with text messages; text messages have been replaced with instant messages, Facebook messages, Snapchats and Tweets. But the same technology that has helped people connect has also become a tool of harassment. A harasser who in the past might have been limited to telephone calls or letters can now send hundreds of electronic messages with little or no effort. As a result of this revolution, a growing number of clients and their family members have sought out Investigative Management Group to investigate these matters, collect evidence and assist in ending harassing communications. However, a recent court decision has limited the ability of enforcement agencies to arrest and prosecute these offenders.

In May of 2014, in the case of *People v. Golb*, 23 NY 3d 455 (2014), the Court of Appeals, New York State's highest court, struck down as unconstitutional Penal Law § 240.30(1)(a), entitled Aggravated Harassment in the Second Degree, a class "A" misdemeanor, punishable by up to one year in jail. At that time, that statute provided as follows:

[A] person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she . . . communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm.

In finding the statute to be unconstitutionally vague and overbroad, the court reasoned that "any proscription of pure speech must be sharply limited to words which, by their utterance alone, inflict injury or tend naturally to evoke immediate violence" As the statute required only that the individual communicate in a manner likely to cause annoyance or alarm but not actually threaten harm, the court struck down the statute.

In response to this court action, in July of 2014, the New York State legislature enacted a new statute that would pass constitutional scrutiny. The new Aggravated Harassment statute provides as follows:

With intent to harass another person, the actor either: (a) communicates . . . by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication, a threat to cause physical harm to, or unlawful harm to the property of, such person, or a member of such person's same family or household as defined in subdivision

one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household.

Thus, while the previous statute required only that the person, acting with the intent to harass, annoy, threaten, or alarm, communicate in a manner likely to cause annoyance and alarm, the new statute requires that that the communication contain an actual threat of physical harm to the person, to their property or to a family member. Moreover, in conveying the message, the actor must be aware that that the communication is likely to cause the recipient to fear physical harm, fear harm to their property or to a member of their family or household.

A consequence of the court's action is that those victims that could previously file criminal complaints to stop individuals utilizing email, text or social media to harass, annoy, threaten or alarm can no longer do so, unless the message contains an explicit threat of harm. For example, while previously it was illegal for an individual to "stalk" someone via email by sending unwanted messages, this is no longer a crime.

Some stalking statutes in New York may still apply in these situations. Penal Law § 120.45, Stalking in the Fourth degree, prohibits one from engaging in a course of conduct directed at a specific person, if the person reasonably should know that their behavior "causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person." However, this statute requires that the victim have previously informed the actor to cease the conduct, though contact with a stalker is often not recommended. Moreover, this statute is a class "B" misdemeanor, the lowest level crime in New York, punishable by only 90 days in jail.

Still, there are other potential remedies. IMG recently assisted a client who was being harassed by a former acquaintance. The harassment included late night phone calls to our client's cell phone and office, inappropriate and harassing text messages from a disguised number and confrontational visits to the client's residence by the acquaintance. IMG conducted a comprehensive background investigation and surveillance on the individual. Additionally, investigators conducted a successful digital forensic analysis of the harassing texts, confirming that the author was the former acquaintance. The harasser was notified that investigators were aware of his behavior and advised him to immediately stop all communications to our client. In this instance, our actions were sufficient to cause the harasser to discontinue his conduct.

About Investigative Management Group

Investigative Management Group (IMG) has distinguished itself as one of the top providers of corporate security and intelligence gathering services, and is a leader in the high-end investigative market. IMG's principals, Robert Strang and Ann Hayes, have been business partners since 1989 after successful careers in Federal law enforcement. IMG routinely performs confidential investigative due diligence for Fortune 500 companies, private equity firms, hedge funds, institutional clients, and law firms to evaluate investments, management teams and portfolio managers on a global basis. One-half of our due diligence practice focuses on global cross-border transactions. IMG employs experts in Digital Forensics and Forensic Accounting when investigating internal fraud, workplace violence, sexual harassment and discrimination cases. IMG works with companies to uncover early warning signs, create an action and response plan, and help deploy professional staff to assist and counsel employees in the aftermath of an incident.



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About RANE

RANE is an information services and advisory company serving the market for global enterprise risk management. We provide access to, collaboration with, and unique insights from the largest global network of credentialed risk experts covering over 200 categories of risk. Through our collective insight, we help enterprises anticipate emerging threats and manage today's most complex risks more effectively.