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September 29, 2010

Chief Dean Hoxsie
Narragansett Police Department
40 Caswell Street
Narragansett, RI 02882

Dear Chief Hoxsie:

Our office recently learned of the "cyberstalking" charges that were filed by your police department in separate incidents last month against town residents Themistocles Faraone and Michael Handrigan. I am writing to express our organization's deep concerns about these actions. We believe that, in addition to being unauthorized by the statute itself, the charges set a very dangerous precedent that could have a significantly chilling effect on freedom of speech by town residents.

It is first important to note that, in both instances, the "victims" of both of these charges are public figures in the Town of Narragansett. In Mr. Faraone's case, the alleged cyberstalking involves Douglas McLaughlin, a retired police officer and current and past Town Council candidate. Mr. Handrigan is alleged to have engaged in cyberstalking of James Durkin, a three-term member of the Narragansett Town Council.

In both cases, the comments were posted on a Craigslist forum that is, by its own terms, dedicated to "rants and raves." Admittedly, the comments were nasty, crude and extremely offensive. At the same time, they are not threatening in any way. Under the circumstances, we find it extremely troubling that, in the space of a month, your Department has *criminally charged two residents for making comments about two public figures in a public forum.*

Leaving to the side the important First Amendment issues raised by these charges, it is abundantly clear that the cyberstalking statute simply **does not apply** to this type of speech in the first place. That makes these charges – with their political undertones – so much more troubling and damaging.

In saying that the statute is inapplicable, I am not referring to the question of whether the charges, as a factual matter, meet the various predicate standards contained in R.I.G.L. §11-52-4.2 (such as if the communications at issue were "for the sole purpose of harassing" or constitute "a course of conduct" as defined in the statute). Those are interesting questions, but ultimately irrelevant ones. Rather, the problem with these charges is more fundamental: the statute does not encompass, and thus does not criminalize, communications posted on web sites.

The scope of the cyberstalking statute is clear: it is specifically limited to electronic communications that the alleged offender **transmits directly to the "harassed" person** or that "cause" that person to be contacted. The passive posting of information on a website simply does not meet the threshold standard contained in the cyberstalking law for a violation to occur.

This is not a minor distinction, nor is it a "loophole." The General Assembly had good reason to make this differentiation. To expand the notion of "cyberstalking" or "cyberharassment" to cover any communication on the Internet, and not be limited to those actually directed to an individual, would run headlong into fundamental free speech problems. For good or for bad, postings such as those allegedly made by Mr. Faraone and Mr. Handrigan are part and parcel of the rough and tumble of the World Wide Web. In saying that, we do not condone such comments; we only wish to emphasize that this is an area where the *criminal* law does not belong.

Indeed, examples of such speech are found everywhere on the Internet – on blogs, in postings and in responses to news stories. (And in less graphic form, personal *ad hominem* attacks have become a staple of radio and television talk shows.) Even if they had the authority to arrest people for such comments, which they do not, police departments eager to "clean up" their town from such cyberspace drivel would need a full-time force of cyber-nannies to try to keep up with things, diverting enormous resources from the true crime-fighting activities expected of a police force.

The postings at issue in these two cases may be extremely crude, but your Department's extraordinarily expansive view of "cyberstalking" is not dependent on crudeness. Indeed, if the law actually read the way your police department has sought to read it, a crime victim who posted on her personal blog critical opinions about a convicted criminal could be deemed to violate the law if it were done for the sole purpose of "harassing" the offender in a way that might cause him or her "substantial emotional distress."

Tellingly, according to Mr. Faraone's arrest report, the arresting officer advised Faraone: "[D]on't put it on the computer unless you know it is fact." Respectfully, we do not believe it is up to a police officer or any government official to tell individuals that they may only put on a computer what they know is "fact." The vast majority of web communications – scientific and social research, political opinion and vast quantities of other material – would come crumbling down under such a standard. The Web is not an encyclopedia. The First Amendment provides for a much more robust Internet, where vulgar, profane, and contentious speech co-exists with more enlightened speech.

Even if the comments at issue in these two incidents were shown beyond any doubt to be legally defamatory, that would be a matter to be handled and decided by the civil courts, not the police or the criminal justice system. The disreputable notion of "criminal libel" has no place, and has long been abandoned, in a country that values freedom of speech.

In sum, however, there is little need to engage in a debate about the First Amendment implications of the Department's interpretation of the statute, for the interpretation itself cannot withstand scrutiny. By inappropriately charging two individuals with a criminal offense for posting vulgar "rants" on Craigslist, the Narragansett Police Department has cast a pall over freedom of speech for all residents of the town. Who knows how many townspeople now think twice about expressing their opinions online for fear that a police officer will determine that they have not posted a "fact," or that a public official will argue that those opinions have caused them "substantial emotional distress"? The end result would be to reduce communications on the Internet to a pablum that is the antithesis of what the First Amendment is about.

Again, in making these observations, we do not mean to suggest that the "victims" have no recourse if they believe that libelous comments have been made about them. However, the initiation of criminal charges against these two defendants has no basis in law and inappropriately chills the exercise of free speech rights.

We therefore strongly urge you to drop these charges and to instead advise the complainants that, if they wish to pursue the matter, they must do so through the civil courts, not by employing the prosecutorial powers of the state.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Steven Brown
Executive Director

cc: The Hon. Patrick Lynch
James O'Neil
William Devine, Jr.