

Friday, July 31, 2009

### **The First Amendment trumps Virginia's unconstitutional harassment statute.**

Virginia has an unconstitutionally vague and overbroad harassment statute, which provides: "§ 18.2-186.4. It shall be unlawful for any person, with the intent to coerce, intimidate, or harass another person, to publish the person's name or photograph along with identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § 18.2-186.3, including identification of the person's primary residence address. Any person who violates this section is guilty of a Class 1 misdemeanor." "Any person who violates this section knowing or having reason to know that person is a law-enforcement officer, as defined in § 9.1-101, is guilty of a Class 6 felony. The sentence shall include a mandatory minimum term of confinement of six months. (2001, cc. 775, 782; 2007, c. 736.)" The foregoing statute references Va. Code § 18.2-186.3(C), which says: "As used in this section, 'identifying information' shall include but not be limited to: (i) name; (ii) date of birth; (iii) social security number; (iv) driver's license number; (v) bank account numbers; (vi) credit or debit card numbers; (vii) personal identification numbers (PIN); (viii) electronic identification codes; (ix) automated or electronic signatures; (x) biometric data; (xi) fingerprints; (xii) passwords; or (xiii) any other numbers or information that can be used to access a person's financial resources, obtain identification, act as identification, or obtain money, credit, loans, goods or services." How does one get inside the head of a defendant to know if s/he had the requisite statutory intent to "coerce, intimidate, or harass" another person by publishing another person's primary residence address, social security number, or bank account number, as for instances, rather than having the intent to be rude, obnoxious, or stupid? Enter Elisha Strom, who is accused of violating this harassment statute in relation to alleged police victims, which bumps up her sentencing exposure from a one-year misdemeanor to a five-year felony for them being police. The news report makes Ms. Strom sound bizarrely obsessed with following, photographing, and blogging about the police. However, being bizarre and obsessed is not a crime. Photography by itself is not a crime. And blogging certainly is not a crime. May sound minds at the prosecutor's office dismiss this prosecution. ADDENDUM: Thanks to a fellow listserv member for posting on this story, which is also covered by Carlos Miller and the Media Law Resource Center's blog.

Posted by Jon Katz in Criminal Defense at 00:00