D.C. Criminal Code Reform Commission

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To: Councilmember Charles Allen,
Chairperson, Committee on the Judiciary and Public Safety

From: Richard Schmechel,
Executive Director, D.C. Criminal Code Reform Commission (CCRC)

Date: Submitted June 19, 2019

Re: Testimony for the June 24, 2019 Hearing on B23-134 – the "Community Harassment Prevention Amendment Act of 2019"

I. Introduction.

Thank you for the opportunity to provide written testimony to the Committee on the Judiciary and Public Safety for the record of the public hearing on the "Community Harassment Prevention Amendment Act of 2019" (hereafter "bill"), to be held on June 24, 2019. I am presenting written testimony on behalf of the Criminal Code Reform Commission (CCRC).

The CCRC is a small, independent District agency that began operation October 1, 2016. The CCRC's mission is to prepare comprehensive recommendations for the Mayor and Council on reform of the District's criminal statutes. Specifically, the CCRC's work is focused on developing comprehensive recommendations to reform the District's "substantive" criminal statutes—i.e., laws that define crimes and punishments.

To date, the CCRC has not submitted final recommendations to the Mayor or Council for the two offenses specifically amended by the bill: defacing or burning cross or religious symbol; display of certain emblems (D.C. Code § 22-3312.02); and stalking (D.C. Code §§ 22-3131 - 22-3135). However, the agency has completed research and *draft* recommendations on stalking, as well as related offenses likely to be committed as part of the behavior described by the bill, such as: trespass (D.C. Code § 22-3302); threats (D.C. Code §§ 22-407; 22-1810); and bias-related crime (D.C. Code §§ 22-3701 - 22-3703).

This testimony focuses on the bill's proposed language expanding the District's stalking statute, with only a few final remarks on the bill's expansion of D.C. Code § 22-3312.02. The analysis identifies a number of issues with the purpose, scope, and constitutionality of the bill's proposed changes.

II. The Bill's Purposes & Overview of Changes to Stalking Statutes.

The bill was introduced by Chairman Mendelson on behalf of the Mayor, whose letter accompanying the legislation made several statements about its purpose and the need for expansion of the stalking statute. Specifically, the introductory letter stated:

- "The bill seeks to provide additional safeguards for protected classes against bias-related crimes in the District."

- "Reports of bias-related crimes and incidents have increased significantly in the District - and the country - in the past two years. As we have seen all too clearly recently, from the murder of an African American couple in a Kroger parking lot to the horrific shooting at the Tree of Life synagogue that left 11 people dead, each hate crime takes a toll not only on the victim, but also on the community. I have made it a priority of my administration to provide support to our individuals and the community that have been targeted by hate."

- "While the rise in reported hate crimes has been disturbing, the harassing incidents that may not currently be covered by our extensive statute on bias related crimes is just as troubling. Organizations have been targeted for repeated harassing phone calls and letters, causing alarm among employees and members. However, the existing stalking statute (D.C. Code § 22-3133) protects an "individual," and it is unclear whether that will extend to the same behavior targeting an organization. As a result, the legislation seeks to serve as a remedy for entities organized by association for any established purpose that are vulnerable to serious incidents of harassment and implied threats. By providing law enforcement with a tool for combatting this harassment, it ensures that individuals can safely assemble to advance their common interests."

The bill would amend or supplement four of the five sections in the D.C. Code concerning stalking. Specifically, the bill:

1. Adds to the codified statement of legislative intent in D.C. Code § 22-3131: "*This title also provides law enforcement with a tool for combatting harassment of an entity, thereby helping to ensure that individuals can safely assemble to advance their common interests*."

2. Adds to the definitions applicable to the stalking offenses, in D.C. Code § 22-3132: "'*Entity' means a group organized by association for any established common purpose, including, but not limited to a religious, social, educational, or recreational purpose*."

3. Adds a new offense called "harassing an entity" that contains language identical to the current stalking statute except that it replaces references to a "specific individual" with references to a person's illicit course of conduct directed "*at a specific entity*" and causing fear of safety, alarm, emotional distress, etc. to the "*members, participants, or employees of that entity*."

4. Adds a new offense penalty provision specific to the "harassing an entity" offense that contains language identical to the current stalking statute except that it again replaces references to a "specific individual" with references to "an entity's members, participants, or employees" and omits the current stalking statute's

provision that "a person shall not be sentenced consecutively for stalking and identify theft based on the same act or course of conduct."[1]

III. Bill Analysis.

The bill would specifically codify a different and much broader rationale for a harassing an entity offense than addressing hate crimes—namely, "helping to ensure that individuals can safely assemble to advance their common interests." In support of the bill, the Mayor's introductory letter states that bias-related crimes and incidents have increased significantly in the District and cites to national examples of hate crimes. However, the bill's changes to the stalking statute are not limited to stalking that is based on hate or bias, nor are the bill's changes limited to traditional "protected classes" based on race, religion, national origin, sex, age, etc. As with the current stalking statute, the bill's new stalking an entity offense does not require any hate or bias-related motive. The bill's definition of "entity" also is "a group organized by association for any established common purpose, including, but not limited to a religious, social, educational, or recreational purpose." While the scope of this definition is somewhat unclear,[2] the "association" apparently is not limited to any traditional class. Consequently, while it may be that some[3] hate or bias-related crimes would be subject to liability under the bill's new harassing an entity offense, the new offense purports to serve a broader, different purpose.

However, the conduct proscribed by the bill's harassing an entity statute is broader still, having no necessary connection to the stated rationale of protection of safe assembly. As with the current stalking statute, the bill's proposed offense would criminalize a course of conduct that is done with the intent, knowledge, or negligence that such conduct would cause a covered person to experience "fear for their safety."[4] Notably, however, there is no requirement in the bill or the current stalking statute that a person actually experienced such a fear for safety based on the accused's actions. The harassing an entity statute doesn't actually require proof that any individual feared for their safety. Moreover, there are several alternative bases of liability in the bill and the current stalking statute that go beyond concerns of safety, including a course of

[1] The rationale for this omission is not obvious. It is unclear how stalking of a person and harassing an entity would differ with respect to the desirability of multiple punishments for identity theft and either stalking or harassment.

[2] The meaning of the phrase "group organized by association for any established common purpose" is ambiguous. It may be expansive enough to include casual friendships or narrow enough to require an externally-recognized, ongoing connection such as a sports team.

[3] For example, single-instance conduct that is bias-related would *not* satisfy the "course of conduct" requirement of the harassing an entity offense.

[4] *See Coleman v. United States*, 202 A.3d 1127, 1144 (D.C. 2019) ("The first type of mental harm listed in the stalking statute, "[f]ear for ... safety," is not defined in the statute. D.C. Code § 22-3133(a)(3)(A). The legislative-intent section of the stalking statute, however, states that the law was designed to prevent "severe intrusions on [an individual's] personal privacy and autonomy" and conduct that "creates risk to the security and safety of the [individual]." D.C. Code § 22-3131(a); see also Committee Report at 33 ("[T]he purpose [of the law] is to enable law enforcement to intercept behaviors that potentially lead to violence, a loss in the quality of life, or even death."). Further, the Model Stalking Code Commentary provides the following examples of fears that would constitute fear for one's safety: "fear of death or serious physical harm," fear of sexual assault, fear that a child will be kidnapped or harmed, and "[f]ear of the unknown." Model Stalking Code Commentary at 39–40. Together, these sources indicate that fear for safety means fear of significant injury or a comparable harm. Moreover, they indicate that the stalking statute is meant to prohibit seriously troubling conduct, not mere unpleasant or mildly worrying encounters that occur on a regular basis in any community.").

conduct that would cause a covered person to "feel seriously alarmed, disturbed, or frightened"[5] or "suffer emotional distress."[6] The District of Columbia Court of Appeals (DCCA) summarized the mental harms as requiring something that "must rise significantly above that 'which [is] commonly experienced in day to day living,'" and "[o]rdinary 'uneasiness, nervousness, [and] unhappiness' are insufficient."[7] However the mental harm in stalking is characterized, it should be clear that the harassing an entity statute criminalizes a wide array of conduct that does not necessarily cause a person to fear for their physical safety, individually or in assembly.

The bill's harassing an entity statute newly criminalizes conduct and is not redundant with the scope of the current stalking statute. While the Mayor's introductory letter to the bill states that "the existing stalking statute (D.C. Code § 22-3133) protects an 'individual,' and it is unclear whether that will extend to the same behavior targeting an organization," the CCRC's analysis is that the current stalking statute in fact *does not* include organizations or an "entity" as defined by the bill as an "individual." There is no indication in the legislative history for the District's current stalking statute or the model statutes that were referenced in the legislative history that the stalking statute was intended to address stalking directed at an organization or other entity. Core behavior described in the stalking statute—e.g. "follow"—and the statute's reference to "personal identifying information" as defined in § 22-3227.01(3)—including, e.g., a birth certificate—are inconsistent with such a construction. Notably, the current stalking statute

[5] *See Coleman v. United States*, 202 A.3d 1127, 1145 (D.C. 2019) ("There is much more limited guidance available about what it means to "feel seriously alarmed, disturbed, or frightened," the remaining form of mental harm listed in the statute. D.C. Code § 22-3133(a)(3)(B). But the D.C. Council's removal, in the current version of the statute, of liability for "seriously…annoy[ing]" conduct tells us that serious annoyance is insufficient. D.C. Code § 22-404(e) (2001) (defining "harass[ment]"—one of the ways in which a person could commit the crime of stalking under the old statute—as conduct that "seriously alarms, annoys, frightens, or torments"); see also District of Columbia Public Defender Service, June 2, 2009, Letter to Councilmember Phil Mendelson, attachment to Committee Report, at 3 (explaining that the United States Attorney's Office and the Office of Attorney General had "propos[ed]…replacing 'annoy' with 'disturb'" and that the Public Defender Service "prefer[ed] 'disturb' to 'annoy' because [it thought it] conveys a more serious effect"); Model Stalking Code Commentary at 39 ("[T]he stalking conduct needs to address behavior that goes beyond merely annoying the victim ...."). And the principle of noscitur a sociis suggests that serious alarm, disturbance, and fright should be understood as mental harms comparable to fear for one's safety or significant emotional distress. *See Burke v. Groover, Christie & Merritt, P.C.*, 26 A.3d 292, 303 n.8 (D.C. 2011) ("'The maxim noscitur a sociis, that a word [or phrase] is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word [or phrase] is capable of many meanings in order to avoid the giving of unintended breadth' to words in a statute." (quoting *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307, 81 S.Ct. 1579, 6 L.Ed.2d 859 (1961)) (alterations in original)).").

[6] D.C. Code § 22-3132 (4) ("'Emotional distress' means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling"). See also, *Coleman v. United States*, 202 A.3d 1127, 1144–45 (D.C. 2019) ("This language indicates that the type of emotional distress that the victim must experience is high, reaching a level that would possibly *1145 lead to seeking professional treatment. See also Committee Report at 32 ("Stalking is a serious crime that often involves intimidation, psychological terror, and escalating severity."). The Model Stalking Code Commentary cites with approval Wallace v. Van Pelt, in which the court explained that "emotional distress" was "a general or specific feeling of mental anguish," "something markedly greater than the level of uneasiness, nervousness, unhappiness or the like which [is] commonly experienced in day to day living." 969 S.W.2d 380, 386 (Mo. Ct. App. 1998) (emphases added), cited by Model Stalking Code Commentary at 49. Further, the Model Stalking Code Commentary sets forth the following examples of conduct that would cause "emotional distress": "making repeated telephone calls to a victim at a workplace, possibly endangering her job,…engaging in conduct that destroys the victim's credit history," and "plac[ing] [the victim] under constant surveillance." Model Stalking Code Commentary at 41, 49."); Avlana K. Eisenberg, *Criminal Infliction of Emotional Distress*, 113 Mich. L. Rev. 607 (2015).

[7] *Coleman v. United States*, 202 A.3d 1127, 1145 (D.C. 2019)(internal citations omitted).

also does not characterize the victim as a "person," which would potentially allow for an inference that organizations were included.[8]

The conduct described in the bill's harassing an entity statute appears to criminalize a wide swathe of ordinary, constitutionally-protected First Amendment activity. For the most part, stalking statutes nationally have withstood constitutional challenges.[9] However, the language of stalking statutes varies considerably and courts in other jurisdictions have recently struck as unconstitutional[10] some uncommon language that, nonetheless, is in the District's current stalking statute and would be replicated in the bill's harassing an entity statute. First Amendment law is complex, but analysis by the Illinois Supreme Court of language almost identical to the formulation in District's stalking statute has been distilled in a helpful article by law professor Eugene Volokh as follows:[11]

1. "The statute is a content-based speech restriction, and thus presumptively unconstitutional." Communications that have pleasant content are not prohibited under the statutes, but communications whose content cause distress are prohibited.

2. The statute isn't limited to speech that falls within one of the few recognized exceptions to the First Amendment's protection recognized by the Supreme Court, including the "exception for true threats of illegal conduct" or "speech integrally related to criminal conduct." While the scope of these exceptions is a litigious matter, the breadth of the Illinois (and D.C.) stalking statute clearly exceeds those bounds.
3. The statute includes constitutionally protected forms of speech, including "political speech"[12] and non-political speech.[13]

4. "The statute isn't limited "to one-to-one communications," which might be restrictable under *Rowan v. United States Post Office Dep't* (which holds "that

[8] *See* D.C. Code § 45–604 (General rules of construction for the D.C. Code state that: "The word 'person' shall be held to apply to partnerships and corporations, unless such construction would be unreasonable, and the reference to any officer shall include any person authorized by law to perform the duties of his office, unless the context shows that such words were intended to be used in a more limited sense.").

[9] Wayne R. LaFave § 16.4(b)The legislative response, 2 Subst. Crim. L. § 16.4(b) (3d ed.).

[10] *People v. Relerford*, 104 N.E.3d 341, 350 (Ill. 2017); *State v. Shackelford*, COA18-273, 2019 WL 1246180, at *9 (N.C. Ct. App. Mar. 19, 2019); *People v. Morocho*, 1-15-3232, 2019 WL 2438619 (Ill. App. Ct. June 10, 2019).

[11] *See* Eugene Volokh, *Ban on speech 'about a person' that negligently causes 'significant mental suffering, anxiety or alarm' struck down,* Washington Post (Nov. 30, 2017) (available online at: https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/11/30/ban-on-speech-about-a-person-that-negligently-causes-significant-mental-suffering-anxiety-or-alarm-struck-down/?utm_term=.976acd0dc7e7.).

[12] Volokh quotes the Illinois Court as stating: "For example, subsection (a) prohibits a person from attending town meetings at which he or she repeatedly complains about pollution caused by a local business owner and advocates for a boycott of the business. Such a person could be prosecuted under subsection (a) if he or she persists in complaining after being told to stop by the owner of the business and the person knows or should know that the complaints will cause the business owner to suffer emotional distress due to the economic impact of a possible boycott."

[13] Volokh quotes the Illinois Court as stating: "The Supreme Court has acknowledged that "most of what we say to one another lacks 'religious, political, scientific, educational, journalistic, historical, or artistic value' (let alone serious value), but it is still sheltered from Government regulation." Given the wide-ranging scope of the first amendment, its protection presumptively extends to many forms of speech that would fall within the broad spectrum of speech restricted by subsection (a)."

nonconsensual one-to-one communications that impinge on the privacy rights of the recipient are not protected under the first amendment")." Instead, the Illinois statute (as in D.C.) includes liability for communications "to or about" an individual and would include Facebook posts and signage displayed publicly.

There is no legally-recognized exception to First Amendment protection for even "hate speech" as generally understood.[14] Forceful, bigoted speech may reasonably be thought to cause a person severe emotional distress, yet even such speech is protected and cannot be specifically prohibited except where such speech constitutes a "true threat," "solicitation of a crime," or another recognized exception to First Amendment protection.[15] Of course, the bill's proposed statute reaches speech about a person that is far less condemnable than hate speech. Speech vilifying a business and its employees for environmental pollution, criticizing the performance of a healthcare facility, or remonstrating a governmental unit for ethical breaches may cause the members of those "entities" severe emotional distress.[16] However, there may be social benefits to such speech. Unfortunately, the proposed harassing an entity offense may be even more likely to involve political or religious forms of speech—e.g., harsh criticism of a political party or condemnation of a religion—than stalking directed at specific individual persons.

The proposed harassing an entity's statutory savings clause[17] *does not sufficiently shield such activity* from unconstitutionally chilling speech. As Professor Volokh recounted, the Illinois Supreme Court confronted a similar savings clause and found that: [18]

1. The statute can't be saved by the exception for "exercise of the right to free speech or assembly that is otherwise lawful." First, the exemption is simply "an affirmative defense that must be raised by a defendant at trial after a prosecution has been initiated. As such, the exemption cannot eliminate the chilling effect on protected speech and resulting self-censorship."

2. Second, "[t]he exemption does not prevent unwarranted prosecutions under a case-by-case application of the "communicates to or about" language. Nothing in the language of subsection (a) explicitly differentiates between distressing communications that are subject to prosecution and those that are not — and the State has not offered any guidance as to how Illinois citizens should tease out that difference. A case-by-case

[14] Again, law professor Eugene Volokh again has written an accessible summary of this point. *See, Eugene Volokh, No, there's no "hate speech" exception to the First Amendment,* Washington Post (May 7, 2015).

[15] The "mere fact that expressive activity causes hurt feelings, offense, or resentment does not render the expression unprotected." *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 414 (1992) (White, Blackmun, O'Connor & Stevens, JJ., concurring); *see also State v. Brobst*, 151 N.H. 420, 423 (2004); *People v. Klick*, 66 Ill. 2d 269, 273 (1977).

[16] Speech on public issues should be "uninhibited, robust, and wide-open…[because such] speech occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder v. Phelps*, 562 U.S. 443, 444 (2011) (citing to *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) and *Connick v. Myers*, 461 U.S. 138 (1983) (internal quotation marks omitted)).

[17] D.C. Code § 22-3133(b) ("This section does not apply to constitutionally protected activity.").

[18] *See* Eugene Volokh, *Ban on speech 'about a person' that negligently causes 'significant mental suffering, anxiety or alarm' struck down,* Washington Post (Nov. 30, 2017) (available online at: https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/11/30/ban-on-speech-about-a-person-that-negligently-causes-significant-mental-suffering-anxiety-or-alarm-struck-down/?utm_term=.976acd0dc7e7.).

> discretionary decision by law enforcement officers and prosecutors does not solve the problem of the chilling effect on innocent speakers who fear prosecution based on negligently made distressing communications to or about a person. We conclude that [the exemption] is insufficient to remediate the extreme overbreadth of subsection (a) and cannot by itself make the terms of that provision constitutional."

Notwithstanding the Illinois Supreme Court opinion and critical legal scholarship, an overbreadth challenge of this type described above has not been brought to the D.C. Court of Appeals to date, so the District's statute remains untested.

The bill's harassing an entity statute may, in some instances, undermine the repeated victimization standard of the current stalking statute. The current stalking statute's statement of legislative intent recognizes that intrusions to personal privacy and autonomy must involve a "pattern" targeting the victim, and the elements of the offense require action on two or more occasions that is directed at the same "specific individual."[19] In contrast, the bill's harassing an entity statute does not require proof of a pattern of infringement against any specific individual. As there is no apparent requirement that the "specific entity" itself or its general membership experience a harm, one-time victimization of two persons in an entity (however narrowly or broadly that term is construed) is sufficient. While affected persons may suffer serious emotional distress from such one-time victimization, providing criminal liability for such an event runs counter to the two-or-more occasions standard of the current statute.

The bill's provisions amending the District offense of defacing or burning cross or religious symbol and display of certain emblems (D.C. Code § 22-3312.02) may not pose constitutional problems, however the bill's amendments do not cure other defects of the statute. While the CCRC has not fully evaluated or developed draft recommendations regarding D.C. Code § 22-3312.02, the statute may generally comport with the Supreme Court ruling in *Virginia v. Black*, 538 U.S. 343 (2003) upholding a cross-burning statute as a form of conduct that may be criminalized when conducted with intent to intimidate (a "true threat" exception to the First Amendment). However, relevant to a constitutional analysis and to the clarity of the offenses as a whole, the it must be noted that the bill does not specify complete culpable mental state requirements for the amended D.C. Code § 22-3312.02. As articulated in D.C. Code § 22-3312.02, the offense proscribes conduct "…where it is probable that a reasonable person would perceive that the intent is…" to intimidate, etc. However, it is unclear what intent or other mental state, if any, the offense requires, and that may be relevant as courts have only upheld a true threats exception to the First Amendment where based on at least recklessness.[20] The CCRC

[19] The number of occasions involved in a relevant "course of conduct" under the District's stalking statute has recently been litigated. *See Coleman v. United States*, 202 A.3d 1127, 1142 (D.C. 2019) ("In sum, although the text of D.C. Code § 22-3133 is ambiguous as to whether a defendant can be convicted of stalking absent proof that he or she possessed a culpable mental state (an intentional, knowing, or "should have known" mental state) during at least two of the occurrences that comprise the course of conduct, the statutory definitions, the last-antecedent rule, the legislative history, and the rule of lenity lead us to conclude that the defendant cannot.").

[20] *See, e.g., United States v. Cassel*, 408 F.3d 622, 633 (9th Cir. 2005). *See, also, Elonis v. United States,* 135 S. Ct. 2001, 2011 (2015) ("Elonis's conviction, however, was premised solely on how his posts would be understood by a reasonable person. Such a "reasonable person" standard is a familiar feature of civil liability in tort law, but is inconsistent with "the conventional requirement for criminal conduct—awareness of some wrongdoing." Staples, 511 U.S., at 606–607, 114 S.Ct. 1793 (quoting *United States v. Dotterweich*, 320 U.S. 277, 281, 64 S.Ct. 134, 88

will engage in a more complete analysis of the offense if time permits under its statutory mandate.

IV. Closing.

While the goals of the proposed legislation are admirable, the CCRC's analysis has identified a variety of concerns about the specific language of the bill.

The scope, constitutionality, and effect of some provisions of the harassing an entity offense appear to be unrelated to or, in some cases, may conflict with, the stated goals of the legislation. I urge the Committee to review carefully the First Amendment implications of the new harassing an entity offense that is provided in the bill. Crafting criminal legislation that regulates speech is a notoriously difficult task that runs the risk of chilling the very rights of assembly and speech that one seeks to protect. The CCRC's draft recommendations to revise the District's stalking statute and explanatory legal commentary provide a solution for how a robust stalking statute can be fashioned that upholds First Amendment values.[21]

Moreover, the CCRC's analysis generally does not support the need for a new harassing an entity offense as described in the bill. I urge the Committee to consider carefully the rationale for creating a new harassing an entity crime, and to identify specific incidents in the District that have gone unprosecuted for want of the proposed harassing an entity offense. There are many other offenses that are currently available for prosecution of behavior that poses safety risks to individuals rights of association—e.g. criminal threats, trespass, disorderly conduct, stalking, and the second offense in this bill, defacing or burning cross or religious symbol and display of certain emblems (D.C. Code § 22-3312.02). The District's current criminal statutes for bias-related crime in D.C. Code § 22-3701 applies to all criminal acts, increasing the maximum authorized penalty by 50%.

Absent a clear need to address incidents in the District that cannot be prosecuted under other laws, I would recommend the Committee delay criminalizing new conduct under the bill's harassing an entity offense until it has the opportunity to review the CCRC's final recommendations for reform of the District's stalking statute. The CCRC's draft recommendations, which have already undergone a round of comments by the agency's Advisory Group and addresses a number of other changes to improve the statute besides those referenced in the analysis above. Final recommendations regarding the stalking statute and other offenses against persons are planned for release to the Council and Mayor by the close of FY 20.

L.Ed. 48 (1943); emphasis added). Having liability turn on whether a "reasonable person" regards the communication as a threat—regardless of what the defendant thinks—"reduces culpability on the all-important element of the crime to negligence," *Jeffries*, 692 F.3d, at 484 (Sutton, J., dubitante), and we "have long been reluctant to infer that a negligence standard was intended in criminal statutes," *Rogers v. United States*, 422 U.S. 35, 47, 95 S.Ct. 2091, 45 L.Ed.2d 1 (1975) (Marshall, J., concurring) (citing Morissette, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288). *See* 1 C. Torcia, Wharton's Criminal Law § 27, pp. 171–172 (15th ed. 1993); Cochran v. United States, 157 U.S. 286, 294, 15 S.Ct. 628, 39 L.Ed. 704 (1895) (defendant could face "liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind"). Under these principles, "what [Elonis] thinks" does matter. App. 286.").

[21] The CCRC's latest draft recommendations regarding stalking and other statutes is available online at www.ccrc.dc.gov/node/1241216.

Thank you for your consideration. For questions about this testimony or the CCRC's work more generally, please contact our office or visit the agency website at www.ccrc.dc.gov.

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