

Portions of New York's "aggravated harassment" struck down as unconstitutional

New York Daily News:

The state's top court struck down a law that's often used against stalkers and domestic abusers.

A significant portion of the second-degree aggravated harassment law, relating to phone calls, emails and other kinds of communication "in a manner likely to cause annoyance or alarm," is invalid under the New York State Court of Appeals ruling that stems from a case against Dead Sea Scrolls enthusiast Raphael Golb.

The judges said they "conclude that (the law) is unconstitutional under both the state and federal Constitutions, and we vacate defendants' convictions on these counts."

They sided with a case brought by Golb's attorney, Ron Kuby, saying: "We agree with defendant that this statute is constitutionally vague and over broad."

The complete decision is [here](#). In it, the New York State Court of Appeals held:

In *People v Dietze* (75 NY2d 47 [1989]), this Court struck down a similar harassment statute, former Penal Law § 240.25, which prohibited the use of abusive or obscene language with the intent to harass, annoy or alarm another person. We determined that the statute was unconstitutional under both the State and Federal Constitutions, noting 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."

The reasoning applied in *Dietze* applies equally to our analysis of Penal Law § 240.30(1)(a). The statute criminalizes, in broad strokes, any communication that has the intent to annoy. Like the harassment statute at issue in *Dietze*, "no fair reading" of this statute's "unqualified terms supports or even suggests the constitutionally necessary limitations on its scope." See also *People v Dupont*, 107 AD2d 247, 253 [1st Dept 1985] [observing that the statute's vagueness is apparent because "[i]t is not clear what is meant by communication 'in a manner likely to cause annoyance or alarm' to another person"]. And, as in *Dietze*, "we decline to incorporate such limitations into the statute by judicial construction" because that would be "tantamount to wholesale revision of the Legislature's enactment, rather than prudent judicial construction."

One columnist has suggested a way to fix the statute to pass constitutional muster, proposing that the law be amended to cover only legitimate threats:

It is time for states like New York to step in and fix their harassment and stalking laws. As the Golb case rightly found, harassment statutes cannot criminalize harassing speech intended to annoy another person. In 2013 Congress amended the federal telecommunications harassment statute to take out overbroad "annoy" language. New York and other states should do the same.

The case is likely to have significant ramifications, both in Family Court and Criminal Court. Anyone accused of violating a harassment statute should contact an attorney to review their legal rights in light of this important decision.

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