

leads to complications in the delineation of the powers and obligations of the Legislature and the Judiciary. In order to maintain the distinction between legislative and judicial powers, it is necessary to assign a point in time when one takes off from the other. This point is, necessarily, the date the statute takes effect. After the Legislature accomplishes its task of designating the norms for the future, the Judiciary begins to perform its solemn duty of determining whether these norms have been complied with. Since the interpretation given by the Supreme Court to a statute expresses the Legislature's intent at the moment of enactment, this interpretation should retroact to the date of the statute's effectivity.

However, there are instances when this simple proposition must yield to considerations of constitutional proportions. There are three exceptions when judicial decisions abandoning doctrines laid down in the past must strictly have prospective effect only. These are: (1) when a violation of the *ex post facto* principle will result, (2) when contracts entered into in accordance with the previous doctrine will be impaired and (3) when rights acquired and vested under the earlier ruling will be affected.

In these cases, the personal liberties sought to be protected by the Bill of Rights must be complemented by protection accorded by the Supreme Court in resolving actual controversies.

Despite its long history of decision-making and the fact that the Supreme Court has faced this problem at least eight times in the past forty years, the Supreme Court has never attempted to discuss the extent to which the principle of prospectivity applies to judicial decisions. Its rulings have been couched in general terms which reveal very little of the reasoning behind the application. Worse, the Supreme Court has never acted aware that whenever it abandons a doctrine previously established, it may be violating constitutionally-protected rights of the parties-litigant by immediately applying the new ruling to the case at bench.

Personal rights and liberties under the Constitution are of such grave import that it is not enough that the rights of future litigants be secured. Even the rights of the parties to the case when a reversal of an old doctrine is undertaken must be upheld. This necessitates a re-examination of the principles of *ratio decidendi*, *obiter dicta*, and *stare decisis*. Establishing better definitions of these principles is a small price to pay for safeguarding the constitutional rights better.

The author is not unaware that the plan of action she has recommended is revolutionary since it calls for a critical modification of the manner whereby cases have been handled by the Supreme Court. But it is a plain fact that continuing in their present disposition of similar cases may result in serious transgressions of constitutional rights. That no one has ever noticed or complained of the resultant inequality or injustice does not legitimize the sacrifice of constitutional rights. Long-standing practice and custom are insufficient to sustain an unjust course of action. More important than any principle of law or any judicial policy is the requirement that the Supreme Court do what is right. More important than adherence to established procedures is that the Supreme Court uphold what is just.

THE INADEQUACY OF EXISTING LEGAL REMEDIES AGAINST STALKING: A PROPOSED PHILIPPINE ANTI-STALKING STATUTE

JANINA C. ARRIOLA*

ABSTRACT

Stalking, described as the "Crime of the Nineties" in the United States, is offensive to every person's right to privacy, security of person, and reputation. As such, it is criminal and should therefore be punished by law.

Sadly, however, there is no Philippine statute which punishes stalking as a distinct offense. Traditional criminal remedies focus on resulting physical harm, punish isolated overt acts and provide relatively low penalties for acts which cause emotional distress upon another. Civil remedies, on the other hand, are vague and inaccessible. In addition, there are no procedural remedies through which stalking conduct can be restrained. There is thus a legal failure to provide stalking victims with protection and relief.

The individual's rights to privacy, peace of mind, security of person and reputation are recognized under Philippine law and jurisprudence, as well as under major international instruments such as The International Covenant on Civil and Political Rights and The Universal Declaration of Human Rights. The government, then, is under an obligation to provide victims with a remedy against stalking.

For the purpose of drafting a proposed Philippine Anti-Stalking Statute, US state laws provide models for defining and penalizing the crime. However, any future Philippine statute must be consistent with prevailing criminal liability principles under Philippine criminal law and hurdle the constitutional obstacles of vagueness and overbreadth.

The proposed anti-stalking statute incorporates a scienter and specific intent element, a notice requirement, and subjective and objective causal elements of substantial emotional distress, and defines stalking in its simple and aggravated forms. It also imposes a stiff penalty scheme on repeat offenders and requires the posting of a bond, prior and subsequent to conviction, to ensure victim protection.

An anti-stalking statute will serve to fill in the gaps in existing statutes and recognize that the intentional infliction of substantial emotional distress upon another is criminal and actionable. It will also declare stalking conduct to be unacceptable and thus deter the conduct. In addition, it will provide the means through which victims will be able to restrain the continuation of acts which unjustly intrude into their private spheres. Finally, it will give victims a tool with which to fight and punish their stalkers.

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INTRODUCTION

A. Background

In 1989, Rebecca Schaeffer, a promising young Hollywood actress and star of the television situational comedy, "My Sister Sam," was shot dead by a nineteen-year old fan. For two years, her assailant, Robert Bardo, had not only pursued Schaeffer, sending gifts and fan mail, but also harassed her with threatening letters and unwelcome visits at her studio, at one time, carrying a knife. Finally, he obtained her home address through the services of a private investigator and shot her in the chest with a shotgun in her own home.¹

That same year, five women from Orange County, California were murdered by their ex-husband or ex-boyfriend within a six-week period.² Prior to their deaths all the victims had been stalked by their murderers. Each, except one, had sought protection from law enforcement agencies but were told nothing could be done unless and until their stalkers "did something" to injure them physically.³ In a separate case, a stalker even consulted a police officer on how he could harass his victim or without breaking the law!⁴

It has been estimated that there are at least 200,000 stalkers in the United States (U.S.) and that one in twenty women will be stalked at least once in her lifetime.⁵ In 1990 alone, 90 percent of the women killed in the United States by ex-husbands or ex-boyfriends were stalked prior to their murder.⁶ Today, experts estimate that half of all the women killed in the US are killed by former partners. Again, 90 percent are stalked first.⁷ "Domestic stalking," or the unwelcome pursuit of a former partner or intimate comprise eighty percent of stalking cases.⁸ And while celebrity-stalking cases are more widely known,⁹ recent studies show that

¹ Mike Tharp, *In the Mind of a Stalker*, US NEWS AND WORLD REPORTS, 17 Feb 1992; Robert N. Miller, *Stalk-Talk: A First Look at Anti-Stalking Legislation*, 50.3 WASH. & LEE L. REV. 1303-1339, 1303 (1993).

² Melinda Beck, *Murderous Obsession*, NEWSWEEK, 13 July 1992, at 60-61, 61.

³ Miller, *supra* note 1, at 1303.

⁴ Joel Fahnestock, *All Stalk and No Action: Pending Missouri Stalking Legislation*, 61.4 UMKC L. REV. 783-804, 786 (Summer 1993).

⁵ Rubenstein, *Stalker a Danger to Himself and Others, But He May Go Free*, ILL. LEGAL TIMES, June 1992, at 18; Richard Lingg, *Stopping Stalkers: A Critical Examination of Anti-Stalking Statute*, 67.2 ST. JOHN'S L. REV. 347-381, 350 (1993).

⁶ Fahnestock, *supra* note 4, at 785.

⁷ Lingg, *supra* note 5, at 355.

⁸ *Id.* at 355; Fahnestock, *supra* note 4, at 785.

⁹ Celebrities who have been stalked include Michael and Janet Jackson, David Letterman, Sharon Gless, Olivia Newton-John, Debbie Gibson, etc.; James L. Hankins, *Criminal Law: Criminal 'Anti-Stalking' Laws: Oklahoma Hops on the Legislative Bandwagon*, 46.1 OKLAHOMA L. REV. 109-53, 112 (Spring 1993).

the stalking more often affects ordinary citizens, usually women.¹⁰ Which is not to say that men are immune to this threat. Female stalkers, however, uncommon.¹¹

Public uproar over the killings and the seeming inability of the police to protect the beleaguered women pushed California legislators towards the enactment into law of the first "Anti-Stalking Law" in the US.¹² Section 646.9 of the California Penal Code, which criminalized the "willful, malicious and repeated" following or harassment of an individual by another,¹³ would serve as a model for subsequent anti-stalking legislation in all 50 states of the United States.¹⁴ Like the California act or measure, each of these state laws was preceded by a tragic event that outraged legislators into action.¹⁵

Prior to its criminalization, stalking was regarded merely as an antecedent to a crime. The fact that, by itself, it inflicts emotional and psychological harm was not recognized.¹⁶ Previous criminal laws punished violent behavior such as physical assault or imminent threat, but did not recognize that the emotional distress caused by stalking also warrants serious remedy.¹⁷

The proliferation of new laws, as well as the 3 subsequent amendments to the original California Law, underscores the seriousness of the phenomenon and the urgent need for legal protection of its victims, as well as for penalizing their tormentors.¹⁸ It likewise reflects the growing political awareness of crimes against women.¹⁹

Hollywood films such as *Fatal Attraction*, *Cape Fear*, and *Sleeping with the Enemy*,²⁰ and movies made for television such as *The Stalking of Laura Black*²¹ and

¹⁰ Kathleen G. McAnaney, *From Imprudence to Crime: Anti-Stalking Laws*, 68 NOIRE DAME L. REV. 819-909, 821(1993); Robert A. Guy, Jr., *The Nature and Constitutionality of Stalking Laws*, 46 VANDERBILT L. REV., 991-1029, 995 (1993).

¹¹ Beck, *supra* note 2, at 61.

¹² Cal. Penal Code, §646.9 (West Supp. 1995).

¹³ Cal. Penal Code, §646.9 (West Supp. 1995).

¹⁴ Guy, *supra* note 10, at 992.

¹⁵ Beck, *supra* note 2, at 6. Stating that the laws of Wisconsin, Virginia and Georgia were legislative responses to murders which were preceded by stalking.

¹⁶ McAnaney, *supra* note 10, at 830.

¹⁷ Guy, *supra* note 10, at 1000.

¹⁸ Lisa Nolen Birmingham, *Closing the Loophole: Vermont's Response to Stalking*, 18.2 VERMONT L. J. 477-527, 480; Sylvia Strikis, *Stopping Stalking*, 81.7 GEORGETOWN L. J. 2771-2813, 2777 (August 1993).

¹⁹ Beck, *supra* note 2, at 61.

²⁰ *Id.* at 60.

²¹ Jay Bobbin, *Shields Aims to Change Image*, THE OREGONIAN, 7 February 1993, at 17.

*Moment of Truth: Stalking Back*²² deal with stalking, "The Crime of the Nineties,"²³ and graphically depict the severe emotional harm and psychological distress its victims suffer.²⁴

In the Philippines, there is no existing legislation that directly addresses stalking. As a result, no official report of stalking incidents, *per se*, are available. This does not mean, however, that stalking does not occur.²⁵ This writer has first-hand reports from women who were hounded and preyed upon. She, herself, has been a victim of stalking. It is her personal experience that interested her in the issue and motivated her to explore the legal options women, and men, can resort to under the threat of what she deems to be a criminal violation.

B. Statement of the Problem

There is no Philippine law which punishes stalking as a distinct offense. As a result, stalking victims do not have adequate and prompt remedies for their protection. Existing laws simply do not provide relief to the victims and their families in the form of adequate pecuniary compensation, criminal prevention, deterrence and punishment.

To begin, the 1987 Philippine Constitution does not expressly recognize the Right to Privacy, Reputation, Peace of Mind and Security of Person against private intrusions. The existence of these rights may only be inferred from the right against Unreasonable Searches and Seizures,²⁶ and to Privacy of Communication.²⁷ But specific grants under the Constitution have "penumbras, formed by emanations from those guarantees that help give them life and substance"²⁸ which create "zones of privacy."²⁹ Thus, in some cases, the Supreme Court has acknowledged that the rights to privacy, reputation and security of person do exist.³⁰ But there is no express remedy addressing violations of these constitutional rights in the form of punishment and compensation.

²² Jay Bobbin, *Reed Plays Gutsy Mom in 'Stalking'*, THE OREGONIAN, 17 October 1993, at 39.

²³ James Thomas Tucker, *Stalking the Problems with Stalking Laws: The Effectiveness of Florida Statutes Section 784.048*, 45b FLORIDA L. REV. 609-707, 611 (September 1993).

²⁴ *Id.* at 613.

²⁵ See Discussion in Chapter II, *infra*.

²⁶ PHIL. CONST., art. III, §2.

²⁷ PHIL. CONST., article III, §3.

²⁸ *Griswold v. Connecticut*, 14 L. ed. 2d 510, 514 (1965).

²⁹ *Griswold*, 14 L. ed. 2d 510, 514 (1965).

³⁰ *Valmonte v. Belmonte*, 170 SCRA 256, 269 (1989). The Supreme Court therein stated that "[t]here can be no doubt that right to privacy is constitutionally protected."; *Morfe v. Mutuc*, 130 Phil 415, 444-445 (1968), stating that "[t]he right to privacy as such is accorded recognition independently of its identification with liberty; in itself it is fully deserving of constitutional protection."; *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 20 SCRA 849, 860 (1967).

Certain provisions in the Revised Penal Code and the Civil Code of the Philippines address acts which cause emotional distress in a person such as *Unjust Vexation*,³¹ or acts which damage one's reputation such as *Libel*³² and *Slander*.³³ These acts are seen as an abuse of right,³⁴ and amount to undue interference into one's private affairs.³⁵ These provisions, however, fail to adequately address the phenomenon of stalking.

The Philippine Government is under an obligation to provide legal protection to its citizens against stalking. Under *The Universal Declaration of Human Rights*:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.³⁶ [Emphasis supplied.]

An almost identical provision is contained in the *International Covenant on Civil and Political Rights*, of which the Philippines is a signatory. This is strengthened by another provision in the same Covenant which obligates State Parties to provide remedies for violations of any of the rights granted under the Convention. Thus:

Each State Party to the present Covenant undertakes:

...to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...³⁷ [Emphasis supplied.]

Stalking, as will be shown in this study, is an offense against the Right to Privacy and Security of Person and constitutes an unjust attack on honor and reputation. Thus, under the above-mentioned International Instruments, the Philippine Government is obligated to enact legislation to address it.

where the Supreme Court impliedly recognized the right to exist when it stated that "[t]here is no occasion to consider even cursorily the alleged invasion of the right of privacy.... Petitioners obviously are not the proper parties to do so."; *Madrona v. Rosal*, 204 SCRA 1, 7 (1991) where the Court recognized the right to "honor and reputation..."; *Worcester v. Ocampo*, 22 Phil 42, 73 (1912) stating that "[t]he enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property. It is one of those rights necessary to human society that underlie the whole scheme of human civilization."

³¹ THE REVISED PENAL CODE, Act No. 3815, art. 287(2) (1932) [hereinafter RPC].

³² RPC, art. 353 in relation to art. 355.

³³ RPC, art. 358.

³⁴ THE CIVIL CODE OF THE PHILIPPINES, R.A. No. 386, arts. 19, 20 and 21 (1950) [hereinafter Civil Code].

³⁵ CIVIL CODE, art. 26.

³⁶ The Universal Declaration of Human Rights, art. 12.

³⁷ International Covenant on Civil and Political Rights, art. 2(3).

C. Objectives of the Study

The aims of the study are:

- To establish that stalking is a criminal violation as it causes substantial emotional and psychological distress to its victims;
- To prove that existing criminal and civil remedies are inadequate;
- To establish the need to address the phenomenon as a distinct offense through legislation;
- To determine the legal as well as the constitutional obstacles which a new penal law must hurdle;
- To determine the essential components of a law to punish stalking; and
- To draft a Philippine Anti-Stalking Statute.

D. Methodology

Chapter I of this paper will examine the nature and types of Stalking and discuss the types and characteristics of stalkers. It will establish that stalking behavior is criminal in nature. Case studies of three local stalking incidents, including that involving this writer, as well as a discussion of the impact of stalking on each of the respondents will be covered in Chapter II.

Chapter III is a survey of the criminal and civil options available to stalking victims for relief and redress. An analysis of the adequacy or inadequacy and the difficulty or feasibility of invoking these laws is included.

In Chapter IV, it will be argued that there is a need to address stalking as a distinct offense through legislation on the ground that there are individual as well as societal interests in criminalizing the behavior. A demonstration of the urgency of enacting legislation against it will be made.

Chapter V is a survey of United States anti-stalking legislation which will be used as models for a proposed Philippine anti-stalking statute. The succeeding chapter will then delve into the constitutional obstacles which a special penal law on stalking must hurdle.

Chapter VII will discuss the necessary components of a proposed statute. Finally, the study will end with the formulation of a Model Anti-Stalking Law for the Philippines.

E. Limits of the Study

1. The models used by the study will be limited to those found in the United States where stalking has been clearly defined as a distinct offense. Concern over this phenomenon also began in that country.
2. Two types of stalking will be discussed: the "romantic" and the "vengeful." "Celebrity" stalking, will not be covered by the study as it is not yet considered prevalent in the Philippines. Moreover, records and accounts will be difficult, if not impossible, to obtain.
3. The study will also be limited to defining the elements of stalking as a crime and penalizing it. It will not delve substantially into evidentiary and procedural matters, except as may be necessary to define the elements of and provide for penalties against the crime and to draft the proposed statute.³⁸

I. STALKING: ITS ELEMENTS AND INCIDENTS

A. Working Definition

The dictionary defines the verb, "stalk," as:

- ...2. to pursue or approach game, an enemy, etc. stealthily, as from cover.
3. ...to walk or move along stealthily or furtively.³⁸

This definition reflects, to a large extent, the nature of the behavior which U.S. laws have been designed to address. In fact, in many stalking cases in the United States, the stalker follows or pursues the victim "stealthily," as one would stalk an animal prey. But pursuit is not the only method by which the crime is committed.

Stalking, by its nature, is a series of multi-faceted conduct which includes, but is not limited to, tailing another. It refers to a chain of repeated events or acts of harassment designed to terrorize or intimidate and disrupt the target's well-being and sense of security. These acts fall short of traditional notions of criminal behavior and are done in a manner that purposely avoids criminal responsibility. The intended result, which is to create in the target a fear of imminent harm, is accomplished by a series of acts rather than a single overt act or threat against the target's physical safety.

Thus, there is no single method of committing stalking. It is essentially a crime which can be committed under diverse contexts and situations, by people with different motives, against persons with varying degrees of relationship with or

³⁸ WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE, 1419 (College Ed. 1962).

connection to the perpetrator.³⁹ This does not mean, however, that the proscribed behavior is not identifiable.

Stalkers employ comparable techniques to obtain their objective.⁴⁰ Among the most common of these are vandalism, telephone harassment, express or veiled threats, and surveillance.⁴¹ The sending of letters and gifts are also common.⁴² In all cases, these acts are employed incessantly and threateningly⁴³ over a period of time. However, no single method of harassment is preferred by stalkers.⁴⁴ It is usually a combination or mix of two or more of the above acts which constitute stalking as an offense.⁴⁵ Over time, the harassment becomes more intense and more unusual,⁴⁶ and oftentimes escalates into violence.⁴⁷ Taken singly, each act can arguably be deemed to cause only minor annoyance. But to say that the accumulated conduct causes discomfort would be an understatement.

Stalking can therefore be seen to be a type of anti-social behavior which does not fit into any pattern or legal norm of conduct. It is, as one author noted, "essentially psychological warfare in the battle for control."⁴⁸ It is within this context that the phenomenon should be viewed.

B. Stalker Profiles and Stalking Types

Stalkers do not share a distinguishable characteristic⁴⁹ except, perhaps, that they suffer from some psychological imbalance or disorder. They come from different walks of life, age brackets and economic status. There is no predictable pattern to their behavior. Generally, however, stalkers can be grouped into three

³⁹ Lingg, *supra* note 5, at 351.

⁴⁰ A survey conducted among 379 law enforcement agencies in Florida reveals that the most common tactics are: repeatedly following the victim, harassing phone calls or other verbal harassment, threats of death or bodily injury and assault, trespass on victim's property, battery, written harassment, emotional harassment such as alienating the victim from her friends and co-workers, loitering and prowling, vandalism, killing of pets. Other acts include kissing and caressing the victim, unsolicited gifts, electronic mail, attempted abduction and assault. Tucker, *supra* note 23, at 678-679.

⁴¹ Birmingham, *supra* note 18, at 488.

⁴² Tucker, *supra* note 23, at 612.

⁴³ Guy, *supra* note 10, at 994.

⁴⁴ Tucker, *supra* note 23, at 612.

⁴⁵ Birmingham, *supra* note 18, at 488.

⁴⁶ Some unusual methods include: stealing pets, slashing car tires, taping bullets to the victim's car window, destroying property. *Id.* at 489.

⁴⁷ Tucker, *supra* note 23, at 613.

⁴⁸ Birmingham, *supra* note 1, at 488.

⁴⁹ Tharp, *supra* note 1, at 28.

categories: The Celebrity Stalker; the Romantic Stalker, which can be further subdivided into 2 sub-classes: the Obsessive Stalker and the Former Intimate Stalker; and the Vengeful Stalker. The first category will not be discussed in this study.⁵⁰

1. THE ROMANTIC STALKER

The Romantic stalker either seeks a relationship with his victim or seeks to renew a failed relationship. Thus, we shall call the former the *Obsessive Romantic*, and the latter, the *Former Intimate Romantic Stalker*.

The Obsessive Romantic stalker initiates contact with his victim to establish a romantic relationship with her.⁵¹ This type of stalker may suffer from a disorder called "erotomania."⁵² There are two types of erotomaniac disorders: delusional and borderline erotomania.⁵³

The delusional erotomaniac believes that his feelings are reciprocated even when, in truth, the target of his attention may not even be aware of his existence.⁵⁴ The delusional erotomaniac thus pursues his victim based on a fantasy, a delusion, that the pursuit is welcome and desired by the victim.

There has been much debate on the culpability of the delusional erotomaniac on account of the very nature of the disorder from which he suffers. It has been argued that an insanity defense can be raised by an accused delusional erotomaniac to escape liability.⁵⁵ Some U.S. state laws provide for counselling and psychiatric treatment and evaluation⁵⁶ to determine whether the accused stalker acted with the requisite intent and discernment, as well as to rehabilitate him after conviction. These provisions ensure that mentally-ill stalkers are not erroneously convicted. Such determination and treatment also provide victims much-needed protection.

It is important to note, however, that in a recently decided case, the Philippine Supreme Court laid down the rule that for an insanity defense to prosper in this jurisdiction, the nature of the illness from which the accused suffers should be

⁵⁰ Some characteristics of the Obsessive Romantic Stalker, which will be discussed shortly, are shared by celebrity-stalkers. These stalkers are also motivated by romantic obsession towards celebrities and public figures.

⁵¹ Anyone can be a victim of stalking. It has been shown, however, that women are more likely to become victims than men. Thus, for purposes of this study the stalker will be referred to using the pronoun "he" while the victim by the pronoun "she."

⁵² McAnaney, *supra* note 10, at 833.

⁵³ *Id.* at 833, 837.

⁵⁴ *Id.* at 832, 834.

⁵⁵ *Id.* at 860.

⁵⁶ Such as the California law.

such as would absolutely deprive him of intelligence and freedom.⁵⁷ It can thus be argued that even in the case of the delusional erotomaniac, criminal liability will attach so long as the criminal act was done wilfully, voluntarily and with full knowledge of its consequences and effects.

The Borderline Erotomaniac, on the other hand, cannot hope to escape liability. This kind of stalker also seeks to establish an intimate relationship with his victim; but unlike the delusional erotomaniac, the borderline erotomaniac pursues his victim not on the basis of a fantasy or delusion. He is aware that his pursuit is unwelcome.⁵⁸

The behavior of the borderline erotomaniac also indicates some psychological or emotional imbalance or disorder as he tends to magnify the most trivial of "responses" from his victim. A glance, a handshake or any other expression of goodwill translates into an expression of affection.⁵⁹ He also tends to vacillate between intense feelings of love and hate towards his victim.⁶⁰ When the object of his affections does not reciprocate, he retaliates. The disorder, however, does not deprive him of will or discernment.

The second type of Romantic Stalker is the Former Intimate Romantic.

Former intimate stalking, also known as domestic stalking, is by far the most common in the United States. It represents more than 80% of all the recorded stalking cases.⁶¹ As the phrase indicates, the former intimate stalker has had a previous intimate relationship with his victim.⁶² He is thus either an ex-husband, an ex-boyfriend or an ex-lover. It has been said that his behavior patterns resemble that of a batterer or wife-beater.⁶³

Battering is not a one-time occurrence but is multi-faceted and continuing. More importantly, battering increases in frequency and severity over time.⁶⁴

A batterer is impulsive,⁶⁵ easily frustrated,⁶⁶ oftentimes unreasonably jealous and possessive of his spouse or partner,⁶⁷ and is highly emotionally dependent on

the same.⁶⁸ But the essential motivation of the batterer is his need to control his intimate. This is revealed by the batterer's extremely manipulative attitude towards his partner. He manifests and maintains control in the relationship through coercion and manipulation.⁶⁹ When his partner asserts her independence, he resorts to physical violence to maintain his control.⁷⁰ This desire to assert himself over his intimate persists even after the relationship ends.⁷¹ This is the reason why batterers often become stalkers.

US statistics prove that 50% of women who leave abusive relationships are harassed or stalked by their former lovers⁷² in an attempt to reconcile with them or simply seek revenge after the break-up.⁷³ The violence against the victim escalates as the batterer/stalker seeks to regain lost control.⁷⁴

2. THE VENGEFUL STALKER

The Vengeful Stalker is sometimes also a former intimate or former lover. Unlike the Former Intimate Romantic, however, he does not seek to renew his relationship with his partner, but seeks revenge against her for terminating the relationship.⁷⁵ Sometimes, however, his revenge is directed against the present partner of his former lover who is perceived to be an obstacle to "reunification."⁷⁶ The film, *Fatal Attraction*,⁷⁷ typifies the Romantic turned Vengeful Stalker although the gender roles are reversed. In said film, a spurned mistress attempts to revive her relationship with a married man. Her failure to reestablish the failed relationship leads to an attempt on her ex-lover's life, and later, his wife's.

The vengeful stalker can also be driven by pure malice. He may seek to harm his victim due to envy or hatred. In such cases, the stalker is not motivated by a desire to avenge a perceived wrong but by the simple pleasure of committing a wrong.

It has been posited that the vengeful stalker is the type most likely to be motivated by malice and ill-will. It is also the vengeful stalker who is most certain that his conduct will go unpunished.⁷⁸

⁵⁷ *People v. Catanyag*, 226 SCRA 293, 295 (1993).

⁵⁸ *McAnaney*, *supra* note 10, at 835.

⁵⁹ *Id.* at 836.

⁶⁰ *Id.* at 837.

⁶¹ *Fahnestock*, *supra* note 4, at 785.

⁶² *McAnaney*, *supra* note 10, at 859.

⁶³ *Birmingham*, *supra* note 18, at 485.

⁶⁴ *Id.* at 483.

⁶⁵ *Id.* at 485.

⁶⁶ *Id.*

⁶⁷ *McAnaney*, *supra* note 10, at 840.

⁶⁸ *Id.*

⁶⁹ *Birmingham*, *supra* note 18, at 483.

⁷⁰ *McAnaney*, *supra* note 10, at 841.

⁷¹ *Id.*

⁷² *Birmingham*, *supra* note 18, at 487.

⁷³ *McAnaney*, *supra* note 10, at 859.

⁷⁴ *Birmingham*, *supra* note 18, at 478.

⁷⁵ *McAnaney*, *supra* note 10, at 859.

⁷⁶ *Id.* at 840.

⁷⁷ Warner Bros. (1987).

⁷⁸ *Birmingham*, *supra* note 18, at 490-491.

II. THE IMPACT OF STALKING

A. Actual Cases

That there are no official police reports of stalkings in the Philippines stems from the fact that most incidents are dismissed as simply an exaggerated display of affection by a persistent suitor, a resolute attempt at reconciliation by a spurned lover, or simply the outlet for the envy or need to get even of an embittered rival.

But stalking incidents are not uncommon. They happen to quite ordinary people living in seemingly unexceptional circumstances. But the incidents and their impact on the victims are serious enough to warrant concern.

The names of the characters in the stories have been changed to protect those concerned. Everything else is true and accurate and based on the personal experiences and knowledge of this writer and of women known personally to her.

1. "SANDRA"⁷⁹ AND HER ROMANTIC STALKER

Romantic Stalking is exemplified in the case of "Sandra."

Sandra was stalked by a Saudi Arabian national, Abdul, who was a guest at the hotel where she was employed. For an entire month, Abdul stood by the front desk of the hotel during Sandra's 3:00 to 11:00 p.m. shift watching her work. He courted her, sent her flowers and gifts, and intimidated her male friends for "stealing his girl." Despite having been rejected by her, he caused to be published a paid personal advertisement in a leading newspaper addressed to Sandra, with her full name spelled out, where he insinuated that he and Sandra were having an intimate sexual relationship. A week later, he again caused the publication of another advertisement where he publicly stated that he would die if Sandra would not "be [his]." Later, he followed her on three occasions to her home in Las Pinas in a taxicab and conducted stake-outs outside her home.⁸⁰

2. "KAREN"⁸¹ AND HER FORMER INTIMATE STALKER

The case of "Karen" typifies Former Intimate Stalking.

Karen was stalked by her husband, Tony, from whom she separated after finding him to be irresponsible and violent. After their separation, Tony pleaded for a reconciliation, but as Karen was adamant in her refusal to live with him again, he harassed her by telephone, both at her office and her home. The incessant

⁷⁹ Interview with "Sandra" (5 Nov. 1995).

⁸⁰ See Appendix A for a more detailed narration.

⁸¹ Interview with "Karen" (11 Sept. 1995).

telephone calls became threatening and obscene. Also, he laid in wait for her outside her office everyday for five weeks and followed her to business meetings, luncheons and parties. He also once slashed the tires of her car and spray-painted her car door with the word "bitch."

Karen left to work in Singapore to escape him. She obtained a decree nullifying her marriage in 1995 on the ground of Tony's psychological incapacity.⁸²

3. TESSA⁸³ AND HER VENGEFUL STALKER

"Tessa" was stalked by Carol, a former classmate, who accused her of stealing the latter's boyfriend. Carol made harassing phone calls to Tessa's home daily and sent 12 letters to Tessa and her parents over a span of five months maligning Tessa's character and threatening her with physical harm. She also used Tessa's name and gave out Tessa's home number in telephone flirtations with men. Later, she sent a letter to a notorious tabloid signed in Tessa's full name describing Tessa's alleged "sexcapades." A clipping of the published article and a copy of the letter were mailed to Tessa's home, addressed to her parents, and her school, the letter addressed to the head of one of her school organizations. On top of all this, she used Tessa's name to harass two other women in the hope that these women would vent their anger on Tessa.⁸⁴

B. The Psychological Impact of Stalking⁸⁵

The stories of the three cases discussed in this study give a glimpse of the psychological stress victims of stalking suffer. But according to a practising psychologist interviewed, the effects of their experience may be deeper and more far reaching than even the victims are aware of.

Depending on the duration and intensity of the stalking, the experience may be comparable to the *chronic trauma* undergone by soldiers suffering from battle fatigue and children subjected to longstanding verbal abuse. While the more familiar psychological trauma is a single dramatic event, chronic trauma consists of cumulative, seemingly insignificant, abuse over a period of time. Since it is difficult to pinpoint the source of psychological stress in cases of chronic trauma (there is no physical evidence of harm), it is difficult for the victim to "put a handle" on her anxiety. At the same time, she cannot fully share her distress since psycholo-

⁸² See Appendix B for a more detailed narration.

⁸³ This section will deal with the writer's personal experience. For this purpose, however, the writer shall be referred to under the name of "Tessa" for consistency in narration.

⁸⁴ See Appendix C for a more detailed narration.

⁸⁵ All the information contained in this section were taken from an Interview with Joanna Micaela C. Arriola, Psychologist and M.A. Cand., Department of Psychology, Ateneo de Manila University, Loyola, done in Manila (10 Dec. 1995).

gical support is usually not forthcoming for abuse that "can be ignored." "You shouldn't let it affect you," the victim is told while her ego is disintegrating.

There are three categories and symptoms present in all cases of chronic trauma which are clearly demonstrated in the stalking cases discussed above — fear, anxiety and powerlessness. These are pervasive in the three stages undergone by trauma victims, namely:

1. HYPER-AROUSAL

Like a stalked animal prey, the stalking victim becomes constantly on alert. There is a sensitivity and stressful alertness to danger. Her adrenalin seems to be flowing continuously. In cases of telephone harassment, for example, there are two levels of stress — anxiety in anticipation of the call itself and the content of the call, which is usually abusive.

The stalker's actions are unpredictable and irrational and thus it is difficult for the victim to rationalize them. Particularly when the stalker's identity is unverified, the victim cannot understand why she is being harassed. This contributes not only to the fear but also to the powerlessness.

2. INTRUSION

This stage relates to the feeling of being unsafe. Fear intrudes into the victim's thoughts, dreams and, much later, even her memory. Fear becomes part of her everyday reality. For her, the predator lurks everywhere and all the time. She is fearful for her safety, her privacy, and her independence. There is a violation of her psychological boundaries, her personal space and, in most instances, of her reputation and self-esteem. The truism that "sticks and stones can break my bones, but names can never hurt me," is not true.

These fears can be debilitating. They certainly diminish her capacity to work as she becomes distracted and suffers a loss of concentration and focus.

3. CONSTRICTION

As soon as fear sets in and the victim is made to accept the powerlessness of her situation, her world becomes smaller. She can no longer go anywhere and move freely. Her lifestyle drastically changes. Her connections and support systems (family and friends) may be cut off. As all the victims in all 3 cases felt at some point: "My life is no longer my own." The victim's consequent isolation serves to intensify the intrusion described above.

Intrusion and Constriction constitute what is known as the "diagnostic of trauma," *i.e.*, they become so ingrained that the personality changes permanently. Trauma can affect the victim's sense of efficacy to the extent that she can no longer make decisions nor plan ahead.

There is also a tendency to turn inward and to develop guilt. She begins to suspect that perhaps it is her fault, like Sandra, who thought that "*baka nagbigay siya ng motibo.*" Then her behavior becomes self-punishing.

It is also possible for psychosomatic reactions to set in. Conversion reactions, *i.e.*, psychological anxiety manifesting itself physically, are not uncommon among chronic trauma victims.

It is suggested that the three women victims featured in the case studies form a support group, to discuss and process their experience among themselves, or, if possible, to undergo some form of psychological therapy.

A law criminalizing stalking, the psychologist says, will help empower victims. It will serve to save their self-esteem and assure them that stalking is censured by the community. Since the law will establish that stalking is wrong, there will be no self-blame on the part of the prey.

Such a law will also support the necessary psychological stages of recovery. It will establish safety. It will give the victims a resort. It will give them back some control over their situation. It will give them a chance to tell their story and process their experience. They can "remember" and "mourn their loss" and by being vindicated, reintegrate into the community and retrieve their connections. Moreover, indemnifying victims will allow them to avail of psychological support and social services where available. Treatment costs can be reimbursed.

III. EXISTING REMEDIES AGAINST STALKING AND THEIR INADEQUACY

A. Criminal Remedies

Before the passage of stalking laws in the United States, victims were unable to obtain adequate police protection and stalkers went unpunished.⁸⁶ Traditional U.S. criminal remedies required actual threats or violence before the police could respond. Thus, many stalking victims were killed or injured before the law could step in.⁸⁷ These remedies failed to acknowledge that stalking is often a precursor to more violent crimes.⁸⁸ More importantly, these failed to recognize that stalking can, in and of itself, be gravely harmful to victims.

The following discussion on existing Philippine criminal and civil remedies related to stalking demonstrates a similar failure to fully address the multi-faceted and serious nature of stalking. Thus, comprehensive stalking legislation is needed.

⁸⁶ Tucker, *supra* note 18, at 615.

⁸⁷ *Id.*

⁸⁸ Guy, *supra* note 10, at 296.

1. UNJUST VEXATION⁸⁹

The penal provision which is probably most applicable to stalking cases is *Unjust Vexation*.⁹⁰ It is the only provision which punishes the intentional infliction of emotional harm as it criminalizes any act which causes irritation or annoyance to another person without justification.⁹¹

In Stalking cases, there is rarely an overt act of violence [although stalking usually culminates in violence]. What the stalker principally intends is the infliction of emotional distress and the disruption of the victim's peace of mind. This element is common to stalking and *Unjust Vexation*. However, there is more to stalking than is covered by the provision on *Unjust Vexation*.

Article 287 of the Revised Penal Code (RPC) punishes a single overt act such as directing epithets at the offended party,⁹² and kissing a girl without lewd designs.⁹³ It does not account for repeated acts, an essential characteristic of stalking. To punish repeated annoyance under *Unjust Vexation*, an offended party must generally prosecute each and every individual act of annoyance separately. This would entail numerous litigation and hence, inconvenience to both the offended party and the accused. Yet, if the offender is convicted on all counts, he will not be made to suffer more than three times the duration of the penalty under the Three-fold rule.⁹⁴ The penalty will then not be commensurate to the sum of the acts and their cumulative effects on the victim. Stalking is, essentially, a graver offense as repeated acts of irritation result not merely in "annoyance." The emotional and psychological impact on the victim of repeated acts is far graver than the sum total of the separate "annoiances."

On the other hand, if the offended party were to choose to punish several annoyances together, she would have to do so based on the theory that the separate acts were products of but one criminal intent. If such an avenue is chosen, the

⁸⁹ RPC, art. 287.

⁹⁰ *Unjust Vexation* is punishable by *arresto menor* or a fine ranging from 5 to 200 pesos, or both. RPC, art. 287. *Arresto Menor* is equivalent to imprisonment for 1 to 30 days. RPC, art. 27.

⁹¹ *People v. Motta*, 59 OG 3020, 3022 (1962). Said the Supreme Court in the case of *People v. Gozum*, 54 OG 7409 (1958): It is an all-encompassing provision "broad enough to include any human conduct, which, although not productive of some physical or material harm, would unjustifiably annoy or irritate an innocent person." *Id.* at 7412. "The paramount question to be considered is whether the offender's act caused annoyance, irritation, vexation, torment, distress or disturbance to the mind of the person to whom it is directed." [emphasis supplied]. *Id.*

⁹² *Id.*

⁹³ LUIS B. REYES, 2 THE REVISED PENAL CODE, 578 (1981).

⁹⁴ RPC, art. 70.

... Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the same maximum period....

offended party cannot look to punish the offender for more than 30 days. The relatively short prison term imposed on *Unjust Vexation* is not commensurate to the seriousness of the vexation the repeated acts impose on stalking victims. The minor penalty also fails as a deterrent to future conduct as it allows the offender to retaliate after serving his short penalty.⁹⁵

Clearly, while the law against *Unjust Vexation* punishes emotional harm, it does not adequately penalize the harm caused by stalking as a whole. The fact is that stalking, even without an express threat to the life or property of the victim, goes way beyond mere "annoyance."

2. CRIMES AGAINST DECENCY AND GOOD CUSTOMS⁹⁶

Article 200 of the RPC defining *Grave Scandal*⁹⁷ applies in a limited sense to stalking.

Stalking, or causing emotional harm to another person, is undoubtedly offensive to "decency and good customs". However, *Grave Scandal* requires that the act be "highly scandalous," implying that there must be some degree of publicity in the act for it to be punishable.⁹⁸

Stalking, however, is usually done secretly and stealthily to create a fear of physical or sexual assault in the victim. And while some stalkers may create a public scandal to torment their victim, stalkings often occur with minimal visual

⁹⁵ For example, if Sandra were to seek to have Abdul punished for conducting surveillance upon her, she would thus have to institute 30 complaints for each day of the month that he watched her plus three additional complaints for the times he followed her home. This would entail needless inconvenience and delay. Besides, 30 separate annoyances is not equal in gravity to the fear and mental stress she suffered from 30 cumulative acts.

On the other hand, if she were to institute a single complaint for *Unjust Vexation* covering the 30 days' surveillance and three instances of following, the maximum term of Abdul's imprisonment would only be 30 days. In both instances, the punishment would not be commensurate to Sandra's emotional and psychological suffering.

The same scenario would prevail in Karen's case if she were to choose to prosecute her husband for following her and conducting surveillance upon her for 5 weeks.

⁹⁶ RPC, Title Six, Chapter Two.

⁹⁷ Under this provision, it is criminal for "any person to offend against decency or good customs by any highly scandalous conduct not expressly falling within any other Article of [the] Code." RPC, art. 200. The crime is punishable by *arresto mayor* or imprisonment for 1 month and 1 day to 6 months, and by public censure. RPC, art. 27.

⁹⁸ Thus, in the case of *US v. Catajay*, 6 Phil 399 (1906), the commission of an act "at night, in a private house, and at a time when no one was present except the accused, the mistress of the house, and one servant," the offender could not be convicted of the crime penalized under Art. 441 [now Art. 200] due to the lack of the element of publicity. *Catajay*, 6 Phil 399, at 399. Similarly, in *US v. Samanigo*, 16 Phil 663 (1909), where the accused was seen by the children of the co-accused at the ground floor of the house dressed only in his drawers, the Supreme Court held that such was not in anyway sufficiently public to constitute the crime of *Grave Scandal*.

contact with the victim and very rarely are stalkings "scandalous."⁹⁹ Yet another disadvantage to invoking the provision on *Grave Scandal* is the requirement that the act sought to be punished must not fall within any other article of the RPC,¹⁰⁰ thus greatly limiting its applicability.

Another provision under the title, *Crimes against Decency and Good Customs*, is that which punishes *Vagrants and Prostitutes*.¹⁰¹

Paragraph 4 of this provision¹⁰² may arguably apply to certain stalking situations.¹⁰³ But the crime punished under this RPC provision is essentially the general nuisance which the offender presents to a community or the public as a whole or to his surroundings, rather than to one particular person. Thus, the offender referred to in paragraph 4 of the article is categorized in the same provision with persons tramping about the country without visible means of support, idle or dissolute persons, pimps and prostitutes. By its very nature, thus, *Vagrancy* is largely inapplicable to stalking situations. Like *Unjust Vexation*, it does not apply to repetitive acts. At most, prosecuting a stalker for vagrancy would interrupt his surveillance of his victim but not deter it.

3. CRIMES AGAINST PUBLIC ORDER¹⁰⁴

Article 153 of the Revised Penal Code punishes the crime of *Tumults and Other Disturbances of public orders*. The crime is committed by causing serious disturbance in a public place, office, or establishment, or interrupting public performances, functions, gatherings or peaceful meetings.¹⁰⁵ If the disturbance in a public place is not of a serious nature, the behavior would fall under the provisions of Article 155 which punishes *Alarms and Scandals*.¹⁰⁶

⁹⁹ Tony's stake-out of Karen's office for five weeks, for example, cannot be characterized as scandalous and public. Abdul's surveillance, similarly, while conducted in a hotel which can be characterized as public, is not scandalous.

¹⁰⁰ RPC, art. 200.

¹⁰¹ RPC, art. 202. Vagrancy carries a penalty of *arresto menor* and/or a fine not exceeding 200 pesos. If the offender is a recidivist, defined in RPC, art. 14(9) as: "one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code," the penalty is increased to *arresto mayor* in its medium period to *prision correccional* in its minimum period and/or a fine from 200 to 2,000 pesos.

¹⁰² Under paragraph 4 of said provision, "Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose" is guilty of vagrancy.

¹⁰³ Such as that involving the stake-out Tony conducted outside Karen's office or that Abdul conducted outside Sandra's home.

¹⁰⁴ RPC, Title Three.

¹⁰⁵ The crime is punishable by *arresto mayor* in its medium period to *prision correccional* in its minimum period and a fine not exceeding 1,000 pesos. RPC, art. 153.

¹⁰⁶ The crime is punishable by *arresto menor* or a fine not exceeding 200 pesos. Specifically, the provision penalizes "...2. Any person who shall instigate or take an active part in any charivari or other

These provisions cannot be made to apply to the many common tactics employed by a stalker to harass his victim.

The purpose of punishing the crimes defined in the above-mentioned articles is essentially to proscribe behavior which threatens the public peace rather than the harassment of a particular individual. In stalking situations, public inconvenience is often not involved. Seemingly innocuous behavior such as lying in wait, following, sending gifts or letters, or incessant and obscene phone calls can hardly be deemed public inconvenience. Surveillance,¹⁰⁷ for example, does not involve a disturbance of the public peace.¹⁰⁸ Even when the stalker resorts to threats, the disruption of public order most definitely does not occur. Moreover, such tactics as telephone harassment and poison letters are hardly ever performed in a public place. *Alarms and Scandals*, to illustrate, is a charge usually applied to persons who play music too loudly or who cause a ruckus along public streets,¹⁰⁹ situations which are hardly ever present in stalking scenarios.

4. CRIMES AGAINST SECURITY¹¹⁰

The crime of *Qualified Trespass to Dwelling*¹¹¹ is committed by any private person who enters the dwelling of another person against the latter's will. Said crime, designed to protect the privacy of one's dwelling against unwelcome intrusions,¹¹² would be difficult to apply to stalking where the element of actual entry into the victim's home is usually absent.¹¹³

But in instances where the stalking is accompanied by threats, the victim may institute prosecution against the stalker under a charge of *Grave Threats*,¹¹⁴ Light

disorderly meeting offensive to another or prejudicial to public tranquility; 3. Any person who, while wandering about at night or while engaged in any other nocturnal amusements, shall disturb the public peace; or 4. Any person who, while intoxicated or otherwise, shall cause any disturbance or scandal in public places..." RPC, art. 155.

¹⁰⁷ The tactic employed by Abdul and Tony.

¹⁰⁸ Similarly, none of the tactics employed by Carol may be characterized as disruptive of public order.

¹⁰⁹ REYES, *supra* note 93, at 164.

¹¹⁰ RPC, Title Nine.

¹¹¹ The crime is punishable by *arresto mayor* and a fine not exceeding 1,000 pesos. If committed by means of violence or intimidation, the penalty is increased to *prision correccional* in its medium and maximum periods. RPC, art. 280.

¹¹² *People v. Almeda*, 75 Phil 476, 479 (1945).

¹¹³ Abdul's stake-out of Sandra's home would not qualify inasmuch as there was no entry into her home. Similarly, Tony may not be charged under this art. because his stake-out was conducted outside Karen's office and not her dwelling. *People v. Lamahang*, 61 Phil 703 (1935).

¹¹⁴ RPC, art. 282:

Grave Threats. — Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime, shall suffer:

1. The penalty next lower in degree than that prescribed by law for the crime he threatened to commit, if the offender shall have made the threat demanding money or imposing any other

Threats,¹¹⁵ or *Other Light Threats*¹¹⁶ under this Title. But in such cases, each overt threat must be prosecuted individually and separately, entailing litigation as numerous as, for example, the threatening letters sent and phone calls made by the stalker.¹¹⁷ Again, the fact that these threats taken together constitute a graver crime, creating as they do a greater sense of danger in the victim, is ignored. The damage or injury to the victim is greater than the sum of all the threats put together. Moreover, substantial inconvenience to the victim may result from multiple litigation and a considerable amount of time will be lost before the victim is afforded protection.

* Where the stalking is *not* accompanied by any *overt* threat, as where the stalker simply maintains an intimidating presence, Articles 282, 283, and 285 will no longer provide any relief for the stalking victim. This, despite the fact that the course of conduct maintained by the stalker is threatening and actually causes the victim to feel imminent fear of physical harm. This kind of "ambiguous" threat, in the context of a series of acts, creates mental distress in the victim, and is thus referred to as "psychological violence."¹¹⁸

It is important to note that in cases where the accused is convicted of Grave Threats or Light Threats, the offender may be required to post a *Bond for Good Behavior*.¹¹⁹ The *Bond* is conditioned upon the undertaking of the accused to cease molesting the complainant after his conviction and is a guaranty that the threat will not be carried out.¹²⁰

condition, even though not unlawful, and said offender shall have attained his purpose. If the offender shall not have attained his purpose, the penalty lower by two degrees shall be imposed.

If the threat be made in writing or through a middleman, the penalty shall be imposed in its maximum period.

2. The penalty of *arresto mayor* and a fine not exceeding 500 pesos, if the threat shall not have been made subject to a condition.

¹¹⁵ RPC, art. 283:

Light Threats. — A threat to commit a wrong not constituting a crime, made in the manner expressed in subdivision 1 of the next preceding article shall be punished by *arresto mayor*.

¹¹⁶ RPC, art. 285(3):

Other light threats. — The penalty of *arresto menor* in its minimum period or a fine not exceeding 200 pesos shall be imposed upon:

- ... 3. Any person who shall orally threaten to do another any harm not constituting a felony.

¹¹⁷ Tessa may proffer charges under the third form of Grave Threats against Carol for each of the letters containing threats of injury upon her person, the threats not being subject to a condition. Karen could, similarly, prosecute Tony for the verbal threats against her person which were made subject to a condition that Karen reconcile with him.

¹¹⁸ Birmingham, *supra* note 18, at 494.

¹¹⁹ RPC, art. 284:

Bond for good behavior. — In all cases falling within the two next preceding Articles, the person making the threats may also be required to give bail not to molest the person threatened, or if he shall fail to give such bail, he shall be sentenced to *destierro*.

¹²⁰ If the accused fails to post the bond, he is sentenced to an additional penalty of *destierro*. RPC, art. 27.

This provision can be very helpful in affording victims of stalking some degree of protection from their harassers. However, it is unfortunate that said bond can only be imposed in cases where the stalker is *convicted* of *Threats*. Therefore, an order requiring the accused to post bond after conviction will only issue if an *overt* threat has been made against the victim. Thus, the provision is rendered inapplicable to most conduct involved in stalking cases even when such conduct are by themselves threatening.

It may also be quite distressing for stalking victims to know that since the bond will only be required after conviction, it is, in a way, quite useless and superfluous. The purpose of the bond, which is to provide victims with freedom from additional molestation and to guarantee that the threat is not carried out,¹²¹ is already addressed by the penalty of imprisonment meted out to the culprit after conviction. It can be argued that the additional term of imprisonment in case of failure to give bond will serve this purpose. But the objection remains: the penalty of imprisonment already serves the purpose of incapacitating the offender from fulfilling his threats.

This remedy is also problematic because the punishment, in case of violation of the conditions of the bond, is uncertain.¹²²

5. CRIMES AGAINST PROPERTY¹²³

The Revised Penal Code punishes "any person who shall deliberately cause to the property of another any damage"¹²⁴ under the crime of *Malicious Mischief*.¹²⁵ The act criminalized under this article is the willful damaging of another's property due to hate, revenge or ill-will, "for the mere pleasure of destroying."¹²⁶

In the stalking context, this provision obviously applies only in instances where the stalker in fact destroys or inflicts damage upon his victim's property.

¹²¹ RPC, art. 35.

¹²² A violation of the conditions can subject the bond to forfeiture and subject the offender to contempt proceedings. But if the bond is forfeited, will the culprit be required to post another to once more "guarantee" the victim's safety? (In the meantime, we hope the convict has not successfully carried out his threat.) If not, what assurance of security is the victim entitled to?

If the bond is imposed as a penalty, can the culprit be prosecuted for Evasion of Service of Sentence, which punishes any person "who shall evade the service of his sentence by escaping during the term of his imprisonment by reason of final judgment... [emphasis supplied], in case he violates the conditions of his bond? RPC, art. 157. Assuming the culprit can be prosecuted for Evasion, how will that address the injury inflicted on the offended party from the consummated violation of the condition of the bond?

¹²³ RPC, Title Ten.

¹²⁴ RPC, art. 327.

¹²⁵ Said crime is punishable by a penalty range of *arresto menor* to *arresto mayor* depending on the value of the property damaged. RPC, art. 329.

¹²⁶ REYES, *supra* note 93, at 826 citing *People v. Siddayao*, C.A., 53 OG 8163.

While a stalker may resort to this as one of the means of tormenting his victim, *Malicious Mischief* will only be one of the many charges the latter may file against him to punish the harassment as a whole.

Notably, however, if the stalker is a former intimate or ex-husband, the stalker is exempt from criminal liability under Article 332.¹²⁷

6. CRIMES AGAINST HONOR¹²⁸

The crimes of *Libel*¹²⁹ and *Slander*¹³⁰ may be invoked in stalking situations involving attempts to damage or injure the reputation or good name of the victim.¹³¹

Written defamation is *libel*; oral defamation, *slander*.

By punishing attacks against a person's honor, the law expressly recognizes that "the enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property."¹³² It also recognizes that an attack upon such reputation affects the victim's "general fortune and comfort and is thus a positive injury."¹³³

The imputation constituting defamation must be made publicly and maliciously¹³⁴ in order to cast a stigma upon the victim's honor.¹³⁵

¹²⁷ Thus, Tony's act of spraying paint over Karen's car can be prosecuted under *Malicious Mischief*. At the time said act was committed, however, Karen was still legally married to Tony. And under art. 332 of the RPC, the person committing the crime is exempt from criminal responsibility when the mischief is committed or caused against his spouse. RPC, art. 332.

¹²⁸ RPC, Title Thirteen.

¹²⁹ RPC, art. 353, in relation to art. 355.

¹³⁰ RPC, art. 353, in relation to art. 358.

¹³¹ Said provisions punish the "public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead." RPC, art. 353.

¹³² *Worcester v. Ocampo*, 43 Phil. 371 (1922).

¹³³ *US v. O'Connell*, 37 Phil 767, 773 (1918).

¹³⁴ RPC, art. 353.

¹³⁵ *People v. Formanes*, 54 OG 6616, 6621 (1958); An imputation is deemed to be libelous or slanderous if the entirety of the language used conveys to the ordinary reader that the libelous matter ridicules the victim or sets him in a "scurrilous and ignominious light." *US v. O'Connell*, 37 Phil 767, 773. Clearly falling within the provision on libel are Carol's letters sent to Tessa's parents and Tessa's school, maligning the character of the latter, and those sent to Ludy's husband. The paid advertisement addressed to Sandra by Abdul, where it was made to appear that they are involved sexually, is likewise libelous. Slanderous, on the other hand, were the malicious phone calls to Ludy and Annie at their respective offices since these were taken by third persons.

Akin to libel and slander are the crimes of *Slander by Deed*¹³⁶ and *Intriguing against Honor*.¹³⁷ Both penal provisions punish acts which injure another person's reputation. But while *Slander by Deed* punishes the performance of "any act... which shall cast dishonor, discredit or contempt upon another person,"¹³⁸ *Intriguing against honor* punishes any "intrigue... to blemish the honor or reputation of a person"¹³⁹ or "scheme or plot designed to blemish the reputation of a person."¹⁴⁰

All the abovementioned crimes have for their object the intentional infliction of injury upon the reputation of another. Thus, they apply to stalking cases only in those instances when tactics to blemish one's good name are employed. But, as discussed in Chapter 1 of this study, stalking may not always involve injury to the reputation of the victim. The intent and purpose of the stalker is usually to create fear in the victim and to disturb her peace of mind and sense of security. The tactics involving damage to the victim's reputation is only one of the means by which the larger intent of harassment is accomplished. Largely, therefore, the chapter on *Crimes Against Honor* are inapplicable to stalking situations.

7. THE LAW ON ATTEMPT

Stalking is often a precursor to the more violent crimes of physical injuries, murder, sexual assault or kidnapping.¹⁴¹ This may give the impression that stalking should be considered merely an inchoate crime or part of an attempt to commit any of the above crimes.¹⁴²

But attempted crimes require an intent to commit a secondary crime. In most stalking scenarios, the intent is to "stalk" or create a fear of physical harm in the victim. It is difficult to determine whether stalking is committed only as a preparation for another crime inasmuch as the series of conduct performed is often not

¹³⁶ RPC, art. 359.

¹³⁷ RPC, art. 364.

¹³⁸ RPC, art. 359. The crime is committed by causing annoyance to another, with attendant publicity, and causing dishonor to the victim. *People v. Motita*, 59 OG 3023.

¹³⁹ *People v. Padilla*, 105 Phil 45, 46 (1959).

¹⁴⁰ *People v. Fontanilla*, 56 OG 1931, 1933 (1959). The means for damaging another's good name is through "some ingenious, crafty and secret plot." *People v. Motita*, 59 OG at 3023. Thus, Carol's "plot" using Tessa's name to harass Ludy and Annie in order for the latter two to retaliate against Tessa, would arguably constitute the crime of *Intriguing Against Honor*.

¹⁴¹ *Guy*, *supra* note 10, at 1010.

¹⁴² The RPC states that: "There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance." RPC, art. 6(3).

proximate enough to the substantive offense¹⁴³ and is not a single-day occurrence. Yet even in this situation, stalking is not merely a preparatory act either.¹⁴⁴ In stalking scenarios, there is a certainty as to the offender's objective to produce fear in the mind of his target, and a direct connection to a wrong committed against the same.

In addition, while an anti-stalking law prevents future harm, it also addresses past psychological and emotional harm inflicted on the victim. Stalking is thus an act that involves a consummated injury. It is not an inchoate or preparatory crime.¹⁴⁵

B. Civil Remedies

Prior to the surge of stalking legislation in the U.S., a stalking victim could recover damages from her stalker through the common law actions on trespass, invasion of privacy, and intentional infliction of emotional distress.¹⁴⁶ But the American experience of stalking has shown that these remedies are very difficult to invoke. Tort actions based on invasion of privacy, for example, require that the stalker intentionally interfere with the victim's solitude or seclusion in a manner that is unreasonable and highly offensive before damages can be awarded.¹⁴⁷ The interference, moreover, must have been conducted within an area in which the victim would be entitled to her privacy, such as her home, but not in public streets.¹⁴⁸ To make a claim for intentional infliction of emotional distress, on the other hand, the conduct sought to be the basis for a monetary claim must be extreme and outrageous, and the resulting emotional distress, severe.¹⁴⁹

These avenues have also proven to be a most uncertain means of obtaining protection and relief. For one, a civil action entails litigation expenses for the victim who must pursue the case herself in court; and often, a stalker has himself very little resources to answer for the damages.¹⁵⁰ Second, it has been proven that a successful civil action, rather than deterring future harmful conduct, may actually

¹⁴³ McAnaney, *supra* note 10, at 888.

¹⁴⁴ See additional discussion in Chapter VI, *infra*.

¹⁴⁵ Guy, *supra* note 10, at 1012.

¹⁴⁶ Tucker, *supra* note 23, at 616.

¹⁴⁷ Tracy Vigness Kolb, *North Dakota's Stalking Law: Criminalizing the Crime before the Crime*, 70 NORTH DAKOTA L. REV. 159-86, 169 (1994).

¹⁴⁸ *Id.* at 169.

¹⁴⁹ Laura Phillips, *Michigan's New Stalking Laws: Hope or Hype?*, 71.2 UNIVERSITY OF DETROIT MERCY L. REV. 453-467, 460 (Winter 1992).

¹⁵⁰ Guy, *supra* note 10, at 995.

be the catalyst for more violent behavior.¹⁵¹ Finally, an award of damages has been shown to be inadequate to repair the injury inflicted on the victim.¹⁵²

The following discussion focuses on the available civil remedies available to the stalking victim under the Philippine legal system and demonstrates the need to enact specific legislation to address stalking.

1. ABUSE OF RIGHTS AND THE TRINITY OF PRECEPTS: ARTICLES 19, 20 AND 21

Damages may be claimed under the Civil Code based on the Trinity of Precepts found in Articles 19, 20 and 21 on human relations.

Article 19, the first of these fundamental precepts establishing the *Abuse of Rights* doctrine,¹⁵³ deviates from the traditional notion that "he who uses a right injures no one."¹⁵⁴ It is based on the recognition that the legal exercise of a right may nevertheless be contrary to common and superior precepts of fair play and justice, and sets basic principles to be observed "for the rightful relationship between human beings and for the stability of the social order."¹⁵⁵ A man will not be permitted to injure another and claim that he is merely exercising a right or performing a duty if he does not conform to the norms established in Article 19.¹⁵⁶ Article 19 is thus a provision based on equity and justice and a limitation on *all* rights, addressing as it does, acts which, although legal,¹⁵⁷ are nevertheless anti-social.¹⁵⁸ It therefore defines a legal wrong which would otherwise not be punishable without its proscription.

¹⁵¹ Hankins, *supra* note 67, at 124; Kolb, *supra* note 147, at 171.

¹⁵² Lingg, *supra* note 5, at 357.

¹⁵³ Civil Code, art. 19:
Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

The elements of an abuse of right under Art. 19 are: (1) a legal right or duty on the part of the defendant; (2) the exercise of said right or the performance of said duty in bad faith; (3) the sole intent of said exercise or performance is to prejudice or injure another. *Albenson Enterprises Corp. v. CA*, 217 SCRA 16, 25 (1993).

¹⁵⁴ CESAR S. SANGCO, *PHILIPPINE LAW ON TORTS AND DAMAGES* (4th Rev. Ed., 1984), 410.

¹⁵⁵ *Globe Mackay Cable and Radio Corp. v. CA*, 176 SCRA 778, 783 (1989), *citing* the Report on the Code Commission on the Proposed Civil Code of the Philippines, 39.

¹⁵⁶ *Albenson v. CA*, p. 24; *Llorente v. Sandiganbayan*, 202 SCRA 309, 318 (1991); *Valenzuela v. CA*, 191 SCRA 1 (1990).

¹⁵⁷ *Llorente v. Sandiganbayan*, 202 SCRA 309, 318 (1990); *Albenson v. CA*, 217 SCRA 16, 24 (1993).

¹⁵⁸ SANGCO, *supra* note 154, at 414.

Article 19 does not in itself, however, provide for damages as relief.¹⁵⁹ Thus, it is complemented by Articles 20¹⁶⁰ and 21¹⁶¹ which expressly grant damages to the plaintiff.¹⁶²

Under Article 20, the act creating liability for damages must be "contrary to law," and must be done either wilfully or negligently. It speaks of a general proscription for all provisions of law which do not in themselves provide for punishment in case of violation.¹⁶³

Under Article 21, on the other hand, the act creating liability for damages, while legal, is *contra bonus mores* or offensive to "public morals, good customs or public policy."¹⁶⁴ Article 21 is distinct from, and as a matter of fact expands,¹⁶⁵ the concept of a tort under Article 2176, which refers to negligent acts or omissions without qualification and excludes the concepts of willfulness and intent. Article 21 is meant to fill in "the countless gaps in the statutes, which leave so many victims of moral wrongs helpless, even though they have actually suffered material and moral injury."¹⁶⁶

A common element in all three provisions is that the act causing the injury must be "intentional,"¹⁶⁷ although as earlier mentioned, Article 20 also punishes negligent acts. The trinity addresses the gaps of existing positive law by punishing that "untold number of moral wrongs which is impossible for human foresight to specifically enumerate and punish in the statute books."¹⁶⁸ Under these provisions,

¹⁵⁹ *Globe v. CA*, 176 SCRA 778, 784 (1989).

¹⁶⁰ Civil Code, art. 20:
Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

¹⁶¹ Civil Code, art. 21:
Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

¹⁶² Civil Code, arts. 20 and 21, in relation to Civil Code art. 2219; *Velayo v. Shell Co.*, 100 Phil 186 (1956).

¹⁶³ *Albenson v. CA*, 217 SCRA 16, 25 (1993).

¹⁶⁴ The requisites for liability are (1) that there is a legal act; (2) which is contrary to morals, good customs, public order, or public policy; and (3) done with intent to injure or damage another. *Albenson v. CA*, 217 SCRA 16, 25 (1993).

¹⁶⁵ *PNB v. CA*, 83 SCRA 237, 247 (1978).

¹⁶⁶ *Globe v. CA*, 176 SCRA 778, 783 (1989).

¹⁶⁷ *Albenson v. CA*, 217 SCRA 16, 25 (1993).

¹⁶⁸ *Baksh v. CA*, 219 SCRA 115, 126 (1993); *Globe v. CA*, 176 SCRA 778, 783 (1989); *PNB v. CA*, 83 SCRA 237, 247 (1978).

it is not necessary that the injury is material; moral injury is likewise actionable.¹⁶⁹ Since all acts involving intentional infliction of injury, material or moral, upon another person are either contrary to law or the general principles of justice and fair play¹⁷⁰ and good customs, it is impossible to conceive of any act which would not fall within the proscriptions of any¹⁷¹ of the above-mentioned articles.¹⁷²

These provisions on human relations have been applied in cases where an employee was unjustly and abusively terminated by his employer,¹⁷³ where a person was intentionally humiliated and embarrassed by the acts of the defendant¹⁷⁴ and where one has been maliciously prosecuted.¹⁷⁵ The most common application of these provisions, however, is grounded upon moral seduction or breach of promise to marry.¹⁷⁶

The application of Articles 19 and 21 in moral seduction cases is a recognition that while the seduction of a virtuous woman under 18 years of age constitutes

¹⁶⁹ *Cogeo-Cubao Operators and Drivers Association v. CA*, 207 SCRA 343, 348 (1992); *Sevilla v. CA*, 160 SCRA 171, 184 (1988).

¹⁷⁰ *Cogeo-Cubao Operators and Drivers Association v. CA*, 207 SCRA 343, 348 (1992); *Sevilla v. CA*, 160 SCRA 171, 184 (1988).

¹⁷¹ In the *Albenson* case, the Supreme Court ruled that damages may be claimed under any of the provisions on human relations, independently. *Albenson v. CA*, 217 SCRA 16, 25 (1993).

¹⁷² Said the Supreme Court in *Baksh v. Court of Appeals*, 219 SCRA 115, 127-128 (1993): "... In the general scheme of the Philippine legal system envisioned by the Commission responsible for drafting the New Civil Code, intentional and malicious acts, with certain exceptions, are to be governed by the Revised Penal Code while negligent acts or omissions are covered by art. 2176 of the Civil Code. In between these opposite spectrums are injurious acts which, in the absence of art. 21, would have been beyond redress. Thus art. 21 fills that vacuum. It is even postulated that together with arts. 19 and 20 of the Civil Code, art. 21 has greatly broadened the scope of the law on civil wrongs; it has become much more supple and adaptable than Anglo-American law on torts." [emphasis supplied].

¹⁷³ *Globe Mackay Cable and Radio Corp. v. CA*, 176 SCRA 778 (1989); *Quisaba v. Sta. Ines-Melale Veneer and Plywood*, 58 SCRA 771 (1974); *Salcedo v. CA*, 81 SCRA 408 (1978); *Medina v. Castro-Bartolome*, 116 SCRA 597 (1982); *Lina v. Purisima*, 82 SCRA 344 (1978).

¹⁷⁴ *Ford v. CA*, 186 SCRA 21 (1990); *RCPI v. CA*, 143 SCRA 659 (1988); *Grand Union Supermarket, Inc. v. Espino*, 94 SCRA 953 (1979).

¹⁷⁵ *Manila Gas Corp. v. CA*, 100 SCRA 602 (1980); *Ilocos Norte Electric Co. v. CA*, 179 SCRA 5 (1989); *Equitable Banking Corp. v. IAC*, 133 SCRA 136 (1984); *Lao v. CA*, 199 SCRA 58 (1991); *Rubio v. CA*, 141 SCRA 488 (1986); *Albenson v. CA*, 217 SCRA 16 (1993).

¹⁷⁶ *Pe v. Pe*, 5 SCRA 200 (1962); *Wassmer v. Velez*, 12 SCRA 652 (1964); *Baksh v. CA*, 219 SCRA 115 (1993); *Quimiguing v. Icao*, 34 SCRA 132 (1970). In cases involving moral seduction, damages are awarded to the plaintiff based on (1) the fraud and deceit behind a man's protestations of love in order that he may have sexual congress with a woman and (2) the consequent damage to the latter's honor and reputation. *Baksh v. CA*, 219 SCRA 115, 128 (1993). In one case, the damages were granted to the family of the seduced woman due to the ingenious scheme or trickery committed by the defendant, a married man, to win the affections of the woman. *Pe v. Pe*, 5 SCRA 200 (1962).

Criminal Seduction under Article 338 of the Revised Penal Code,¹⁷⁷ the seduction of a woman 18 or over is not criminal and is therefore not otherwise actionable. Similarly in cases involving abusive termination of employment,¹⁷⁸ the declaration that a perfectly legal and non-criminal act can be the basis of an award of damages recognizes that the human relations provisions are "fallback" provisions. Thus, it is highly likely that the trinity above referred to may be applied in stalking scenarios to compensate the stalking victim for the moral injury which she suffered in the hands of her stalker. Stalking is not punished criminally under the Revised Penal Code. But under Article 21, the stalker may be held liable for his acts which are contrary to good customs and public policy. This does not mean, however, that this remedy is adequate.

The damages which may be awarded in actions under these articles are moral¹⁷⁹ in nature, the purpose of which is to indemnify or repair the injury to another to enable the injured party "to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action."¹⁸⁰ Thus, in essence, these damages are compensatory in nature and do not address the issue of deterrence and punishment.¹⁸¹ In stalking situations, therefore, moral damages are terribly inadequate. For one, recovery of damages from the stalker may only aggravate the stalking situation and cause the stalker to increase his harassment in retaliation. It also fails to provide stalking victims with the remedy with which to incapacitate the stalker from continuing the conduct, i.e., imprisonment. The lack of penal sanctions against the behavior also creates the impression that so long as the offended party is compensated monetarily, the injury is alleviated. But the conduct constituting stalking is criminal in nature, affecting as it does the victim's sense of security and peace of mind by creating fear and anxiety in the victim, which fear and anxiety builds up over time. Such a wrong, it is asserted, cannot be adequately redressed by monetary compensation.

Also quite disturbing is the ruling of the Supreme Court in the case of *De Tavera v Philippine Tuberculosis Society*¹⁸² where it was held that the provisions on the chapter on Human Relations in the Civil Code are "merely guides for human conduct in the absence of specific legal provisions and definite contractual stipulations."¹⁸³ This raises concerns over the propriety of invoking these articles in stalking

¹⁷⁷ Said art. provides: The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by Arresto Mayor.

¹⁷⁸ See footnote 175.

¹⁷⁹ Civil Code, art. 2219.

¹⁸⁰ *Grand Union Supermarket, inc. v. Espino*, 94 SCRA 953, 960 (1979).

¹⁸¹ *Malonzo v. Galang*, 109 Phil 16, 21 (1960).

¹⁸² 112 SCRA 243 (1982).

¹⁸³ *De Tavera vs. Philippine Tuberculosis Society*, 112 SCRA 243, 245 (1982) [emphasis supplied].

situations where criminal provisions such as *Unjust Vexation* may be considered applicable, albeit in a limited sense. The ruling in the above-mentioned case substantially limits, if not renders nugatory, the application of Articles 19, 20 and 21, quite contrary to the intention of the Code Commission to make such provisions apply to every conceivable wrong not expressly or adequately addressed by existing law.

2. INVASION OF PRIVACY: ARTICLE 26

Every intrusion into a man's privacy, personality and peace of mind is an affront to the social order and is violative of human dignity.¹⁸⁴ If statutes do not sufficiently protect persons from such intrusions and disregard human safety, the law is defective. Article 26¹⁸⁵ plugs the loopholes in the law by expressly granting damages to a victim of such intrusions. It is, moreover, an express recognition that the right to privacy exists. Under this provision would fall those acts which are performed intentionally to cause emotional distress to another.¹⁸⁶

¹⁸⁴ In *Grand Union Supermarket v. Espino*, 94 SCRA 953 (1979), art. 26 was made the basis, together with arts. 19 and 21, for an award of damages to plaintiff who had suffered humiliation and embarrassment due to the false accusation of shoplifting hurled against him by defendant corporation. Said the Supreme Court: "...[T]he false accusation charged against private respondent after detaining and interrogating him by the uniformed guards and the mode and manner in which he was subjected, shouting at him, imposing upon him a fine, threatening to call the police and in the presence and hearing of many people in the supermarket which brought and caused him humiliation and embarrassment, sufficiently rendered the petitioners liable for damages... [P]etitioner wilfully caused loss or injury to private respondent in a manner that was contrary to morals, good customs or public policy. It is against morals, good customs and public policy to humiliate, embarrass and degrade the dignity of a person. Everyone must respect the dignity, personality, privacy and peace of mind of his neighbors and other persons." *Grand Union Supermarket v. Espino*, 94 SCRA 953, 957 (1979) [emphasis supplied].

¹⁸⁵ Civil Code, art. 26.

Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief: (1) prying into the privacy of another's residence; (2) meddling with or disturbing the private life or family relations of another; (3) intruding to cause another to be alienated from his friends; (4) vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect or other personal condition [emphasis supplied].

¹⁸⁶ Applying this principle to the cases dealt with in this study, Abdul's acts of conducting surveillance upon Sandra, may fall within the first paragraph proscribing the act of "prying into the privacy of another's residence." It is unfortunate, however, that said paragraph will fail to apply to the surveillance conducted by Tony upon Karen as the same was not committed within the latter's residence. It can be argued, however, that Tony's "following" can be punished as "disturbing the private life" of Karen under Paragraph 2, the acts therein referred to being multifarious. Under this sub-paragraph will fall all other stalking methods previously discussed, including those employed by Carol against Tessa, Johnny, Ludy and Annie, and by Abdul against Sandra.

The scope of Article 26 is broad. While it expressly enumerates actionable intrusions, it also denounces "similar acts."¹⁸⁷ It appears then that stalking and its multifarious incidents are punishable under Article 26.

All objections, however, previously discussed against Articles 19, 20 and 21 likewise apply to Article 26, inasmuch as primarily, the latter article merely provides for pecuniary compensation to victims for the moral injury suffered by them through the award of damages. The only advantage, perhaps, which Article 26 has over the trinity of articles is that Article 26 gives a cause of action for "prevention and other relief." It is unfortunate that no definitive ruling has been laid down by the Supreme Court interpreting this phrase. It is submitted, however, that a violation of this provision gives the victim of unwarranted intrusions the right to seek injunctive relief from her tormentor.

C. Injunctive Relief

In most US jurisdictions, restraining orders and civil protective orders are available to enjoin a stalker from threatening and harassing his victim.¹⁸⁸ But ineffective enforcement, the lack of effective penalties in case of violation, and attendant difficulties in obtaining these orders have limited their effectiveness.¹⁸⁹

In the Philippine setting, certain injunctive remedies are available.

An injunction may be the subject of an independent action or may be a mere provisional remedy which is ancillary to a main action civil in nature. The first type, the independent actions for injunction, are resorted to in order to restrain a court or agency from acting on a particular case or dispute or from enforcing an order or judgment. In the case of the provisional remedy, an order prohibiting or requiring the performance of a certain act during the proceedings is called a *preliminary injunction*.¹⁹⁰

The purpose of a preliminary injunction is to maintain the *status quo ante bellum* between the parties to a civil suit in relation to the subject matter in litigation, in order that injury or damage to either may be prevented.¹⁹¹

¹⁸⁷ Civil Code, art 26.

¹⁸⁸ Tucker, *supra* note 23, at 626; Strikis, *supra* note 18, at 2776.

¹⁸⁹ Strikis, *supra* note 18, 2776-2777; Tucker, *supra* note 23, 626-627.

¹⁹⁰ A preliminary injunction is defined as "...an order granted at any stage of an action prior to final judgment, requiring a person to refrain from a particular act. It may also require the performance of a particular act, in which case it shall be known as a preliminary mandatory injunction." REVISED RULES OF COURT, Rule 58, §1 [hereinafter ROC].

¹⁹¹ A writ of preliminary injunction can be obtained upon filing a verified complaint with the proper court showing facts entitling the plaintiff to relief and upon payment of a bond to the party sought to be enjoined. The bond shall answer for whatever damages the defendant may suffer if the court later finds that the plaintiff was not entitled to the injunction. ROC, Rule 58, §4.

A *temporary restraining order* (TRO), as distinguished from the writ of preliminary injunction, is a temporary measure by which a court restrains the defendant, prior to a determination of the appropriateness of issuing an injunction, from performing a particular act for a period not exceeding 20 days.¹⁹² The 20-day period expires *ipso jure* without need of a declaration from the court.¹⁹³

A writ of *preliminary injunction* or a TRO may arguably provide temporary relief to stalking victims. But they are largely inadequate and inapplicable to stalking.

The TRO, for example, can only be effective for 20 days at the maximum, and thus, in the event that it is made applicable to restrain personal acts,¹⁹⁴ it will only serve as a temporary respite from incessant and increasing harassment. Preliminary injunctions, like the TRO, have generally been applied in cases where interference

The writ will only issue upon a showing that the plaintiff has a right to restrain the defendant from performing a particular act either for a limited period or perpetually; or that the continuation of the acts sought to be enjoined will work injustice to the plaintiff; or that the defendant is doing or is threatening to do some act to defeat plaintiff's right over the subject matter of the case. ROC, Rule 58, §3.

A motion for a writ may be denied, or a prior injunction may be dissolved, when the court determines that there is an insufficiency of the complaint. ROC, Rule 58, §6.

It may also be refused or dissolved, notwithstanding injury to the claimant, when its issuance "would cause great damage to the defendant while the plaintiff can be fully compensated for such damages as he may suffer" and the defendant gives a bond to answer for any possible injury to plaintiff. ROC, Rule 58, §6.

If a preliminary injunction is granted, a final injunction may be obtained to permanently enjoin the defendant in the action from continuing the commission of the act complained of if, after trial of the main action, the plaintiff establishes his right to the same. ROC, Rule 58, §10.

¹⁹² Resolution of the Court *en banc*, dated January 11, 1983 Providing for the Interim or Transitional Rules and Guidelines Relative to the Implementation of the Judiciary Reorganization Act of 1981 (Batas Pambansa Blg. 129), Section 8. [hereinafter, Interim Rules.]; Administrative Circular No. 20-95, September 12, 1995. The order will issue upon the filing of affidavits or by verified complaint that "great or irreparable injury would result to the applicant" before a preliminary injunction can be heard. Interim Rules, Section 8. The complaint or petition for a writ of preliminary injunction or temporary restraining order shall first be raffled after notice to the adverse party and in the presence of the same. A summary hearing will ensue within 24 hours from transmittal of the records to the branch selected by raffle after which the court shall determine the propriety of issuing the order. Administrative Circular No. 20-95, Sections 1 and 2. Where, however, the "matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise," the Executive Judge may immediately issue the restraining order which shall be effective for 72 hours without the necessity of a hearing. Within the 72-hour period, he shall summon the parties for conference and raffle the case in their presence. A summary hearing shall then be conducted to determine whether it is proper to extend the period until a hearing on the application for a writ of preliminary injunction can be made. The 72-hour period shall be included in counting the maximum period of 20 days within which a restraining order is effective. Administrative Circular No. 20-95, §3 [emphasis supplied].

¹⁹³ Paras v. Roura, 163 SCRA 1 (1988).

¹⁹⁴ The writer has not come across any case applying the preliminary injunction or the TRO to restrain personal acts.

with property rights are involved. This is so even when a final injunction is issued by a court permanently restraining the commission or continuance of the act complained of. And while it may be argued that Article 26 of the Civil Code expressly grants injunctive relief against unwelcome intrusions into the privacy, peace of mind, and security of another, the absence of any judicial decision employing the writ of preliminary injunction in such actions makes the application of such procedural remedy uncertain.

D. Conclusion: the Inadequacy of Existing Criminal and Civil Remedies

The above discussion demonstrates that existing criminal remedies fail to address the fact that the totality of the behavior in stalking scenarios creates a far graver crime by nature than all the crimes taken and prosecuted individually and separately. The psychological and emotional injury caused by the pattern of conduct involved in stalking situations on the victim build up over time. Thus, a more substantial wrong is caused. Punishing repetitive harassing behavior piecemeal thus downplays the significance of the harm inflicted upon the victim.

Existing criminal remedies such as those punishing Murder,¹⁹⁵ Homicide,¹⁹⁶ and Physical Injuries,¹⁹⁷ have traditionally focused on the resulting physical harm. But by waiting for actual physical harm to occur, the law proclaims that emotional harm or mental anguish is not serious enough to warrant criminal sanction. By way of exception, the law penalizes *Unjust Vexation*, probably one of the few provisions which criminalize the intentional infliction of psychological injury or emotional distress on another. But said provision punishes mere annoyance or irritation and does not address the fear, alarm, and disturbance of the victim's peace of mind which are the aims and effects of stalking. Other penal provisions dealing with psychological harm likewise do not deal with this type of injury or are simply not designed to address direct mischief against any particular victim.¹⁹⁸

The relatively low penalties provided for in the criminal provisions constitute another source of frustration for the stalking victim. These petty penalties addressing isolated acts of stalking again render insignificant the gravity of stalking as a distinct offense. In contrast, stalking statutes can and should provide a graver penalty which can take into consideration the totality of the conduct as it relates to the seriousness of the injury suffered by the victim.

Even the provision of the Revised Penal Code requiring a *bond for good behavior* from an offender convicted of *Grave* or *Light Threats* grants only impractical and uncertain assistance to a stalking victim and is not accompanied with adequate

¹⁹⁵ Art. 248, RPC.

¹⁹⁶ *Id.* art. 249.

¹⁹⁷ *Id.* arts. 262-266.

¹⁹⁸ Such as Grave Scandal, Intriguing Against Honor, Vagrancy, and Alarms and Scandals.

enforcement mechanisms to ensure compliance. Said provision also fails to provide for adequate punishment in case of a violation.

Existing civil remedies, on the other hand, are very difficult to invoke. Even under the specific provision of Article 26, a plaintiff must prove a substantial privacy interest or dignitary injury which the offender is entitled to respect in order to obtain damages. Under Articles 19, 20, and 21, on the other hand, a plaintiff's cause of action is by nature grounded on equity and an amorphous "injury." These provisions are, at best, uncertain routes to recovery.

A civil action, moreover, requires that the victim, rather than the state, actively pursue his cause in court. This entails litigation expenses and costs, not to mention attorney's fees, which may render civil relief inaccessible. Thus, a victim without adequate financial resources will be unable to pursue a civil action. And even where a victim is able to institute such an action, the delay concomitant to such litigation may deplete the victim's scarce resources.

In the event of a favorable judgment, a victim of stalking can only be awarded monetary compensation. A monetary judgment is oftentimes ineffective especially when the offender is unable to pay, and does not deter future harmful acts nor punish or correct past conduct. As a matter of fact, the pressure and stress of defending a civil action may cause the offender to retaliate, especially since his conduct has not been penalized. Most importantly, civil damages are inadequate to repair the dignitary injury and emotional suffering of the victim.

Injunctive orders, finally, have traditionally not been applied to actions involving personal injury. They are also severely limited in scope and duration to be of much help in deterring stalking conduct and protecting victims. In the United States where civil and domestic protection orders are available, procedural remedies have proven to be cumbersome.¹⁹⁹ The same situation prevails in this jurisdiction.

IV. THE NEED TO CRIMINALIZE STALKING

There are no common-law crimes in the Philippines.²⁰⁰ An act is not punishable unless Congress provides otherwise by legislative enactment. Thus, even where an act is deemed socially or morally wrong, no criminal liability is incurred by the actor unless there exists a particular provision in the Penal Code or in a special penal law that defines and punishes the act.²⁰¹

¹⁹⁹ Lingg, *supra* note 5, at 358.

²⁰⁰ US v. Taylor, 28 Phil 599, 604 (1914).

²⁰¹ *Id.*; See also *Harvey v. Santiago*, 162 SCRA 840, 847-848 (1988), where the Supreme Court stated that "[W]hile [pedophilia] is not a crime under the Revised Penal Code, it is behavior offensive to public morals and violative of the declared policy of the state to promote and protect the physical, moral, spiritual, and social well-being of our youth..." The proceedings then before the Court were not criminal in nature but administrative. The petitioner was deported for being an "undesirable alien."

In defining crimes, the legislature derives its authority from the state's Police Power which has been characterized as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs."²⁰² Through police power, the state can prohibit and penalize acts with the end in view of providing for the comfort, safety and welfare of the general public.²⁰³ Thus:

The right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights.²⁰⁴ [Emphasis supplied.]

It is posited that there are individual and societal interests involved in criminalizing stalking.

The individual interest in proscribing threatening and annoying behavior lies in the individual's right to privacy and security of person. The Bill of Rights of the 1987 Constitution contains no express recognition of the right to privacy and security of persons except when communication or correspondence is involved²⁰⁵ or when said right is in conflict with state searches and seizures of one's person, house, papers and effects.²⁰⁶ But the Supreme Court has not hesitated to invoke the right to privacy in cases such as *Valmonte v Belmonte*,²⁰⁷ *Morfe v Mutuc*,²⁰⁸ and *Ermita-Malate Hotel and Motel Operators Association, Inc. v City Mayor of Manila*.²⁰⁹ Here, the Supreme Court implicitly recognized that the right to privacy as a constitutional precept involves the right to be free from governmental intrusion.²¹⁰

²⁰² *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 20 SCRA 849, 857-858 (1967).

²⁰³ *People v. Santiago*, 43 Phil 124, 124 (1922); *US v. Pablo*, 35 Phil 94, 100 (1916).

²⁰⁴ *Id.* at 100.

²⁰⁵ Art. III, §3(1), 1987 Constitution:
The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

²⁰⁶ *Id.*, art. III, §2.

²⁰⁷ 170 SCRA 256, 269 (1989). The Supreme Court therein stated that "There can be no doubt that right to privacy is constitutionally protected."

²⁰⁸ 130 Phil 415, 444-445 (1968), stating that "The right to privacy as such is accorded recognition independently of its identification with liberty; in itself it is fully deserving of constitutional protection."

²⁰⁹ 20 SCRA 849, 860 (1967) where the Supreme Court impliedly recognized the right to exist when it stated that "There is no occasion to consider even cursorily the alleged invasion of the right of privacy.... Petitioners obviously are not the proper parties to do so."

²¹⁰ *Camara v. Municipal Court*, 18 L. ed. 2d 930 (1967) *Griswold*, 14 L. ed. 2d 510 (1965).

Moreover, the Supreme Court equated the constitutional right to privacy with the privacy concept in torts law, particularly Article 26 of the Civil Code, which includes the right to be free from unwarranted attention by another individual, or the right to "be let alone."²¹¹

It may be argued therefore, that the right to privacy as a constitutional precept²¹² may be invoked to justify forbidding such unwarranted intrusions into the private life of another which cause mental and emotional distress.

It may also be argued that this individual or private interest is inextricably linked to the duty of the State to exalt human dignity and defend the peace of mind and reputation of another.²¹³ The Constitution expressly makes it the policy of the state to value "the dignity of every human person"²¹⁴ and declares that "the prime duty of the government is to serve and protect the people."²¹⁵

This policy of upholding every person's dignity and the right to privacy have thus been expressly enshrined in Articles 19, 20, 21 and 26 of the Civil Code²¹⁶ and in Article 2217 which grants moral damages for "mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury."²¹⁷ The policy is also enshrined in the provision punishing *Unjust Vexation*, which punishes the unjust annoyance of another; *Grave*

²¹¹ *Id.* at 515. In *Valmonte*, for example, which involved a request by petitioners for information about certain loans obtained from the GSIS by certain legislators on the alleged guaranty of Imelda Marcos, the Supreme Court recognized, while defending the right to information found in the Constitution, that when information sought to be obtained from the government invades a citizen's privacy, a conflict arises. The Court did not resolve this conflict on the ground that the entity invoking the right was a juridical person which, by virtue of its artificial existence, could not suffer injuries to "feelings and sensibilities." *Valmonte v. Belmonte*, p. 269. The court's pronouncements, however, recognized, albeit implicitly, that an individual's private transactions, nay, his privacy, cannot be inquired into by another notwithstanding the invocation of the latter's right to information against the government. Nevertheless, the information sought to be obtained was nevertheless granted on the ground that the persons in whose favor the alleged loans were extended were public officials, who "enjoy a more limited right to privacy as compared to ordinary individuals, their actions being subject to closer public scrutiny." *Id.* at 270.

²¹² See also the persuasive case of *NAACP v. State of Alabama*, 2 L. ed. 2d 1488 (1958), in which the right of individuals to "pursue their private interests privately" was recognized.

²¹³ Thus, the Supreme Court has said: "The enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property. It is one of those rights necessary to human society that underlie the whole scheme of human civilization." *Worcester v. Ocampo*, p. 73.

²¹⁴ Art. II, Section 11, 1987 Constitution.

²¹⁵ *Id.* art. II, §4.

²¹⁶ See previous discussion under Chapter III, *supra*.

²¹⁷ Art. 2217, Civil Code.

Threats, which punishes a threat against another's person, honor or property; *Libel*, which punishes unjust attacks on another's honor and reputation; and other provisions under the Revised Penal Code.²¹⁸

To a certain degree, it can also be argued that there is a substantial private interest involving the general right to liberty in stalking scenarios. Victims of stalking often are afraid to leave their homes or appear in public due to the constant threat on their lives posed by the stalker's behavior. Victims therefore feel trapped and thus limit travel and work time to avoid contact with the culprit. In a sense, stalking victims are physically obstructed,²¹⁹ and are thus unable to enjoy their freedom to move about and to feel secure and tranquil within their private spaces; a freedom which every individual is entitled to under the Constitution.²²⁰

Protection and vindication of the above individual interests is, in turn, the societal interest in criminalizing stalking since it is against societal norms.²²¹ A democracy cannot function adequately unless an individual is free from invasions into his private life, reputation and peace of mind. In addition, "economic progress will be useless if the people cannot enjoy the fruits of their labors, if they live in fear and helpless rage in their own homes."²²² The state must thus provide mechanisms by which the individual's rights are safeguarded. At the very least, the state must improve on existing laws by filling in the loopholes through which violations of these rights are committed with impunity. Otherwise, society is weak; and the state, powerless. Societal interests are therefore necessarily derivative of the rights and interests of individuals.

To fill in the gaps in existing laws, a law condemning stalking will protect and vindicate the individual interests which are endangered in stalking scenarios. An anti-stalking law will provide a legal framework whereby the series of acts employed in stalking are treated as a distinct and more serious crime, taking into account the seriousness of the emotional harm suffered by the victim and the degree of intrusion into her private life, rather than as a "stream of unrelated minor offenses"²²³ consisting of isolated overt acts, causing separate minor injuries. It will also treat the behavior as constituting direct injury to a victim rather than an indirect nuisance posed by the behavior on a general community, unlike existing

²¹⁸ See previous discussion under Chapter III, *supra*.

²¹⁹ Birmingham, p. 496.

²²⁰ *Lupangco v. CA*, 160 SCRA 848, 859 (1988).

²²¹ Art. II, §5, 1987 Constitution:
The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

²²² Editorial, "Modified form of Kidnapping," *The Philippine Star*, 19 November 1995.

²²³ *McAnaney*, *supra* note 10, at 883.

penal laws. Thus, criminalizing the conduct will be a declaration that even without physical contact, stalking is disruptive and serious, will be treated seriously, and is a crime in its own right. By thus defining and penalizing a new crime, the law will be able to intervene at the critical point before material harm or physical assault can be inflicted on the victim. Law enforcement officers will be able to step in before another crime such as murder, homicide, rape or physical injuries is committed. Defining the intentional and malicious infliction of emotional distress as unacceptable conduct, moreover, will discourage the behavior due to the concomitant public and formal condemnation of the same.

A stalking law, moreover, will afford the victim a more definite cause of action for civil damages against her stalker for the invasion of her personal space, damage to her reputation or disturbance to her peace of mind, in contrast to existing civil remedies which are uncertain and vague. It will create a distinct legal wrong which will be a more certain avenue to recovery as it will determine within well-defined limits actionable conduct. In addition, criminalizing stalking will afford victims with less financial resources the opportunity to see their tormentors in court. Punishment and deterrence will thus be made more accessible.

Criminal penalties, in addition, will be able to adequately redress the substantial injury and emotional harm to the victim in terms, not only of civil indemnity, but also of imprisonment, thus providing victims with a tool with which to fight their stalkers. A victim thus need not be impeded by the offender's insolvency before her injury can be repaired.

A stalking law may also be a means towards obtaining for the victim a safeguard, in the form of a protective court order, through which contact with the stalker and the consequent damage to the victim's privacy and security are minimized — if not altogether avoided — even before a penalty is imposed. Such a protective court order can be formulated in such a manner as to ensure the victim's safety for a longer period of time than a restraining order. Violation, in turn, may justify stiffer penalties and greater compensation.

In addition, an adequately stiff prison term will not only inhibit future conduct and punish past ones, but also incapacitate the incorrigible offender from further continuing his behavior. In this way, the eruption of actual physical violence is prevented, and the victim is provided with the opportunity to effect means to avoid contact with her stalker, such as to effect a change in address or phone number, or simply the opportunity to feel free from the harassment for a period of time. Ideally, however, the law will empower victims and give them back control over their lives — permanently.

In the landmark torts case of *Libi v IAC*,²²⁴ the Supreme Court laid down the doctrine on the subsidiary liability of parents for the tortious acts of their minor children. The case was filed by the parents of one Julie Ann Gotiong against the

²²⁴ 214 SCRA 16 (1992).

parents of Wendell Libi based on Articles 2176,²²⁵ 2180²²⁶ of the Civil Code and Article 101²²⁷ of the Revised Penal Code. The recital of facts in the opinion reveals that:

For more than two (2) years before their deaths, Julie Ann Gotiong and Wendell Libi were sweethearts until December 1978 when Julie Ann broke up her relationship with Wendell after she supposedly found him to be sadistic and irresponsible. During the first and second weeks of January, 1979, Wendell kept pestering Julie Ann with demands for reconciliation but the latter persisted in her refusal, prompting the former to resort to threats against her. In order to avoid him, Julie Ann stayed in the house of her best friend... from January 7 to 13, 1979[9].

On January 14, 1979, Julie Ann and Wendell died, each from a single gunshot wound inflicted with the same firearm... licensed in the name of petitioner Cresencio Libi, which was recovered from the scene of the crime....²²⁸ [Emphasis supplied.]

The Supreme Court found that Julie Ann's death was caused by Wendell, "his motive being revenge for her rejection of his persistent pleas for reconciliation."²²⁹

This is stalking; and this is probably the only legal report of such an incident in the Philippines. It is unfortunate that Wendell's and Julie Ann's relationship ended in tragedy. Perhaps if Julie Ann had been provided with an avenue through which Wendell's unrelenting pursuit could be stopped, she would be alive today.

The need to criminalize stalking conduct becomes even more imperative in the light of a recent report that it is now being employed to commit extortion.

In a recent editorial published in *The Philippine Star* entitled "Modified Form of Kidnapping,"²³⁰ it was reported that kidnapping syndicates were resorting to a "novel type" of extortion. Syndicates, it claimed, were resorting to *stalking* their

²²⁵ Art. 2176, Civil Code:

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

²²⁶ Art. 2180, Civil Code:

The obligation imposed by art. 2176 is demandable not only for one's own acts or omissions, but also for those persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

²²⁷ Art. 101, RPC.

²²⁸ Libi v. IAC, at 19.

²²⁹ *Id.* at 25.

²³⁰ Editorial, "Modified Form of Kidnapping," p. 8.

victims without physically abducting them. Under this scheme, an anonymous caller would initially make veiled threats through the telephone. Subsequently, the victim would receive, by mail, photographs of himself, his family, his home, his car, in the most common of places — at work, the supermarket, in church. Later, a demand for money is made over the phone, to "protect" the victim's privacy. Sadly, the editorial laments, the stalkings are not reported because of "the relatively low public regard for law enforcers" and thus the extortions continue unchecked and unpunished.²³¹

"The government," the editorial states, "must act fast before this novel type of 'kidnapping' becomes as rampant as the actual abductions."²³²

Verily, the government is obligated to protect every citizen's right to life, liberty and property. And every citizen has a right to a remedy under the law.

V. A BRIEF SURVEY OF US STATE ANTI-STALKING LAWS

The present survey is not meant to be comprehensive but seeks only to provide an overview of prevailing definitions and elements of stalking as perceived and legally addressed in the United States. These definitions and elements shall then be used as models for the formulation of a proposed Philippine Anti-Stalking Statute.

A. California Penal Code §646.9

The California Anti-Stalking Law,²³³ the first ever to punish stalking as a crime, contains 2 *actus reus* elements. It punishes any person who "follows or harasses another person."²³⁴ In addition, the culprit must make "a credible threat."²³⁵ To ensure that the acts punished are not confused with innocent behavior, the law adds certain *mens rea* elements. The acts must be made "willfully, maliciously and repeatedly"²³⁶ and "with the intent to place [another person] in reasonable fear for his or her safety,²³⁷ or the safety of his or her immediate family."²³⁸

²³¹ *Id.*

²³² *Id.*

²³³ Cal. Penal Code.

²³⁴ *Id.* (a).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ The original law required that the threat be made with the intent to place the victim in reasonable fear of death or great bodily injury." 49 West's Annotated California Codes 134 (Minn: West, 1995) [emphasis supplied].

²³⁸ Cal. Penal Code, (a).

The law does not define "follows" but contains a lengthy definition of "harasses." "Harasses" refers to "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person and that serves no legitimate purpose."²³⁹ To further clarify the term, there is a definition of "course of conduct," which is "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose."²⁴⁰ "Constitutionally protected activity"²⁴¹ and "conduct that occurs during labor picketing"²⁴² are expressly excluded from the meaning of "course of conduct" and from the application of the law, respectively.

A "credible threat" is defined as "a verbal or written threat" or "a threat implied by a pattern of conduct" or "a combination of verbal or written statements and conduct."²⁴³ The threat, no matter how it is made, must be "with the intent and the apparent ability to carry out the threat."²⁴⁴

The above-mentioned acts must have a causal relation to the intended results, which are: that the target of the "harassment" is seriously alarmed, annoyed, tormented or terrorized;²⁴⁵ that the course of conduct must cause "a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the person;"²⁴⁶ and that the threat must "cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family."²⁴⁷ Thus, the result of the acts committed by the accused must be based on 2 standards; an *objective standard* by which the acts would cause a "reasonable person" to suffer substantial emotional distress, and a three-fold *subjective standard* by which the target (a) must be seriously alarmed, annoyed, tormented or terrorized; (b) must actually suffer substantial emotional distress; and (c) must reasonably fear for his or her safety or that of his or her immediate family.²⁴⁸

²³⁹ Cal. Penal Code, (d). The original law did not require that the target be tormented or terrorized. It merely required that the victim be alarmed, annoyed or harassed. 49 West's Annotated California Codes 135 (Minn. West, 1995).

²⁴⁰ Cal. Penal Code, (d).

²⁴¹ Cal. Penal Code, (d).

²⁴² Cal. Penal Code, (f).

²⁴³ Cal. Penal Code, (e). The original law required that the threat be "against the life of, or a threat to cause great bodily injury to, a person x x x" In addition, the original law did not specify how the threat must be made; it was worded in such a way that it was interpreted to require an express verbal threat. 49 West's Annotated California Codes 135.

²⁴⁴ Cal. Penal Code, (e).

²⁴⁵ Cal. Penal Code, (d).

²⁴⁶ Cal. Penal Code, (d).

²⁴⁷ Cal. Penal Code, (e).

²⁴⁸ "Immediate family" is defined as any "spouse, parent, child" or relative by consanguinity or affinity within the second degree of the victim, or "any other person who regularly resides in the household, or who within the prior six months, regularly resided in the household." *Id.*, (l).

The California law also contains special provisions governing post-trial treatment of a convicted stalker. First, it allows a judge to impose a condition that the offender undergo counselling if the offender is released on probation or his sentence is otherwise suspended.²⁴⁹ Second, the court convicting the felon may recommend to the Department of Corrections that the offender be subjected to psychiatric evaluation and treatment.²⁵⁰ Third, the court may also issue an order restraining the stalker from maintaining any contact with the victim for up to 10 years, considering the seriousness of the stalking, the probability of "future violations," and the need to protect the victim and his or her family.²⁵¹

B. "Credible Threat" Models

The two concurrent *actus reus* elements found in the California law were adopted by numerous states²⁵² such as Iowa,²⁵³ Massachusetts²⁵⁴ and South Carolina.²⁵⁵ These laws contain relatively minor deviations from the California law.

Iowa, for example, punishes a person who "follows" or "harasses" another, but adds "pursues" in its enumeration.²⁵⁶ It also took away the *mens rea* requirement that the acts must be done "maliciously" and requires only that the same be done "willfully" and "on more than one occasion."²⁵⁷

Other statutes where the target or victim of the stalking includes members of the principal victim's immediate family are the Oregon, Or. Laws Ch. 626, §163.730 to .750, and Mississippi, Miss. Code Ann. §97-3-107, laws.

²⁴⁹ *Id.* (g). Other statutes with a "counseling" provision are the Haw. Rev. Stat., Rev. Stat. §711-1106.5 (The Michie Company, Supp. 1994) and La. Rev. Stat. Ann. laws.

²⁵⁰ Cal. Penal Code, (j).

²⁵¹ Cal. Penal Code, (h).

²⁵² Ala. Code §13A-6-90 to 92 (Supp. 1993), Ill. Ann. Stat. Ch. 720, para. 5/12-7.3 to 7.4 (Smith-Hurd 1993), Iowa Code Ann. §708.11 (West 1993), Ky. Rev. Stat. Ann. §508.130 to .150 (The Michie Company Supp. 1994), La. Rev. Stat. Ann. §14:40.2 (West Supp. 1995), Mass. Gen. Laws Ann. Ch. 265, §43 (West Supp. 1995), Neb. Rev. Stat. §§ 28-311.02 to .04 (1993), RI Gen. Laws §§11-59-1 to -3 (Supp 1993), SC Code of Laws Ann. §16-3-1070 (Law Co-op Supp. 1994), SD Codified Laws Ann. §22-19A-1 to -7 (Supp 1993), Tenn. Code Ann. § 39-17-315 (Supp 1993), Tex. Penal Code Ann. §42.07 (West Supp 1993), Utah Code Ann. §76-5-106.5 (Supp 1993), Wis. Stat. Ann. §947.013 (West Supp 1993).

²⁵³ Iowa Code Ann.

²⁵⁴ Mass. Gen. Laws Ann.

²⁵⁵ SC Code Of Laws Ann.

²⁵⁶ Iowa Code Ann.

²⁵⁷ Iowa Code Ann.

The Massachusetts Law²⁵⁸ adopts the *actus* and *mens rea* requirements of the California law with the slight deviation that the threat must be made with the intent to place the person in "imminent fear of death or serious bodily injury,"²⁵⁹ which is similar to the original wording of the California law. In addition, there is no specification as to the manner in which the threat is made.²⁶⁰ The required result of the criminal acts is limited to annoying or alarming the target of the conduct.²⁶¹ There is, moreover, no requirement that the target actually suffer substantial emotional distress.

⁴The South Carolina law²⁶² also adopts the *actus* and *mens rea* requirements of the California law. However, the threat must be made with the intent to place the victim in reasonable fear of "death or great bodily injury"²⁶³ and no provision is made regarding the manner in which the threat is made. But unlike the Massachusetts law, it requires that the victim actually suffer substantial emotional distress.²⁶⁴

The disclaimers found in the California law have also been adopted in the South Carolina statute.²⁶⁵

The Kentucky²⁶⁶ and Illinois²⁶⁷ statutes also adopt the two-tiered *actus rea* elements of the California law. However, the Illinois statute²⁶⁸ enumerates two

²⁵⁸ Mass. Gen. Laws Ann.

²⁵⁹ Mass. Gen. Laws Ann., (a).

²⁶⁰ There is no provision which provides that the threat be made with the intent and apparent ability to carry out the threat.

²⁶¹ Mass. Gen. Laws Ann., (d).

²⁶² SC Code Of Laws Ann. Under this law, Stalking is a misdemeanor and is punished with the same penalty as the law's California counterpart. The crime is elevated to felony status when there is a second or subsequent conviction within seven years of the prior conviction against the same victim, and said subsequent conviction involves "an act of violence or 'a credible threat' of violence against the victim." Par. (B) and (D).

²⁶³ *Id.* (B).

²⁶⁴ *Id.* (A)(1).

²⁶⁵ *Id.* (A)(2), (E).

²⁶⁶ Ky. Rev. Stat. Ann.

²⁶⁷ Ill. Ann. Stat.

²⁶⁸ The Illinois statute, said to be one of the toughest in the US, makes stalking a felony even for a first conviction. *Id.* 12-7.3 (b). It also incorporates into its scope the infliction of bodily harm to or the imposition of confinement or restraint on, the victim in its definition of Aggravated Stalking. *Id.* 12-7.4 (a)(1) and (2). In effect, stalking as it is defined in its aggravated form, covers what would otherwise be separate crimes in other states.

types of conduct which must be done together with the threat and "in furtherance" thereof.²⁶⁹ The offender must, knowingly, either follow the person outside the residence of the defendant, or place the person under surveillance by remaining outside his or her school, place of employment, vehicle, other place occupied by the person, or residence other than that of the stalker's.²⁷⁰ Said conduct must be done on at least two separate occasions,²⁷¹ rather than specifying a "series of acts"²⁷² as in the California law. The threat, on the other hand, must be made with the intent to place the person in reasonable "apprehension" of death, bodily harm, sexual assault, confinement, or restraint.²⁷³ No reasonable person or objective standard is provided.

The Kentucky Statute²⁷⁴ deviates from the first *actus rea* and *mens rea* requirements of the California law. It specifies only that the offender must engage in an "intentional course of conduct" which alarms, annoys, intimidates or harasses the target.²⁷⁵ Said conduct must cause a "reasonable person to suffer substantial mental distress."²⁷⁶ But like the California law, the threat element may be made either explicitly or implicitly so long as it is made with the intent to place the person in fear of sexual contact, physical injury²⁷⁷ (or serious physical injury in the case of "Stalking in the First Degree"),²⁷⁸ or death.

C. Credible Threat Qualifying or Aggravating the Crime

Significant deviations from the California Model in terms of the required criminal acts are found in the Florida,²⁷⁹ Indiana,²⁸⁰ and Michigan²⁸¹ statutes. These laws do not require that a credible threat be made against the victim before a conviction can be had. The making of a credible threat only aggravates the crime.

²⁶⁹ *Id.* 12-7.3(a).

²⁷⁰ *Id.* 12-7.3(a)(1) and (2).

²⁷¹ *Id.* 12-7.3 (a).

²⁷² Cal. Penal Code, (d).

²⁷³ Ill. Ann. Stat., 12-7.3 (a).

²⁷⁴ Ky. Rev. Stat. Ann.

²⁷⁵ Ky. Rev. Stat. Ann., 508.130 (1)(a).

²⁷⁶ Ky. Rev. Stat. Ann., 508.130 (1)(b).

²⁷⁷ Ky. Rev. Stat. Ann., 508.150 (1)(b).

²⁷⁸ Ky. Rev. Stat. Ann., 508.140 (1)(a)(2).

²⁷⁹ Fla. Stat. Ann. §§ 784.048 (West Supp. 1994).

²⁸⁰ Ind. Code Ann. § 35-45-10-1 to -5 (Burns Supp. 1993).

²⁸¹ Mich. Comp. Laws. Ann. §750.411h to .411i (West Supp. 1993).

Thus, under the Florida law, when one willfully, maliciously and repeatedly follows or harasses another, he commits a misdemeanor of the first degree.²⁸² However, once the conduct is coupled with a credible threat, the crime is elevated to felony status and is called "Aggravated Stalking."²⁸³

The same situation is provided for in the Indiana statute,²⁸⁴ except that here, stalking, even in its aggravated form, is not a felony.²⁸⁵

The Michigan statute²⁸⁶ is slightly different. Like the Florida statute, making a credible threat aggravates the crime to felony status.²⁸⁷ The Michigan statute, however, requires that the conduct, considered apart from the threat, be composed of "two or more separate, noncontinuous acts, evidencing a continuity of purpose"²⁸⁸ including, but not limited to, "repeated or continuing unconsented contact."²⁸⁹

D. Credible Threat as Alternative Conduct

Several states²⁹⁰ adopt the two-tiered *actus reus* requirements of the California law, only that these requirements are connected by the conjunction "or" rather than "and."

The Mississippi law,²⁹¹ for example, practically adopts the entire wording of its California counterpart except for this splitting.²⁹²

The Delaware statute²⁹³ likewise splits the acts of following or harassing and the making of a credible threat.²⁹⁴ It further automatically makes stalking a felony regardless of the attendant circumstances.²⁹⁵

²⁸² Fla. Stat. Ann., (2).

²⁸³ Fla. Stat. Ann., (3).

²⁸⁴ Ind. Code Ann.

²⁸⁵ This law, however, includes within its scope an "implicit" threat." *Id.* 35-45-10.

²⁸⁶ Mich. Comp. Laws Ann.

²⁸⁷ *Id.* at 750.411i.

²⁸⁸ *Id.* at 750.411h.

²⁸⁹ "Unconsented contact" includes following the individual, approaching the victim in a public or private place, contacting the victim by phone and even communications by electronic mail. *Id.*

²⁹⁰ Miss. Code Ann. §97-3-107, Dela. Code Ann., W. Va. Code, NJ Sess. Lawserv.

²⁹¹ Miss. Code Ann. The Mississippi law provides for the lowest sentence for stalking in the entire United States as simple stalking is punishable by imprisonment of not more than 6 months rather than the usual 1-year maximum term. *Id.* (1).

²⁹² *Id.*

²⁹³ Dela. Code Ann. Title 11, §1312A (Supp. 1994).

²⁹⁴ Dela. Code Ann. Title 11, §1312A (a) (Supp. 1994).

²⁹⁵ Dela. Code Ann. Title 11, §1312A (f) (Supp. 1994).

The New Jersey statute²⁹⁶ modifies the *mens rea* requirements found in the above-mentioned statutes by specifying that the person follow or engage in a course of conduct "purposely and repeatedly."²⁹⁷ The threat, however, may be explicit or implicit like in its California counterpart.²⁹⁸

The West Virginia statute²⁹⁹ is by far the most limited in scope in this class. It requires that the offender "intentionally and closely follow, lie in wait, or make repeated threats to cause bodily injury" to his target who must be a person "with whom that person formerly resided or cohabited or with whom that person formerly engaged in a sexual or intimate relationship."³⁰⁰ Therefore, this law appears to address only former intimate stalking.

E. Pure Harassment Statutes

The Oklahoma,³⁰¹ Louisiana,³⁰² Idaho³⁰³ and Vermont³⁰⁴ statutes comprise the class of statutes which punish following or harassing conduct without specification as to the employment of a threat. Among these, the Louisiana and Idaho statutes seem to have adopted, almost *verbatim*, the provisions of the California law, except that a credible threat under them is not required.³⁰⁵ The Vermont statute makes the additional act of "lying in wait" one of the means by which the crime is committed.³⁰⁶ The Oklahoma statute, in a similar manner, adds to the definition of "harassment," the "repeated or continuing unconsented contact"³⁰⁷ with the target of the stalking.

A smaller sub-class of this type of anti-stalking statutes are those which define stalking as simply a pattern or course of conduct, without specifying the acts which

²⁹⁶ NJ Sess. Law Serv. Ch. 209, Senate No. 256 (West 1992).

²⁹⁷ NJ Sess. Law Serv. Ch. 209, Senate No. 256 1(b) (West 1992).

²⁹⁸ NJ Sess. Law Serv. Ch. 209, Senate No. 256 1 (a)(2) (West 1992).

²⁹⁹ W. Va. Code. §61-2-9a (1992).

³⁰⁰ W. Va. Code. §61-2-9a (a) (1992).

³⁰¹ Okl. Stat. Ann. Title 21, §1173 (West Supp 1995).

³⁰² La. Rev. Stat. Ann.

³⁰³ Idaho Code. §18-7905 (The Michie Company, Supp. 1994).

³⁰⁴ Vt. Stat. Ann. Title 13, Ch. 19, §1061-1063 (Butterworth Supp. 1994).

³⁰⁵ La. Rev. Stat. Ann. and Idaho Code.

³⁰⁶ Vt. Stat. Ann. (1).

³⁰⁷ Okl. Stat. Ann. F(1)

comprise the conduct. Under this sub-class are the North Dakota³⁰⁸ and the Ohio³⁰⁹ statutes.

Two unique statutes also fall within the "pure harassment" class. These are the laws of Oregon³¹⁰ and Alaska.³¹¹ The Oregon statute punishes a person who knowingly "alarms or coerces" another person or engages in "repeated and unwanted contact" with the person.³¹² It then enumerates those types of behavior which are included in the phrase unwanted "contact."³¹³ The Alaska statute, on the other hand, contains a unique *mens rea* element. It punishes one who "recklessly"³¹⁴ places another in fear of death or physical injury.

F. Pure Stalking Statutes

The last class of stalking statutes are those which punish the mere following or lying in wait of a person. Under this class fall the Hawaii,³¹⁵ Connecticut,³¹⁶ Washington,³¹⁷ Arizona,³¹⁸ Maine³¹⁹ and Maryland³²⁰ statutes.

The Connecticut statute, which best exemplifies this class, punishes mere "following or lying in wait"³²¹ which causes the person to reasonably fear for his

³⁰⁸ ND Century Code. 12.1-17-07.1 (The Michie Company, Supplement 1993).

³⁰⁹ Ohio Rev. Code Ann. §2903.211 (Page Supp. 1994). Noteworthy is the provision in the Ohio law which requires that the victim suffer mental distress as a result of the conduct. Ohio Rev. Code Ann. (A) Mental distress, in turn, is defined as "any mental illness or condition that involves some temporary substantial incapacity or mental illness or condition that would normally require psychiatric treatment." *Id.* (C)(2). This provision severely limits the applicability of the statute to many common stalking tactics which do not cause mental illness.

³¹⁰ Or. Laws Ch. 626, §163.730 to .750.

³¹¹ Ala. Code §13A-6-90 to 92 (Supp 1993).

³¹² Or. Laws. 163.732 (1).

³¹³ *Id.* 163.730 (3).

³¹⁴ Alabama Code, §11.41.

³¹⁵ Haw. Rev. Stat. Rev. Stat. §711-1106.5 (The Michie Company, Supp. 1994).

³¹⁶ Conn. Gen. Stat. Ann. §53a-181c, -181d (West Supp 1993).

³¹⁷ Wa. Rev. Code Ann. §9A.46.110 (West Supp 1993).

³¹⁸ Ariz. Rev. Stat. Ann. §13-2921 (Supp 1993).

³¹⁹ Me. Legis. Serv. 475 (West).

³²⁰ Md. Code Ann. Art. 27 §121B (Supp 1993).

³²¹ Conn. Gen. Stat. Ann. 53a-181c-181-d.

physical safety. Minor deviations from this statute are those which specify the place where the following or lying in wait is performed³²² or eliminate the *scienter* requirement.³²³

The Hawaii law,³²⁴ which punishes *Harassment by Stalking*, eliminates the term "follow" in its definition of stalking. Instead, it punishes one who "pursues or conducts surveillance upon [another] person" with the intent to "harass, annoy, or alarm" said person or "in reckless disregard of the risk thereof."³²⁵ The conduct must be such as would cause the target to "believe" that the offender intends to cause bodily injury to him or her or damage to his or her property.³²⁶

G. Other Significant Deviations from the California Model

1. ACTUS REUS ELEMENTS

A notable deviation from the *actus reus* requirements of the California law punishing following or harassing conduct is the provision in the Oregon law punishing one who "alarms or coerces"³²⁷ another by engaging in "unwanted contact." This is similar to the provision on "unconsented contact" in the Michigan statute.³²⁸ The phrase "unwanted contact" is defined through an enumeration of illustrative acts.³²⁹ A similar enumeration is found in the Illinois statute.³³⁰

³²² The Washington statute, for example, specifies that the following must be made to the target's "home, school, place of employment, business, or any other location," or "while the person is in transit between locations." Wa. Rev. Code Ann., (1)(a). Other statutes specifying the place where the "following" is committed are the Maine law which provides that the offender follow or otherwise be in the vicinity of the victim's home, school, business, or place of employment without reasonable cause Me. Legis. Serv., 762; and the Arizona and Maryland statutes which require that the act of following be done "in or about a public place." Ariz. Rev. Stat. Ann. and Md. Code Ann.

³²³ Under the Washington statute, a person is punished even though he does not intend to frighten, intimidate or harass the person so long as he "knows or reasonably should know that the person being followed is afraid, intimidated or harassed." Wa. Rev. Code Ann., (1)(c)(ii).

³²⁴ Haw. Rev. Stat.

³²⁵ Haw. Rev. Stat. (1).

³²⁶ Haw. Rev. Stat. (1)(b).

³²⁷ Defined as "to restrain, compel or dominate by force or threat." Or. Laws. 163.732 (1).

³²⁸ Mich. Comp. Laws Ann. 750.411h.

³²⁹ Such as "coming into visual or physical presence of the other person, following, waiting outside the victim's home, place of work or school, sending written communications, making other forms of unwanted communication, and damaging property." Or. Laws. (3)(a)-(k).

³³⁰ Ill. Ann. Stat., 12-7.3(a).

The New York statute,³³¹ which punishes *Menacing*, on the other hand, is similar to the Philippine RPC provision on *Other Light Threats*.³³² It punishes one who "intentionally places another person in reasonable fear of physical injury or death."³³³ However, the crime in the New York statute is committed by "displaying a weapon, dangerous instrument, or what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm."³³⁴

Other statutes provide for additional elements which qualify their *actus reus* requirements. Washington, for example, requires that the crime must be committed under such circumstances that would not make it a felonious attempt of another crime.³³⁵ Michigan requires that the harassment must be composed of "two or more separate, noncontinuous acts"³³⁶ rather than the "series of acts"³³⁷ requirement in the California law. Finally, the Maryland,³³⁸ Arizona³³⁹ and North Carolina³⁴⁰ statutes impose upon the victim the obligation to give to the stalker a warning or request to desist from the behaviour as a prerequisite to prosecution.³⁴¹

2. PENALTIES

The California law imposes a penalty of not more than 1 year and/or a fine of not more than \$1000 for a first conviction.³⁴² The penalty increases to imprisonment in a state prison for two (2), three (3) or four (4) years when the crime is committed a second or subsequent time³⁴³ or in violation of a temporary restraining order, injunction or other court order prohibiting the conduct.³⁴⁴

Some laws adopt this sentencing scheme with the slight deviation that a second or subsequent conviction must occur within a certain period of time or

³³¹ NY Penal Law, §120.13 to .15; 240.25 to .30 (McKinney Supp. 1994).

³³² The Revised Penal Code, art. 285 (1932).

³³³ NY Penal Law, 120.13.

³³⁴ NY Penal Law, 120.13.

³³⁵ Wa. Rev. Code Ann. (1).

³³⁶ Mich. Comp. Laws Ann. 750.411h.

³³⁷ Cal. Penal Code.

³³⁸ Md. Code Ann.

³³⁹ Ariz. Rev. Stat. Ann.

³⁴⁰ NC Gen. Stat. §14-277.3 (1993).

³⁴¹ Md. Code Ann. 121A; Ariz. Rev. Stat. Ann. 13-2921; NC Gen. Stat., 14-277.3.

³⁴² Cal. Penal Code, (a).

³⁴³ Cal. Penal Code, (c).

³⁴⁴ Cal. Penal Code, (b).

number of years. The Mississippi³⁴⁵ and Idaho³⁴⁶ laws, for instance, require that the subsequent conviction be within seven years from a prior conviction against the same victim.³⁴⁷ The Oklahoma statute imposes a 10-year interim period between convictions of stalking and a crime involving the use or threat of violence against the victim³⁴⁸ or between execution of sentences.³⁴⁹ Another 10-year limit is imposed for subsequent acts of stalking from the date of completion of the sentence for a prior conviction.³⁵⁰

The penalty can also be modified by additional requirements not found in the California law. Notable is the provision in the Vermont statute which aggravates the crime of stalking if the person being stalked is under the age of 16 years.³⁵¹

3. DISCLAIMERS AND EXPRESS EXCLUSIONS

The California law excludes constitutionally-protected activity from its definition of course of conduct³⁵² and expressly removes from its application conduct which occurs during labor picketing.³⁵³ Some statutes exempt private investigative activities and activities of law enforcers.³⁵⁴ The Maryland law, notably, excludes "peaceable activity intended to express political views or provide information to others,"³⁵⁵ while the Arkansas statute adds to its list of exempted activities those of an "attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty."³⁵⁶

³⁴⁵ Under the Mississippi law, the second stalking must involve an act of violence or a credible threat of violence against the same victim. Miss. Code Ann. 97-3-107 (3). This last requirement has also been adopted by the New Jersey law. NJ Sess. Lawserv. (2)(d).

³⁴⁶ Idaho Code.

³⁴⁷ Miss. Code Ann., 97-3-107 (3); Idaho Code, 18-7905 (c).

³⁴⁸ Okl. Stat. Ann. B(3).

³⁴⁹ Okl. Stat. Ann. C.

³⁵⁰ Okl. Stat. Ann. D.

³⁵¹ Vt. Stat. Ann. §1063(a)(4).

³⁵² Adopted by ND Century Code, Dela. Code Ann., La. Rev. Stat. Ann., Fla. Stat. Ann., Mich. Comp. Laws Ann., Okl. Stat. Ann., Ky. Rev. Stat. Ann., SC Code Of Laws Ann., Ariz. Rev. Stat. Ann., Miss. Code Ann., NJ Sess. Lawserv., Idaho Code, and Vt. Stat. Ann.. Cal. Penal Code, (d).

³⁵³ Adopted by Dela. Code Ann., Fla. Stat. Ann., Ill. Ann. Stat., and SC Code Of Laws Ann. Cal. (f).

³⁵⁴ ND Century Code 12.1-17-07.1(4), Dela. 1312A(f), Ark. 5-71-229.

³⁵⁵ Md. Code Ann. 121A.

³⁵⁶ Ark 5-71-229.

4. SOME UNIQUE PROVISIONS

The Illinois Statute³⁵⁷ contains an unusual feature which allows the sentencing court to recommend to the parole board that a convicted stalker be made to undergo mental health treatment as a condition for probation or parole.³⁵⁸ It also allows the court to deny bail to an accused stalker before conviction if it finds, after a hearing, that his release would "pose a real and present threat to the physical safety" of the victim and such denial is necessary to prevent the execution of the stalker's threat.³⁵⁹

The Florida statute allows a law enforcement officer to arrest, without a warrant, a person whom he believes is committing the behavior prohibited in the act.³⁶⁰

Other statutes create what are called "rebuttable presumptions." Michigan and Oklahoma, for example, create a rebuttable presumption that the victim was terrorized, frightened, intimidated, harassed, threatened or molested if the proscribed conduct was continued despite a warning or a request to the stalker to desist.³⁶¹ Under the same circumstances, the Washington and North Dakota laws provide for a rebuttable presumption that the accused intended to stalk or harass the victim.³⁶²

The Washington and North Dakota laws, finally, do not require that the stalker intend to "frighten, intimidate or harass" the victim.³⁶³ These provisions have raised constitutional concerns that these laws create strict liability offenses.

VI. LIMITATIONS ON THE CREATION AND DEFINITION OF CRIMES

There are two broad limitations on the power of the legislature to define and punish crimes: (1) the basic principles underlying the Philippine Penal System; and (2) the Constitutional limitations.³⁶⁴

These will be discussed in the following chapter with the end in view of providing a conceptual framework for the formulation of an Anti-Stalking law in the Philippines.

³⁵⁷ Ill. Ann. Stat.

³⁵⁸ Ill. Ann. Stat. ch. 730 5/3-14-5.

³⁵⁹ Ill. Ann. Stat. ch. 725 5/110-4

³⁶⁰ Fla. Stat. Ann. (5).

³⁶¹ Mich. Comp. Laws Ann. 411h(4); Okl. Stat. Ann. (E).

³⁶² Wa. Rev. Code Ann. (4); ND Century Code (3).

³⁶³ ND Century Code (2)(a).

³⁶⁴ People v. Santiago, 43 Phil. 124, 125 (1922).

A. Basic Principles in Criminal Law

A basic obstacle which must be hurdled by any future law against stalking is consistency with the basic precepts enshrined in the present Philippine Penal Law System. These precepts are the bases for imposing criminal liability upon an individual. This is important in stalking scenarios in which, most often, the methods employed by the stalker are considered too innocuous to subject to criminal sanction. In the United States, most state anti-stalking statutes have been challenged as creating a new species of inchoate crimes, a challenge brought about by the common perception that stalking is merely preparatory to the commission of graver crimes such as murder, kidnapping and sexual assault.³⁶⁵

The Revised Penal Code, and the Philippine Penal System in general, is based on the principle of the classical school,³⁶⁶ although some positivist tendencies are apparent in some provisions. The classical school bases criminal liability on human free will; that is, that man is a "moral creature with an absolutely free will to choose between good and evil."³⁶⁷ Thus, much emphasis is placed on punishing crimes committed with *dolo* or malice,³⁶⁸ which comprise a majority of the felonies defined in Book II of the Revised Penal Code. Under this theory, criminal punishment is inflicted for the purpose of retribution.

As earlier mentioned, the Philippine Criminal Law System is founded on the inherent power and duty of the state to further the interests of the community and to guard and defend the individual and social rights and liberties of every citizen.³⁶⁹ In so doing, the state has a large measure of discretion in defining what acts are criminal and in prescribing for their punishment, for so long as the proscription is not inconsistent with the Constitution.³⁷⁰ But no act can be punished by the state until and unless there is an expressed legislative will to punish it as a distinct felony or offense³⁷¹ — *nullum crimen, nulla poena sine lege*.

A crime, in its generic sense, has two elements: (1) internal acts or the *mens rea* and (2) external acts or the *actus rea*.³⁷²

³⁶⁵ GUY, *supra* note 10, at 1012.

³⁶⁶ REYES, *supra* note 93, at 21.

³⁶⁷ *Id.*

³⁶⁸ The Revised Penal Code, art. 3 (1932).

³⁶⁹ US v. Pablo, 35 Phil. 94, 100 (1916).

³⁷⁰ People v. Santiago, p. 124-125.

³⁷¹ United States v. Taylor, 28 Phil 599 (1914).

³⁷² REYES, *supra* note 93, at 96.

In this jurisdiction, a crime requires, excepting a few defined by law, "criminal intent or by such negligence or indifference to duty or to consequences, as, in law, is equivalent to criminal intent"³⁷³ — *actus non facit reum, nisi mens rea*. Standing alone, however, mere intent is absolutely *not* punishable, notwithstanding the fact that had the internal or mental acts been carried out, a crime would result. Mere *intent*, a mental state, is not sufficient to warrant criminal sanction and proscription. Where coupled, however, with some physical deed which is *unlawful*, criminal intent is presumed³⁷⁴ and gives rise to criminal liability.

The second element can be divided into two: (1) preparatory acts; and (2) acts of execution.³⁷⁵

Preparatory acts are generally not punishable, unless the law expressly provides that such preparatory acts are punishable either as correlates of a separate crime or as separate crimes in themselves. In the first case, *conspiracy* and *proposal to commit a felony* are generally not punishable except where the law has expressly provided for their punishment.³⁷⁶ In the second, the preparatory acts are considered as independent crimes in themselves, such as, the *Possession of Picklocks* under Article 304,³⁷⁷ which is technically a mere antecedent to the commission of *Robbery with force upon things*.³⁷⁸

As a general rule, however, acts which are but preludes to a crime and which are ambiguous by nature in relation to the actor's objective are not punishable in themselves.³⁷⁹ This is so since these acts are as yet "indeterminable" and uncertain at the point of commission.³⁸⁰

Acts of execution, on the other hand, are those which have traditionally been subjected to criminal sanction. Under Article 6, acts of execution are of three stages: the attempted, frustrated and consummated.³⁸¹ In the lowest of these stages, the

³⁷³ United States v. Catolico, 18 Phil 504, 507 (1911).

³⁷⁴ United States v. Apostol, 14 Phil 92, 93 (1909); Catolico, 18 Phil. 504 at 508.

³⁷⁵ REYES, *supra* note 93, at 96.

³⁷⁶ As in The Revised Penal Code, arts. 115, 136, and 141 (1932).

³⁷⁷ The Revised Penal Code, art. 304 (1932).

Any person who shall without lawful cause have in his possession picklocks or similar tools specially adopted to the commission of the crime of robbery, shall be punished by *arresto mayor* in its maximum period to *prison correccional* in its minimum period. x x x

³⁷⁸ The Revised Penal Code, arts. 299 and 302 (1932).

³⁷⁹ People v. Lamahang, 61 Phil 703, 705 (1935).

³⁸⁰ Thus, buying poison or inflammable materials are not criminal although they can be the first steps towards the commission of murder or arson, respectively.

³⁸¹ The stages apply to the so-called "material" crimes. The Revised Penal Code, art. 6 (1932).

attempted stage, the basis for punishment is the performance of some *overt* act evidencing an intent to commit a crime.³⁸² Thus, a prerequisite to finding criminal liability for an attempted felony is the performance of some external act, a physical activity or deed, having a *direct* connection to the crime intended to be committed; a connection which in the logical course of things, *immediately* and *necessarily* graduates into a concrete felony or crime.³⁸³ This follows from the principle that the overt act committed determines the intent or objective of the offender.³⁸⁴

This is the basic difference of the attempted felony with the preparatory act or the attempt to commit an indeterminate offense. The latter, although having some *indirect* connection with a felony, is nevertheless an ambiguous or uncertain act which *could* produce results other than the felony³⁸⁵ and does not point with certitude to the existence of an *intent* to commit the same.³⁸⁶ Preparatory acts are thus ambiguous in relation to their *objective* and are thus, consequently, not punishable.

³⁸² Thus, the elements of an attempted felony are: (1) The offender commences the commission of the felony directly by overt acts; (2) He does not perform all the acts of execution which should produce the felony; (3) The offender's act be not stopped by his own spontaneous desistance; and (4) The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance. REYES, *supra* note 93 at 98. Note however must be made of art. 121 of the Revised Penal Code which makes even the attempt to flee to an enemy country punishable as a *consummated* felony [emphasis supplied].

³⁸³ The Supreme Court has stated: "... [I]t is not sufficient, for the purpose of imposing penal sanction, that an act objectively performed constitute[s] a mere beginning of execution; it is necessary to establish its unavoidable connection, like the logical and natural relation of the cause and its effect, with the deed which, upon its consummation, will develop into one of the offenses defined and punished by the [penal] code; it is necessary to prove that said beginning of execution, if carried to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will *logically* and *necessarily* ripen into a concrete offense." People v. Lamahang, 61 Phil 703, 706 (1935) [emphasis supplied].

³⁸⁴ Soriano v. People, 88 Phil 368, 374 (1951).

³⁸⁵ Reyes illustrates the distinction thus: "If A bought poison from a drugstore, in preparation for the killing of B by means of poison, such act is only a preparatory act. It is not an overt act, because it has no direct connection with the crime of murder which A intended to commit. The poison purchased may be used by A to kill rats or insects. Hence, the act of buying poison did not disclose necessarily an intention to kill a person with it.

"But if A mixed the poison with the food intended for B, and the latter, not knowing that it contained poison, put into his mouth a spoonful thereof, the act of A was more than a mere planning or preparation for the commission of murder. The buying of poison and mixing it with the food of B who later put into his mouth part thereof to eat it, taken together, constituted the overt acts of murder. The nature of the external act thus performed by A clearly indicated that he intended to commit the crime of murder. If for some reason or another, B threw away the food with poison from his mouth, A is liable for attempted murder." REYES, *supra* note 93 at 99 [emphasis supplied].

³⁸⁶ Thus, for example, the discharge of a firearm may not by itself sustain a finding of intention to kill although with cert. in attendant circumstances, such intent can be conclusively established. People v. Mabug-at, 51 Phil 967, 970 (1926).

The landmark case of *People vs. Lamahang*,³⁸⁷ illustrates this.

In *Lamahang*, the Supreme Court ruled that in order for an act to be punishable at least as an attempt of a crime, the act itself must disclose the *objective* of the offender; that is, the act must not be so *ambiguous* as to permit several inferences as to the offender's purpose.³⁸⁸ This is so because in offenses which are not consummated, the intent of the offender is inferred from his overt acts. The acts, it must be emphasized, "by their very nature, by the facts to which they are related, by the circumstances of the persons performing the same, and by the things connected therewith"³⁸⁹ must show without a doubt that the actor intends to perform a crime. Lacking this certainty, there can be no conviction on attempt.³⁹⁰

The principle prohibiting punishment for ambiguous or indeterminate offenses arises from the Constitutional presumption of innocence³⁹¹ afforded the accused in criminal cases. And this presumption translates into the principle that where an act is susceptible of double interpretation, one tending to convict the culprit and the other tending to show his innocence, the latter interpretation must prevail. "It is necessary," said the Court in *Lamahang*, "in order to avoid regrettable instances of injustice, that the mind be able to directly infer from [the facts] the intention of the perpetrator to cause a particular injury."³⁹²

³⁸⁷ 61 Phil 703 (1935). The accused in the said case was charged with and convicted of the crime of attempted robbery after he was caught by a policeman in the act of making an opening on the wall of a store with an iron bar.

³⁸⁸ In reversing the conviction of Lamahang for attempted robbery, the Supreme Court ruled that there was nothing in the record from which the purpose of the accused in thus making an opening in the wall can be inferred. To convict him for attempted robbery, the Court stated, there must be shown a clear intent to take possession, for the purpose of gain, of some personal property belonging to another. *Id.* The Court continued: "...That his final objective, once he succeeded in entering the store, was to rob, to cause physical injury to the inmates, or to commit any other offense, there is nothing in the record to justify a concrete finding." *People v. Lamahang*, 61 Phil 703 (1935) [emphasis supplied].

³⁸⁹ *Lamahang*, 61 Phil 703, 707 (1935).

³⁹⁰ Lamahang was acquitted of Attempted Robbery but convicted of Attempted Trespass to Dwelling, the crime to which his acts indubitably steered. Similarly in the case of *United States v. Simeon*, 3 Phil 688 (1904), the conviction of the accused of Attempted Assassination was reversed on the ground that the raising of appellant's bolo, without more, is insufficient evidence of intent to kill the offended party. Appellant, however, was convicted of threatening another with a weapon. And in *People v. Tabago*, 48 OG 3419 (1952), the Court, in acquitting the accused, stated that his act of placing his hand over his revolver was "equivocal and susceptible [sic] to different interpretations." It also stated that Tabago, at any time after such equivocal act and during the subjective phase of the felony, could have desisted from completing all the acts constituting the crime of Homicide, which desistance would have exempted him from responsibility. *People v. Tabago*, 48 OG 3419, 3422 (1952).

³⁹¹ CONST. art. III, §14(2).

³⁹² *Lamahang*, 61 Phil 703, 707 (1935).

It is thus certain that under the present criminal justice system, before criminal punishment can be inflicted, *at the very least*, there must be some *overt* act indicating with certainty the actor's objective and constitutive thereof, which, moreover, has a direct connection with the felony intended to be committed.³⁹³

B. Constitutional Limitations

United States Anti-Stalking Laws have been attacked principally on two grounds: that the statutes are either *void for vagueness* or are simply vulnerable to *overbreadth* attacks. These attacks are grounded upon allegations that the statutes fail to adequately define the proscribed conduct, and thus, fail to provide adequate warning of the conduct to avoid; and that they render the exercise of freedom of speech and expression subject to sanction and punishment. An understanding of the principles involved relating to these doctrines is necessary in order that any future Anti-stalking law can avoid the pitfalls of vagueness or overbreadth.

1. THE DOCTRINE OF OVERBREADTH

A statute addressing stalking may be subject to attacks on the ground that it may well render illusory a citizen's right to freedom of expression especially where it appears that the statute punishes seemingly innocuous conduct protected under the Constitution.

A statute is void for being overbroad when "it offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep broadly and unnecessarily and thereby invade the area of protected freedoms."³⁹⁴ This doctrine mandates that when the regulation of or limitation on conduct can be more narrowly achieved so as not to broadly stifle fundamental liberties, the legislature must do so even when there is a legitimate and substantial governmental purpose to the enactment.³⁹⁵ The freedoms under the Constitution need "breathing space to thrive" and thus, statutes which intrude into these protected freedoms must be drawn with "narrow specificity."³⁹⁶

In the context of statutes which restrict the exercise of protected freedoms, upon a challenge of overbreadth, the Court will initially determine whether the statute infringes on an individual's protected freedoms on its face, the "most difficult to mount successfully."³⁹⁷ Failing this test, the challenger must prove that

³⁹³ The Revised Penal Code, art. 6 (1932).

³⁹⁴ *Adiong v. Comelec*, 207 SCRA 712, 719-720 (1992); *Griswold v. Connecticut*, p. 516.

³⁹⁵ *Gonzales v. Comelec*, 27 SCRA 835, 871(1969); *Dela Cruz v. Paras*, 123 SCRA 569, 578 (1983).

³⁹⁶ *NAACP v. Button*, 371 US 415, 433 (1963).

³⁹⁷ *United States v. Salerno*, 95 L. Ed. 2d 697, 707 (1987). The test in determining whether the statute is in fact overbroad on its face is founded on an examination as to whether or not the "activity

the statute will be unconstitutional when applied to him, will constitute a clear invasion of personal or property rights,³⁹⁸ and will not be permitted to speculate that it will apply unconstitutionally to others.³⁹⁹ The only exception is when the attack is coupled with an invocation of the right to free speech or expression, in which case, the challenger can invoke the doctrine of overbreadth even when it is shown that the statute is constitutional when applied to him.⁴⁰⁰

The exception is based on the qualitative significance accorded free speech in the realm of constitutional law, as it is "the indispensable condition of nearly every other freedom."⁴⁰¹ Cognates to the right to free speech are the rights of association⁴⁰² and assembly.⁴⁰³ To justify any interference on the exercise of these rights, there must exist a substantial governmental interest or a clear and present danger which the state has the right to prevent.⁴⁰⁴

The "clear and present danger" test, as interpreted in numerous cases, means that the evil must be of such seriousness and imminence that the state will be justified in curtailing the utterance occasioning it.⁴⁰⁵ The application of this stringent test⁴⁰⁶ is premised on the recognition that these freedoms are "delicate and vulnerable," the exercise of which may be effectively deterred by mere threats of sanction.⁴⁰⁷ The test has been uniformly accepted by the Supreme Court as the

or property has some relevance to the public welfare." *Ynot v. IAC*, 148 SCRA 659, 670 (1987); whether or not there is a legitimate and substantial governmental purpose to the enactment. *Gonzales v. Comelec*, 27 SCRA 835, 871 (1969) and *Dela Cruz v. Paras*, 123 SCRA 569, 578 (1983) and whether the restriction directly impacts constitutionally protected conduct. *Hoffman Estates v. Flipside*, 455 US 489, 494 (1982).

³⁹⁸ *Dela Cruz v. Paras*, 123 SCRA 569, 578 (1983); *Ermitta-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 20 SCRA 849, 856-857 (1967).

³⁹⁹ *United States v. Salerno*, 707; *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 839 (1973).

⁴⁰⁰ *Broadrick vs Oklahoma*, 37 L. ed. 2d 830, 840 (1973).

⁴⁰¹ *Adiong v. Comelec*, 207 SCRA 712, 716 (1992); *Gonzales v. Comelec*, 27 SCRA 835, 856 (1969); *Reyes v. Bagatsing*, 125 SCRA 553, 566 and 570 (1983).

⁴⁰² CONST. art. III, §8.

⁴⁰³ CONST. art. III, §4.

⁴⁰⁴ *Adiong v. Comelec*, 207 SCRA 712, 718-719 (1992); *Gonzales v. Comelec*, 27 SCRA 835, 858 (1969).

⁴⁰⁵ *Gonzales v. Comelec*, 27 SCRA 835, 858 (1969).

⁴⁰⁶ The test for determining permissible intrusions into the domain of human rights is more stringent than that for intrusions on property rights. See *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, 51 SCRA 189 (1973).

⁴⁰⁷ *Gonzales v. Comelec*, 27 SCRA 835, 866 (1969); *NAACP v. Button*, 371 US 415, 418 (1963).

proper test in situations involving public order or national security,⁴⁰⁸ over the less stringent "Dangerous tendency" rule which merely requires a "natural tendency" that the evil will be produced by the utterance.⁴⁰⁹

In cases, however, involving the settlement of conflicting interests not involving public order or security, the Court has applied the "Balancing of Interests" test.⁴¹⁰ When legislative action is directed at a legitimate objective but nevertheless clearly constitutes an invasion of personal or property rights under the guise of police power, and the protection of the right clearly outweighs the need for the legislative prescription, the Court will find in favor of the individual right.⁴¹¹ The balancing of interests test has been posited to apply to situations where there exists an interference on the right to free speech in the more generalized concept of liberty.⁴¹² Yet even in these cases where public order and security are not involved, restrictions on essential liberties must nevertheless be narrowly drawn.

A finding that an intrusion into fundamental freedoms exists necessitates a determination of whether the freedom has been unduly and impermissibly narrowed to justify the unconstitutionality of a statute, using either the "clear-and-present-danger" or "balancing-of-interests" tests.⁴¹³ The validity of the restriction will be gauged thus by the degree by which it transgresses into the domain of protected speech and expression applying either of the tests.⁴¹⁴ Where the statute operates "directly"⁴¹⁵ on a freedom or relation protected by the Constitution and

⁴⁰⁸ *Gonzales v. Comelec*, 27 SCRA 835, 897 (1969) see separate opinion of J. Castro.

⁴⁰⁹ *Gonzales v. Comelec*, 27 SCRA 835, 859 (1969).

⁴¹⁰ The test is premised on the precept that the exercise of rights is not absolute and may be curtailed and regulated in order that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. *Gonzales v. Comelec*, 27 SCRA 835, 895 (1969), see separate opinion of J. Castro; *Adiong v. Comelec*, 207 SCRA 712, 716 (1992); *Primicias v. Fugoso*, 80 Phil 71, 75 (1948).

⁴¹¹ *Ermitta-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, *supra* note 30, at 856-857; *United States v. Salaveria*, 39 Phil 102, 111 (1918).

⁴¹² *Gonzales v. Comelec*, 27 SCRA 835, 898-899 (1969) see separate opinion of J. Castro. See for example *NAACP v. Alabama*, 357 US 449 (1958).

⁴¹³ In *Adiong v. Comelec*, 207 SCRA 712, 718 and 722 (1992), the Supreme Court utilized both tests in invalidating a statute prohibiting the posting of decals and stickers on places other than Common Comelec Poster Areas. The Supreme Court stated, applying the clear and present danger test, that there was no clear public interest threatened by the prohibited conduct. At the same time, it ruled that the interest of the state in guaranteeing freedom of expression outweighed any financial considerations that may be invoked in favor of the challenged statute. A similar approach was made by the Court in the case of *Imbong v. Comelec*, 35 SCRA 28 (1970) and *Badoy v. Comelec*, 55 SCRA 285 (1970).

⁴¹⁴ *Badoy v. Comelec* 35 SCRA 285, 289 (1970).

⁴¹⁵ *Griswold v. Connecticut*, p. 513.

"less drastic means"⁴¹⁶ are available to the state to effect the statute's purpose, the balance will thus be struck in favor of individual liberty. Where, however, the restriction is necessary to fulfill the avowed purpose of the law and is "so narrow that the basic constitutional rights themselves remain substantially intact and inviolate,"⁴¹⁷ or "appears too insignificant to create any appreciable dent on the individual's liberty of expression,"⁴¹⁸ a statute imposing such a restriction will not be struck down and will constitute a valid infringement of the constitutional guarantees.

The invocation of overbreadth in the context of statutes inhibiting protected speech to guard against a threat or deterrence to constitutionally protected activity is thus "strong medicine."⁴¹⁹ Verily, successful overbreadth challenges have been made against statutes abridging purely spoken words, rights of association, or expressive or communicative conduct political in nature,⁴²⁰ which are, it is posited, truly protected freedoms guaranteed for the protection of "certainly lawful ends."⁴²¹

In the context of regulation of legitimate and protected speech, therefore, the application of the clear and present danger and balancing of interests tests are premised on an examination on "the limits of the regulation"⁴²² rather than the limits of speech or expression itself.

In the context, however, of a statute punishing criminal behavior, a challenge of overbreadth will not involve an examination of the validity of the restrictions or limits of the regulation. A penal statute, by its very nature, defines unlawful conduct or conduct which has been determined by legislative process to be *unpro-*

⁴¹⁶ *People v. Nazario*, 165 SCRA 186, 197 (1988).

⁴¹⁷ *Imbong v. Comelec*, 35 SCRA 28, 40 (1978).

⁴¹⁸ *Badoy v. Comelec*, 35 SCRA 285, 291 (1970).

⁴¹⁹ *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 841 (1973).

⁴²⁰ *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 840 (1973).

⁴²¹ Thus, in the earlier-mentioned case of *NAACP v. Button*, 371 U.S. 415, 416 (1963), for example, the US Supreme Court struck down a statute penalizing the referral of an individual to a lawyer for legal assistance on the ground that the state's interest in prohibiting "barratry" could not be greater than the need to protect NAACP's freedom of expression and association. In so deciding, the Court looked into the aims of NAACP and concluded that since the prohibition found in the challenged statute injuriously intervenes with the organization's basic freedoms in the context of its plainly legitimate and, incidentally, political, objectives, the statute's broad scope could not be justified. *NAACP v. Button*, p. 416, 424. The US Supreme Court stated: "In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression." See also *Primicias v. Fugoso*, 80 Phil 71, 81(1948), where it was said that a law cannot suppress what is perfectly lawful.

⁴²² *Adiong v. Comelec*, 207 SCRA 712, 718 (1992).

tected speech.⁴²³ Thus, a challenge against a statute on the ground of overbreadth will involve an altogether different approach; for while "liberty" means more than just freedom from physical restraint and includes the freedom "to go where one may choose," its exercise must be in such a manner so as not to be "inconsistent with the equal rights of others"⁴²⁴ or must not constitute a "breach of the peace."⁴²⁵

In *Broadrick v. Oklahoma*,⁴²⁶ the US Supreme Court distinguished between statutes purporting to regulate protected speech and those which criminalize conduct. The Court cited the ruling in *Cantwell vs. Connecticut* in which the conviction of a Jehovah's Witness preacher, for having played a phonograph record attacking the Catholic Church on a New Haven Street, was reversed on the ground that his conduct, "considered in the light of the constitutional guarantees," could not be punished under a law punishing a common law crime of breach of the peace.⁴²⁷ *Broadrick* clarified this ruling by saying that the *Cantwell* Court did not strike down the statute then in question *in toto* "because it was capable of some unconstitutional applications."⁴²⁸ What it did was affirm the application of the statute to a wide variety of conduct which do in fact destroy the public peace.⁴²⁹ The *Broadrick* Court thus emphasized that overbreadth scrutiny has been less rigidly applied to statutes which proscribe conduct in a neutral and noncensorial manner, as distinguished from those which proscribe "pure speech."⁴³⁰

⁴²³ See *Primicias v. Fugoso*, 80 Phil 71, 81 (1948) in which the Court, citing *In re Frazee*, 63 Michigan 399, 30 NW 72, stated: "When people assemble in riotous mobs, and move for purposes opposed to private or public security, they become unlawful, and their members and abettors punishable. ...It is only when political, religious, social, or other demonstrations create public disturbances, or operate as nuisance, or create or manifestly threaten some tangible public or private or private mischief, that the law interferes." See also *Reyes v. Bagatsing*, 125 SCRA 553, 562-563, where it was stated that: "...[U]tterance in the context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution.... What is guaranteed is peaceable assembly." [emphasis supplied].

⁴²⁴ *Lupangco v. CA*, 160 SCRA 848, 859 (1988), citing *Munn v. Illinois*, 94 US 143; *United States v. Salaveria*, 39 Phil 102, 110 (1918).

⁴²⁵ *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 841 (1973).

⁴²⁶ *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 841 (1973).

⁴²⁷ *Cantwell v. Connecticut*, 310 US 296, 308-311 (1940), cited in *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 841 (1973).

⁴²⁸ *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 841 (1973).

⁴²⁹ *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 841 (1973).

⁴³⁰ The Court stated that "...conduct - even if expressive - falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct. Although such laws if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect - at best a prediction - cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing a statute against conduct that is admittedly within its power to proscribe." *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 842 (1973) [emphasis supplied].

It appears therefore that in the context of a penal statute, an overbreadth challenge cannot be successfully mounted if it is grounded on an allegation that the statute *could* have an unconstitutional application on some conceivable or potential situation not before the court.⁴³¹ Thus, an individual may invoke the doctrine of overbreadth against a penal statute on the ground that the statute unnecessarily punishes "innocent" behavior falling within the constitutional guarantee of free speech. Upon this challenge, the Court will look into the application of the law on the particular case before it, *i.e.*, on the conduct of the accused himself sought to be penalized. The test then is not whether the restriction or the proscription of conduct is "narrowly drawn," but whether the accused's conduct is itself constitutionally protected and thus immune from criminal liability.

In the context of the state's right to define crimes and thus penalize conduct, what is involved is a determination by the state, under its police power, that the conduct, as precisely defined under the statute, is *not* protected. Within this framework, the task will be a determination not of the validity of the restriction or proscription imposed by the state,⁴³² but of the validity of the conduct itself — whether it falls within the scope of constitutionally protected speech or expression. It is thus submitted that a criminal or penal statute will be more difficult to strike down on the ground of overbreadth.⁴³³

It is within this framework that any future stalking law must be defended against an overbreadth challenge.

It is submitted that any future stalking law will survive overbreadth challenges on two grounds. First, it proscribes *conduct*, not pure speech, determined by the legislature as "unprotected" under the Constitution; thus, overbreadth scrutiny will not be as rigid. Second, as earlier established, there are individual and societal interests involved in punishing stalking. These interests are enshrined in specific provisions of the Civil Code and the Revised Penal Code, as well as in the Constitution itself.⁴³⁴ These provisions, embodying the norms, both legal and social, sought to be upheld in a future anti-stalking law punishing malicious and willful acts, are indications by which it can be asserted that stalking belongs to that class of conduct which is constitutionally *unprotected*. Condemning stalking conduct means condemning dangerous and injurious behavior on a broader scale; not regulating guaranteed expression.

⁴³¹ The Court stated that statutes such as the one then in question could be cured from overbreadth defects "through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied." *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 841 (1973).

⁴³² *Adiong v. Comelec*, 207 SCRA 712, 718 (1992).

⁴³³ See *US v. National Dairy Prod. Corp.*, 372 US 29, 36 (1963), where it was ruled that overbreadth challenges will fail when the statute proscribes conduct which is "neither constitutionally protected nor socially desirable."

⁴³⁴ See discussion on *The Need to Criminalize Stalking*, Chapter IV.

The remaining tasks then will be to determine whether the statute as it thus defines unlawful conduct satisfies the due process limitation against vagueness⁴³⁵ and whether the legislature is consistent with the well-established principles laid down within the Philippine criminal justice system.⁴³⁶

2. DUE PROCESS AND THE VOID FOR VAGUENESS DOCTRINE

As earlier intimated,⁴³⁷ the State has an inherent right to define and punish crimes by virtue of its police power which has been defined as "that inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society."⁴³⁸ But while the legislature enjoys wide discretion in so defining crimes,⁴³⁹ it is nevertheless bound to observe the "sporting idea of fair play."⁴⁴⁰ Thus, the Due Process clause under the Constitution mandates that citizens must be put on fair notice of what acts constitute a violation of law and which thus make the actor liable for the statute's penalties.⁴⁴¹

A statute will be struck down as *void for vagueness* when the prohibition against the performance of an act contained in a statute lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application,⁴⁴² and thus incapacitates the courts from determining "with any reasonable degree of certainty, what the legislature intended."⁴⁴³ A vague statute violates due process requirements because it fails to adequately inform persons targeted by the law with fair notice of the conduct to avoid and leaves law enforcers unbridled discretion in carrying out its provisions.⁴⁴⁴

In order for a statute to be declared unconstitutional on this ground, the Court must make a finding that the law, on its face, is utterly and "impermissibly vague in all of its applications."⁴⁴⁵ And when the statute operates as a restriction on constitutional freedoms such as speech and expression, stricter standards apply as to the

⁴³⁵ See *infra*.

⁴³⁶ See discussion on *Basic Principles in Criminal Law*, Chapter VI (A).

⁴³⁷ See Chapter IV, *supra*.

⁴³⁸ *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 20 SCRA 849, 858 (1967).

⁴³⁹ *People v. Santiago*, 43 Phil 124 (1922).

⁴⁴⁰ *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 20 SCRA 849, 861 (1967); *Ynot v. IAC*, 148 SCRA 659, 668 (1987).

⁴⁴¹ *Connally v. General Construction Company*, 269 US 385, 391 (1926).

⁴⁴² *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 20 SCRA 849, 867 (1967); *Broadrick v. Oklahoma*, 37 L. ed. 2d 830, 837 (1973); *People v. Nazario*, 165 SCRA 186, 195 (1988).

⁴⁴³ *People v. Rosenthal*, 68 Phil 328, 348 (1939).

⁴⁴⁴ *People v. Nazario*, 165 SCRA 186, 195 (1988).

⁴⁴⁵ *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 494-495 (1982).

degree of vagueness permissible.⁴⁴⁶ But the Supreme Court has used the void for vagueness doctrine sparingly and has consistently ruled that where the statute is susceptible of a reasonable construction, the statute will not be struck down.⁴⁴⁷

The Supreme Court has stressed, in *People v Nazario*, that a statute imposing "no standard at all,"⁴⁴⁸ must be distinguished from those which, although containing imprecise language, may nonetheless be "saved" by construction.⁴⁴⁹ These ambiguous, but nonetheless valid statutes which specify sufficient standards, are considered to be at most "difficult" pieces of legislation.⁴⁵⁰

The cardinal rule of Statutory Construction is that when the law is clear as to its meaning, there is no room for interpretation or construction.⁴⁵¹ Where, however, it has been demonstrated that direct application of the law is impossible⁴⁵² due to some ambiguity in draftsmanship, means must be taken to ascertain legislative intent⁴⁵³ through a reasonable interpretation.⁴⁵⁴

⁴⁴⁶ *Gonzales v. Comelec*, 27 SCRA 835, 866 (1969); *People v. Nazario*, 165 SCRA 186, 198 (1988).

⁴⁴⁷ See *Rosenthal*, 68 Phil. 328, 348; *Gonzales v. Comelec*, 27 SCRA 835, 866 (1969); *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 20 SCRA 849, 867 (1988); *People v. Nazario*, 165 SCRA 186, 195 (1988).

⁴⁴⁸ The case of *Coates v. City of Cincinnati*, 402 US 611 (1971), cited in *People v. Nazario*, 165 SCRA 186, 195 (1988), is a prime example of an invalid statute due to vagueness. The ordinance then in question prohibited the assembly of three or more persons on any sidewalk who conduct themselves in a manner annoying to passersby. The US Supreme Court struck down the statute as void for vagueness on the ground that the ordinance "imposed no standard at all 'because one may never know in advance what annoys some people but does not annoy others.'" *Id.* at 195. This exemplifies an undoubtedly vague law the ambiguity of which is apparent on its face.

⁴⁴⁹ *Id.* at 196.

⁴⁵⁰ *Id.* at 199. In *Gonzales v. Comelec*, 27 SCRA 835 (1969), a statute limiting the period of "election campaign" and "partisan political activity" was attacked on the ground that the aforementioned phrases were vague. The law, however, contained an enumeration of acts which are deemed "included" within the terms "election campaign" and "partisan political activity." On this basis, the Supreme Court saved a statute from the vagueness attack thus: "As thus limited, the objection that may be raised as to vagueness has been minimized, if not totally set at rest." *Id.* at 868. [emphasis supplied]. Similarly in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, *supra*, petitioners invoked due process grounds in attacking an ordinance which, among others, required patrons of hotels and motels in the Manila area to give the name, relationship, age, and sex of his companions to the said establishments, imposed upon the operator the duty to maintain certain minimum facilities within the hotels and motels, and mandated "full rate of payment" for every lease of a room therein. The Supreme Court in this case admitted that the court cannot supply the omissions in criminal laws such as the ordinance then before it. However, it also stated that notwithstanding an allegation of such an omission, it said that "there is no canon against using common sense in construing laws as saying what they obviously mean." *Id.* p. 867 [emphasis supplied].

⁴⁵¹ *Republic Flour Mills v. Commissioner of Customs*, 39 SCRA 269, 273 (1971).

⁴⁵² *Id.* at 275 (1971); *Caltex v. Palomar*, 18 SCRA 247, 256 (1966).

⁴⁵³ SAMSON S. ALCANTARA, STATUTES, 23 (1990) [hereinafter ALCANTARA].

⁴⁵⁴ *Republic Flour Mills v. Commissioner of Customs*, 39 SCRA 269, 273 (1971).

...What Congress intended is not to be frustrated. Its objective must be carried out. Even if there be doubt as to the meaning of the language employed, the interpretations should not be at war with the end sought to be attained.⁴⁵⁵

In ascertaining such intent, the Court will look into the words of the statute, primarily, on the principle that the legislature is presumed to know the meaning of the words used in conveying its intent and that it did so in fact use such words as would clearly reflect the same.⁴⁵⁶ And it is a basic postulate that the words so employed are to be given their commonly accepted meaning or their usual signification,⁴⁵⁷ except, of course, if it is clear that the intention was to give to the terms a technical meaning.⁴⁵⁸ It is imperative therefore that any new statute, criminal in particular, which addresses stalking must employ words which clearly communicate the message it seeks to convey. Mathematical precision is not required. For this purpose, and for more effective notice to citizens of the particular criminal acts proscribed, commonly used words are preferable.

Nonetheless, interpretation of ambiguous wording of the law may save a statute from vagueness attacks through the principles of *Noscitur a Sociis*,⁴⁵⁹ *Ejusdem Generis*,⁴⁶⁰ *Reddendo Singula Singulis*,⁴⁶¹ and the Doctrine of the Last Antecedent,⁴⁶² among others. To determine the intent, resort may also be had to "aids"⁴⁶³ within

⁴⁵⁵ *Id.* at 274.

⁴⁵⁶ *Aparri v. CA*, 127 SCRA 231, 241 (1984).

⁴⁵⁷ *Republic Flour Mills v. Commissioner of Customs*, 39 SCRA 269, 273 (1971) holding that the phrase "products of the Philippines" means simply goods that are produced in the country, and not merely to those manufactured, thus including 'waste'; *Philippine British Assurance Co., Inc. v. IAC*, 150 SCRA 520, 527 (1987) holding that when the statute speaks of "any judgment," it is not to be restricted to final judgments only as the law, as written, does not distinguish; *Republic Flour Mills, Inc. v. CIR*, 31 SCRA 520, 526 (1970) holding that the phrase "tax-free product" means what it ordinarily conveys - a material or article exempt from payment of tax.; *Song Kiat Chocolate Factory v. CB*, 102 Phil 477, 479 (1957) where it was held that the word "chocolate" refers to the finished product manufactured from cocoa.

⁴⁵⁸ ALCANTARA, *supra* note 452, at 34.

⁴⁵⁹ The principle that the meaning of the words can be determined through the other terms which accompany it. *Caltex v. Palomar*, 18 SCRA 247, 262 (1966).

⁴⁶⁰ The principle of that general words following a specific enumeration are deemed to refer to things of the same class or kind. *Empire Insurance Company v. Rufino*, 90 SCRA 437, 443-444 cited in ALCANTARA, *supra* note 452, at 41.

⁴⁶¹ The principle that words in different parts of a statute must be referred to their proper connections and associations. ALCANTARA, *supra* note 452, at 49; See also *Yu Khe Thai v. Santos*, 36 SCRA 104, 108 (1970) where it was stated that art. 222 of the Civil Code should be read in the light of art. 217 of the same code relating to "members of the same family."

⁴⁶² ALCANTARA, *supra* note 452, at 51. The principle that qualifying words are deemed to refer to the words or phrase immediately preceding them.

⁴⁶³ *Id.* at Chapter IV.

the statute itself such as the statute's title, preamble, legislative definitions, and the context or history of the particular piece of legislation. And where the language of the statute is susceptible to two or more reasonable interpretations, "that construction should be adopted which will most tend to give effect to the manifest intent of the lawmaker and promote the object for which the statute was enacted, and a construction should be rejected which would tend to render abortive other provisions of the statute and to defeat the object which the legislator sought to attain by its enactment."⁴⁶⁴ The spirit of the law "must," in any case, "prevail over its letter."⁴⁶⁵ "The reason," after all, "of law is its soul."⁴⁶⁶

It is important thus, it is argued, to ensure the effectiveness and validity of a penal statute by incorporating within its terms, sections which elucidate the legislative intent behind the enactment. A Preamble, for example, would not only serve as a declaration of the particular evil addressed by the statute and the history of the effort to remedy the same, but would also serve as a policy directive, to guide courts and law enforcers in the application of the law, particularly, in the prosecution and arrest of offenders. More particular legislative definitions, on the other hand, expounding on words or phrases used in defining the crime, will obviate any possible vagueness challenges. In addition, and more importantly, state agents will be able to anticipate and recognize the conduct proscribed by the statute with more facility. Where, however, there is an absence of specific legislative definitions, the Court can ascertain the meaning of undefined terms through their common signification. These principles will be helpful in framing a statute addressing stalking.

Where reference to the language of the statute becomes impossible, only in this instance will the court resort to Construction by probing into the contemporaneous circumstances behind the enactment of the law⁴⁶⁷ and resorting to presumptions of statutory construction.⁴⁶⁸ The law can be "bent," so to speak, either to avoid

⁴⁶⁴ US v. Toribio, 15 Phil 85, 90 (1910).

⁴⁶⁵ ALCANTARA, *supra* note 452, at 26.

⁴⁶⁶ Comendador v. de Villa, 200 SCRA 80, 94 (1991).

⁴⁶⁷ Comendador v. de Villa, 200 SCRA 80, 94 (1991); Hidalgo v. Hidalgo, 33 SCRA 105 (1970). In the case of Melchor v. Commission on Audit, 200 SCRA 704, 711 (1991), for example, the Court held that the rationale behind the LOI then in question, which was to ensure the availability of funds for a proposed project of the MECS, was served by the certificate of fund availability issued by the Chief Accountant of the school, notwithstanding the fact that the LOI required explicitly that the signature of the said chief accountant be made as a witness to the contract itself. The Court stated that to render the contract null on the ground of the absence of such a signature would lead to "absurdity, contradiction, injustice or would defeat the clear purpose of the lawmakers." *Id.* Similar rulings were made by the Court in the cases of Casela v. CA, 35 SCRA 279, 282 (1970), Civil Liberties Union v. Executive Secretary, 194 SCRA 317, 332-333 (1991) and Hidalgo v. Hidalgo, 33 SCRA 105, 115 (1970).

⁴⁶⁸ In the case of Melchor v. COA, 200 SCRA 704, 712 (1991), another presumption was invoked by the Court to avoid the highly inequitable situation that a party would be made to shoulder the cost of the construction of the building when it was the government which was benefitting

the application of a statute to a highly inequitable situation or to avoid an absurdity which is patently beyond the intent of the legislature.⁴⁶⁹ And a large measure of discretion is given the judiciary to cope with situations which, although clearly beyond the scope of the statute, are nevertheless intended by the legislature to fall within its scope.⁴⁷⁰ This is a broad power, indeed, and one which carries with it the power to determine in every instance not just the inclusion of a particular situation within the statute's delineated scope, but the exclusion of those without. Thus, it is asserted, judicial power in this sense can be utilized in order to save a future anti-stalking law from impermissible vagueness by invoking the broad license granted the judiciary to construe statutes. This license is furthermore strengthened by the presumption of constitutionality⁴⁷¹ accorded every legislative enactment against challenges of invalidity. Faced with a choice of whether to "save" a statute from invalidity or to render it unconstitutional, the Court will opt for the former.⁴⁷²

From the preceding discussion, impermissibly it is readily apparent that attacks of vagueness may thus easily be remedied by construction and interpretation. Yet over and above these "remedies" or defenses against void for vagueness attacks is the pronouncement in the case of *Broadrick v. Oklahoma*,⁴⁷³ a case which is persuasive in this jurisdiction.⁴⁷⁴ In this case, it can be gleaned that where an

from the same. The Court stated "that there exists a valid presumption that undesirable consequences were never intended by the legislative measure, and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil and injurious consequences."

⁴⁶⁹ In the case of Matabuena v. Cervantes, 38 SCRA 284, (1971), the Court refused to accept the argument that since the law then in question prohibiting donations between spouses did not cover donations between common-law spouses explicitly, the law should not be applied to the latter. Said the Court: "It would be to indict the framers of the Civil Code for a failure to apply a laudable rule to a situation which in its essentials cannot be distinguished. Moreover, if it is at all to be differentiated, the policy of the law which embodies a deeply-rooted notion of what is just and what is right would be nullified if such irregular relationship instead of being visited with disabilities would be attended by benefits. Certainly, a legal norm should not be susceptible to such a reproach."

⁴⁷⁰ *Id.*

⁴⁷¹ *Aris, Inc. v. NLRC*, 200 SCRA 246, 255 (1991); In *Ynot v. IAC*, 148 SCRA 659, 666 (1987), however, it was stated that the presumption is not conclusive and thus may be rebutted by a clear showing of the statute's invalidity.

⁴⁷² *Aris, Inc. v. NLRC*, 200 SCRA 246, 256 (1991).

⁴⁷³ 37 L. ed. 2d 830 (1973).

⁴⁷⁴ Before the US Supreme Court in this case was an attack against a statute prohibiting state employees from engaging in 'partisan political activities' on grounds of vagueness. The Court, while admitting that the language of the statute was "imprecise," nevertheless dismissed the allegation of invalidity as of "little relevance" on the ground that "appellant's conduct falls squarely within the 'hard core' of the statute's proscriptions and appellants concede as much." It went further to state that if any difficulty should arise as to the application of the statute in the future, that would be the time to rule on the objection. *Id.* at 837-838.

act sought to be penalized under the law is "obviously covered conduct," or "falls squarely within the "hard core" of the statute's proscriptions, the statute will not be struck down.⁴⁷⁵

The ruling in *Broadrick* has been applied in this jurisdiction in the case of *People v Nazario*⁴⁷⁶ where the Court, in upholding the validity of the ordinance then in question against a vagueness attack, declared:

It is unmistakable from their very provisions that *the appellant falls within its coverage*. As the actual operator of the fishponds, he comes within the term "manager."

x x x

Suffice it to say that as the actual operator of the fishponds in question, and as the recipient of profits brought about by the business, the appellant is clearly liable for the municipal taxes in question. *He cannot say that he did not have a fair notice of such a liability to make such ordinances vague.*⁴⁷⁷ [Emphasis supplied.]

In the context of stalking scenarios, this pronouncement will be significant in determining the validity of a statute prohibiting stalking where it is plainly apparent that the conduct sought to be put within its scope is precisely and undoubtedly what is sought to be prohibited. In this case, the statute will survive the vagueness challenge and the challenger will be deemed to have had adequate notice of the conduct sought to be proscribed by the statute.⁴⁷⁸

3. OTHER CONSTITUTIONAL HURDLES

The Constitution prohibits the infliction of "cruel, degrading or inhuman punishment,"⁴⁷⁹ a limitation which applies both to the form and duration of the penalty imposed by a criminal statute.⁴⁸⁰ The determination as to whether a statute inflicts such a punishment entails an examination of the "prevalent conditions

⁴⁷⁵ *Id.*

⁴⁷⁶ *People v. Nazario*, 165-SCRA 186, (1988). This case involved a municipal ordinance of Pagbilao, Quezon Province making "owner[s] or manager[s]" of fishponds within the municipality liable for a P3.00 municipal tax. The Petitioner Nazario was charged for having violated this ordinance and thus challenged the constitutionality of the statute on vagueness grounds. The Supreme Court rejected his theory that as the language of the statute failed to define the terms "owner" and "manager," and he being a mere lessee of the fishpond, he could not be covered by the statute's provisions.

⁴⁷⁷ *Id.* at 198.

⁴⁷⁸ See *Maynard v. Cartwright*, 486 US 356, 360-362, in which it was held that a vagueness challenge may be overcome where reasonable persons would be put on notice that their "conduct is at risk."

⁴⁷⁹ CONST. art. III, §19(1).

⁴⁸⁰ *People v. Estoista*, 93 Phil 647, 654 (1953).

which the law proposes to suppress or curb," and is not to be judged in light of exceptional cases in which the penalty may, based on the facts, apply cruelly.⁴⁸¹ In the latter case, a provision in the Revised Penal Code mandates that where a statute may impose an excessive penalty in regard to the facts of a particular case, the court meting out the penalty is advised to recommend to the Chief Executive the use of his clemency powers.⁴⁸²

Another limitation is the Constitutional prohibition against the enactment of *ex post facto* laws.⁴⁸³

These constitutional limitations must be complied with if any future anti-stalking law is passed. Thus, this future law must inflict punishment commensurate to the degree of injury occasioned to the individual and to society and adequately address the evil or wrong which the penal law seeks to suppress. The law must also apply only prospectively to punish criminal behavior specifically defined in the statute.

VII. PROPOSED COMPONENTS OF FUTURE ANTI-STALKING LEGISLATION

Any future anti-stalking legislation must strike the delicate balance between the need to ensure the security of stalking victims on one hand, and the constitutional protections and rights granted the accused on the other. The criminal conduct must be broadly defined in order to maximize victim protection; at the same time, it must be narrowly drawn in order that serious abuse may be prevented.

The present chapter is devoted to a discussion of the components which the writer submits are essential for the accomplishment of the above purposes.

A. Policy Directives

Policy statements in the preamble and in the body of the proposed statute itself will serve as safeguards against charges of vagueness and overbreadth. A declaration of policy will recognize and declare that stalking conduct is not only unacceptable, morally and socially, but criminal as well.

⁴⁸¹ *People v. Estoista*, 93 Phil 647, 654 (1953).

⁴⁸² The Revised Penal Code, art. 5 (1932).

⁴⁸³ CONST. art. III, §22. An *ex post facto* law is one which: (1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act; aggravates a crime, or makes it greater than it was, when committed; (2) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed; (3) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; (4) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and (5) deprives a person accused of a crime of some lawful protection to which he has become entitled. In re *Kay Villegas Kami, Inc.*, 35 SCRA 429, 431 (1970).

Statements of policy must embody, first and foremost, the legal bases for criminalizing stalking conduct under the Constitution and international instruments such as the *International Covenant on Civil and Political Rights* and the *Universal Declaration of Human Rights*. The rights and remedies granted under these instruments will serve to lay the foundations for establishing the state's responsibility to promote and protect the individual and societal interests involved in stalking scenarios.

It will also be necessary that there be an affirmation that stalking, in itself, is a grave offense against these individual and societal interests, and that previously available legal recourse against it have proven largely inadequate, inapplicable or simply ineffective. This affirmation will give more "teeth," so to speak, to the future law and enable courts to assess and view stalking more seriously. It will emphasize the substantial impact of stalking on the victim and ensure that the courts will not hesitate to apply the statute's penalties to redress these injuries and prevent their further infliction.

These policy statements will also serve to prevent possible vagueness challenges as they will set the guidelines through which potential offenders may be warned that their conduct is at risk. Should these challenges, however, be mounted, the same policy statements will ensure that they cannot be mounted successfully. Courts will be able to turn to these statements in the interpretation and application of the statute to save its provisions from charges of unconstitutionality on vagueness grounds.

Further, policy directives will establish that the conduct sought to be punished in the anti-stalking statute is not constitutionally protected and thus that the statute is not overly broad. An express legislative recognition of the seriousness of the injury occasioned by stalking will confirm the need to define and penalize conduct which has, until its criminalization, been erroneously perceived as innocent and harmless. Stalking will thus be considered unlawful and anti-social, characteristics which remove it from the sphere of constitutionally protected activity.

B. SCIENTER AND SPECIFIC INTENT REQUIREMENT

As earlier discussed, crimes, under the Philippine Criminal System, are made up of two elements, one of which is the *mens rea* or intent requirement. In most crimes defined and penalized under the Revised Penal Code, only a general intent is required; *i.e.*, that the act for which the offender is subjected to criminal liability was done voluntarily and freely. Some crimes, however, require a specific intent such as "intent to gain" in *Robbery*⁴⁸⁴ and *Theft*,⁴⁸⁵ "intent to kill" in *Frustrated or Attempted Homicide*,⁴⁸⁶ and "lewd designs" in the crime of *Forcible Abduction*.⁴⁸⁷

⁴⁸⁴ RPC, art. 293.

⁴⁸⁵ RPC, art. 308.

⁴⁸⁶ RPC, art. 6 in relation to art. 249.

⁴⁸⁷ RPC, art. 342.

In the case of stalking, the acts sought to be punished are in themselves susceptible of being interpreted as innocuous and harmless. In this sense, potential overbreadth challenges will be easy to mount. Thus, a mere general intent of voluntariness in the performance of the acts in question will not suffice. It will be necessary, therefore, to define stalking in the context of a specific criminal intent.

Most US anti-stalking laws incorporate a *scienter* element, or the element of "guilty knowledge," that the acts be committed not only willfully, but maliciously and repeatedly as well. In addition, a specific criminal intent to create fear in the mind of the victim or target of the stalking of physical harm is included.

While stalking is often a precursor to physical assault, these elements will recognize that the objective of stalking is not to inflict upon the victim actual physical harm, but to sow anxiety and fear. Most important, in the Philippine setting, including these elements in a future anti-stalking law will preclude any objection that the statute will deter and punish innocent and constitutionally protected behavior and is thus overbroad. Including a *scienter* and specific intent requirement in the statute will thus delineate the borderline difference between protected conduct and harassment. In this sense, legitimate and noncriminal behavior occasioning unintentional infliction of emotional distress upon another individual will then be excluded from the operation of the statute. In addition, this will constitute sufficient warning to potential offenders that when done maliciously and with the intent to instill fear in the mind of the victim, the seemingly innocent acts become unlawful and criminal. Thus, due process challenges on the ground of vagueness can also be obviated.

A *scienter* element will likewise forestall any misgiving that the statute will punish mere preparatory acts. It will recognize that the methods employed in stalking are not mere preludes to the commission of another crime involving physical or sexual assault, but are in themselves aimed towards the infliction of severe psychological and emotional injury. Any future anti-stalking law will punish present and consummated injury and not potential or future harm. The offender will thus be prevented from raising the defense that his mere presence at the scene does not warrant the imposition of criminal liability. Once established that his performance of the acts sought to be punished was willful, malicious and repeated, and that his intent was to create fear in the mind of his victim, he thus demonstrates culpability, irrespective of whether or not he in fact intended to commit another crime. Such an intent will be crucial in characterizing the stalking acts as criminal in themselves and will be helpful in redressing the victim's moral injuries.

The additional requirement that the acts be performed "repeatedly" further assures these objectives and forestalls overbreadth challenges. Thus, while it can be argued that a single act of following, for example, may come within the purview of constitutionally protected activity, the fact that such acts were performed repeatedly clearly evinces a continuity of purpose to intimidate and harass another.

Most U.S. state laws define "repeatedly" as a series of two acts. It is submitted, however, that the proscribed conduct, in order to be consistent with criminal liability principles in this jurisdiction, must be composed of a series of acts com-

posed of at least three incidents, an arbitrary number establishing the "series." This, in order that a court may determine with certainty that said acts were done with criminal purpose and intent, and serve as yet an additional safeguard against overbreadth attacks. Moreover, the fact that the unwelcome conduct has been repeatedly performed on at least three separate occasions establishes clearly the offender's intent to harm his victim psychologically and emotionally, the core of the crime of stalking, thus affirming that the conduct is not a mere preparatory act to the commission of another crime. Finally, the requirement that the acts be performed at least thrice, focuses on the kind of behavior which an anti-stalking statute, by its nature, is designed to combat. In this way, isolated acts of annoying behavior are excluded.

In addition to *scienter* and specific intent requirements, a "legitimate purpose" exclusion and disclaimers against "constitutionally protected activity" are embodied in most US anti-stalking laws. While these may be viewed as unnecessary, such exclusions will nevertheless serve as additional safeguards against possible attacks of overbreadth and vagueness. For example, apprehension that the statute may apply to a television crew hounding a public figure for an interview may be quelled by a court finding that such is a legitimate activity which falls beyond the intended scope of the statute. By incorporating similar exclusions in the future law, a court will be able to determine with certainty that the legislature did not intend to penalize such type of conduct. The possibility then that the statute may be misapplied to similar legitimate behavior will then be minimized, if not altogether avoided. It is submitted, however, that incorporating both "legitimate purpose" and "constitutionally protected activity" exclusions would be superfluous. The first would be sufficient for the purposes hereinabove referred to as the exclusion of "constitutionally protected activity" would already be covered by excluding activities with legitimate aims and by the *scienter* element of the statute.

C. Actus rea Elements

1. SIMPLE STALKING: "FOLLOWS OR HARASSES"

Most U.S. statutes employ the terms "follows" and "harasses" in the disjunctive to define stalking. The use of these terms recognizes that following and harassment are common stalking techniques and that seemingly innocent acts can produce lasting harm in victims.

Very few U.S. statutes, however, define "following," apparently in reference to the rule that common words are to be construed and interpreted in accordance with their usual and common signification. While the reliance is well-placed, it can, however, make the statute susceptible to vagueness challenges. Thus, it is important that the term be specifically defined in the future anti-stalking statute in order to forestall such challenges.

It may be helpful to define the term more clearly and equate it with pursuing or conducting surveillance upon the victim, a tactic which describes the more common perception of what constitutes stalking conduct. The term should also be defined so as to capture the essence of the behavior as it relates to the specific

intent of the offender, *i.e.*, to create fear in the mind of the victim of physical harm. A definition which would signify that the act of following was performed to ensure that the victim is aware that he or she is being followed closely would fulfill this objective.

It seems that the definition found in the Vermont statute that "following" means "maintaining over a period of time visible physical proximity to another person in such a manner as would cause a reasonable person to have a fear of unlawful sexual conduct, unlawful restraint, bodily injury or death"⁴⁸⁸ should be adopted, with the modification that the intent must be "to cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the person followed or pursued." As thus defined, it will be established that the true intent of the offender in generating fear in the mind of his victim is to cause such emotional distress.

Qualifying the term with the *scienter* and the specific intent element will, in addition, clearly establish culpability. It will be important, too, that a requirement that the following must be done "repeatedly" or on at least three separate occasions be embodied in the future statute. This will ensure that the statute will punish that pattern of conduct which is the essence of stalking.

The term "harasses," on the other hand, has been adequately and specifically defined in the California law and its progeny. The dominant definition of this term incorporates the intended result of the offender and the effects of the acts performed by him on his victim.

A definition of harassment as a "course of conduct evidencing a continuity of purpose" accurately reflects the type of repetitive and traumatizing behavior which the stalking statute is intended to penalize, and captures the effect of such behavior on the target of the stalking. As thus defined, the peculiar and ultimate intent of the stalker to resort to an amalgamation or pattern of conduct, rather than a specific act, in order to inflict emotional distress upon his target is emphasized. This relieves the frustration associated with traditional criminal remedies which focus on single, overt and isolated acts.

This definition furthermore recognizes that the acts need not be the same throughout the series punished as stalking; a recognition, in effect, that different modes can be employed to accomplish one purpose — to seriously alarm, intimidate, torment or terrorize the victim. By assembling a portrait of the victim's experience, the statute will be able to clearly justify the criminalization of the conduct.

2. QUALIFIED STALKING: THREATS

One difficulty with many U.S. anti-stalking statutes is that they require an explicit threat to be made against the victim in order to obtain a conviction of the

⁴⁸⁸ Vt. Stat. Ann., (3).

offender. It has been argued that this requirement establishes a threshold to ensure that criminal intent is present⁴⁸⁹ and provides potential offenders with notice of what conduct to avoid and law enforcers less discretion in enforcing the statute.⁴⁹⁰

The threat requirement, however, considerably and unreasonably narrows the scope of these statutes and fails to recognize that the fear created in the mind of the victim is occasioned by a threat implicit in the pattern of conduct sought to be punished as stalking. Thus, it renders insignificant the psychological violence and trauma suffered by victims who are thereby left to wait until they are actually threatened or harmed before they can hope to stop their stalkers.

While some statutes, like the California statute, define the threat as either "explicit or implicit," such a definition is believed to be superfluous. A definition of stalking as a pattern of conduct causing fear or substantial emotional distress will already establish that this fear is generated by a reasonably perceived threat on the victim's physical safety. This kind of definition will identify the true objectives of the offender: to create such a fear in his victim while avoiding criminal liability. Requiring a threat, although admittedly limiting possible misapplications of the statute, will provide criminals with a loophole through which they can escape the arm of the law — notwithstanding the fact that their intent and conduct clearly establish culpability and cause actual harm.

It is argued, however, that the employment by the offender of an explicit threat against his victim must make the offense graver. This must be so, because the fear then generated will be more serious as the offender has expressed his intent to actually cause his target harm. The degree of malice and perversity is, in addition, graver.

To incorporate a threat element in a separate provision to punish what this writer believes should be designated as "Qualified Stalking," the Revised Penal Code provisions punishing *Grave Threats*, *Light Threats*, and *Other Light Threats* are helpful. The Revised Penal Code punishes "any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime."⁴⁹¹ The RPC likewise punishes any person who shall threaten another with the commission of "a wrong not constituting a crime."⁴⁹²

The definitions and the gradations of penalties in Articles 282, 283 and 285 will be helpful in formulating the crime of Qualified Stalking. Thus, when the stalking is accompanied by any of these elements, the crime is correspondingly graver and thus, heavier penalties must be imposed.

⁴⁸⁹ Guy, *supra* note 10, at 1002.

⁴⁹⁰ Strikis, *supra* note 18, at 2796.

⁴⁹¹ RPC, art. 282.

⁴⁹² RPC, art. 283.

D. Notice Requirement

It is submitted that a provision, similar to those found in the Maryland, Arizona and North Carolina statutes, requiring the victim or some other person on his or her behalf to communicate a warning to the stalker that he desist from continuing the conduct, is necessary.

Such a provision will serve three purposes.

First, it will fend off overbreadth attacks. The apprehension and fear that the stalking statute may punish merely preparatory acts or indeterminate and innocent acts, will be allayed. A notice requirement will ensure that the particular conduct sought to be punished in every case before the court was indeed performed with criminal intent. This notice will inform the stalker that his conduct is causing distress to the target and, therefore, its continued commission will thereafter be considered criminal. If the stalker persists in so conducting himself and fulfills the statutory numerical standard, a clear criminal design to harass the target can be unmistakably established. Said conduct will thus be impossible to justify as innocent.

Second, the notice requirement will guarantee that the stalker is adequately warned of the conduct which he must avoid and which is at risk of prosecution. And Courts will be able to determine, from the fact of compliance with this requirement, not only that there is a clear intent to harass, but also that the subsequent behavior falls within the "core" of the criminal conduct sought to be punished by the statute. In this manner, vagueness challenges are minimized and subjectivity is eliminated.

Finally, by requiring that the victim publicly legitimize his claim, unfair and vindictive charges will be deterred.

The notice requirement will impose an additional burden on the victim, it is true. However, such a burden is necessary to ensure that the accused's freedoms are secured. Thus, the slight inconvenience occasioned by such requirement on the victim is of slight significance when viewed in light of the need to protect the accused's rights. The notice, however, may be in any form, provided that the fact of compliance with the requirement is proven in court.

E. Causal Element: Defining "Substantial Emotional Distress"

Stalking, by its very nature, does not directly produce physical harm although, as earlier discussed, it is often a precursor to more violent behavior. Stalking, essentially, is a crime with the objective of inflicting psychological violence on the victim. There is thus a need to define the extent to which the acts can be characterized as productive of some substantial harm in order that they may justify criminal sanction.

Most U.S. anti-stalking laws require two levels of harm: the objective and the subjective. Thus, the California statute, for example, requires that the stalking

conduct must inflict upon a "reasonable person" substantial emotional distress. In addition, it requires that the target of the conduct, in particular, must *actually* suffer substantial emotional distress. This two-tiered effect together with a *scienter* element will be helpful in establishing the offender's culpability. The reasonable and actual consequences of the offender's conduct showing a continuity of purpose to harass, and the requirement that the conduct be performed maliciously and repeatedly, will indicate that the stalker truly intended to cause the victim fear. The conduct, therefore, then becomes clearly harmful and criminal and will distinguish it from innocent behavior.

The objective standard, moreover, will obviate the misapplication of the statute's penalties to redress the emotional harm which a fragile or hypersensitive person might suffer and from which, from an objective standpoint, may not be as damaging to another less prone to anxiety and fear. It would eliminate the issue of subjectivity regarding the actual occurrence of a crime and will guarantee that the court will be able to determine for itself whether the conduct is malicious enough to warrant criminal sanction. The Court will furthermore not be bound by the mere assertion of the complainant that substantial harm has indeed been caused. The imposition, thus, by the court of the statute's proscriptions will not be arbitrary. In addition, the court will be able to determine whether under the circumstances of a particular case, the complainant or offended party responded reasonably and not maliciously or vindictively to the conduct. This will preclude a crafty complainant from concocting charges and using the statute itself, ironically, to harass the accused. Abuse is thus prevented.

The causal element of substantial emotional distress, essential in criminalizing stalking, must likewise be clearly defined in order to avoid any inappropriate application of the law. Such a definition must link the psychological suffering of the victim to the intent of the offender to create a fear in the mind of the victim of physical harm. After all, it is the fear generated by the conduct that creates this suffering.

In the Philippine criminal context, fortunately, civil law standards for the award of moral damages can be used to define the distress which the stalking behavior occasions. Thus, Article 2217 of the Civil Code declares that moral damages include "... mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury."⁴⁹³

While said standards may be argued to apply only in civil cases, they can nevertheless justify the imposition of criminal sanctions in case their infliction was occasioned by a criminal intent, and in case the degree to which they have been carried is clearly beyond the bounds of mere bad faith. If the standards are characterized as severe, emphasizing the psychological trauma involved in stalking scenarios, and the grave and lasting disruption to an individual's sense of security, privacy and autonomy, it is averred that their intentional infliction warrants criminal sanction.

⁴⁹³ CIVIL CODE, art. 2217.

F. Preventing Further Damage: Bond for Good Behavior Pending Trial

There are no civil remedies under the Philippine legal system similar to the protective orders available in most U.S. jurisdictions. As already established, the remedy of injunction is inapplicable to situations in which personal conduct is sought to be enjoined. It will be necessary, therefore, that any future anti-stalking law address the need to prevent the continuation of the conduct pending trial or before conviction.

The grant of bail during the pendency of a criminal case is inapplicable to address this need. This is because a bail bond functions merely as an assurance that the accused will make himself available at all times whenever the court requires his presence⁴⁹⁴ and thus does not seek to prevent the accused from further committing the criminal acts.

There is therefore a need to impose a separate security through which the accused will be made to guarantee that he will not pursue the conduct sought to be enjoined. It is suggested that a bond to ensure the accused's "good behavior" *pendente lite* be imposed. For this purpose, the provisions in the Revised Penal Code, specifically Articles 35 and 284 will be used as models.

These provisions apply only in case there is a conviction against an offender guilty of *Threats*. But the principle behind the imposition of the bond may be utilized more effectively if applied as a deterrent prior to actual conviction rather than as a penalty. This, however, may raise constitutional concerns.

For example, the imposition of this bond may invite attacks that a penalty is imposed before there has been a judicial determination of the guilt of the accused in violation of his right to be presumed innocent.⁴⁹⁵ But this attack can be easily overcome if the bond is treated, not as a penalty, but as a means to secure the victim's safety pending the trial.⁴⁹⁶ The proposed bond will thus be similar in nature to the *Measures of Prevention or Safety which are not considered penalties*⁴⁹⁷ under the Revised

⁴⁹⁴ *Manotoc v. CA*, 142 SCRA 149, 154 (1986).

⁴⁹⁵ Phil. Const., art. III, §14(2): "...In all criminal prosecutions, the accused be presumed innocent until the contrary is proved...."

⁴⁹⁶ The imposition may warrant a similar imposition on the complainant to put up a counterbond to answer for whatever damages the accused may suffer should he be acquitted of the charges and the complaint is declared to be unfounded.

⁴⁹⁷ RPC, art. 24:

The following shall not be considered as penalties:

1. The arrest and temporary detention of accused persons, as well as their detention by reason of insanity or imbecility, or illness requiring their confinement in a hospital.
2. The commitment of a minor to any of the institutions mentioned in Article 80 and for the purposes specified therein.

Penal Code. The circumstances mentioned in Article 24 are *preventive* measures imposed before conviction of offenders.⁴⁹⁸ In the context of the proposed statute, thus, the bond will serve to prevent the accused from carrying out the explicit or implicit threatened harm rather than to punish him for engaging in threatening activities. In this manner, the bond will not be struck down as a violation of the accused's right to be presumed innocent.⁴⁹⁹

The suggested imposition of the bond is presently not recognized under the Philippine criminal justice system. It is, however, suitable to stalking situations where the proscribed conduct and its consequent injuries are, by nature, continuing. Thus, the measure of security is best imposed at an earlier time before conviction, that is, pending trial.

The bond, it is suggested, is not to be imposed in all cases. Imposing as it does an additional burden upon the accused, the bond must be ordered posted only upon a determination by the court that such is necessary to forestall any further violation of law. To prevent arbitrary imposition of the bond, the court must determine, upon verified motion by the offended party, that the seriousness of the harassments employed by the accused and the gravity of the threat, if any, made by him, warrant the imposition. This determination shall be made after a hearing on the motion, during which the court may ascertain, from the testimonies of the offended party and her witnesses, whether or not there is just cause to require that the harassment be enjoined and the threatened act prevented; a judicial determination similar to that made by a court in granting bail in cases where bail is not a matter of right.⁵⁰⁰ The imposition of the bond may thus be justified upon a showing that the evidence of guilt is strong. During the hearing, the accused can present evidence showing that the imposition of the bond would be clearly unjustified and oppressive.

3. Suspension from the employment or public office during the trial or in order to institute proceedings.
4. Fines and other corrective measures which, in the exercise of their administrative disciplinary powers, superior officials may impose upon their subordinates.
5. Deprivation of rights and reparations which the civil law may establish in penal form.

⁴⁹⁸ REYES, *supra* note 93, at 576. The circumstances mentioned in Article 24, however, are not imposed by a court in the course of judicial proceedings. In this manner, the proposed bond, as it is suggested to be imposed by a court upon motion, is different in nature.

⁴⁹⁹ See *Gonzaga v. Sandiganbayan*, 201 SCRA 417, 422-423, 426 (1991), where it was held that preventive suspension, not being a penalty, does not violate the accused's right to be presumed innocent.

⁵⁰⁰ Phil. Const., art. III, §13:
All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law... [emphasis supplied].

The bond must only issue if the motion filed by the offended party is in writing and verified, a requirement which will exact upon the complainant the duty to allege only the truth; otherwise, a prosecution for perjury against him may be initiated. It is in this way that the accused's rights may be safeguarded and possible oppression eliminated.

If the court finds that a bond must be posted by the accused, it must have the discretion to determine the duration and amount of the bond. The exercise of this discretion is imperative as it is the court which has determined the necessity for such a bond. It will therefore be in the best position to determine the extent to which the bond can adequately guarantee the accomplishment of its avowed purpose. This is the same discretion granted to the court under the provisions of Articles 35 and 284.

A violation of the conditions of the bond will result in its forfeiture and subject the accused to contempt proceedings.

G. Penalties

1. PRINCIPAL

The imposition of penalties in the context of the Philippine criminal justice system is justified by various theories. These theories are Prevention, Self-defense, Reformation, Exemplarity, and Justice.⁵⁰¹

Any criminal penalty must be consistent with the above aims. To accomplish this, criminal penalties must be commensurate to the degree of harm inflicted by the offender against the public order and against the private offended party, and to the degree of perversity displayed by him, taking into account the gravity of the offense committed. Thus, for example, heavier penalties may be imposed for repeat offenders. The penalties, however, must not be so grave as to offend the integrity of the human personality. In addition, the penalty must satisfy the need to deter future similar conduct.

It is this framework which should be referred to in penalizing stalking.

In addition, it is essential to compare the penalties imposed for similar crimes punished under the Revised Penal Code.

⁵⁰¹ Penalties, first and foremost, are a means towards preventing or suppressing the danger to the State and to the public order which arises from the criminal acts performed by the offender. They also serve as a measure of self-defense through which the state can protect itself and its citizens from the commission of a wrong. Penalties may also be viewed as a means to correct and reform the criminal, to reintegrate him, as it were, into mainstream society after serving sentence, and to set an example to deter others from committing criminal acts. Finally, criminal penalties are a function of retributive justice and thus serve to vindicate moral and legal wrongs. REYES, *supra* note 93, at 559.

Unjust Vexation,⁵⁰² for example, is punishable by *arresto menor* or imprisonment from one to thirty days,⁵⁰³ or a fine ranging from 5 to 200 pesos, or both. When several acts of *Unjust Vexation* are punished, the offender may be imposed a maximum penalty of imprisonment of up to 90 days, the maximum duration of the sentence which he may be required to serve under the Three-Fold Rule.⁵⁰⁴ Stalking, established in this study as a graver offense, must necessarily carry a heavier penalty which takes into account the substantial emotional harm occasioned by the conduct and its characterization as constitutive of repetitive behavior.⁵⁰⁵ The penalty for stalking must thus be heavier than the maximum threefold duration of *Unjust Vexation* considering the gravity of the sum of the acts committed by the offender to accomplish his purpose to create fear in his victim.

It is thus submitted that a penalty of *prision correccional* in its minimum and medium periods, the duration of which shall be from 6 months to 4 years and 2 months,⁵⁰⁶ and/or a fine of not less than two hundred (P200) nor more than four thousand (P4,000) pesos will be adequate to penalize simple stalking.⁵⁰⁷ Within this range, a court will be able to determine the proper period to be imposed considering the gravity of the acts committed and the degree of injury suffered by the victim as a result.

When stalking, however, is accompanied by a threat, the penalty must be graver still. For the purpose of determining this penalty, the penalties provided for the crimes of *Grave Threats*, *Light Threats*, and *Other Light threats* are instructive.

The gradations of penalties found in these provisions will be adopted in punishing the crime of Qualified Stalking, only that the imposition of an additional penalty is necessary in order to punish the criminal conduct which preceded the threat, and which contributed to the extreme emotional distress suffered by the victim. It is suggested that this additional penalty be the same penalty imposed

⁵⁰² RPC, art. 287.

⁵⁰³ RPC, art. 27.

⁵⁰⁴ RPC, art. 70.

⁵⁰⁵ Three acts were earlier established as necessary to constitute the offense under a previous discussion.

⁵⁰⁶ *Id.* The penalty for Libel is the same.

⁵⁰⁷ The nomenclature of the penalties proposed are found in the Revised Penal Code. This is necessary in order that the accessory penalties provided under the said Code may also be imposed on stalking offenders pursuant to the ruling of the Supreme Court in *People v. Simon*, 234 SCRA 555, 578 (1994), that "...by the incorporation and prescription... of the technical penalties defined in and constituting integral parts of the three scales of penalties in the [Revised Penal] Code [in a special law], ... the provisions of said Code on the appreciation and effects of all attendant modifying circumstances apply in fixing the penalty. Likewise, the different kinds or classifications of penalties and the rules for graduating such penalties by degrees should have supplementary effect ... except if they would result in absurdities...."

for Simple Stalking. This additional penalty will reflect the true gravity of the stalking conduct, threats and harassment, taken as a whole. The additional distress occasioned by the communication of a threat to commit a crime must then be penalized according to the penalties provided in Article 282.

Under Article 282 of the Revised Penal Code, however, a threat which is not made subject to any condition, but involves the intention to commit a crime⁵⁰⁸ is punishable by a straight penalty of *arresto mayor*, or imprisonment from one month and one day to six months,⁵⁰⁹ and a fine not exceeding 500 pesos. The same duration of imprisonment is imposed, under Article 283, when the threat is coupled with a demand for money or any other condition but involves the commission of a wrong not constituting a crime.⁵¹⁰ If the threat not constitutive of an intent to commit a crime is made orally,⁵¹¹ the penalty is *arresto menor*, or imprisonment ranging from 1 to 30 days,⁵¹² or a fine not exceeding 200 pesos.

A modification of the above penalties in the stalking context will be necessary. It is posited that the penalties of *arresto mayor* and *arresto menor* will not be commensurate to the degree of perversity which the stalker demonstrates when he follows or harasses another and at the same time communicates a threat. They also give the impression that stalking is a light offense.⁵¹³ To accurately reflect this degree of perversity and the substantial harm it occasions, the following is suggested:

If the threat was not made subject to any condition, the penalty shall be *prision correccional* in its maximum period.

(b) If the offender threatens his victim with the commission of any wrong not constituting a crime and the threat is coupled with a demand for money or imposing any other condition, the penalty shall be *prision mayor* in its minimum period, if the threat be made in writing or through a middleman, or *prision correccional* in its maximum period, if otherwise. If the threat was not made subject to any condition, the penalty shall be *prision correccional* in its medium period.

The gradations of penalty found in this draft take into account the circumstances which unmistakably make the crime more perverse.

Under this draft, if the threat is to commit a crime but does not impose any condition, the penalty is raised from the original penalty of *prision correccional* in its minimum and medium periods, imposed for simple stalking, to *prision correc-*

⁵⁰⁸ *Id.*

⁵⁰⁹ RPC, art. 27 and 76.

⁵¹⁰ RPC, art. 283.

⁵¹¹ RPC, art. 285 (3).

⁵¹² RPC, art. 27 and 76.

⁵¹³ RPC, art. 9: "...Light felonies are those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding 200 pesos or both, is provided."

cional in its maximum period. The penalty thus is lighter than when the threat to commit a crime imposes a condition, in which case the penalty is *prision correccional* in its minimum and medium periods and a penalty next lower or two degrees lower than the crime which the offender threatened to commit, in its maximum period, if made in writing or through a middleman, or its medium period, if otherwise. The penalty however, is considerably greater than that for simple stalking, and in effect recognizes the high degree of malice displayed by the offender when he not only stalks his victim but also communicates a threat to aggravate the latter's distress.

When the threat does not constitute a crime but is nevertheless one to commit a wrong, the penalty is *prision mayor* in its minimum period, if the threat be made in writing or through a middleman, or *prision correccional* in its maximum period, if otherwise. The high penalty is necessary in order to accommodate the gradations of penalties to be imposed for circumstances which make the offense lighter, such as when the threat is not made subject to any condition, in which case the penalty shall be *prision correccional* in its medium period, a penalty which must necessarily also be of an aggravated form of the original penalty punishing simple stalking. The high penalty also emphasizes the severity of the offender's culpability and is a declaration that this kind of conduct is absolutely not to be tolerated. This is commensurate to the degree of perversity of the offender and the severe damage sustained by the victim. Nevertheless, this penalty is still necessarily lighter than that imposed when the threat is to commit a crime, in which case, as earlier mentioned, the additional penalty for the crime which the offender threatened to commit is imposed.

A system of fines must likewise reflect the perversity and damage attendant to the crime. The penalty which has been suggested for the crime of simple stalking is *prision correccional* in its minimum and medium periods, a penalty which is correctional in nature.⁵¹⁴ Necessarily, therefore, the imposable fine must also be correctional; thus, a fine of not less than 200 pesos nor more than 4,000 pesos is deemed adequate and commensurate.⁵¹⁵

This consistency must be achieved throughout the gradation of penalties consisting of imprisonment, taking into account the attendant circumstances provided for under the Definitions proposed.

2. INCREASED PENALTIES FOR REPEAT OFFENDERS

In addition to the penalties already imposed for first time offenders of the proposed stalking statute, a provision must be made to impose a heavier, and possibly, additional, penalty against repeat offenders. By doing this, the law will acknowledge that stalkers who remain undeterred after a prior conviction for

⁵¹⁴ RPC, art. 9.

⁵¹⁵ RPC, art. 26: A fine whether imposed as a single or as an alternative penalty, shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty, if it be less than 200 pesos.

stalking, are probably the most dangerous and thus, deserve higher punishments.

To accomplish this, Article 62 (5) of the RPC on the effects of habitual delinquency on the imposition of penalties will serve as a model.⁵¹⁶

The *proviso* in this article requiring that the subsequent conviction be made within ten years from the last release or conviction of the offender shall be adopted in the proposed statute, regardless of whether the subsequent conviction be of the crime of Simple or Qualified Stalking.

The distinction between the Simple and Qualified forms of the crime, however, will be material in determining the additional penalty to be imposed for the subsequent conviction. Thus, where the second to fifth convictions are of the crime of Simple Stalking, the additional penalty shall range from *prision correccional* in its medium period to *prision mayor* in its medium period. Where the second to fifth convictions are of the crime of Qualified Stalking, the additional penalty shall range from *prision correccional* in its maximum period to *prision mayor* in its maximum period. This will reflect the greater degree of perversity of the offender who, after having been previously convicted of either Simple or Qualified Stalking, commits a subsequent crime of stalking in its aggravated form.

Most U.S. anti-stalking statutes require that the subsequent conviction be against the same victim. It is submitted, however, that there is no justification for imposing such a requirement. The higher degree of perversity of the offender is manifest regardless of who his subsequent victim is. As a matter of fact, a showing that the stalker has harassed or stalked numerous victims clearly indicates that the activity is chronic and that the legal system should respond with punishment. It is in this way that the statute can truly deter any future commissions of stalking by the same offender.

3. ADDITIONAL PENALTY: BOND TO KEEP THE PEACE

A future anti-stalking law must seek to protect victims from the unwanted behavior and from the accomplishment of the stalker's explicit or implicit threat.

⁵¹⁶ RPC, art. 62(5): ...Habitual delinquency shall have the following effects: (a) Upon a third conviction, the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the additional penalty of *prision correccional* in its medium and maximum periods; (b) Upon a fourth conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of *prision mayor* in its minimum and medium periods; and (c) Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period.

Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

For the purpose of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, *robo*, *hurto*, *estafa* or *falsification*, he is found guilty of any of said crimes a third time or oftener.

Thus, in case of a conviction of a stalker, it will be necessary to ensure that the victim be protected from any acts of retaliation which the stalker might perform against her after he has served his sentence. For this purpose, Article 284 of the RPC providing for a *Bond for Good Behavior* will serve as a model.⁵¹⁷

The Bond, when imposed by the court in its discretion, shall guarantee that the offender will refrain from further committing acts of stalking against the same victim and shall be in an amount and duration to be determined by the Court considering the gravity of the offense committed by, and the dangerousness of, the stalker.

Should the person sentenced fail to give the bond as required, he shall be detained for a period which shall in no case exceed three (3) months for a conviction of Simple Stalking and six (6) months for Qualified Stalking, in addition to the penalties imposed upon him for the crime of which he has been convicted. The additional penalty substitutes for the bond which the offender has failed or has refused to pay in order that the victim's safety is secured. The duration of six months is suggested as it is the minimum duration of the penalty of *destierro*, the penalty imposed upon the offender convicted of Threats who shall fail to give bail as required under Article 284. The duration, however, must be shorter where the offender has been convicted of Simple Stalking. In such a case, there is no express threat made by the culprit and, consequently, the danger posed by the stalker upon the victim is less imminent.

H Additional Measure of Security: Counselling

A convicted stalker may be required to undergo psychological or psychiatric examination, counselling and treatment for his rehabilitation after conviction. When the court determines the necessity of confining the convict in an institution, it may so provide in its judgment. This imposition will recognize that stalkers are most often suffering from some psychological disorder and will ensure that mentally ill stalkers are not erroneously convicted.⁵¹⁸ More importantly, it will ensure that the stalker does not pursue similar conduct in the future.

I. Conditions of Probation

Probation is "a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer."⁵¹⁹

⁵¹⁷ RPC, art. 284.

⁵¹⁸ The psychological or psychiatric examination is intended to protect not only the stalking victim but the stalker as well. This being so, the stalker may validly refuse to subject himself to counselling and treatment and thereby waive the protection. This will forestall any possible constitutional objections.

⁵¹⁹ THE PROBATION LAW OF 1976, PD 968, §3(a) [hereinafter, THE PROBATION LAW].

A person will qualify for probation provided he has not been sentenced to serve a maximum term of imprisonment of more than six years, or has not previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than two hundred pesos, or has not been once on probation under the provisions of the Probation decree.⁵²⁰

It would appear that a convicted stalker under the system of penalties herein suggested for the proposed statute, may, in certain cases such as a first conviction for simple stalking,⁵²¹ be entitled to avail of the benefit of probation. This entitlement should not be denied to the felon whose degree of culpability, as determined by the court in its judgment, is not so severe. To ensure, however, that the victim is not further molested, it will be necessary to impose two conditions for the grant of probation.⁵²²

A condition which would require that the convicted stalker undergo counselling or treatment will serve this purpose. In addition, there must also be a condition which would prohibit the offender from further molesting the offended party during the period of probation.

In case the offender violates⁵²³ the conditions of his probation, the court which has previously granted the probation may issue a warrant of arrest against the offender in case it finds that the violation is serious⁵²⁴ and, after a summary hearing to determine the existence of such violation, the court may require the offender to serve his original sentence or may modify the probation order.⁵²⁵ A stipulation, therefore, characterizing the violation of the condition requiring the offender to undergo counselling or restraining him from molesting his victim as *serious* will

⁵²⁰ THE PROBATION LAW, §9(a), (c) and (d). Under section 8, an application for probation may be denied if there is an undue risk that during the period of probation the offender will commit another crime or if probation will depreciate the seriousness of the offense committed, taking into account "the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources."

⁵²¹ Made punishable by *prison correccional* in its minimum and medium periods.

⁵²² The Probation Law states that the probation order granted by the court may contain the condition that the probationer "undergo medical, psychological or psychiatric examination and treatment and enter and remain in a specific institution, when required for that purpose" and "satisfy any other condition related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience." These provisions are helpful in drafting a similar condition in the proposed stalking statute in order to ensure the safety of the victim and the rehabilitation of the offender. THE PROBATION LAW, §10, in relation to §26, THE RULES ON PROBATION METHODS AND PROCEDURES AND FORMS.

⁵²³ "A violation of probation shall be understood to mean any act or omission on the part of a probationer which is contrary to the terms and conditions specified in the probation order." THE RULES ON PROBATION METHODS AND PROCEDURES AND FORMS, §34.

⁵²⁴ THE PROBATION LAW, §15.

⁵²⁵ THE PROBATION LAW, §15.

be necessary in the proposed anti-stalking statute. However, where the subsequent molestation in itself constitutes a separate offense of stalking, a separate prosecution under the proposed statute may be commenced.

J. Severability Clause

A Clause to be incorporated in the proposed statute which will ensure that if any provision of the statute is declared invalid or unconstitutional on any ground other provisions will not be affected will be necessary to forestall the frustration of the legislative will to punish stalking. In addition, if the application of these provisions in a certain case is held to be invalid on the ground of overbreadth, there must be a guarantee that its constitutional application to other persons or circumstances will not be affected. For this purpose, the *Separability of Provisions* clause found in RA 7080, *An Act Defining And Penalizing The Crime Of Plunder*, will be adopted.⁵²⁶

CONCLUSION AND RECOMMENDATIONS

A future anti-stalking statute must be drafted in a manner that will forestall attacks against its invalidity on constitutional or legal grounds. As established in the preceding chapter, these attacks may be repelled by embodying several safeguards in the proposed statute.

The statute must, first of all, provide a subjective standard by which the intentional infliction of emotional distress caused by the generation of fear, the privacy intrusion, and the disturbance to another's peace of mind and sense of security are treated and dealt with seriously. In this manner, the stalking victim's emotional and psychological trauma will be redressed. To protect the rights of the accused, on the other hand, a reasonable person standard to objectively determine the degree to which the intentional infliction of emotional harm can be characterized as criminal is likewise essential. As an additional safeguard, the establishment of a causation between the criminal acts performed and the consequent harm to the victim must be required.

A notice requirement through which the potential offender may be informed of the conduct which he must avoid to forestall prosecution will clearly distinguish criminal from innocent conduct. This requirement will ensure protection of the accused's rights and forestall possible vagueness and overbreadth challenges.

Policy directives, *scienter* and specific intent requirements, and legislative definitions of words and phrases employed in the statute must also be incorporated to save the statute from invalidity due to vagueness.

⁵²⁶ The said clause reads:

Separability of Provisions. - If any provisions of this Act or the application thereof to any person or circumstance is held invalid or unconstitutional, the remaining provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

To address the issue of victim protection and to deter the criminal conduct, the statute punishing stalking must contain stiff penalty impositions. Even stiffer penalties must be imposed when the stalking is accompanied by a threat. And repeat offenders must be warned through appropriate additional penalties that their incorrigibility and perversity will not be tolerated.

To give more teeth to the provisions ensuring victims' safety, the imposition of a *Bond For Good Behavior Pending Trial* and a *Bond to Keep the Peace* after conviction will serve to incapacitate the offender from pursuing the prohibited behavior and consequently, provide victims with time and opportunity to make provisions for their own protection. If an offender is granted probation, conditions must be imposed to accomplish these purposes.

A provision requiring that the offender undergo counselling either as an additional measure of security or as a condition of probation will recognize that stalkers are most often psychologically and emotionally unstable and will ensure their rehabilitation and reintegration into mainstream society.

Finally, a severability clause guaranteeing the continued effectivity of the statute's provisions to persons and circumstances to which they may be constitutionally applied ensures that the legislative purpose to punish the harmful behavior is achieved.

Stalking, as defined herein, is *mala in se*, requiring criminal intent and malice. Its penalization, thus, under a special penal law, may lead to a misinterpretation that it is merely *malum prohibitum*,⁵²⁷ quite contrary to the elements of *scienter* and specific intent established as necessary in this study. The proposed statute, therefore, is formulated to add to the RPC provisions punishing *Crimes Against Security*, the crimes to which stalking conduct is akin.

Incorporating all these components, the proposed statute will read thus:

AN ACT DEFINING AND PENALIZING STALKING,
AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE,
AS AMENDED, AND FOR OTHER PURPOSES

WHEREAS, the Constitution, specifically Article II, Section 11 thereof, states that "The State values the dignity of every human person and guarantees full respect for human rights";

WHEREAS, the Constitution, specifically Article II, Section 5 thereof, likewise states that "The Maintenance of peace and order, the protection of

⁵²⁷ As stated in *People v. Lo Ho Wing*, 193 SCRA 122, 130 (1991), a crime punished as an offense under a special law is a *malum prohibitum*. Thus, "It is a wrong because it is prohibited by law. Without the law punishing the act, it cannot be considered a wrong. As such, the mere commission of [the] act is what constitutes the offense punished and suffices to validly charge and convict an individual caught committing the act so punished, regardless of criminal intent." [Emphasis supplied].

life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy";

WHEREAS, the State, under the *International Covenant on Civil and Political Rights* and *The Universal Declaration of Human Rights*, recognizes every person's right against unlawful and arbitrary interference with his privacy, and attacks against his honor and reputation, peace of mind and security of person;

WHEREAS, under the aforementioned *International Covenant on Civil and Political Rights*, every person has the right to the protection of the law against such unlawful and arbitrary interference and attacks;

WHEREAS, stalking is an offense against human dignity, against every person's right to privacy, security of person, and psychological and emotional well-being, and is outrageous to the common standards of decency, morality and good customs in a just and civilized society;

WHEREAS, there is an alarming upsurge of stalking incidents in the country in part brought about by the employment of stalking methods in the commission of extortion and terrorism;

WHEREAS, existing Philippine criminal and civil remedies do not adequately address and punish stalking and all of its peculiar devises;

WHEREAS, the Congress, in the interest of justice, public order and the rule of law, and the need to enact measures to ensure the protection of victims and redress the severe wrong and injury occasioned by stalking, finds compelling reasons to penalize the same as a distinct offense,

Now, therefore,

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Title.* — This Act shall be known as the "Anti-Stalking Act of 19__."

SECTION 2. *Declaration of Policy.* — It is the policy of the State to protect and enhance every individual's dignity, right to privacy, peace of mind, security of person and psychological and emotional welfare, to punish acts which undermine said rights and to protect every citizen's safety and well-being.

SECTION 3. *Definition of Terms.* — As used in this Act, the following terms shall mean or be interpreted and construed as hereunder defined:

- a) *Repeatedly* — shall mean on at least three (3) separate occasions closely related in time evidencing a continuity of purpose;
- b) *Follows* — shall mean maintaining a visible physical proximity to another person or pursuing or conducting surveillance upon that person over a period of time and without legitimate purpose so as to cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the person followed or pursued;

- c) *Harasses* — shall mean a knowing and willful course of conduct directed at a specific person which seriously alarms, intimidates, torments or terrorizes the person and serves no legitimate purpose;
- d) *Course of Conduct* — shall mean a series of three (3) or more separate, noncontinuous acts, closely related over a period of time, however short, evidencing a continuity of purpose, including, but not limited to, unconsented contact with another person. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the person;
- e) *Unconsented contact* — shall mean any contact with another individual that is initiated or continued in malicious and willful disregard of that individual's expressed desire that the conduct be avoided or discontinued and with the intent to place that person in reasonable fear of his or her safety, including, but not limited to:
 1. following or coming into visual presence of that individual;
 2. approaching or confronting that individual in a public place or on private property;
 3. placing that individual under surveillance by waiting at or outside the workplace, school or residence of that individual;
 4. entering onto or remaining on property owned, leased, or occupied by that individual;
 5. contacting that individual by telephone;
 6. sending mail or other written communications to that individual; or
 7. damaging that individual's home or property.
- f) *Substantial emotional distress* — shall mean severe mental anguish, fright, anxiety, wounded feelings, moral shock, social humiliation and similar injury.
- g) *Physical injury* — shall mean those injuries defined and punished under Title Eight, Chapter Two, specifically, Articles 262 to 266 of the Revised Penal Code;
- h) *Restraint* — shall mean those offenses defined and punished under Title Nine, Chapter One, Section One, specifically Articles 267 and 268, and Title Eleven, Chapter Four, specifically Article 342, of the Revised Penal Code;
- i) *Sexual assault* — shall mean those offenses defined and punished under Title Eleven, Chapter Two, specifically Articles 335 and 336 of the Revised Penal Code;
- j) *Family* — shall mean the spouse, parent, child, any person related within the third degree of consanguinity, or any person who regularly resides in the household of the victim.

SECTION 4. There shall be incorporated after Article 282 of the Revised Penal Code, as amended, a new section to read as follows:

Article 282-A. *Definition of the Crime of Stalking.* — Any person who willfully, maliciously, and with the intent to place another person in reasonable fear of death, physical injury, unlawful restraint or sexual assault, repeatedly follows or harasses the said person after having been given reasonable warning or request to desist by or on behalf of the person so followed or harassed, shall be guilty of Stalking, an offense punishable by *prision correccional* in its minimum and medium periods and/or a fine of not less than two hundred (200) pesos nor more than four thousand (4,000) pesos.

In case of conviction, the offender shall also be required to post a bond to keep the peace conditioned upon his undertaking that he will refrain from further committing acts of stalking against the same victim for a period and amount to be determined by the Court in its discretion. Should the person sentenced fail to give the bond as required, he shall be detained for a period which shall in no case exceed three (3) months.

Article 282-B. *Definition of the Crime of Qualified Stalking.* — (a) A person is guilty of the crime of Qualified Stalking when he commits the acts defined under Article 282-A hereof, and he threatens the person followed or harassed with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime, if the offender makes the threat demanding money or imposing any other condition, whether or not he has attained his purpose.

Qualified Stalking is punishable by the penalty of *prision correccional* its minimum and medium periods and the penalty next lower in degree than that prescribed by law for the crime he threatened to commit in its maximum period, if the threat be made in writing or through a middleman, or in its medium period, if otherwise, and the offender shall have attained his purpose. A fine of not less than eight (8) thousand pesos nor more than Ten (10) thousand pesos may likewise be imposed by the court. If the offender has not attained his purpose, the penalty shall be *prision correccional* its minimum and medium periods and the penalty two degrees lower than that prescribed by law for the crime he threatened to commit in its maximum period, if the threat be made in writing or through a middleman, or in its medium period, if otherwise. Likewise, a fine of not less than six (6) thousand pesos nor more than Eight (8) thousand pesos may be imposed by the court.

If the threat was not made subject to any condition, the penalty shall be *prision correccional* in its maximum period and/or a fine of not less than four thousand pesos nor more than Six (6) Thousand pesos.

(b) If the offender threatens his victim with the commission of any wrong not constituting a crime and the threat is coupled

with a demand for money or imposing any other condition, the penalty shall be *prision mayor* in its minimum period and/or a fine of not less than six (6) thousand pesos nor more than Eight (8) thousand pesos, if the threat be made in writing or through a middleman, or *prision correccional* in its maximum period and/or a fine of not less than four thousand pesos nor more than six (6) thousand pesos, if otherwise. If the threat was not made subject to any condition, the penalty shall be *prision correccional* in its medium period and/or a fine of not less than four thousand pesos nor more than six (6) Thousand pesos.

In any of the above instances, the offender shall also be required to post a bond to keep the peace conditioned upon his undertaking that he will refrain from further committing acts of stalking against the same victim for a period and amount to be determined by the Court in its discretion. Should the person sentenced fail to give the bond as required, he shall be detained for a period which shall in no case exceed six (6) months.

Article 282-C. *Additional penalties for subsequent convictions.* — The following penalties shall be imposed in case of a second or subsequent conviction made within ten (10) years from the last release or conviction of the crimes defined and penalized under Articles 282-A and 282-B:

(a) Upon a second conviction of the crime penalized in Article 282-A, the offender shall be sentenced to the penalty provided by this Act for the last crime of which he be found guilty, and to the additional penalty of *prision correccional* in its medium period;

(b) Upon a second conviction of the crime penalized in Article 282-B, or a third conviction of the crime penalized in Article 282-A, the offender shall be sentenced to the penalty provided by this Act for the last crime of which he be found guilty, and to the additional penalty of *prision correccional* in its maximum period;

(c) Upon a third conviction of the crime penalized in Article 282-B, or a fourth conviction of the crime penalized in Article 282-A, the offender shall be sentenced to the penalty provided by this Act for the last crime of which he be found guilty, and to the additional penalty of *prision mayor* in its minimum period;

(d) Upon a fourth conviction of the crime penalized in Article 282-B, or a fifth or additional conviction of the crime penalized in Article 282-A, the offender shall be sentenced to the penalty provided by this Act for the last crime of which he be found guilty, and to the additional penalty of *prision mayor* in its medium period;

(e) Upon a fifth or additional conviction of the crime penalized in Article 282-B, the offender shall be sentenced to the penalty provided by this Act for the last crime of which he be found guilty, and to the additional penalty of *prision mayor* in its maximum period.