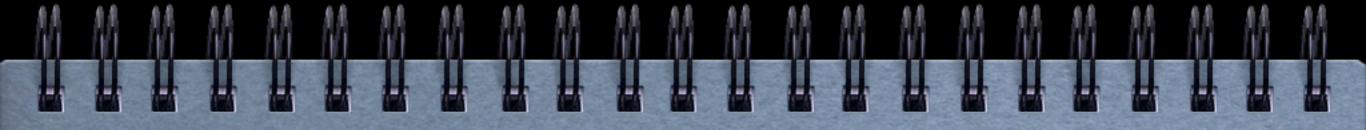


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Cyber Civil Rights Symposium
University of Denver Sturm College of Law
20 November 2009

In this talk:

- ☐ A story of anonymous online harassment.
- □ A counterintuitive proposal.
- ☐ A more realistic view of the uses and abuses of unmasking.



Act I: Skanks in NYC

Skanks in NYC





Dan Solove says:

"The law must restrict bad-faith lawsuits designed solely to unmask anonymous speakers."



Act II: Unmasking

This is justice

- D Rosemary Port got what she deserved.
- □ In contrast, a lawsuit would have been:
 - □ Slow and expensive for Port.
 - A much greater burden on Cohen.
 - D Possibly futile.

From this, I conclude...

- □ We need more "bad-faith lawsuits designed solely to unmask speakers."
- And once you put it that way, why not cut out the middleman?
- What if unmasking were the preferred remedy???

A thought experiment

- Desit a significantly lower threshold to unmask an unknown online harasser.
- In exchange, the plaintiff is required to give up all legal remedies.
- ☐ This is not a call for David Brin-style total transparency.
- D Bear with me on this for a bit.

Identification r0XX0rz

- D Best way to break up a mob.
- D Less First Amendment trouble.
- Avoids making intermediaries liable.

: on balance, it's good for free speech

Dog Poop Girl objects

- ☐ Won't this lead to disproportionate, illiberal, shaming-based revenge?
- ☐ But would you rather be Dog Poop Girl or be sued into bankruptcy?
- ☐ And if someone is going to bear this risk, why not the defendant?



Act III: The Punchline

Sadly, it doesn't work

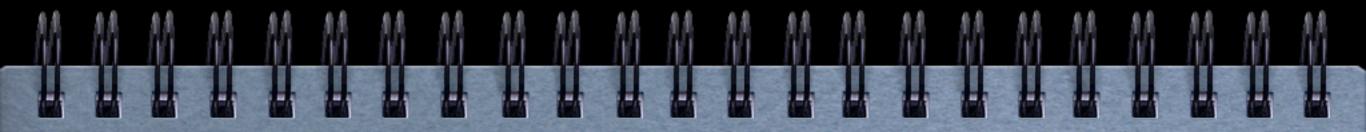
- D Some plaintiffs need legal remedies.
 - ☐ And they're not in a position to choose until after they know who it is.
- 🗆 Some defendants fear retaliation.
 - □ Even a waiver of legal remedies can leave plaintiffs with too much power.

Solove has half a point

- D Pretextual unmasking is a real problem.
 - □ NB: Retaliation cases involve harms we dislike but won't or can't police.
- ☐ But "weak claims" is a poor proxy for "pretextual unmasking."

Lessons for real life

- Decouple identification from litigation.
 - □ Identification standards can be looser than those needed to win a lawsuit.
- ☐ We need anti-pretext doctrines, and we should be more explicit about the ones we already have.



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