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Review:
I am Jane Doe

By: Gabriela Hidalgo

I. INTRODUCTION

I am Jane Doe is a harrowing documentary directed by Mary Mazzio and narrated by Academy Award nominee Jessica Chastain. The documentary, which was released on February 10, 2017, chronicles the lives of three young girls who were victims of underage sex trafficking. The documentary recounts the girls' journeys through the eyes of their mothers and follows the legal battle they embarked on to end the website that facilitated their daughters' trafficking: Backpage.com (Backpage). The victims, J.S., M.A., and Jane Doe, relay their horrific accounts simultaneously throughout the film with the help of their mothers and advocates.

The documentary leads viewers down a timeline evincing the legal proceedings the families went through, beginning in 2010 and ending in 2017. At the close of the film, viewers learn that the victims' battle against Backpage was legally unsuccessful. However, the film is ultimately a victory for morality and sheds light on a pervasive, continuously growing, and despicable practice in the United States.

II. PLOT SUMMARY

J.S. was 15 years old when she disappeared in Seattle, Washington. She was missing for 180 days before a police officer saw photos of her and an advertisement offering her services on Backpage.com. He initiated a sting operation and was able to rescue her. Before her disappearance, J.S. had been a young girl who enjoyed playing soccer, singing, acting, and playing the violin. Upon her return, that little girl was no longer the same. She was repeatedly raped and drugged during her capture.

M.A. was 13 years old when she was taken in St. Louis, Missouri. She was missing for 270 days and was only found due to her mother's heroic efforts. Her mother searched for her incessantly the moment she realized her daughter was missing. M.A. was finally saved from her captors when her mother found lewd photos of her on Backpage.com. When M.A. was returned, viewers learn that she had been stabbed, burned, and forced into becoming a drug addict.

In 2010, both families filed suit against Backpage.com. Backpage was the second largest classified website on the Internet, second only to Craigslist.com (Craigslist). When Craigslist took down its "escort" section, Backpage became the number one website for such services, reaping over 80% of online sex/escort advertisement revenue. The site is also linked to 75% of child trafficking cases in the United States. Throughout the film, the audience learns that Backpage was hosting advertisements selling sex with trafficked

children on their website. Additionally, it was revealed that Backpage's website managers were coaching their customers on how to write the ads posted on the website to evade law enforcement.

In all of the proceedings involving Backpage, the company hid behind the immunity granted to it by the Communications Act of 1934 (Act). The Act, also known as the Communications Decency Act, prohibits the enforcement against providers and users of interactive computer services. The Act protects against federal and state criminal and civil liability. That is, under the Act, websites are not to be held responsible for content or information posted on their websites provided by a third party.

In all suits, the court sided with the company. In *Jane Doe No. 1 v. Backpage.com, LLC.*, the United States Court of Appeals for the First Circuit held that Backpage was not liable to the minor victims of sex trafficking because it "did not engage in unfair trade practices by allegedly making misrepresentations to law enforcement and others concerning its efforts to combat sex trafficking, since the victims' series of speculative inferences failed to show a causal chain between the misrepresentations and an increased risk of the victims being trafficked." The court also held that, even though Backpage profited from the sale of advertising, the traffickers were the ones who benefitted from misappropriation of the commercial value of the children's images.

When all of the law suits were decided in favor of Backpage, the mothers and their attorneys took their concerns to the Senate. The documentary walks us through the Senate Subcommittee on Investigations hearings, which include the late Senator John McCain, Senator Rob Portman, and Senator Claire McCaskill, among others. On January 10, 2017, the Subcommittee issued a subpoena for Carl Ferrer, the CEO of Backpage. In a surprising turn of events, Ferrer ignored the subpoena and did not present himself at the hearing. Thereafter, the Senate compelled Backpage's CEO and owners, Jim Larking and Michael Lacey, to come before the committee. However, nothing was gleaned from the hearing as they all invoked their First and Fifth Amendment rights. The film ends shortly thereafter and informs the audience that new charges were filed against Carl Ferrer, Jim Larkin and Michael Lacey.

III. REVIEW

Mazzio employs several popular film techniques throughout the documentary. The film opens by thanking the victims and their parents for sharing their stories and informs its audience that the innocent, happy little girls playing throughout the film are not victims of human trafficking.

To facilitate the understanding of the events that took place, Mazzio provides the audience with a simple timeline graphic. Each event featured on the timeline introduces several key moments and players who were met with adversity every step of the way. As the documentary progresses, each moment on the timeline is explained by testimonies

given by the victims, their parents, and/or their advocates. The testimonies that evoke the most meaningful emotions and reactions are the ones by the victims and their parents. Including these testimonies was a clever way of manipulating pathos and ethos techniques, as seeing and hearing from the actual victims will always elicit strong emotional reactions. In addition to the testimonies, Mazzio provides old family photos and videos of the young girls, prior to their abductions. These techniques successfully induce anger, shock and despair, as they should.

Mazzio also caters to audience members who sway more toward logic and reasoning by including clips of interviews given by experts in the field of child trafficking. Experts on the topic included The National Center for Missing and Exploited Children's (NCMEC) General Counsel, Yiota Souras, and the CEO of the Polaris Project, Brad Myles. Mazzio also offers clips of the opinions and reasonings of credible individuals who are familiar with the legal system, including all of the attorneys who worked on the victims' cases and prominent members of Congress at the time. She also includes footage of J.S.'s trial and Justice Souter's decision. Including this footage helped illustrate that there truly is a need to explore and explain how websites like Backpage facilitate child sex trafficking. Like Mr. Erik Bauer (Mr. Bauer), one of the retained counsels for J.S., states:

When the CDA (Communications Decency Act) is being interpreted by the courts to allow websites such as Backpage.com to engage in human sex trafficking we have a problem with the statute or a problem with the judges, either way we got a problem. If the judges are too obtuse and don't get it then it needs to be made crystal clear that Congress does not support human sex trafficking.

The documentary also features clips and animations to explain legal and historical background. To explain the enactment of the Communications Decency Act, Mazzio provides a brief clip from Leonardo DiCaprio's performance in the *Wolf of Wallstreet*. From the clip, we learn that the Act was enacted as a response to an unfavorable ruling against Stratton Oakmont. For those who have not watched the *Wolf of Wallstreet*, even for those who have, this explanation is wanting. The audience is met with a fleeting description and is then bombarded by testimony of why the Act should be amended. This technique leaves the audience with no choice but to accept that the Act, in and of itself, is a "bad" Act.

Mazzio did not interview proponents of the Act and did not explore how it has been utilized in other circumstances. She briefly mentions that two proponents of internet freedom, the Electronic Frontier Foundation and the Center for Democracy & Technology, submitted an *amici curiae* brief in support of Backpage in its cases against J.S. and Jane Doe. With a quick Google search on screen we are informed that donors to the Center for Democracy & Technology, including tech giants like Google, Facebook and Microsoft, are indirectly supporting Backpage in its suits contesting underage trafficking.

Viewing the film holistically reveals that it might be one-sided, as it omits important information about how the Act has been used in the past in matters that do not involve sex trafficking. This is not to say that the cases and anecdotes illustrated in the documentary are any less ghastly or true, but, perhaps a more in-depth explanation of the Act would have shed some light on the shocking decisions made by the court.

Another questionable choice Mazzio makes is including Mr. Bauer's daughters' opinions about their father. Mr. Bauer was the only attorney who succeeded in securing a ruling in his client's favor against Backpage. Albeit, Mr. Bauer is an extraordinary attorney and advocate for child sex trafficking victims, but interviewing his daughters about their father's good character seemed to be included only to elicit more emotions from the audience rather than provide any substantive material. Giving the spotlight to the victims' attorney takes focus away from what should be the documentary's main concern: the victims and their journey.

Nevertheless, this film is important, as it dispels a popular misconception that underage human trafficking only occurs in foreign countries. One statistic that is appalling is the number of underage victims there are in the United States. There are approximately 1.6 million homeless children in the United States and, out of those, there are between 100 and 150 thousand children who are or have been victims of human trafficking. The average age of victims falls between eleven and fourteen years old. According to reports by the International Labor Organization and the United Nations Office on Drugs and Crime, human trafficking is one of the fastest growing criminal enterprises in the world. The only enterprises that are more lucrative than human trafficking are the illegal drug trade and counterfeiting. It has been estimated that human trafficking generates around \$99 billion dollars in revenue worldwide; the United States is included in that figure.

IV. FOSTA-SESTA ACT

Although the film did not end on a positive note, as only one case against Backpage was won, broadcasting these cases and legal issues was a step in the right direction. This documentary has opened the eyes of many and incentivized the American public to use their voices to help bring permanent change. As a result of all of the suits brought against Backpage and further investigations conducted by the Senate and Department of Justice, Backpage.com was seized and shut down on April 6, 2018. On April 11, 2018, the Stop Enabling Sex Traffickers Act (SESTA) and the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) were signed into law as the FOSTA-SESTA Act. The Act amends Section 230 of the Communications Decency Act to exclude enforcement of federal or state sex trafficking laws from its immunity. Congress' intention is to provide serious, legal consequences for websites that profit from sex trafficking. Those in opposition to the bill argue that amending Section 230 is a form of internet censorship and places the burden on internet companies and intermediaries that handle user-generated content with service providers to take action against sex trafficking activities. Opponents of the bill argue that the law does little to target illegal sex trafficking directly; instead, it

increases violence against high-risk crime victims, such as homeless children and sex workers, among others. Opponents vehemently believe that all the bill does is make it easier to censor free speech over the internet. Law Professor Eric Goldman of Santa Clara University School of Law wrote that “the bill would expose Internet entrepreneurs to additional unclear criminal risk, and that would chill socially beneficial entrepreneurship outside the bill’s target zone.”

Another large group of opponents of the bill is composed of sex workers. Sex workers argue that the bill is conflating consensual sex work with nonconsensual sex work. Sex workers argue that the bill actually leaves them vulnerable to harm more than being able to vet their clients online does. Sex advocates are even arguing that removing transparent websites like Backpage.com will make nonconsensual victims less visible and lead them into the dark web. The dark web is part of the World Wide Web that requires special software to access. There are sites that are effectively “hidden;” sites that have not been indexed by a search engine and can only be accessed if you know the address of the site. Users of the dark web have long evaded law enforcement, and finding victims being sold through it is nearly impossible.

V. CONCLUSION

The FOSTA-SESTA Act is expected to help thwart and cut down on the number of trafficked children online but it would be unreasonable to assume that this battle between First Amendment rights and child trafficking will end here. As long as there are opponents of the Section 230 amendment, the online child sex trafficking industry will continue to flourish. Admittedly, the bill is not perfect and creates issues such as those discussed above, but it is a step in the right direction. This documentary and the legal outcomes demonstrate that we need to continue to spread awareness and educate the public about what child sex trafficking is and how the trade continues to grow in the United States.

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