

## **Chapter Two:**

### **Social Control in a Free Society**

This chapter focuses on the uses of criminal law as a means of societal control, and a brief history of criminal justice systems from ancient times to American law is presented. Students are introduced to the developments of common law and codified law, with examples of how one affects the other. The impact of constitutional law on criminal law and procedure is discussed, and a problem is presented to illustrate the interaction.

The constitutional issues that relate to general criminal law also apply to white-collar crime, and the recent Supreme Court case of *United States v. Skilling* is used to show how the fundamental concepts are applied in an up-to-date context.

#### **Problem**

A police department received a 911 call from a person who stated that a man was exposing himself from a window. An officer who responded to the location observed a man, who appeared not to be wearing clothes, standing in a second-floor window of an apartment building. As the officer parked his car, a pedestrian approached him and stated that every day when she walked her dog on this street the man coincidentally appeared naked in the window. The officer, on the basis of the pedestrian's assertion and his observation, went to the second-floor apartment, and after speaking with the occupant, arrested him.

The officer charged the man with violation of a statute that read:

It shall be unlawful for any person to commit any indecent, immodest or filthy act in a public place or in such a situation that persons passing in a public place might ordinarily see the same.

## Questions

1. On the basis of the plain meaning of the words in the statute, did the defendant violate the statute?
2. Did the defendant have fair notice that his conduct was prohibited by law?
3. Should criminal laws encompass indecent or immoral conduct?
4. Did he have to know such a law existed in order for him to be found guilty?
5. Could the defendant be successfully prosecuted on the basis of the police officer's observations alone?
6. Would it be necessary for the pedestrian to testify about her observations?
7. Did the fact that the defendant was in his own apartment preclude a prosecution under the statute?
8. Should a court or jury find that the defendant's conduct did not constitute an indecent, immodest, or filthy act?
9. Should a court rule that the statute as applied violated the defendant's rights?
10. Should a court rule that the statute on its face is unconstitutional?

## **Discussion**

The constitutional right that no person shall be deprived of life, liberty, or property without due process of law incorporates the principle of legality, which requires criminal offenses to be as precisely defined as possible, so that it can be known with reasonable certainty beforehand what acts are criminal and what acts are not. Criminal statutes must be sufficiently definite to give persons of ordinary intelligence fair warning that their contemplated conduct is prohibited; statutes must provide explicit standards for those who apply them to avoid arbitrary and capricious enforcement. Vague and overly-broad statutes fail to warn individuals of what the law forbids, and such statutes leave too much discretion in the hands of government officials. The statute in this problem uses the terms “indecent, immodest or filthy” without defining them specifically enough to alert persons as to exactly what they can or cannot do.

## **Suggested Answers**

1. No. Standing naked, absent other conduct, cannot be characterized as indecent, immodest, or filthy.
2. No.
3. Yes. When the conduct causes a social harm, society can deem it criminal.
4. No. Ignorance of the existence of a law is no excuse.
5. No. Even assuming the defendant’s conduct was a violation of law, the police officer did not see it. However, if the defendant made admissions or a

confession to the officer, it is conceivable, but highly unlikely, that a prosecution could succeed.

6. Yes. Unless there was other evidence sufficient to convict.
7. No.
8. No. The factual question need not be reached. The issue is the legality of the statute.
9. Yes.
10. Yes.

## **References**

*Lanzetta v. New Jersey*, 306 U.S. 451 (1939)

*Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972)

*Rose v. Locke*, 423 U.S. 48 (1975)

*State v. Metzger*, 319 N.W. 2d 459 (Neb. 1982)

*Smith, Sheriff v. Goguen*, 415 U.S. 566 (1974)

*Kolender v. Lawson*, 467 U.S. 352 (1983)

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