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## **Criminal Law—Publication and Distribution of Criminal News Prohibited (Winters v. New York, 333 U.S. 597 (1948))**

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CRIMINAL LAW — PUBLICATION AND DISTRIBUTION OF CRIMINAL NEWS PROHIBITED.—A New York statute,<sup>1</sup> under which the defendant was convicted, made it a misdemeanor to distribute publications “principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime.” The New York Court of Appeals upheld the conviction, construing the statute to include publications containing a collection of criminal deeds “so massed as to become vehicles for inciting violent and depraved crimes against the person.”<sup>2</sup> The case was then presented to the United States Supreme Court to be reviewed as violating the Fourteenth Amendment of the United States Constitution in that accused’s rights to procedural due process were denied.<sup>3</sup> *Held*, the conviction reversed. In a six-to-three decision, the Supreme Court ruled that even as so interpreted by the New York Court of Appeals, the statute was vague, uncertain, and did not set up an adequate standard of conduct. *Winters v. New York*, 333 U. S. 597, 92 L. ed. 654 (1948).

The law must put the reasonable man on notice as to what acts constitute the crime.<sup>4</sup> Thus the following were held void for uncertainty: a statute punishing the acceptance of “excessive prices for any necessaries,”<sup>5</sup> a law forbidding a state contractor to pay less than the current rate of per diem wages in the locality,<sup>6</sup> legislation making it a crime for any unemployed ex-criminal to join a “gang”;<sup>7</sup> in relation to limitations upon expression, a law prohibiting the display of any symbol or emblem in opposition to organized government,<sup>8</sup> and a statute punishing the distribution of pamphlets intended at any time in the future to result in forcible resistance to law.<sup>9</sup> Men of common intelligence are not required to guess at the meaning of the proscribed crime.<sup>10</sup> However, the mere fact that a penal statute is so framed as to require a jury upon occasion to determine a question of reasonableness is not sufficient to make it too vague as a practical guide to permissible conduct;<sup>11</sup> “the law is full of instances where a man’s fate depends upon a jury estimating rightly, some matter of degree.”<sup>12</sup> The Supreme Court upheld a statute punishing one who used abusive words in public that would incite an average

<sup>1</sup> N. Y. PENAL LAW § 1141-2.

<sup>2</sup> *People v. Winters*, 294 N. Y. 545, 63 N. E. 2d 98 (1945).

<sup>3</sup> U. S. CONST. AMEND. XIV, § 1 (1868).

<sup>4</sup> *Champlin Refining Co. v. Corporation Com.*, 286 U. S. 210, 76 L. ed. 1063 (1932).

<sup>5</sup> *Weeds v. United States*, 255 U. S. 109, 65 L. ed. 537 (1921).

<sup>6</sup> *Connally v. General Construction Co.*, 269 U. S. 385, 70 L. ed. 323 (1926).

<sup>7</sup> *Lanzetta v. New Jersey*, 306 U. S. 451, 83 L. ed. 889 (1939).

<sup>8</sup> *Stromberg v. California*, 283 U. S. 359, 75 L. ed. 1117 (1931).

<sup>9</sup> *Herndon v. Lowry*, 301 U. S. 242, 81 L. ed. 1066 (1937).

<sup>10</sup> See note 7 *supra*.

<sup>11</sup> *United States v. Ragen*, 314 U. S. 513, 86 L. ed. 383 (1942).

<sup>12</sup> *Nash v. United States*, 229 U. S. 373, 375, 57 L. ed. 1233, 1235 (1913).

man to breach the peace;<sup>13</sup> a law making it a crime to advocate the overthrow of government by unlawful force;<sup>14</sup> and a statute penalizing a person who edited printed matter tending to encourage and advocate disrespect for law.<sup>15</sup>

In the case under discussion, two factors were present along with the rights of the individual to a fair criminal standard: (1) the local need to stamp out crimes arising from such publications and (2) the ability to strictly define the scope of the subject matter in question. Although it does not deny that a state may punish circulation of objectionable printed matter, the court maintains that the clause "so massed as to incite crime" can become meaningful only by concrete instances, since it has no technical nor common law definition.<sup>16</sup> The dissent expresses doubt as to whether more clarity can be reached. Should the New York legislature enumerate the objectionable publications, or are they to specify in detail the ingredients that incite these violent and depraved crimes?<sup>17</sup> Why does the lewd and obscene which have always been condemned by the courts enjoy a constitutional prerogative over criminal tales that lead to bloodshed?<sup>18</sup> If it be granted that the material considered objectionable can be no more clearly defined by our legislatures, there remains the problem whether the expediency of the state must bow to the individual's right to have notice of an ascertainable standard of guilt. The court here felt that the need did not justify the sanctioning of a statute deemed repugnant to due process of law.

V. O'N.

CRIMINAL LAW — PURE FOOD AND DRUG ACT — MISLEADING LITERATURE ACCOMPANYING DRUG IN INTERSTATE COMMERCE.— Defendant was tried and convicted for violations of Section 301 of the Federal Food, Drug, and Cosmetic Act of June 25, 1938.<sup>1</sup> Each violation arose out of the shipping of a drug in interstate commerce, and the subsequent shipment of explanatory literature to the same consignee, which literature contained certain false and misleading statements, thereby rendering the drug misbranded<sup>2</sup> within the mean-

<sup>13</sup> *Chaplinsky v. New Hampshire*, 315 U. S. 568, 86 L. ed. 1031 (1942).

<sup>14</sup> *Gitlow v. New York*, 268 U. S. 652, 69 L. ed. 1138 (1925).

<sup>15</sup> *Fox v. Washington*, 236 U. S. 273, 59 L. ed. 575 (1915).

<sup>16</sup> *Winters v. New York*, 333 U. S. 597, 92 L. ed. 654, 662 (1948).

<sup>17</sup> *Ibid.*

<sup>18</sup> See note 16 *supra*.

<sup>1</sup> 52 STAT. 1040 (1938), 21 U. S. C. § 301 (1946).

"The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded. . . ."

<sup>2</sup> 52 STAT. 1050 (1938), 21 U. S. C. § 352 (1946).

"A drug or device shall be deemed to be misbranded . . .

(a) If its labeling is false or misleading in any particular. . . ."