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Recent Decisions - State and Federal: Don't Count Your Tuition before You're Billed

John Jeffrey Ross

designed to pursue the "legitimate national, state, and community interest in maintaining a decent society." *See United States v. Moses,* 339 A.2d 46, 54 (D.C.App., 1975).

The District of Columbia Court of Appeals recently found the opportunity to consider this statute again in reviewing the conviction of Diane Dinkins. *Dinkins v. United States, 374 A.2d 292 (D.C. App., 1977).* In affirming this conviction, the court, sitting *en banc,* arrived at a construction of the statute which broadens considerably its reach and which some have found to be outrageous.

Diane Dinkins was standing on a corner in Washington, nattily attired in a red sweater, blue miniskirt, and knee length boots. Obviously impressed by Diane's sartorial display, a plain clothes police officer who had been cruising the area in his private car pulled near the sidewalk where Ms. Dinkins was standing. The officer rolled down his window and said "Hi" to Ms. Dinkins, who thereupon approached the car. A conversation ensued which consisted of typically loaded questions from the police officer and typically suggestive responses from Ms. Dinkins. The officer first asked how much the lady's services would be, and when Ms. Dinkins finally became explicit as to her repertoire, she was arrested. After her conviction in a bench trial, she appealed to the District of Columbia Court of Appeals. A division of this court decided to reverse the conviction. After the panel's opinion was circulated to the other judges on the court, the usual practice, a rehearing *en banc* was scheduled, and the full court affirmed.

The appellant claimed that "no solicitation [was] made for prostitution since Miss Dinkins conduct was responsive . . . rather than [initiatory]." 374 A.2d at 295.

The court disagreed, and in analyzing the wording of the statute noted that the word *solicit* does not specifically appear and thus its directive-active connotation as a gravamen of the offense was not applicable to §22-2701. 374 A.2d at 295. Instead, the court indicated (after research in Webster's Third New International Dictionary) that words such as "entice" and "address" which are present in §22-2701

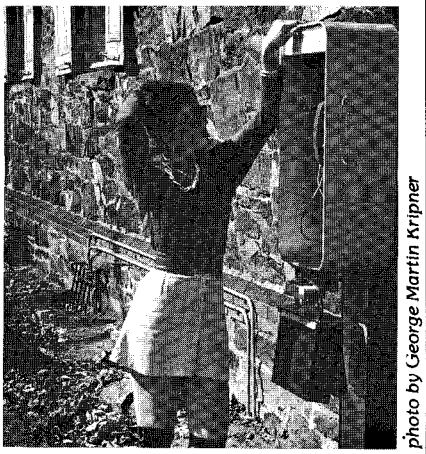

photo by George Martin Kripner

can describe conduct which is not necessarily active nor initiative in tenor. Through this analysis, which rivals the medieval philosophical speculation of the number of angels on the head of a pin, conduct which is responsive and even passive in reaction to a reasonably clever police officer can be proscribed by law.

The court stated its conclusion as follows:

> We hold that appellant's attire, her prolonged presence on the street corner, her approach to a complete stranger, her extremely suggestive verbal responses to the officer, her prompt discussion of financial terms, and her ready arrangement for a room are legally sufficient, when taken together, for a fact finder to conclude guilt beyond a reasonable doubt. 374 A.2d at 296.

The dissenting opinions noted that the Court of Appeals has interpreted the law as a *solicitation* statute. *Id.* at 297. The gist of the dissent was that "it must be affirmatively demonstrated that [she] invited, enticed, persuaded, or addressed . . . *for purposes of prostitution.*" *Id.* at 298 (emphasis in original). The minority indicated that the police officer's remarks themselves could well be taken to constitute violations of §22-2701. *Id.*

The second dissenting opinion stated:

> I had always thought that if a prostitute is merely standing on a corner she may not be convicted of [a violation] of this statute simply because she is a prostitute. Only if she solicits for prostitution may a conviction follow. I would have thought a construction of the statute was that simple, but now it seems that it is not. 374 A.2d at 299.

Don't Count Your Tuition Before You're Billed

by John Jeffrey Ross

In *Basch v. George Washington University,* 370 A.2d 1364 (D.C.App., 1977), the District of Columbia Court of Appeals considered a claim by plaintiff medical students that the defendant university breached its contract with them by charging tuition increases far exceeding those listed in the medical school bulletin.

The *George Washington University Bulletin: School of Medicine and Health Sciences,* published for the 1974-1975 year, listed estimated tuition increases of approximately $200.00 per year over the base tuition of $3200.00 for 1974-1975. Many students, according to appellants/plaintiffs, contended that their decision to attend George Washington was influenced by these estimated costs. When the university issued a "Statement of Tuition Rates" in January, 1975, revealing tuition costs far in excess of those outlined as estimates by the bulletin, the students complained in a suit in D.C. Superior Court. Treating a defendant's motion to dismiss as one for summary judgment, the trial court found that as a matter of law the students were not entitled to relief. The case was taken to the Court of Appeals.

The issue before the court was whether the university was to be contractually bound to projected tuition increases. The appellants renewed their claim that it was. Considering the fact that medical school tuition costs in the District have reached, or will reach $12,000 per year at George Washington and Georgetown universities, this claim on the part of the students was certainly an urgent one.

The court began its discussion by noting the general rule that terms set down in a university bulletin can become part of

the contractual relationship between the university and its students. 370 A.2d at 1366. The court indicated, however, that bulletin listings of projected tuition increases does not support finding a contractual obligation. *Id.* This examination must be made in light of principles of contract interpretation.

This construction must be made with an eye to the circumstances and to the *intent* of the parties. Terms of the document are to be given their common meaning. *Id.* at 1367. The court quoted from the RESTATMENT OF CONTRACTS §32 (1932):

> An offer must be so definite in its terms, or require such definite terms in the acceptance, that the promises and performances to be rendered by each party are reasonably certain.

Viewing the language of the *Bulletin* as a whole, and with a reasonable view toward the language surrounding the remarks concerning tuition costs, the court stated that "[t]hese words expressed an expectancy by the University regarding future increases. This is not a promise susceptible of enforcement." 370 A.2d at 1368.

In essence, the court found that the university attempted to provide rational guidelines for tuition costs. It had not intended to create an inflexible obligation on its part to maintain fixed tuition rates when the economic realities of operating a university medical school would defeat that attempt at price stability, and force the school to operate at a loss. Such an unknown economic variable did arrive on the scene when the federal government all but eliminated its support for medical/health educational programs in Washington by a decrease in funding through the District of Columbia Medical and Dental Manpower Act.

Growth Of Vicarious Liability Checked

by John Jeffrey Ross

When tort law assigns to an institution liability for the injurious acts of an individual, the role of the law of civil accountability as social engineering becomes especially clear. An important legal concept which assists this function is the theory of *respondeat superior*, where an entity actually remote from the transaction resulting in injury is held responsible because the acting defendant is, or appears to be, the agent of the party ultimately liable.

The Court of Appeals of Maryland recently considered the liability of the remote principal founded on apparent agency, but in reversing a judgment of the Court of Special Appeals, refused to assign responsibility beyond the immediate parties to the event. *B.P. Oil Corporation v. Mabe*, 279 Md. 632, 370 A.2d 554 (1977).

Claude Mabe drove into a service station because his car was low on fuel and water. He asked the attendant for water to fill the radiator, and the employee produced a can filled with a volatile liquid. When Mabe poured this into the hot radiator there was an explosion. Mabe was injured, and he sued.

The gas station was adorned with British Petroleum insignia: uniforms, gas pumps, a station vehicle, and a large sign exhibiting the BP letters and colors. Mabe had entered the station because he "... always buy[s] BP gasoline, always deal[s] with BP." 279 Md. at 636, 370 A.2d at 557. He therefore decided to deal with BP in court too, and named the corporation as a defendant, claiming that the injuries "stemmed directly from the negligent and tortious conduct of the defendants and their agents ..." 279 Md. at 634, 370 A.2d, at 556.

The jury returned a verdict for Mabe. As consumers they were apparently convinced that Mabe's reliance on the ample exhibition of BP insignia as indicative of good products and service meant that he thought he had entered a station under the competent direction of the defendant corporation. The trial court, however, entered a judgment n.o.v., "finding 'no agency of any kind. . . .'" 279 Md. at 634, 370 A.2d at 556. The Court of Special Appeals reversed, finding there was agency by estoppel. *Mabe v. B.P. Oil Corporation*, 31 Md.App. 221, 356 A.2d 304 (1976). *(See The FORUM*, Vol. VII, No. 2, p. 26)

After granting certiorari, the Court of Appeals examined two theories of action: actual and apparent agency. In considering the former, it found that the owner of the station, Faison, leased the premises from a third party, further leased the station to B.P. which in turn, by a reciprocal agreement, leased it back to Faison. The rents between B.P. and Faison were contingent on the amount of gasoline sold, payment for such fuel being the actual rental fee. Other facts dispositive of the actual agency theory were the lack of salary and commission from B.P., and absence of control by the corporation in the hiring and payment of the station's employees. It was found that Faison controlled the operation of the station and that B.P.'s role was limited to that of selling its products to Mabe (and only when he was able to pay for them).

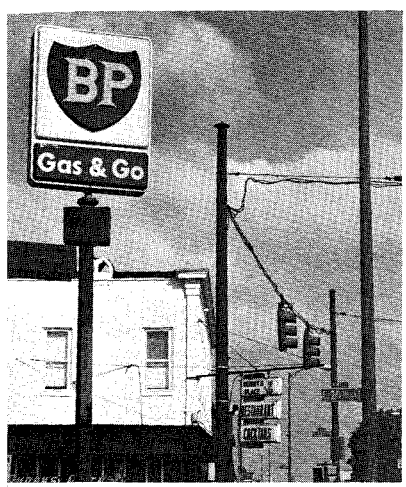

photo by George Martin Kripner

The court concluded that there was no direct control by B.P. over the operation