Clarity in Criminal Statutes: The Void-for-Vagueness Doctrine.—Criminal statutes that lack sufficient definiteness or specificity are commonly held "void for vagueness." [1031] Such legislation "may run afoul of the Due Process Clause because it fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused." [1032] "Men of common intelligence cannot be required to guess at the meaning of [an] enactment." [1033]

For instance, the Court voided for vagueness a criminal statute providing that a person was a "gangster" and subject to fine or imprisonment if he was without lawful employment, had been either convicted at least three times for disorderly conduct or had been convicted of any other crime, and was "known to be a member of a gang of two or more persons." The Court observed that neither common law nor the statute gave the words "gang" or "gangster" definite meaning, that the enforcing agencies and courts were free to construe the terms broadly or narrowly, and that the phrase "known to be a member" was ambiguous. The statute was held void, and the Court refused to allow specification of details in the particular

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[1031] Cantwell v. Connecticut, 310 U.S. 296, 308 (1940).

[1032] Musser v. Utah, 333 U.S. 95, 97 (1948). "The vagueness may be from uncertainty in regard to persons within the scope of the act . . . or in regard to the applicable tests to ascertain guilt." Id. at 97. "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warnings. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory applications." Grayned v. City of Rockford, 408 U.S. 104, 108–09 (1972), *quoted in* Village of Hoffman Estates v. The Flipside, 455 U.S. 489, 498 (1982).

[1033] Winters v. New York, 333 U.S. 507, 515–16 (1948). "The vagueness may be from uncertainty in regard to persons within the scope of the act . . . or in regard to the applicable test to ascertain guilt." Id. *Cf.* Colten v. Kentucky, 407 U.S. 104, 110 (1972). Thus, a state statute imposing severe, cumulative punishments upon contractors with the state who pay their workers less than the "current rate of per diem wages in the locality where the work is performed" was held to be "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Const. Co., 269 U.S. 385 (1926). Similarly, a statute which allowed jurors to require an acquitted defendant to pay the costs of the prosecution, elucidated only by the judge's instruction to the jury that the defendant should only have to pay the costs if it thought him guilty of "some misconduct" though innocent of the crime with which he was charged, was found to fall short of the requirements of due process. Giaccio v. Pennsylvania, 382 U.S. 399 (1966).