



**Criminal Intent in the Regulatory Context:  
A Post-*Staples* Study in Supreme Court Precedent**

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**§ 1.01. An Overview of Issues of Criminal Intent.**

**[1] — Introduction.**

Life was much simpler when criminal conduct represented the “concurrency of an evil-meaning mind with an evil-doing hand.”<sup>2</sup> Crimes were serious matters — matters beyond mere civil law or civilized conduct — which warranted the ultimate in societal disapprobation. A guilty mind, one which *intended* wrong, was essential to this eighteenth century notion of criminal conduct.<sup>3</sup>

No principle of law remains constant, however. The nineteenth century ushered in the Industrial Revolution, which triggered an entirely new and developing body of laws directed at the health, safety and welfare of the public. These laws were designed to strike a different balance, in which

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<sup>2</sup> *Morissette v. United States*, 342 U.S. 246, 251 (1952).

<sup>3</sup> According to Blackstone, “vicious will” was an essential predicate to any crime. 4 W. Blackstone, Commentaries 21.

protection of the public and the public good were deemed more compelling than any issue of individual culpability. Thus was born the concept of the “public welfare” or “regulatory” offense. These offenses “dispense[d] with the conventional [*mens rea*] requirement for criminal conduct — awareness of some wrongdoing. In the interest of the larger good it [put] the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger.”<sup>4</sup>

Even though public welfare offenses have been with us in one form or another for over a century, courts continue to struggle not only with the elements which define a public welfare offense, but also with the extent to which criminal intent can or should be dispensed with. In recent years, prosecutions under environmental laws have proven fertile ground for this debate, though the issues involved are by no means limited to environmental crimes. Indeed, two recent United States Supreme Court decisions, *Ratzlaf v. United States*,<sup>5</sup> which involved a money laundering offense, and *Staples v. United States*,<sup>6</sup> which involved a firearms violation, have once again demonstrated that the law on the subject of criminal intent “is neither settled nor static.”<sup>7</sup>

To understand the issues that still remain, particularly in the environmental and mine safety area, practitioners of regulatory law must understand the historical context of the law of criminal intent. This chapter will thus attempt to set forth a basic primer on United States Supreme Court law with respect to criminal intent in general, and in the regulatory context in particular. The *Ratzlaf* and *Staples* decisions will also be discussed in terms of their likely impact on regulatory prosecutions.

## **[2] — The Spectrum of Criminal Intent: From Specific Intent to Strict Liability.**

A wise judge once told me: “No matter how simple a case seems, the more you study it, the more complex it gets.” The same is unfortunately true with respect to the law of criminal intent. Crimes and criminal conduct should be readily understood as such, and the elements of those crimes

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4 United States v. Dotterweich, 320 U.S. 277, 281 (1943).

5 Ratzlaf v. United States, 114 S. Ct. 655 (1994).

6 Staples v. United States, 114 S. Ct. 1793 (1994).

7 *Morissette*, 342 U.S. at 260.