

NATIONAL COMMITTEE FOR SEXUAL CIVIL LIBERTIES

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NEWS

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FOR IMMEDIATE RELEASE

Subject: California Supreme Court renders landmark
decision in sexual solicitation case

Yesterday, the California Supreme Court issued a ruling of national importance in a sexual solicitation case. The case centered around the constitutionality of the criminal statute which prohibits soliciting or engaging in "lewd or dissolute conduct."

The Court reviewed and analyzed over 70 years of statutory interpretations and, responding to the question of what conduct past appellate decisions have made illegal, the court stated, "The answer of the prior cases -- such acts as are lustful, lascivious, unchaste, wanton, or loose in morals and conduct -- is no answer at all." The Court then totally overruled all of those cases, concluding that the statute "as construed by prior California decisions does not meet constitutional standards of specificity."

The effects of this decision will be far reaching, since most other states have similar laws, and many states look to the California Supreme Court for leadership in judicial matters.

The case, Don Barry Pryor -v- Los Angeles Municipal Court, (Supreme Court # LA30901), involved a San Francisco resident, who, on a visit to Los Angeles, solicited another man for a sex act which Mr. Pryor claimed was to be performed in private. The solicited man turned out to be a plainclothes officer, and Mr. Pryor was arrested.

In a surprise move, rather than striking the statute down in its entirety and deferring to the Legislature to redefine the crime, the Court adopted an approach suggested by the Los Angeles City Attorney and reconstructed the statute itself to meet constitutional tests, creating totally new and unique interpretations and definitions.

Agreeing with the "friend of the court brief" submitted in the case by the National Committee for Sexual Civil Liberties, the Court held, "A constitutionally specific definition must be limited to conduct of a type likely to offend . . . even if conduct occurs in a location that is technically a public place . . . the state has little interest in prohibiting that conduct if there are no persons present who may be offended."

Thomas F. Coleman, Hollywood based attorney for Mr. Pryor, and publisher and managing editor of the Sexual Law Reporter, a national legal periodical, remarked: "To our knowledge, this is the first time an appellate court in the United States has apparently held that a sex statute which does not include the requirement of an offended viewer, may be unconstitutional."

The Court achieved another first in California by holding that public solicitation for lawful sexual conduct to be performed in private cannot constitutionally be made criminal by the state. (OVER)

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According to Dr. Arthur C. Warner of Princeton, New Jersey, co-chairman of the National Committee for Sexual Civil Liberties, "The decision could spell an end to the snooping and spying by plainclothes police on what amounts to adult sexual or affectionate behavior. It affects the case in which a couple is caught engaging in intimate sexual behavior in a car in lovers' lane when the only person who observes the conduct is a police officer with a flashlight. It also could affect the type of sexual harassment exercised by police for years as a method of building for their departments good arrest statistics, to the detriment of real crime fighting in cases of robbery, rape, assault, and other cases important to public safety and welfare."

The National Committee is an effective group with years of experience comprised of experts in various disciplines working for the dismantling of existing criminal structure which penalize sex between consenting adults in situations where members of the public are not affected.

According to Mr. Coleman, "The decision of the California Supreme Court has given stern notice to prosecutors and police that they must put an end to systematic arrests of people who are doing nothing more than engaging in some form of harmless sexual conduct. It also constitutes a warning to lower courts in California that constitutional protections cannot be denied homosexuals, nor their rights disrespected."

Finally, in an exceptionally unusual move, the Court gave retroactive effect to its new definitions. This means that thousands of men previously prosecuted under the statute may be entitled to an overturning of their convictions for solicitation or lewd conduct, thereby eliminating the requirement to register as sex offenders for the rest of their lives.

The scholarly and meticulous opinion of the Court, fifteen months in preparation, and some 30 pages in length, was written by Justice Matthew O. Tobriner, senior member of the Court. Chief Justice Bird and Associate Justices Mosk and Newman concurred in the opinion. The only dissent came from Associate Justice Clark.

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