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AREA CODE 405
360-1302

July 23, 1981

Mr. Thomas F. Coleman
Attorney at Law
1800 N. Highland
Suite 106
Los Angeles, California 90028

Re: City of Tulsa v. Carmack,
et. al.
No. O-79-58 CCA, Oklahoma

Dear Tom:

I have just received this date the enclosed Order Dismissing Appeal filed in the above captioned matter. While I am certain that the Court sidestepped the issues on appeal in this matter, I cannot say what effect this ruling has on the validity of the present ordinance. Apparently, since the Court chose not to consider the city's appeal, the Trial Court's decision must stand and the ordinance is unconstitutional. The Court of Appeals apparently is saying that the City's only option upon sustaining a Motion to Quash (which the Court reads as a Demurrer even though styled as a Motion to Quash) is to refile the information but this is barred by 22 O.S. §501. I believe that implicit in the Court's ruling is the implication that the ordinance is unconstitutional since the Trial Court sustained a Demurrer and Court of Appeals cannot (or will not) review the Trial Court's Deterimination. If the offense was alleged in the words of the ordinance, then it would appear to me that there is nothing the city could do to refile the information and change the languange of the charges.

I hope you can make sense of this ruling and should you have any questions, please do not hesitate to contact me.

Cordially yours,

Micheal Salem
Attorney at Law

RECEIVED JAN 5 1981

January 2, 1981

Mr. Ross N. Lillard, Jr.
Clerk Court of Criminal Appeals
State Capitol Building
Oklahoma City, Oklahoma 73105

Re: City of Tulsa v. Carmack
et. al. No. o-79-58, Court of
Criminal Appeals, Oklahoma

Dear Mr. Lillard:

On April 6, 1979, I filed an Amicus Curiae Brief in the above captioned matter on behalf of the Appellees and the National Committee for Sexual Civil Liberties. This case was submitted on June 18, 1979 by Order of the Court. Since the time of the filing of our Brief, two additional developments in the case law have been brought to my attention by Mr. Thomas F. Coleman, my cocounsel on the Brief for Amicus Curiae. I know this matter has been under submission for over 18 months and feel that the Court may not be interested in additional briefs, therefore I am providing by this letter the citations to two additional cases of which the Court should be made aware. The National Committee for Sexual Civil Liberties was Amicus Curiae in each of these cases.

The first case is that of Pryor v. Municipal Court, 25 Cal. 3d 238, 158 Cal. Rptr. 3300 (1979). This case involved a statute very similar to the one before the Court of Criminal Appeals in this case. The second case is Commonwealth v. Edward J. Sefranka, S.J.C. 2084, Filed 12/15/80. In our Amicus Brief the Court was urged to strike the ordinance down rather than reinterpreting it. In both the pryor and Sefranka cases, both the Supreme Court of California and the Supreme Court of Massachuetts construed statutes similar to the instant case. We feel that the interpretation made by both Courts in these cases is a satisfactory and acceptable alternative.

I have attached copies of both of these decisions as a convenience to the Court. At such time as an official report citation is entered for Commonwealth v. Sefranka, and this office becomes aware of it, I will also notify the Court. Copies of this letter are being providèd to Counsel of Record Thank you for your consideration in this matter and if I can be of any further assistance, please do not hesitate to contact me.

Cordially yours,

Micheal Salem
Attorney at Law

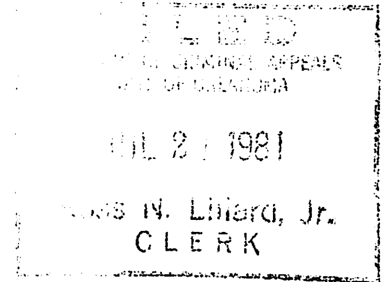
Amicus Curiae Counsel
National Committee for Sexual
Civil Liberties

MS/lt

cc:

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CITY OF TULSA, Appellant,	]	
-vs-	]	No. O-79-58
CARL LEROY CARMACK, JUNIOR W. SELLS, RAYMOND SOUTHERLAND, EDWARD PETERS, PHILLIP ARNETT WILEY and DAVID LEE STILL, Appellees.	]	



ORDER DISMISSING APPEAL

The City of Tulsa has attempted to appeal from an order of the municipal judge dismissing charges against the appellees. Each appellee was charged with soliciting an undercover police officer "to commit an act of lewdness to wit: oral copulation with himself." The judge ruled that the City's ordinance prohibiting lewd behavior was void for vagueness, and he sustained the appellees' motions to dismiss.

The right of a municipality to appeal is limited:

> "Appeals to the Criminal Court of Appeals may be taken by the state or a municipality in the following cases <u>and no other</u>:
>
> "1. Upon judgment for the defendant on quashing or setting aside an indictment or information.
>
> "2. Upon an order of the court arresting the judgment.
>
> "3. Upon a question reserved by the state or a municipality." 22 O.S.Supp.1980, § 1053 (emphasis added).

Taking these situations in reverse order, it is first easily seen that this cannot be an appeal on a reserved question of law. An appeal on a reserved question of law may be taken only when the proceedings have reached the point that jeopardy has attached. State v. Robinson, 544 P.2d 545 (Okl.Cr.1975).[1] That did not happen in these cases.

---

[1] Title 22 O.S. Supp.1980, § 1053.1, provides for an appeal on a reserved question of law when an act of the State Legislature is declared unconstitutional. Municipal ordinances are not included.

Nor is this an appeal from an order arresting the judgment. By definition, such an order would not be entered until after the verdict had been returned, but there were no verdicts in these cases.

Finally, this is not an appeal from an order quashing, or setting aside, the information. Although the appellees' motions in which the constitutionality of the ordinance was raised were styled motions to quash, that is not one of the statutory grounds for such a motion.[2] A comparison of 22 O.S.1971, § 493, and 22 O.S.1971, § 504, indicates that the motion in the instant case was in the nature of a demurrer, rather than a motion to set aside. Like an order sustaining a demurrer, the ruling in the instant case will be a bar to refiling---compare 22 O.S.1971, § 508, whereas an order sustaining a motion to set aside is not such a bar. See 22 O.S.1971, § 501. Also, implicit in the ruling is a holding that the facts alleged in the information do not state a public offense, since the ordinance creating the offense is void. Failure to state an offense is one of the statutory grounds for a demurrer to the information. Section 504, supra.

IT IS THEREFORE the order of this Court that the above styled and numbered cause should be, and hereby is, DISMISSED.

WITNESS OUR HANDS and the seal of this Court this 21st day of July, 1981.

TOM BRETT, PRESIDING JUDGE

HEZ J. BUSSEY, JUDGE

TOM R. CORNISH, JUDGE

ATTEST:

Clerk

[2] There is no statutory provision for a motion to quash. It has been placed by case law under the provision for a motion to set aside the information, 22 O.S.1971, § 493. See, for example, Spivey v. State, 69 Okl.Cr. 397, 104 P.2d 263 (1940); Still v. Dalton, 624 P.2d 76 (Okl.Cr.1981).

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IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

THE CITY OF TULSA, Appellant, -v- CARL LEROY CARMACK, et al., Appellees.	Appellate No. M 79-58 Municipal Court Numbers 259161, 259160, 259204, 259265, 258180, 261637 BRIEF OF AMICUS CURIAE ON BEHALF OF APPELLEES

INTRODUCTION

Appellees, hereinafter referred to as "defendants", were charged with a violation of Title 27, Section 154b, of the revised ordinances of the City of Tulsa, The complaints against each defendant alleged that he did "solicit another, Roger Harmon, to commit an act of lewdness by unnatural sex act, oral copulation, with himself at 600 block South Main." The defendants filed motions to dismiss, not challenging the sufficiency of information, but rather arguing that the ordinance they were alleged to have violated, i.e., Title 27, Section 154b, of the revised ordinances of the City of Tulsa, was itself unconstitutional for a variety of reasons.

The ordinance in question reads:

"It shall be an offense for any person to (b) solicit, induce, intice, or procure another to commit an act of

lewdness, assignation, or prostitution with himself or herself."

It should be noted at this point that the constitutional challenges to the ordinance focused exclusively on the vagueness and overbreadth because of the lewdness portion of the ordinance. This case does not involve constitutional challenges to the prostitution portion of the ordinance.

Title 27, Section 151, of the revised ordinances of the City of Tulsa defines "lewdness" as follows:

"The term 'lewdness' shall be construed to include the making of any appointment or engagement for prostitution, or lewdness or any act and furtherance of such appointment or engagement."

The term "lewdness" is not further defined by the revised ordinances of the City of Tulsa. This ordinance was patterned after Title 21, Section 1029(b) and Section 1030, of the Oklahoma statutes In fact, the Tulsa ordinance reads identical to these sections of the state statutes.

FOURTEENTH AMENDMENT, DUE PROCESS ARGUMENT

Defendants challenged the constitutionality of this ordinance as being unconstitutionally vague. It was for this reason that the Municipal Court declared the ordinance unconstitutional and as a result, dismissed the cases.

The threshold consideration in reviewing a statute which has been challenged as unconstitutionally vague, is whether that statute requires or forbids an action in terms which are so ambiguous that "men of proper intelligence must guess at its meaning and differ as to its application." Connelly v. General Construction Company, 269 U.S. 375, 391(1926). Statutes or ordinances that do not give proper notice of proscribed activity violate the Due Process clause of the Fourteenth Amendment of the Constitution of the United States since "no one may be required at peril of life, liberty, or property

1 to speculate as to their meaning." Lanzetta v. New York, 306 U.S.
2 451(1939).

3 Statutory clarity is also necessary to prevent arbitrary exer-
4 cise of power and discretion by courts and law enforcement officials
5 Grayned v. Rockford, 408 U.S. 104, 110(1972). The United States
6 Supreme Court has held that vaguely worded statutes are constitu-
7 tionally defective, because they fail not only to provide adequate
8 notice to potential offenders, but they also provide inadequate
9 standards for law enforcement officials, thereby encouraging dis-
10 criminatory enforcement by the police. Papachristu v. City of
11 Jacksonville, 405 U.S. 156 (1971).

12 Furthermore, if a legislative body passes an extremely vague
13 statute or ordinance, and if the courts are unable to satisfactor-
14 ily construe and limit the definition, there may be an unconstitu-
15 tional delegation of power from the legislative body to the police
16 (the executive branch). This may constitute a flagrant violation
17 of the concept of Separation of Powers.

18 "It is established that a law fails to meet the requirements of
19 the Due Process clause if it is so vague and standardless that it
20 leaves the public uncertain as to conduct it prohibits, or leaves
21 judges and jurors free to decide, without any legally fixed stan-
22 dards, what is prohibited and what is not in each particular case."
23 Giacco v. Pennsylvania, 382 U.S. 399, 402-403. In Jellum v. Cupp,
24 475 F. 2d 829(Ninth Cir., 1973), the court applied this standard to
25 an Oregon statute prohibiting "acts of sexual perversity." The
26 court looked to the statute itself, court interpretations, and dic-
27 tionary definitions, and finding no acceptable standards, stated:

28 "It is not enough to say that the prosecutor, judge and
29 trier of fact may exercise their own common sense and
30 good judgment in determining what is 'unnatural conduct'
31 and 'abnormal sexual satisfaction'."

32 As will be discussed later in this brief, the Oklahoma Legis-
33 lature, the Tulsa City Council, and the Oklahoma Court of Criminal
34 Appeals has never come to a single definition of the term "lewdness"
35 as it has been used in the Tulsa ordinance or the state statute.
36 Whether certain conduct or certain language has been considered a

violation of this ordinance or the equivalent state statute seems to have been determined on an ad hoc basis. However, as will be discussed in more depth later in this brief, the analysis of these appellate decisions seems to cause more confusion than enlightenment.

The opinion of presiding Judge Lawrence A. Yeagley quite properly states that "the terminology of the ordinance would meet the constitutional test if its meaning was fairly ascertainable by reference to similar statutes, prior judicial determination, if the questioned word has a common and generally accepted meaning, or if there are attendant definitions to the ordinance to support its understanding."

Now, just what does the ordinance, or for that matter, the state statute, say that "lewdness" means? Again, Judge Yeagley succinctly points out "when the factors not appropriate for consideration in these cases are stricken from the 'definition' (which reads word for word as the state law), we are left with the enlightenment that lewdness is the making of an appointment for lewdness."

As this court stated in Landrum v. State, 255 P. 2d 525, 529 (Okl. Cr., 1953) "it will be noted that no attempt is made to specifically define the term 'lewdness' or limit the definition, but it is merely specified that the term shall be construed to include, etc." Because the legislative authorities have failed to define the heart of the crime, we must resort to prior judicial decisions in order to ascertain whether the ordinance (or state statute) has been constitutionally interpreted.

The first reported appellate opinion on this subject is Landrum v. State, supra. In that case, the defendant was charged with a violation of the Oklahoma lewdness statute, Section 1029, Section 1030. The information filed against him alleged that he did unlawfully and wrongfully commit an act of lewdness. After noting that the legislative body had failed to define the term, this court resorted to Roget's International Thesaurus, New Edition, and, stated "the term 'lewdness' as used in Title 21, O.S. 1951, §§ 1029, 1030, means unlawful indulgence in lust, sensuality, passion, eager for sexual indulgence, whether public or private." Landrum v. State,

supra, at page 526. The court went on at page 531 and stated, "two persons meeting and kissing, or lovers arm in arm and petting, but showing high respect each for the other is one thing, and sensual acts as shown by the evidence in the within case is another." Now just what did the evidence show in this case? A black man was holding the breast of a white woman, and was caressing and kissing her on the neck. This conduct occurred behind closed doors in a law office. The police were called to the scene, not because this conduct was seen by a member of the public, but merely because a white woman and black man were seen on the street with their arms around each other. The Court of Appeals stated,"to see a white woman and Negro man on the street with their arms around each other and staggering about, as the evidence disclosed in this case, could be calculated to cause shock, consternation, and chagrin to well up in many persons of the public, and more so than if the parties were of one race." It might also be noted that while the black man was charged with lewdness, the court said that "it would seem that the woman was more at fault in willingly permitting herself to be the recipient of the lewd attentions of the defendant than the defendant. It does not appear that she was charged." Landrum v. State, supra, at page 531. Although the court did not reverse his conviction, the court reduced his sentence to six months in the County Jail.

The next relevant reported case is Bayouth v. State, 294 P.2d (Okl. Cr., 1956). In that case, the defendant was prosecuted under Title 21, Section 1029 of the Oklahoma statutes, alleging that he did entice a woman to commit an act of lewdness with him. The evidence showed that the prosecuting witness was a thirty-six-year-old woman, a mother of five children, who lived with her husband. She complained that she had received several telephone calls from the defendant. In the course of these telephone calls, the defendant became aware of the fact that the complaining witness was a married woman who lived with her husband. On one occasion, it was alleged that the defendant said to her on the telephone, " If I could meet with you, could we have intercourse?" On another occasion, the defendant was alleged to have asked if the complaining

witness would have intercourse with the defendant in front of his wife. On a third occasion, it was alleged that the defendant made another offer to have sexual relations with the woman,and in furtherance of his effort to entice her, offered to furnish her money if she would do so. The defendant was not charged, in the information, with the first two telephone calls requesting sexual intercourse (without the offer of money). However, in the information, he was charged with asking her to have sexual intercourse with him and promising her money if she would. At the trial, testimony was allowed to go before the jury about all three conversations. On appeal, the defendant claimed that it was error for the trial court to fail to instruct the jury concerning "the admission of evidence of other crimes in connection with the identity of the accused." In response to that claim of error, the Court of Appeals stated:

> "And although the defendant had one time prior to December 2, 1954, asked Mrs. Hamilton by telephone to have intercourse with him, it was not until the second day of December, 1954, that he offered her money to lure her on. He denied this, but the jury did not believe him. Although the telephone calls prior to December 2, 1954, might have amounted to a breach of the peace, they did not violate the terms of Section 1029, of Title 21, O.S.A., as defined by Section 1030 of the same Title, as he had not previously, as an allurement, offered her money."

Bayouth v. State, supra, at page 865.

From the foregoing analysis of the Bayouth case, and from the court's holding at page 865, it appears that a solicitation to commit an act of adultery is not considered a violation of Section 1029. This, even though adultery was, and still continues to be, a crime in Oklahoma. See Title 21, Section 871, of the Oklahoma statutes, which states that adultery is the voluntary sexual intercourse of a married with a person of the opposite sex. Both parties to the sexual act are considered guilty.

The next reported case dealing with the lewdness statute is Griffin v. State, 357 P.2d 1040 (Okl. Cr., 1961). In that case,

1 the defendant was charged with the crime of soliciting and enticing
2 a female to commit an act of lewdness. He was tried before a jury,
3 found guilty, and his punishment was to be imprisonment in the
4 County Jail for twelve months. The testimony showed that the defen-
5 dant made a telephone call to a sixteen-year-old girl at her home.
6 The girl lived with her mother. When the first telephone call was
7 made, the mother was not at home. The defendant asked the girl,
8 "How would you like to make $10.00?" The defendant further stated,
9 "All you have to do is to go down the street and meet me." The
10 telephone call soon ended. The girl telephoned her mother and also
11 phoned the police. There was also testimony that the defendant
12 later offered her $50.00 if she would go to a hotel with him. At
13 one point in a conversation, he asked her to have on a negligee.
14 This was the extent of the evidence for the State. On appeal, one
15 complaint was that the information did not allege that the complain-
16 ing witness was a minor. The Court of Appeals stated, "It would
17 not matter what the age of the prosecuting witness or person invol-
18 ved might be." Another argument on appeal was that there was no
19 evidence that the defendant requested the girl to commit a lewd
20 act. This court stated, "Still, what did he way to her that was
21 lewd? That is the question. He wanted to see her down at the
22 corner. The girl asked him what for, but apparently never got an
23 answer. He offered her $10.00, or $50.00 if she would go to a
24 hotel with him, but still did not say for what purpose. We could
25 reasonably speculate that it must be for some sexual play. But
26 that is speculation." This court allowed the conviction to stand,
27 even though there was no evidence that the defendant solicited the
28 girl to commit an act of lewdness. Instead of reversing the con-
29 viction, the court stated, "Here, by weakness of the information
30 in the first instance, and the weakness of the evidence to support
31 the charge in the second instance, justice demands that the sentence
32 be reduced from twelve months to thirty days in the County Jail."
33 In essence, the court allowed a conviction of soliciting for lewd-
34 ness to be based upon speculation that the defendant, if prompted
35 to continue his requests, might have requested the girl to commit
36 an act of lewdness.

Some seventeen years elapse between the decision of the court in Griffin and the next relevant reported opinion dealing with lewdness, or solicitation to commit lewdness. In Profit v. City of Tulsa, 574 P.2d 1053(Okl. Cr., 1978), the defendant was charged with soliciting a person to commit an act of lewdness or prostitution, in violation of Tulsa revised ordinances, Title 27, Section 154. The defendant challenged the sufficiency of the information for two reasons. One was that the information alleged that she solicited another to commit an act of lewdness or prostitution, and that charging in the alternative was improper. The court rejected this claim. The second reason she stated the information was deficient was on the ground that the ordinance was unconstitutional for vagueness, overbreadth, and a status crime. The court, on appeal, stated that "the information specified the particular act of lewdness which the defendant allegedly committed." For this reason, the court held that the information was sufficient. The evidence showed that the defendant, while in the privacy of a bedroom of her own home, asked a stranger to expose himself to her, and to urinate in her presence. The defendant argued that the act of exposure or urination should not be considered lewd under the circumstances of this case because the act was to occur behind closed doors. The court stated,"This solicitation was not laved of its lewdness by the mere fact that the door was closed." Profit, supra, at page 1056. The court went on to say, at page 1057,"Lewd behavior is by its very nature offensive to the community. If a person is found to have committed a lewd act, then there is no need for a separate finding as to whether the act was offensive, or whether anyone in particular saw it, or was offended by it." From this case, and the language of the court, it appears that the court is holding that exposure of a penis and/or urination of a man in the presence of a consenting woman, in private, is lewd.

The Landrum, Bayouth, Griffin, and Profit cases appear to be the only relevant reported appellate decisions in Oklahoma with respect to what does or does not constitute lewdness, or soliciting for lewdness within the state statute or the Tulsa City ordinance.

1 Since the statute or the ordinance do not define the term lewd-
2 ness, it is the language of the court in these four opinions which
3 must be the subject of critical inquiry as to whether constitutional
4 standards have been met. Just what is "lewdness" in Oklahoma?
5 Are citizens given adequate notice so that they may conform their
6 conduct or speech to the requirements of the law? Are the police
7 being given objective standards so that they may enforce the law
8 in a fair and impartial manner? Are judges and juries being given
9 adequate guidance and objective standards so that they may fairly
10 judge whether a person's speech or conduct is or is not a violation
11 of the law? What do these cases tell us?

12 We are told that the term "lewdness" means"unlawful indulgence
13 in lust, sensuality, passion, eager for sexual indulgence, whether
14 public or private." Landrum, supra, at page 526.

15 We are told that whether kissing or petting violates the law
16 is determined by whether or not there is also a showing of "high
17 respect for each other in the performance of said kissing or pet-
18 ting." Landrum, at page 531.

19 We are told that "lewd behavior is by its very nature offensive
20 to the community." Profit, at page 1057. We are also told that
21 certain conduct may cause more shock, consternation, and chagrin
22 to the public if the parties are of different races. Landrum, at
23 page 530.

24 We are told that a man touching a woman's breast, and kissing
25 her on the neck, is lewd, regardless of whether it occurs in a
26 public or private place. Landrum,at page 529 and 530.

27 We are told that soliciting for an act of adultery, without the
28 offer of money, is not a violation of the statute. On the other
29 hand, soliciting for an act of adultery with the offer of money is
30 a violation of the statute. Bayouth v. State, supra, at page 865.
31 This appears to be so even though adultery is a crime in Oklahoma.

32 We are told that even though the solicitation does not specify
33 that the offer of money is for a sexual act, that a conviction of
34 the statute may be based on the speculation that it would be for
35 sexual play. Griffin v. State, supra, at page 1046. Finally, we
36 are told that exposure of a penis to a woman in a private place,

1 and/or urination of a man in front of a woman in a private place,
2 is lewd. Profit, supra, at page 1056.
3 Do these pronouncements by the court satisfy the due process
4 requirements of the United States Constitution? Does this put
5 citizens on notice? Are these cases consistent? Or are the incon-
6 sistencies of such a nature as to confuse the public?
7 It is submitted that the alleged definition of "lewdness" set
8 forth by the court in Landrum, supra, is really nothing more than
9 a string of equally vague synonyms. These synonyms do not seem to
10 limit the definition of lewdness, but instead, seem to expand and
11 confuse the issue.
12 When we turn to the courts of other jurisdictions, we see a
13 wide variety of differing definitions as to the meaning of "lewdness
14 The opinion of Judge Yeagley in the court below sets forth, at page
15 2 of that opinion, numerous decisions. There seems to be no gener-
16 ally accepted definition of the term "lewd".
17 Amicus Curiae would like to illustrate how "reasonable judges
18 may differ" as to the meaning of "lewdness". California has a
19 statute, Section 647(a) of the Penal Code, which prohibits solici-
20 ting or engaging in lewd or dissolute conduct. For many years,
21 the standard jury instruction on the meaning of "lewd or dissolute"
22 as used in that subdivision read as follows:
23 "The terms lewd and dissolute are synonymous, and mean
24 lustful, lascivious, unchaste, wanton, or loose in morals
25 and conduct."
26 This was not a definition established by the California Legis-
27 lature. As in Oklahoma, the California Legislature failed to de-
28 fine the terms "lewd or dissolute" as used in that statute. The
29 California appellate courts, in attempting to construe those terms,
30 referred to the dictionary in arriving at this standard jury in-
31 struction. Then, in 1974, in an attempt to ward off continuing
32 challenges of vagueness, the First District Court of Appeal, in the
33 case of Silva v. Municipal Court, 115 Cal. Rptr. 479(1974), held
34 that in order to avoid constitutional vagueness, those terms would
35 hereafter construed to mean "obscene". That court then went on to
36 define the term "obscene" as meaning grossly repugnant and patently

offensive to what is generally accepted to be appropriate and decent under statewide contemporary community standards. The National Committee for Sexual Civil Liberties was amicus in that case. Then, two years later, the Second District Court of Appeal, in the case of People v. Williams, 130 Cal. Rptr.460 (1976) refused to follow the reasoning of the First District Court of Appeal, and instead, held firm to the traditional definition and the traditional jury instruction. The Second District Court of Appeal criticized the First District Court of Appeal and held that the First District was incorrect in its reasoning. This created inconsistencies between the various Courts of Appeal. Although this situation could not arise in Oklahoma because there are not different District Courts of Appeal, nonetheless, the decisions of Landrum, Bayouth, Griffin, and Profit, when compared with each other and analyzed, seem to create inconsistencies in the law. It is also noteworthy that, in the Profit case, one Court of Appeals justice dissented. It is also noteworthy that, although Judge Yeagley, in the Profit case, felt that the statute was not unconstitutionally vague, one year later, has changed his mind. Not only do reasonable persons or reasonable judges differ among themselves, but a reasonable judge may, at one point in time, feel the statute is not vague, and at another point in time, feel that it is vague.

Although on many occasions, the District of Columbia Court of Appeals had held that the "lewd, obscene and indecent act" statute of that jurisdiction was not unconstitutionally vague, in the case of District of Columbia v. Walters(a copy of which is attached hereto for the convenience of the court) that court reversed its position and declared that statute unconstitutionally vague.

Similarly, although the Iowa courts had upheld the constitutionality of their lewdness law on numerous occasions, in the case of State v. Kueny, 215 NW 2d 215(1974), the Supreme Court of Iowa unanimously declared that statute as unconstitutionally vague. A copy of the Kueny decision is also attached hereto for the convenience of this court.

In the case of Morgan v. City of Detroit, 389 F. Supp. 922(1975) the Federal District Court in Michigan held a portion of the City

of Detroit ordinance regulating "lewd and immoral acts" as unconstitutionally vague. That decision was not appealed by the City of Detroit. As a result, in the case of Steponaitis v. City of Detroit Civil Action #76-614-365-CZ, in the Wayne County Circuit Court, Judge John H. Hausner entered a declaratory judgment to the effect that the "lewd and immoral act" portion of the City of Detroit ordinance was unconstitutionally vague. A copy of that declaratory judgment is attached hereto for the convenience of this court. This court is requested to take judicial notice of that declaratory judgment.

Also, in the case of Miami Health Studios v. City of Miami Beach, (S.D. Fla., 1973) 353 F. Supp. 593, reversed on procedural grounds only, 491 F. 2d 98 (1974), the Federal District Court held unconstitutional the portions of a Florida statute which prohibited lewdness and prostitution. The court specifically held that the use of the words "lewd" and "lewdness" rendered such portions unconstitutionally vague. The Federal Court refused to accept any of the language defining "lewdness" which appears in a state court opinion and in the statute, holding that

> ".....the legislature (must) refrain from using such broad language as 'lewdness shall include any indecent or obscene act' when it tells the people of Florida what conduct constitutes the criminal offense."

As Judge Yeagley did in the case below, the Federal Court in Florida then went on to order that the words "lewdness" and "lewd" be deleted from the lewdness-prostitution statute. The Federal Judge held that the lewdness portion was severable from the prostitution portion.

The Supreme Court of New Jersey has, on several occasions, recognized the lack of precision in the term "lewdness", remarking in State v. Dorsey (1974) 316 A. 2d 689:

> "Lewdness has been described as conduct of a lustful, lecherous, lascivious or libidinous nature. This definition is pleasantly alliterative, but not especially revealing."

/// ///

In conclusion on the vagueness argument:

1) The Tulsa ordinance fails to properly define the term "lewdness";

2) The state statute, upon which the Tulsa ordinance is based, likewise fails to define the term "lewdness";

3) The decisions of this court in Landrum, Bayouth, Griffin, and Profit, fail to develop objective standards, and appear to create conflicts and inconsistencies in the law as previously outlined above;

4) As outlined in Judge Yeagley's opinion in the Municipal Court below, the courts of various jurisdictions outside of Oklahoma have failed to establish a uniform or commonly accepted of the term "lewdness";

5) While Judge Yeagley himself last year felt the ordinance was not unconstitutional, this year, after further reflection, he now feels that it is unconstitutionally vague;

6) State and Federal Courts in various jurisdictions have held that similar statutes or ordinances which fail to properly define "lewdness" are unconstitutionally vague.

Therefore, this committee urges the Oklahoma Court of Criminal Appeals to sustain the opinion and judgment of presiding Judge Lawrence A. Yeagley, and to declare the Tulsa ordinance, insofar as it fails to define the term "lewdness",as unconstitutionally vague.

FIRST AMENDMENT OVERBREADTH AND RIGHT OF PRIVACY ARGUMENTS

"Under the common law, it was not a crime for men and women to engage in fornication, prostitution, or other immoral practices in private." Landrum v. State, 255 P.2d 525, 529.

Nothing is against the law in Oklahoma unless it is made so by statute, Griffin v. State, 357 P.2d 1040(Okl. Cr., 1961). It therefore appears that at common law, people had a certain amount of breathing space and leeway as to engaging in various forms of

private sexual behavior. That is not to say that social pressures or religious pressures did not influence their behavior. However, the state did not interfere in many forms of private sexual behavior.

Since Oklahoma became a state, the Oklahoma Legislature has enacted a multitude of laws regulating private sexual behavior between consenting adults. However, it has not outlawed all private sexual acts between consenting adults. Section 871 of Title 21 of the Oklahoma statutes prohibits adultery. Adultery is defined as voluntary sexual intercourse of a married person with a person of the opposite sex. At least one of the parties to the act of sexual intercourse must be married. However, both parties are culpable. Prosecution may only be instigated by a complaining spouse, unless the adultery is "open and notorious". If it is "open and notorious", anyone may bring the complaint. To be open and notorious adultery, the accused persons must engage in sexual intercourse with each other <u>habitually</u>, and must live together, and must hold themselves out to the public in a manner in which the public is aware that sexual relations exist between them. <u>Hargan v. State</u>, 121 P.2d 315(Okl. Cr., 1942)

The Oklahoma Legislature has never enacted a fornication statute Fornication is traditionally defined as sexual intercourse between two unmarried persons. One instance in which fornication in private appears to be illegal is when each of the parties are within the degrees of consanguinity for void marriages. Then the crime is not considered fornication, but is considered incest. See Section 855 of Title 21. The only other instance in which fornication appears to be illegal is when the female participant to the act of sexual intercourse is under sixteen, or if she is between the ages of sixteen and eighteen, and of previous chaste character. See Section 1111 of Title 21. Thus it appears that sexual intercourse between a man and a woman, in private, and with consent, is generall not illegal in Oklahoma unless it falls within the prohibitions of the incest law or the statutory rape law.

Section 886 of Title 21, the "crime against nature" statute, prohibits either anal intercourse or oral copulation between a man

and a man, a man and a woman, or a woman and a woman. The statute provides for no exceptions. See Warner v. State, 489 P. 2d 526 (Okl. Cr., 1971) It appears that this prohibition against oral or anal intercourse would apply to a husband and a wife. The legislature did not provide for a spousal exception to the crime agains nature law. In contrast, when we look to Section 1111 of Title 21, the rape statute, the legislature specifically provided for a spousal exception to that law, both in cases where the female is under sixteen, and in cases where the act of sexual intercourse is perpetrated by force. From this we must assume that, had the legislature intended to provide for a spousal exception to the crime against nature statute, it would have done so by express language. However, it chose not to create such an exception.

From the analysis of the foregoing statutes and cases, it appear that the following consensual sexual acts in private are specificall outlawed by state statutes:

1) Acts of sexual intercourse when one of the parties is married;

2) Acts of sexual intercourse when the participants are closely related by blood;

3) Acts of sexual intercourse where the female is under sixteen years old, or between the ages of sixteen and eighteen and of a previous chaste character(except if the parties are married to each other);

4) Any and all acts of anal intercourse or oral copulation regardless of whether the participants are married to each other, unmarried, or whether the acts are of a homosexual or a heterosexual nature.

It also appears that the first man to engage in an act of sexual intercourse with a female between the ages of sixteen and eighteen is guilty of a crime. However, the second man to engage in an act of sexual intercourse in private with a female between the ages of sixteen and eighteen is not guilty of a crime.

By not passing a specific statute on fornication, it appears that the Oklahoma legislature has decided not to criminalize voluntary acts of sexual intercourse performed in private unless those

acts of sexual intercourse fall within the provisions of the statutory rape law or the incest law.

It is extremely difficult to ascertain the legislative intent in either criminalizing or not criminalizing various forms of private sexual acts between consenting adults. On the one hand, the legislature seems to be concerned in preserving marriage and marital privacy by enacting an adultery law, and in creating a spousal exception to the statutory rape and forcible rape law. On the other hand, it appears that the legislature has evidenced no concern for marital privacy by enacting a crime against nature statute which does not create a spousal exception. It also appears that the legislature is not concerned with the moral issues surrounding pre-marital sex in private, in that it has never enacted a fornication law. Likewise, the legislature does not criminalize all acts of sexual intercourse with females under eighteen. It only punishes the first man to have consenting sex with a woman between the ages of sixteen and eighteen. It is also interesting to note that the legislature has provided for a specific defense to the statutory rape law when the male is under the age of eighteen years at the time of sexual intercourse.

There seems to be no common theme of public policy or morality surrounding these statutes. They seem to be piecemeal efforts by the legislature to outlaw certain sex acts in private and not to outlaw others. These statutes seem to be inharmonious with each other.

In 1943, the state legislature enacted Section 1029 and Section 1030 of Title 21. These sections apply to acts of "lewdness" whether committed in public or in private. Unfortunately, the legislature chose not to define the term "lewdness", or to limit the definition. Landrum v. State, 255 P. 2d 525,529. The legislature specifically defined what it outlawed in the adultery statute. The legislature specifically defined what it outlawed in the statutory rape law. The legislature specifically defined what it outlawed in the forcible rape law. The legislature specifically defined what it outlawed in the incest law. In the case of the crime against nature law, while the legislature did not specifically what it meant by that

phrase, the courts have construed and limited the definition to acts of anal intercourse and acts of oral copulation. As so construed, citizens, police, judges, and juries are on notice and are given objective guidelines as to what does or does not constitute a violation of the crime against nature statute. However, with respect to the lewdness statute(or for that matter, the Tulsa lewdness ordinance),the legislature has not defined the term "lewdness" and as is evidenced by the cases of Landrum, Bayouth, Griffin, and Profit, the courts have been unable to come up with an objective and specific definition. Furthermore, those cases appear to have no common denominator.

Notwithstanding the benevolent dicta of this court in Profit v. City of Tulsa, supra, at page 1056, that lewdness could not reasonably be interpreted to extend to the acts of married persons in the privacy of their own home, it appears that the purported definition of "lewdness" is so broad and ambiguous that this statute could reasonably be interpreted to extend to acts of sodomy and/or oral copulation between married persons in the privacy of their own home. Certainly the legislature has determined that those acts are unlawful by failing to provide for a spousal exception to the sodomy laws. This court has never specifically held that the crime against nature statute may not be constitutionally applied to acts of anal intercourse or oral copulation between a man and a wife in the privacy of their bedroom. In Warner v. State, 489 P.2d 526 at page 528, this court briefly discussed the case of Griswold v. State of Connecticut, 381 U.S. 479(1955), but it did not hold that the Oklahoma crime against nature statute would be unconstitutional as applied to married couples. The court stated, "we are of the opinion that the United States Supreme Court, in the landmark case of Griswold v. State of Connecticut, supra, does not prohibit the state regulation of sexual promiscuity or misconduct between non-married persons." Warner, supra, at page 528. It should be noted that the Warner case was decided by this court in 1971. In 1972, the United States Supreme Court, in the case of Eisenstadt v. Baird, 405 U.S. 438, extended the doctrine of Griswold to unmarried persons. The court specifically held that the right of privacy that it was dis-

cussing in Griswold was not limited to a marital right of privacy, but was an individual right of privacy. Again, in 1973, in the case of Roe v. Wade, 410 U.S. 113, the United States Supreme Court emphasized that the right of privacy was an individual right and not a marital right. In State v. Pilcher, 242 N.W. 2d 348(Iowa,1976) the Iowa Supreme Court recognized these principles and therfore voided the sodomy law in that state as violating the rights of privacy in both married and unmarried participants to an act of sexual intercourse in private. In State v. Saunders, 75 N.J. 200 (1977), the Supreme Court of New Jersey declared that state's fornication statute as unconstitutional in violation of the right of privacy.

So we see that the legislature has not specifically outlawed all private sexual acts between consenting adults, unless the lewdness law could be construed in that manner. We simply do not know the legislative intent in passing a law which prohibited both public and private lewdness. However, it would appear that an attempt to outlaw all forms of sexual conduct between consenting adults in private, except between a husband and a wife, would run afoul of the United States Constitution. Griswold v. Connecticut, supra, Eisenstadt v. Baird, supra, and Roe v. Wade, supra. Insofar as the lewdness statute, or the lewdness ordinance, regulates private sexual acts in the vaguest terms, it would appear that this statute and this ordinance are unconstitutionally overbroad. It would appear that the First Amendment should protect a friendly and polite invitation of a man to a willing woman who happened to meet and converse in a nightclub or a bar, to go home and have sexual intercourse in private. The First Amendment should also protect a husband's request to his wife that the two should engage in oral sex in private. Although this oral sex between husband and wife seems to be criminal according to the crime against nature statute, it would nonetheless be constitutionally protected behavior.

The lewdness ordinance and the lewdness statute are unconstitutionally vague and violate the right of privacy in that they fail to give notice as to which private sexual acts are illegal and which private sexual acts are lawful. How is a person to know what he may

or may not do in private?

The Tulsa ordinance in question punishes speech alone, and regulates the content of that speech, regardless of whether the words are uttered in a public place, or in a private place, and regardless whether the words are uttered between a man and a woman, or a man and a man, or a woman and a woman. It prohibits all speech calculated to obtain consent to engage in a "lewd act". It then fails to define what is "lewdness". This court has held that when an ordinance punishes speech alone, the defendant has standing to attack the overbreadth of that ordinance, although the words he used might have been constitutionally punishable under a narrow, precisely drawn provision. Conchito v. City of Tulsa, 521 P.2d 1384,1386(Okl. Cr., 1974). In that case, this court stated:

> "The overbreadth doctrine is founded upon the principle of substantive due process which forbids governments to prohibit certain freedoms guaranteed by the Constitution. A penal provision violates this doctrine when, as drafted or construed, it is susceptible of application to speech, although vulgar or offensive, that is protected by the First and Fourteenth Amendments."

This court went on to say:

> "Therefore, an ordinance which undertakes to punish speech may be upheld only by the showing of a compelling state interest, and the words made punishable by such a provision must come with certain specific and 'narrowly limited classes of speech'." Conchito, supra, at page 1387.

This ordinance is no narrowly drawn provision. The language proscribed need not be loud or boisterous, or uttered in public. There is no requirement that it be uttered with the knowledge that someone is within hearing who might be offended. The ordinance has only two elements: first, that the conversation should be calculated to solicit or entice another person, and second, that it be calculated to produce an act of lewdness with another person either in public or in private.

This ordinance appears to be overbroad in that it attempts to prevent one adult from obtaining consent from another adult to en-

gage in an act of fornication in private. It also could be applied to a husband's request to his wife to engage in an act of oral or anal sex in private.

This ordinance is not limited to fighting words, obscene speech, public utterances, or solicitations to commit criminal acts.

In the case of Conchito v. City of Tulsa, supra, this court stated, "we do not confuse the power to construe with the power to legislate." The legislative body did not limit the application of this ordinance. It appears to be vague, not susceptible of a limiting and constitutional interpretation, and may apply to both lawful and unlawful sexual acts in private.

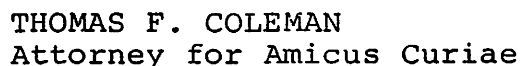
The National Committee For Sexual Civil Liberties is not suggesting that the City of Tulsa is without power to adopt a solicitation ordinance which might be constitutional. However, it has not done so. It has enacted the broadest of all possible ordinances. This court should not attempt to save the ordinance, but instead, should void the ordinance on its face, and allow the City of Tulsa to draft one which is in the furtherance of a compelling state interest and which is narrowly drawn.

Again, it should be emphasized that voiding the ordinance because of the "lewdness" provision will not prevent the police from making arrests for prostitution solicitations. "Prostitution" has a separate definition of "sexual intercourse for hire."

It should also be noted that solicitations of minors are separately punished by §1021(5) of Title 21 of the Oklahoma Statutes. Voiding the "lewdness" portion of the Tulsa ordinance (and by implication the same portion of the state statute) will have no effect on prosecutions involving solicitations of minors.

Dated: March 30, 1979

Respectfully submitted:



THOMAS F. COLEMAN
Attorney for Amicus Curiae

Michael Salem
Co-counsel for Amicus Curiae

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAR 20 1979
Ross N. Lillard, Jr.
CLERK

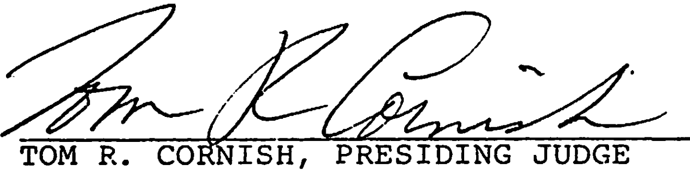
THE CITY OF TULSA, Appellant,	]	
-vs-	]	O-79-58
CARL LEROY CARMACK, et al., Appellee.	]	

- O R D E R -

NOW, on this 19th day of March, 1979, the Court having examined the application to file a brief amicus curiae filed by counsel for the National Committee for Sexual Civil Liberties;

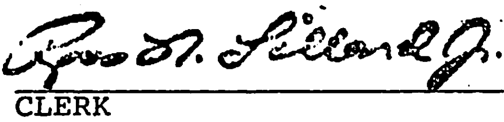
NOW THEREFORE, this Court finds that said application should be and is hereby GRANTED, said brief to be filed within fifteen (15) days from the date of this order.

WITNESS MY HAND and the Seal of this Court this 19th day of March, 1979.



TOM R. CORNISH, PRESIDING JUDGE

ATTEST:



CLERK

IN THE MUNICIPAL CRIMINAL COURT OF THE CITY OF TULSA

TULSA COUNTY, STATE OF OKLAHOMA

THE CITY OF TULSA, Plaintiff, vs. RAYMOND SOUTHERLAND, JUNIOR W. SELLS, DAVID STILLS, EDWARD PETERS, PHILLIP WILEY, and CARL CARMACK, Defendants.	)	Case Nos. 259161, 259160, 259204, 259265, 258180, and 261637

MUNICIPAL COURT
FILED
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By__________Dep.

MEMORANDUM OPINION

The above causes came on for hearing on Thursday, November 30, 1978, upon due notice, having been consolidated by agreement and upon defendants' combined Motions to Dismiss. The court, having heard argument of counsel: Mr. John Geb on behalf of the City of Tulsa; Mr. John Street for defendants Southerland, Sells, Stills, and Peters; Mr. Sam Cassidy and Mr. Greg Bledsoe for the defendant Wiley; Mr. T. Reid Young for the defendant Carmack, hereby makes the following memorandum opinion its finding of fact and conclusions of law.

Jurisdiction in the action is properly founded upon Title 11 OSA, Sections 28-102A, and Article VII, Section 1, of the Oklahoma Constitution.

The defendants, and each of them, are charged under Title 27, Section 154b, of the Revised Ordinances of the City of Tulsa, and, more particularly, with the act, "Solicit another, Roger Harmon, to commit an act of lewdness by unnatural sex act, oral copulation, with himself at 600 block South Main."

The ordinance in question reads:

> "It shall be an offense for any person to
> (b) Solicit, induce, entice, or procure another to commit an act of lewdness, assignation, or prostitution with himself or herself."

The basic concept at issue here is the fact that all persons are entitled to be informed as to what the governmental entity commands or forbids. It is the assumption that all persons are free

to steer between lawful and unlawful conduct, and, in furtherance of that, they have the right to insist that the laws be written so as to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited so he or she may act accordingly. State v. Kueny 215 N.W. 2d 215 (1974).

The terminology of the ordinance would meet the constitutional test if its meaning was fairly ascertainable by reference to similar statutes, prior judicial determination, if the questioned word has a common and generally accepted meaning, or if there are attendant definitions to the ordinance to support its understanding.

Initially, the state law reads word for word as the ordinance in question, so any reference to the same serves no useful purpose.

In turning to other decisions for support, it is found that those decisions are so fractionated as to be of little or no benefit. However, they serve to demonstrate that there is a definite void in objective standards by which a person's conduct may be said to be "lewd." The various courts have defined the word "lewd" as lustful, Shreveport v. Wilson 145 La. 903, 83 S. 186 (1919); involving unlawful sexual desire, Jamison v. State 117 Tenn. 58, 94 SW 675 (1906); dissolute, State v. Lawrence 19 Neb. 307, 27 NW 126 (1886); filthy, State v. Lawrence, supra.; indecent, State v. Rose 147 La. 243, 84 S. 643 (1920); lascivious, Shreveport v. Wilson, supra.; lecherous, State v. Rose, supra.; and libidinous, Snow v. Witcher 31 NC 346 (1898); that form of immorality which has relation to sexual impurity or incontinence carried on in a wanton manner, State v. Prejean, 216 La. 1072, 45 So. 2nd 627 (1950); that form of immorality which has relation to sexual impurity, Slusser v. State 155 Tex. Cr. R. 160, 232 SW 2d 727 (1950); and lay, unlearned, unlettered, wicked, lawless, bad, vicious, worthless, and base, State v. Saibold 213 La. 415, 34 So. 2d 909 (1948); gross and wanton indecency in sexual relations so notorious as to tend to corrupt a community's morals, Hensley, et al, v. City of Norfolk, 218 SE 2d 735 (1975); lustful, lascivious, unchaste, wanton, loose in morals and conduct, People v. Williams --- Cal. Rptr. ---- (1976); obscene, Silva v. Municipal Court, 115 Cal. Rptr. 479 (1974).

It is easily ascertained that the various judicial definitions are purely a matter of imposition of a subjective standard based upon social, moral, and cultural bias. It is further quite clear that the very phrases and synonyms through which meaning is purportedly ascribed to the term "lewdness" merely serve to obscure rather than to clarify, that there may be a rough consensus in our society as to certain acts that are beyond the pale of the moral--such generalizations are constitutionally too indefinite for criminal prosecution. Morgan v. City of Detroit, 389 F. Supp. 922 (1975).

We then look to whether the words such as "lewdness" have a common and generally accepted meaning in society. It has been held at one time that they did. State v. Ragona, 232 Iowa 700, 704, 5 NW 2d 907 (1942). The word has little, if any, vernacular use in today's society. Common usage thereof has been so generalized as to encompass an infinite variety of behavorial patterns, the result of which is the erosion of the effective employment of like terms in a criminal ordinance absent an attendant definition thereof to give import to the proscribed criminal conduct.

With this in mind, we turn to Title 27, Section 151, of the Revised Ordinances of the City of Tulsa, and find to our delight an attendant definition of the word "lewdness" which reads as follows:

> "The term 'lewdness' shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement."

When the factors not appropriate for consideration in these cases are stricken from the "definition" (which reads word for word as the state law), we are left with the enlightenment that lewdness is the making of an appointment for lewdness. Now if the other definitions alluded to above are constitutionally suspect, then surely ours is overshadowed with the vice of vagueness.

Equally as important as the right of the people to know, as specifically and as clearly as possible, what acts are proscribed, are the rights of enforcement and judicial determination. The words "lewd" and "lewdness", as used in the ordinance, provide no plausible

basis upon which police officers, judges, or juries may reasonably ascertain guidelines essential to determination of legislatively intended application of the ordinance. Absent the explicit standards, the vagueness of the law impermissibly delegates basic policy matters to police, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant danger of arbitrary and discriminatory application. State v. Kueny, supra.

The City argues that the question has heretofore been resolved in Griffin v. State, Okl. Cr. 357 P. 2d 1040 (1960), and more recently in Profit v. City of Tulsa, 49 OBAJ 161 (1978), a case wherein this judge presided. However, the issue for determination in both of these cases was the sufficiency of the information. Undoubtedly, the information in Profit, supra., specified the particular act of lewdness, but a well-worded information cannot, of itself, confer the exactness necessary to clothe vague terms contained in the ordinance with constitutionality.

This court, after additional insight, is reversing its former position on the question of vagueness as it pertains to the ordinance in question and respectfully urges the Court of Criminal Appeals, if called upon, to closely question whether the concept of lewdness is so sufficiently a matter of common knowledge as to enable the average citizen to determine what is proscribed conduct and to provide guidelines sufficient to prevent ad hoc resolution of the causes brought thereunder.

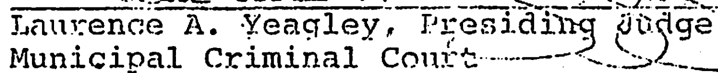
It is, therefore, the finding of the court that the terms "lewd" and lewdness" here challenged are so indefinite and uncertain that persons of ordinary intelligence are given inadequate notice as to what conduct is prohibited thereby; further that there is no plausible basis upon which police, judges, or juries may ascertain, with any degree of certainty, guidelines essential to a determination of the legislatively intended application of the ordinance here in question.

The constitutionality of Title 27, Section 154, not being before the court as it concerns prostitution, the court will judicially delete and sever the words "lewd" and "lewdness" and the

definition of "lewdness" as they are contained in Title 27, Section 151 and Section 154.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Title 27, Section 151, is hereby declared to be in violation of defendants' Fifth and Fourteenth Amendment rights to due process of law as it defines the term "lewdness" and, further, Title 27, Section 154, as it includes the word "lewd" or "lewdness" in any subsection; the operation of the remainder of said ordinance not being otherwise affected by this decision.

In light of the contents, consideration of other issues raised by the defendants would only serve to cause a needless extension of this opinion, it being the position of the court that arguments as to right of privacy are without merit. The court suggests that the City of Tulsa pass an ordinance prohibiting any specific conduct it may deem advisable, but that it do so while refraining from the use of such broad language and providing the benefit of delineated standards by which violative conduct may be ascertained.



Laurence A. Yeagley, Presiding Judge
Municipal Criminal Court