IMPLICATIONS OF REED

- Retroactivity -

While the California Supreme Court explicity held its ruling in Pryor v. Municipal Court (1979) 25 Cal.3d. 238, to be retroactive, nothing was said about retroactive application of Reed. However, the holding itself makes exploration of such an issue unnecessary.

If the registration statute is unconstitutional and void as applied to those convicted of violating section 647(a), then the trial courts are without jurisdiction to require registration in any cases now pending. Further, from the time the decision is final, police departments and the department of justice will also be without jurisdiction to maintain on their registration lists 647(a) violators. This is not retroactive, but prospective application of the law, since it is not the act of registering which is cruel or unusual under the state Constitution, but rather the state of being registered, of carrying the "ignominious badge" and enduring the continued disabilities which attach to or are a natural consequence of registration.

- Application to all defendants -

If the Court's decision were based only on the unlikelihood of Mr. Reed's being a recidivist, or on the fact that no violence or children were involved in his fact situation, then the opinion would not necessarily be applicable to all 647(a) violators.

However, the Court made it clear that its rationale included the fact that more serious crimes in California are not punished by registration and that other states do not require such a punishment. Therefore, registration is cruel or unusual as to all such violators. Implicit in the Court's opinion is the notion that a crime of violence or a crime involving children will be charged as such under one of the many penal code sections available for that purpose, several of which are registerable.

- Plea bargaining

While registration was a primary reason for plea bargaining to a non-registerable offense, it was never the only reason. In fact, the Long Beach judges and prosecutors, who never required registration for 647(a) violators (even though the law required it -- because the judges in that jurisdiction felt registration in such cases was at least inappropriate and probably unconstitutional), still engaged in the practice of plea bargaining to P.C. section 415.

Moral Turpitude.

Although no longer registerable, 647(a) offenses remain crimes of "moral turpitude" which have grave implications in military, immigration, teacher, hospital worker, and professional licensing cases. A conviction, and in some cases a mere arrest, for such a crime invites a special inquiry which may result in loss of profession or employment. Such is not a natural consequence of other "normal" misdemeanors such as P.C. section 242, battery. Yet a battery may be violent and dangerous, much more so than most of the "minor indiscretions" (involving no citizen complainants) which fall into the 647(a) category.

The heightened disability which is attached to "lewd conduct" can be understood historically, since less than a decade ago, even consenting adult homosexual behavior in private could be punished by up to life imprisonment. While the law has changed in this area, much of public and law enforcement attitude has not. Therefore, the loss of ability to plea bargain to a crime not involving moral turpitude or extroardinary collateral disabilities may, for many, continue to be as harsh or more harsh than the threat of registration.

For some, most noteably teachers, loss of state license (credential) remains an "automatic" disability which follows from conviction of 647(a). Under the "no plea bargain" rules, a teacher must either plead straight up (an untenable thought) or risk pitting

his credibility against that of the vice-officer in a trial. Again, loss at trial means automatic loss of credential to teach, a tremendously harsh result, especially considering the "minor" nature of the crime, with no "traditional victim", and especially in light of the tendency of some vice-officers to exaggerate their testimony. Other misdemeanor offenses carry no such risks regarding automatic loss of career.

Loss of Benefits of Reed.

The numbers of people negatively affected by a no-plea-bargain policy are much more significant than the numbers of those who suffered because of registration. Reed righted an injustice which remained a part of the state's Penal Code; however, it was only a small part of the total injustice created by 647(a). It is ironic that the practical effect of Reed might be to create an even greater injustice for more people. The integrity of the law cannot be considered in a vacuum, but must include a concern about the practical manifestations of use of the law in the lives of human beings.

- Filing guidelines -

A number of different prosecutorial offices are filing different charges or combinations of charges in the same basic fact situations. The list below illustrates the problem:

		COMMENT
1.	242	This is a normal misdemeanor with no unusual effects. The crime involves an offensive touching.
2.	242 + 647(a)	This double charge adds a crime of moral turpitude which carries many collateral disabilities, including loss of teaching credential. The second charge requires the presence of a potentially offended observer. If the facts allege only a touching of a vice-officer and the defendant wants

to dispute whether the officer "consented," charging a 647(a) in addition is an effective way of intimidating the defendant into not going to trial, especially if the defendant holds a professional or state license of any kind.

3. 647(a) This crime of moral turpitude is appropriate in a complaint when the actor participates in some sexual touching in a public place when he ignores the presence of a potentially offended observer.

4. 647(a) + 314.1 This added charge implies the intentional drawing of attention of a member of the public to one's genitals to offend or arouse, the proverbial "flasher" situation. This crime not only involves moral turpitude, but is also registerable and priorable, that is, a second conviction would be a felony. When a sexual touching takes place on a deserted beach at 2:00 a.m. behind a tree with no one present to observe except a vice-officer who has sneaked up on the pair, a charge of 314.1 is inappropriate. In addition, it has employment implications for certain jobs simply by virtue of the charge being filed, even if there is no conviction (i.e., for hospital workers or doctors).

5. 314.1 This charge is appropriate when a defendant intentionally thrusts observation of his or her sexual organs on members of the public.

6. 242 + 647(a) + 314.1 Overkill, without regard for the legal or human consequences or the facts of the case or the integrity of the legal system.