

CRAIG W. PATTON

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March 15, 1973

Gerald A. Gerash, Esq.  
Gerash, Gerash & Davis  
Suite 2317 1700 Broadway  
Denver, Colorado 80202

Dear Gerald:

This is to acknowledge receipt of your letter dated March 11, 1973 wherein you requested information respecting the National Gay Law Conference and other assistance in preparing certain cases pending in Denver.

The National Gay Law Conference can be described, at best, as being in embryo stages of development. It was procreated as a result of a meeting in Buffalo New York last November by members of the National Committee for Sexual Civil Liberties and other individuals interested or trained in law as a tool for obtaining gay civil liberties. At present the workhorse organization being utilized in this area by Tom Coleman, myself et al. is the National Committee for Sexual Civil Liberties. Attached to this letter is a memorandum which adequately describes the internal structure and activities of the Committee.

Although membership in the National Gay Law Conference and the National Committee is in many instances interlocking the underlying reason for two organizations is that the Conference, as its name implies is concerned with strictly "gay" matters while the National Committee, at least ostensibly, as described in the memorandum, committed to a broad spectrum



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of sexual rights both straight and gay. In this latter instance we have been obliged to take a broader policy orientation for purposes of funding from straight organizations and to secure support and expertise from straight individuals who would not otherwise be motivated to work for strictly gay matters. In this regard your attention is directed to memorandum written by our co-chairman, Dr. Arthur C. Warner, which is in support of our request for financial assistance from the American Civil Liberties Union.

With respect to your upcoming offensive against the Denver "lewd offer" ordinance and its oppressive and discriminatory enforcement by the Denver Police Department I will, as you requested, make some suggestions and enclose some materials which may prove useful.

First, I suggest you contact William F. Reynard, Esq., a Denver attorney and member of the Committee. His address is:

William F. Reynard, Esq.  
Reynard & Dowart, P.C.  
Suite 719, University Bldg.  
Denver Colorado 80202

Bill Reynard has done extensive work in this area and had recently been successful in having the Colorado solicitation statute declared unconstitutional. This was at the trial level on a motion for dismissal---the case is now on mandatory appeal in that the constitutionality of a state statute is involved.

I agree wholeheartedly with you that ordinance in question can be successfully attacked on grounds of vagueness. Further, your interest in the issue of discriminatory enforce-



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ment is well taken. Under the Yick Wo rationale it is possible to establish the unconstitutional application of the statute. The more salient application of the discriminatory enforcement doctrine, is, however, in my estimation, prima facie evidence of vagueness and overbreadth of the ordinance.

I also suggest you, again, contact Tom Coleman, who is presently involved in a case challenging the vagueness of the word "lewd" as it is used in these ordinances. I understand several linguists have been called to testify in the case as to the uncertain meaning of the word. I suspect that their testimony is that the varying moral codes of individuals attribute diverse meanings to the word "lewd".

Finally, I would like to suggest another attack on the ordinance which you have most likely considered but did not mention in your letter. For some time now our Committee has felt that solicitation statutes in states, such as Colorado, where inter alia sodomy statutes have been repealed, are unconstitutional under the first amendment. The reasoning is equally applicable to "lewd offer" ordinances. A lewd offer or proposal, like a solicitation ( if there is a distinction) is a verbal crime which unless falling under a recognized exception is protected by the first amendment as being speech. Historically, solicitation for the commission of a crime has been recognized as not falling with the protection of freedom of speech. It is our strong belief, therefore, that in jurisdictions such as Colorado where the proposal is for a legal act the speech involved is ~~speech involved~~ is constitu-



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tionally protected. The only countervailing argument to this position is somewhat strained, however, should be anticipated---this is, the legal but lewd act which is solicited or proposed is itself obscene and therefore the proposal to engage in same is also obscene. Obscene language is another long recognized exception to the first amendment. Many disagree with me, however, I personally believe this latter defense is not worth the paper it is written on. This is because the obscenity exception has been employed only where the obscenity has been for public consumption (e.g. Stanley v. Georgia upheld the right to possess obscene material in private). Secondly, the obscenity issue has revolved around specific visual representations which have been specifically prohibited by statute. In the ordinance in question it is the verbal act of making the proposal and not the obscene content of the words which the law attempts to prohibit (i.e. the law is too overbroad to be interpreted to contemplate the issue of obscenity). Finally, the only instances where verbal communications have been excepted from the first amendment (as opposed to written or pictorial representations) has involved incitations to crime, e.g. fighting words (reasonably calculated to incite an assault) inciting to riot, conspiracy to commit a crime etc.

I have enclosed the following with this letter:

- 1- Memorandum to Ayer Neier which details the Committee.
- 2- "Discriminatory Enforcement of the Law as a Defense to Criminal Prosecution"



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a paper written by Tom Coleman Richard Angel. This paper fully details the mechanics and issues respecting discriminatory enforcement. You will note the yeoman's work required to factually establish the defense.

- 3- United States of America v. Demetria Moses et al.---This case ably details many arguments and defenses pertinent to your problems.

I trust that the above and enclosed will be of some assistance to you. I am sending a reproduction of this letter to other members of the committee along with a copy of your letter and memo to me. If they have any further suggestions respecting your case I urge them to contact you. With respect to your request to be placed on our mailing list, regretablely and unhappily, at this time, xerox and mailing costs oblige us to limit our distributions to only a few members of the Committee. I, however, will be happy to send you covering memoranda which accompany distributions. These memoranda in most instances summarily describe accompanying distributions, and, if any document is of particular interest to you, upon specific request I will be only too happy to make these materials available to you.

With the most sincere wishes for your future success,

I remain,

Very truly yours,

*Craig*  
Craig W.. Patton

*Please excuse  
the typing*



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March 20, 1973

Mr. Craig W. Patton  
218 East State Street  
Columbus, Ohio 43215

Dear Craig:

Thank you so much for your letter of March 15, 1973 along with the enclosed legal material. I have skimmed through some of it, and I am sure we will be benefited by them. However, I want to dictate this letter to you right now in appreciation for your prompt and generous response.

Bill Reynard whom you mentioned in your letter is working with me on the Legal Committee, and is the ACLU person I mentioned in my letter to you.

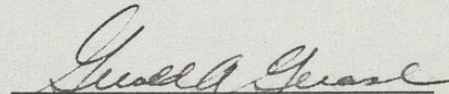
I agree with your analysis regarding the distinction between verbal speech between two people which is allegedly obscene and the "obscene" speech which is intended to have wide distribution. The Gooding v. Wilson case decided last year by the United States Supreme Court and the Per Curium decisions by the same court following the Gooding decision, further supports this argument.

I hope to be corresponding to you in the near future, but certainly I will let you know as to what has happened regarding the pending criminal prosecutions and the proposed injunctive/declaratory relief action arising out of the recent police harrassment of gays in Denver.

Best regards.

Yours very truly,

GERASH & GERASH

  
Gerald A. Gerash

GAG:pw

Encl.

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P.S. Enclosed is a check in the amount of \$4.00 to cover  
the costs for reproducing the material you sent me.

G.A.G.