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8 MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT
9 COUNTY OF LOS ANGELES, STATE OF CALIFORNIA
10

11 PEOPLE OF THE STATE OF CALIFORNIA,)
12)
13 Plaintiff,) No.
14 -v-) DEMURRER TO COMPLAINT
15) (Section 647(b)P.C.)
16 FABIAN FARNIA,)
17 Defendant.)
18)

19 Now comes the defendant and demurs to the complaint charging
20 him with a violation of subdivision (b) of Section 647 of the
21 California Penal Code, i.e., soliciting for an act of prostitution.

22 The defendant asserts that the court lacks jurisdiction to
23 proceed in this matter, other than to hear and decide the demurrer,
24 for the following reasons:

25 1. This subdivision is unconstitutionally vague in that
26 the definition of "prostitution" is dependent on the meaning
27 of the term "lewd."

28 2. This subdivision is unconstitutionally vague in that
29 the definition of "prostitution" is dependent on the meaning
30 of the phrase "or other consideration."

31 3. This subdivision is unconstitutionally overbroad in
32 violation of the state and federal constitutional protections
33 of freedom of speech in that it prohibits all requests to
34 engage in sex for a consideration regardless of whether the
35 request is made in public or in private, is discreet or
36 offensive, or whether the parties are strangers or intimates,

1 whether the consideration is commencial or social, whether the
2 sexual acts suggested would be performed for recreational or
3 theraputic reasons, or whether the consideration is for a
4 lawful or an unlawful act.

5 4. The state and federal constitutions guarantee each
6 person the right to privacy. Persons above 18 years of age
7 have the right to engage in consenting sexual activity in
8 California, so long as that activity occurs in private. It
9 is a violation of that right to privacy to restrict the right
10 to offer or receive ^{IN PRIVATE} any form of consideration for such legal
11 activity. As a result subdivision (b) is unconstitutional.

12 5. This section is further violative of the right to
13 privacy and is overbroad in that it infringes on the rights
14 of patients undergoing psychological treatment to participate
15 in therapy involving the use of sexual surrogates who are paid
16 a fee for participating in such therapy. This section in-
17 fringes on the decision of both the doctor and the patient in
18 that it prohibits the use of paid sexual surrogates even
19 though this may be the recommended form of therapy.

20 6. Sex is a basic right guaranteed by the state and
21 federal constitutional provisions of freedom of speech,
22 right to privacy, life and liberty under the due process
23 clauses, and other rights reserved by the people under the
24 Ninth Amendment to the United States Constitution. Section
25 647(b) violates these provisions by prohibiting sex for a
26 consideration under any and all circumstances, without
27 a compelling state interest.

28 7. By denying sex for any consideration, Section 647(b)
29 is violative of the due process clauses of the state and
30 federal constitutions in that such a restriction is arbitrary,
31 unreasonable and irrational.

32 8. Section 647(b) is violative of equal protection under
33 the state and federal constitutions in that the state allows
34 persons over 18 to engage in any form of consenting sex in
35 private and to solicit for such conduct, but 647(b) deprives
36 persons of the right to engage in such conduct or solicite for

1 such conduct if any form of consideration is involved. This
2 deprives persons of engaging in private sexual conduct who can
3 not find sexual partners without offering some form of consider-
4 ation, thus condemning such persons to lives of celibacy; there
5 is no rational state interest in forbidding the offering of
6 consideration by such a person when the offer is made in private
7 to another consenting adult.

8 9. Section 647(b) violates the constitutional doctrine of
9 Separation of Church and State in that there are no independent
10 secular purposes for the proscription contained in the section,
11 and the acts are not malum in se; the only basis for such a
12 sweeping prohibition is historical religious law.

13 10. The solicitation portion of Section 647(b) is violative
14 of equal protection in that it allows a conviction to be based
15 upon the uncorroborated testimony of one witness. The general
16 solicitation statute which prohibits soliciting a crime, namely,
17 Section 643(f) P.C., requires either two witnesses or one witness
18 and other corroborating circumstances. Section 647(b) does not
19 have any such safeguard, and there is no rational justification
20 for the distinction.

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22 For the foregoing reasons, any one of which is sufficient,
23 the defendant requests that this court sustain the demurrer.
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25 DATED: November 13, 1979
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THOMAS F. COLEMAN
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