

NATIONAL COMMITTEE FOR SEXUAL CIVIL LIBERTIES

September 8, 1979

BULLETIN REGARDING CALIFORNIA LEWD CONDUCT CASE VICTORY

In what NCSCL co-chairman Arthur Warner called "one of the most important developments in our Committee's history," the California Supreme Court filed an opinion September 7 that exceeded NCSCL hopes in its case challenging the validity of California's lewd conduct and solicitation statute.

If other State supreme courts follow the California court's reasoning, a gloss protective of sexual civil liberties will be supplied for those States' lewd conduct or public indecency laws as well.

According to NCSCL co-chairman Tom Coleman, who was co-counsel for plaintiff in the case, the decision was virtually unanimous on the main points. Two justices filed separate concurrences in the result, and the one justice who dissented did so only on the question of the opinion's retroactive application, Coleman said.

Coleman sees the opinion as being applicable to an immense number of prior California convictions because of its retroactivity.

The case--*Pryor v. Los Angeles Municipal Court*, No. LA 30901--drew the amicus curiae participation of the NCSCL itself through a brief written by Arthur Warner.

According to Coleman, who received word of the court's ruling while in San Francisco for a deposition in NCSCL's suit against the Sheraton-Palace Hotel and rushed to the court clerk's office just before closing to pick up his copy, the main holding of the court is that a constitutionally specific definition of lewd conduct must be limited to conduct of a type likely to offend.

The court held, according to Coleman, that the California statute and its prior judicial constructions were unconstitutionally vague but that the statute can now be construed in a constitutional manner through the guidelines now enunciated. He said that those guidelines include: (1) the conduct has to involve a touching of the genitals, buttocks, or female breast; (2) it must be for purposes of sexual arousal, gratification, annoyance, or offense; (3) the actor must know or reasonably be expected to know of the presence of persons who may be offended; (4) the conduct must be in public view.

Further details will appear in the NCSCL *Newsletter* and *SexualLaw Reporter*. In the meantime, besides being potentially applicable to "tens of thousands of prior cases," Coleman sees the decision's importance as resting also on the constitutional standards announced, which should inhibit legislative efforts to broaden the future scope of "lewd conduct."

--Bill Kelley