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1981 LITIGATION DOCKET

<u>1.</u>	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	People v. Onofre People v. Peoples, Gross, Sweet	U.S. Supreme Ct.		William Gardner Buffalo, New York

ISSUES: Does a state law prohibiting unmarried adults from engaging in private acts of sodomy violate constitutional protections?

STATUS: Petition for certiorari in U.S. Supreme Court filed by county prosecutors after New York Court of Appeals (on 12-17-80) declared state's sodomy law unconstitutional in violation of right to privacy. NCSCL will continue its status as amicus curiae should be Supreme Court grant certiorari.

<u>2.</u>	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	City of Tulsa v. Carmack	Oklahoma Court of Criminal Appeals	0-79-58	Thomas F. Coleman Los Angeles, CA  Michael Salem Norman, Oklahoma

ISSUES: Does an ordinance which prohibits soliciting or engaging in a lewd act violate protections of due process because of its vagueness?

STATUS: After the Municipal Court declared the statute unconstitutional, the City appealed. NCSCL filed an amicus curiae brief in the appellate court. Case was argued and submitted to the appellate court on June 18, 1979. Waiting for opinion.

<u>3.</u>	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	State v. Tusek	Oregon Court of Appeals	CA19478	Thomas F. Coleman Los Angeles, CA  Patricia A. Vallerand Eugene, Oregon

ISSUE: Does a state law prohibiting the solicitation of deviate sexual intercourse violate the protections of freedom of speech under the federal and state constitutions?

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STATUS: After the trial court dismissed constitutional challenges, the defendant was convicted and appealed. NCSCCL filed an amicus curiae brief in the Court of Appeals. Oral argument will be scheduled shortly.

<u>4.</u>	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	Steve P. v. Appellate Dept, et al.	Calif. Supreme Ct.	2 Civil 64524	Jay M. Kohorn Los Angeles, CA  Thomas F. Coleman Los Angeles, CA

ISSUE: Does a state law prohibiting loitering for the purpose of soliciting or engaging in lewd or lascivious conduct violate due process (vagueness), free speech protection (overbreadth), and requirements for probable cause (insufficient standards for arrest) under the state and federal constitutions?

STATUS: Petition for hearing filed in Supreme Court on March 26, 1981 after denial of writs of certiorari and/or prohibition in the Court of Appeal. Law offices of Thomas F. Coleman, by Jay M. Kohorn and Thomas F. Coleman representing petitioner. NCSCCL provided research material and NCSCCL by Don Gaudard filed amicus curiae brief in Court of Appeal. Waiting for decision by Supreme Court as to whether a hearing will be granted.

<u>5.</u>	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	People v. McConville	Calif. Court of Appeal	2 Crim 39105	Jay M. Kohorn Los Angeles, CA  Thomas F. Coleman Los Angeles, CA  Marge Rushforth Orange, CA

ISSUE: Does the California Supreme Court decision of Pryor v. Municipal Court (1979) 25 Cal.3d 238, which redefined California's lewd conduct statute, require the actual presence of an observer who may be offended or merely the possibility of the presence of such an observer in order for a public lewd act to be criminal?

STATUS: Opinion by the Court of Appeal, 2d Appellate District, Division Two, filed April 14, 1981 held that actual presence of an observer is not required and merely the likelihood of such a presence is required in order for lewd conduct in public to be criminal. That decision notes that vice officer enticement is required and approved of by the court in enforcing the lewd conduct statute. Law offices and Thomas F. Coleman and Jay M. Kohorn joined as co-counsel in this case. Petition for re-hearing will be filed and if denied petition for hearing in Supreme Court of California must be filed by April 18, 1981.

6.	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	In the matter of the application of Thomas F. Coleman on behalf of Allen Eugene Reed	Los Angeles Superior Court	APHC 000095	Thomas F. Coleman Los Angeles, CA

ISSUE: Does California's statute requiring persons convicted of lewd conduct to register as sex offenders violate due process, equal protection, right to privacy, intra-state travel, or cruel and unusual punishment, under state and federal constitutions?

STATUS: Petition for writ of habeas corpus summarily denied. The petition for writ of habeas corpus must now be filed in California Court of Appeal.

7.	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	People v. Mendoza	Calif. Court of Appeal	2 Crim. 39600	Arnold Paul Santa Barbara, CA  Thomas F. Coleman Los Angeles, CA  Jay M. Kohorn Los Angeles, CA

ISSUE: Same as In re Reed, above.

STATUS: Certification of case to the Court of Appeal by the Appellate Department of the Santa Barbara Superior Court to resolve important constitutional issues was denied by the Court of Appeal. Petition for writ of habeas corpus to Court of Appeal and ultimately to California Supreme Court must be prepared and filed in late June or early July.

8.	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	People v. Joseph	Calif. Court of Appeal		Thomas F. Coleman Los Angeles, CA

ISSUE: Does the Supreme Court decision of Pryor v. Municipal Court, *supra*, require the actual presence of a person who may be offended or merely the likelihood of such presence; was the arresting officer who observed the defendant's conduct through binoculars from a distance "present" within the meaning of Pryor?

STATUS: In a two-to-one decision the conviction was reversed by the Appellate Department of the Ventura Superior Court, but was certified to the Court of Appeal to resolve an important question of law. Awaiting decision by the Court of Appeal as to whether it will accept certification of the case.

9.	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	People v. Vigner	Appellate Dept. Los Angeles Superior Court	CR A 18321	Thomas F. Coleman Los Angeles, CA  Jay M. Kohorn Los Angeles, CA

ISSUE: Does California's statute authorizing the sealing of criminal records require such sealing in a lewd conduct case in which an acquittal was based upon the insufficiency and lack of any evidence to show that the defendant "knew or should have known of the presence of persons who may be offended."?

STATUS: Municipal Court order denying sealing reversed by Appellate Department in an opinion and judgment filed April 15, 1981. Court held that sealing under such circumstances is required. Decision must be made as to whether to petition Appellate Department to certify the case for publication.

10.	<u>CASE</u>	<u>COURT</u>	<u>NUMBER</u>	<u>ATTORNEY(S)</u>
	People v. Wolf	Appellate Dept. Los Angeles Superior Court	CR A	Jay M. Kohorn Los Angeles, Ca

ISSUE: Does California's statute prohibiting the soliciting or engaging in the act of prostitution violate the right to privacy, due process of law, and freedom of speech protections under the state and federal constitutions?

STATUS: Appeal recently filed in Appellate Department after constitutional challenges in Municipal Court were dismissed. Prepare and file Appellate briefs.

This is a brief summary of litigation in which the NCSCCL litigation project is directly involved. Individual members of NCSCCL are involved in several important cases involving constitutional issues in various parts of the country. Also the NCSCCL litigation project is providing consultation services to other attorneys and organizations involved in litigation of interest to the National Committee.