Designating Clothing-Optional Recreational Areas within the California State Parks System

A Proposal for the Consideration of
The Parks Forward Commission and the
California State Parks and Recreation Commission

Submitted June, 2014

Table of Contents

FORWARD

After dozens of different advocates for nude recreation appeared and gave testimony at many of your Parks Forward hearings, we have been asked to provide your Commission with a proposal on how to implement a clothing-optional policy within the State Parks system.

Representatives of naturist and nudist groups in California put their heads together and came up with a proposal that represents our best thinking on how to allow fair access to the state park system for all of its diverse users, including naturists. This document and its support exhibits is that proposal. We want to make it clear that we are advocating a naturist (clothing-optional) policy at these sites, not a nudist (nudity is mandatory) policy.

We are grateful for your promise to review our thoughts and ideas with the other commissioners. We are prepared to meet with you, the commission, and other staff members at any time to answer any questions or to discuss this proposal further.

We are prepared to do our part to achieve a successful implementation.

Sincerely,

Gary L. Mussell
Friends of Bates Beach

Rolf Holbach,
President, Southern California Naturist Association

The 2008 report of the Hoover Commission about the State Parks System concluded, “ALL beach users should have equal access to California's beaches…and that it helps the state better serve the diverse recreational interests of the public.”

Even though naturists are not (yet) mentioned in your draft report to the Legislature and the Governor, clothing-optional use of the park system has been going on since before there was a park system. Naturists continue to populate a wide variety of locations throughout the state where clothing-optional use has been traditionally enjoyed on numerous beaches, hiking trails, lakes, rivers, waterfalls, and reservoirs.

It is our conclusion, therefore, that the naturist community deserves to be part of this Commission’s recommendations to the Department in its final report.

I. WHY ALLOW CLOTHING-OPTIONAL RECREATION?

Because:

1. It is a traditional and legitimate function of the State Park System to **provide facilities for users** with special interests. Certain park areas today are designated for hunting, for example, others for off-highway motor vehicle recreation, for camping and picnic areas, for bicycles or bridle trails, and some park areas have been declared wilderness zones that are off limits to everyone except the native plants and animals who live there. Clothing-optional recreation is simply another legitimate use, which is enjoyed year-around on beaches, at secluded lakes and rivers, and along many hiking trails throughout the system. Some of these places have been traditionally used by naturists for many decades.
2. A sizeable **majority of the people of California favor the idea** of designated areas for clothing-optional recreation (79% of a 2009 California Zogby poll*). The same poll revealed 40% percent of all California adults say they have skinny-dipped or experienced nude sunbathing with others. That calculates to several million people!
3. In recent years, several **California court decisions*** have consistently found simple nudity, absent lewd behavior, is not indecent.
4. Statistics regarding illegal activities in these traditional clothing-optional areas **do not show a significant correlation** with nude recreation, but may be associated instead with the remoteness of many of these areas. Encouraging legitimate use and monitoring of less-used areas of beach and parkland has been shown to reduce criminal activity and drug use.
5. It won’t cost anything more than a few posted signs at the beach, lake or along the trail announcing the clothing-optional designation.

** Material supporting these facts may be found in the Appendices of this report.*

6. The naturist community will continue to **generate several million dollars of income** to the state parks* and adjacent local communities. Businesses near these designated areas will receive additional income to their restaurants, hotels and motels, food markets, and gas stations.
7. Naturists have demonstrated they are **good stewards of the land** and are generally supportive of preserving the natural environment. Our groups always attempt to pack out more trash than we bring in to any designated area.
8. Naturists are simply not going to go away. Some accommodation for naturist recreation needs to be made. In the words of your Parks Forward Commission Working Draft of April 23, 2014, "We have a vision for California's parks that focuses not only on protecting our state's natural and cultural resources, but also on **ensuring access to parks for all Californians**" (page 10).

II. HOW TO IMPLEMENT A CLOTHING-OPTIONAL RECREATION POLICY

A. Authorization

How exactly is a legal clothing-optional policy to be accomplished? The answer is surprisingly simple:

Moving ahead requires **no new legislation, no need for new regulations, and no need for any pilot program. State Parks already has the power** to designate areas within its jurisdiction for clothing- optional use under California Code of Regulations, title 14, section 4322:

> "No person shall appear nude while in any unit [of the State Parks System] except in **authorized areas set aside for that purpose by the department**."

In other words, the **Department has all the authority it needs** to designate and set aside areas for clothing-optional use. All that is needed is a willingness for the Commission to direct it to do so.

B. Traditional Beaches

Even though clothing-optional beaches have never been officially designated by the Parks Department, thousands of people in this state continue to use state park beaches for clothing-optional enjoyment. These beaches exist up and down the California coast and have been traditionally clothing-optional for decades. It is to the Park's Department advantage to channel these people onto selected beaches where naturist areas can be clearly marked and controlled.

We can identify six such state beaches along the Pacific Ocean where nudity has been traditionally accepted, and where groups of beach users have organized into clubs or "friends" groups to "adopt" their beach for the purposes of monitoring visitor behavior and making sure these beaches are clear of trash.

These beaches (and user groups) are:

** Material supporting these facts may be found in the Appendices of this report.*

- Bonny Doon State Beach, Santa Cruz (Bay Area Naturists)

From Santa Cruz, go north on CA Hwy 1 to milepost 27.6. The north end has been used for clothing-optional sunbathing for decades. A 15-foot long rock on the sand, along with a sloping cliff with rocks that jut out, separates the two sides of the cove — one for clothed visitors and the other for naturists.

As for nudity, Kirk Lingenfelter, sector superintendent for Bonny Doon and nearby state beaches says his rangers, who periodically patrol the beach, haven't issued a single warning or citation for nudity since the state approved the acquisition of the beach in 2006. "We'll respond to complaints we receive," he explains, "but I can't recall (receiving) a single complaint."

- Gaviota State Beach, Santa Barbara County (Friends of Gaviota)

Gaviota State Park is about 33 miles north from Santa Barbara along the 101 freeway. The traditional clothing-optional beach section is at the southern end of Gaviota State Beach, past the petrochemical plant.

- San Onofre State Beach, San Clemente (Friends of San Onofre Beach)

Until 2009, Trail 6 had been a traditional clothing-optional area for decades. Some complaints about inappropriate activity in the trail 4 parking lot caused the new area superintendent to close Trail 6 to nude use after he erroneously concluded that the existence of the nude beach must have caused the different activity a mile away.

Some naturists continue to use the area, but they illegally cross onto the Camp Pendleton marine base property to do so. With a proper Beach Watch Ambassador program in place, we are convinced a return to Trail 6's traditional use can be negotiated.

- Torrey Pines State Beach , San Diego (Friends of Black's Beach)

The most popular traditional clothing-optional beach in the state, known as Black's Beach to the locals, this spot draws up to 5,000 visitors on a hot summer weekend. Our local polling estimates that tourists to this beach pump over $21 million into the local economy each year.

The Friends of Black's Beach group there actively patrols the beach reminding visitors about proper beach behavior.

- Indian Head Beach, Fort Ord Dunes State Park, Monterey County

Since reverting to civilian use, the beaches of Fort Ord have developed a clothing-optional tradition. To the best of our knowledge, no one has ever filed a complaint about nudity at Indian Head Beach, in the Fort Ord Dunes, south of the southern boundary of the pre-existing Marina State Beach.

.

- Gray Whale Cove, San Mateo County

Also known as Devil's Slide, this beach is off Highway 1, about five miles south of the town of Pacifica.

Despite the recent threat of park closure, Gray Whale Cove continues to attract clothing-optional sunbathers.

San Mateo coast state parks sector superintendent Paul Keel was quoted recently in a local newspaper as saying “Clothing-optional sunbathing [at Gray Whale Cove] has been continuing, with few problems…We're not having an increase in (complaint) calls there."

Inland, there are two other parks that have areas with traditionally clothing-optional use:

- Auburn State Recreation Area, Placer County

The park (which is 20 miles long on two forks of the American River) is situated south of Interstate 80, stretching from Auburn to Colfax. The main access is from Auburn, either on Highway 49 or the Auburn-Foresthill Road.

The traditional clothing-optional area is about a half-mile north of where the bridge crosses the American River

- Henry Cowell Redwoods State Park, Santa Cruz County

The “Garden of Eden” is a popular creekside skinny-dipping spot located in Henry Cowell Redwoods State Park, between Santa Cruz and Felton.

It is also used by suited swimmers and sunbathers, and the unofficial rule is live-and-let-live by the mostly college-age crowd that hikes there. Signage at the trail head is definitely one of our recommendations so that people who do not know about its clothing-optional status will not be surprised and can choose to go there or not.

State Beach Recommendation

#1: In order to be declared a legal clothing optional area at a state park beach or park, there must be an active sponsoring group, whose members will visit this beach or park as often as practical, distributing behavior guidelines to the visitors there, managing any necessary signage, and doing their best to keep the area free of trash.

#2: There is no need for a test site or two. These eight locations have had traditional clothing-optional use for decades with established user groups, ready to lead today. It will be important that these user groups and the local rangers and superintendent have an open line of communication and periodic meetings to clear up any problems that may arise in the future. Until recently, meetings have been taking place at several of these locations, and we believe it is important to re-establish the rapport thus generated.

#3: In the future there could be other state park beaches that, over time, develop their own clothing-optional tradition. When that happens, we recommend the following procedure be implemented by the parks department: (a) a sponsoring group must be organized at that location who will work with the local park rangers and law enforcement by performing the duties described above. (b) The area superintendent and his/her park rangers will make every effort to work with the sponsoring group to decide where the boundaries will be for any clothing-optional area and to arrange appropriate signage to avoid any potential park visitor/user conflict.

#4: At some of these state park locations, it may be necessary for the sponsoring group to organize a system of **Beach Ambassadors***. These will act like a Neighborhood Watch for the area, supplementing visits there by the park rangers by periodically walking the clothing-optional area, distributing **Beach Etiquette information**, and convincing anyone there for the wrong reasons to leave. This Beach Ambassador system has been a success on the East Coast at such clothing-optional beaches as Gunnison in New Jersey and Haulover in Florida where several thousand beachgoers or more visit these beaches on any given summer day. This is not a perfect system, but where it has been used it has cut the drug selling and other criminal behavior to minimal levels (because these abusers will lose the privacy they need in order to do their illegal activities, and so they will go elsewhere.) While Ambassadors and club members cannot be expected to be in the park or beach 24/7, the sponsoring group can promise to be there often enough to be a known asset for the park. This literature and Beach Ambassador information should also be available at ranger stations, points-of-park-entry, and other negotiated locations so that visitors can learn the law and rules regarding clothing-optional use of the local park.

#5: Signage.

We recommend that signs be posted at the access points of each state park clothing-optional beach to alert visitors of what they may encounter beyond those points. Visitors reading the signs can decide whether or not to continue toward the beach. Examples of signs from existing clothing-optional beaches around the country are shown below.

** Beach Ambassador and Beach Etiquette information may be found in the Appendix of this document.*

The costs of purchase and maintenance of these signs can be negotiated at every beach between the area Superintendents and the sponsoring group. However, naturists groups are prepared to purchase these signs and to maintain them as part of our commitment to this new relationship with the State Parks Department.

C. Hiking Trails, Lakes, and Hot Springs

There are potentially hundreds of lakes, streams, hot springs and hiking trails scattered throughout the State Park system where people enjoy skinny-dipping every day.

These more remote areas of the park system are hard to identify for policy purposes, although we suspect every ranger, deputy, and area superintendent knows where some of them are within their jurisdictions. Some of these traditional areas are along the Sacramento River, the Kern River, the hills near Mammoth Lakes, the Big Sur area, above Ojai and Sespe Creek in Ventura County, and the hills of Monterey, Mendocino, and San Diego Counties, among many others.

Unlike the established parks and beaches, there are fewer local groups available to adopt a hiking trail, hot spring, or river/stream since most of these users will be day hikers or overnight campers who may go skinny-dipping on a whim. A different approach must be taken.

Our Recommendation for Hiking Trails, Lakes, and Hot Springs

#6: We recommend that the area Superintendents and local rangers work in good faith with local representatives of the two national nudist organizations, the American Association for Nude Recreation (AANR) and The Naturist Society (TNS).to designate certain hiking trails, lake areas, and hot springs for clothing optional use. Both AANR and TNS can communicate these approved trails, rivers, lakes, and hot springs to their various clubs and members via social media, etc. The number of clothing-optional locations will evolve over time, and new trails may replace old ones as hiking groups discover new areas to explore.

Therefore, the trailheads of these hiking trails should have adequate signage telling the hikers they are entering a clothing-optional area, so that park visitors can decide whether or not to continue in that direction. Signage should also be posted at the destination lake, hot springs, or river's edge that the area has been designation for clothing-optional use. In some cases, these signs could be temporary so that they can be posted when a known naturist group plans to use the trail and then taken down when that group leaves at the end of the day or weekend.

When there is a process of periodic meetings established between the naturist organizations and the local ranger or superintendent, problems can be discussed and resolved.

#7: If a ranger or deputy finds a nude person in an area where nudity is not permitted, the official may ask that person to get dressed or to go immediately to an area where nudity is allowed. No citation is to be issued unless the nude person does not comply with the official request, or unless the person is caught engaging in other criminal activity.

III. IN CONCLUSION

While the challenges and changes needed to improve the California Department of Parks and Recreation and the parks they oversee are challenging for this Commission, the naturists of California, and those who come to visit our beautiful state, strongly feel that we are one of the groups of park users mentioned in your Draft Report whose needs are not being recognized by the Department.

This proposal addresses our concerns in a manner that recognizes our desire to reverse the recent trend of adversarial encounters with the Parks Department into a more cooperative relationship. We want to be seen as a valuable partner that values, respects, and protects the parks and beaches that we use In short, we want to be treated no different than any other interest group that you now recognize as a valuable partner.

We stand ready to assist the Parks Department to designate nude beaches in the state and to establish rules for their use. We are available for consultation at any time.

Exhibits and Appendices In Adjacent PDF files.

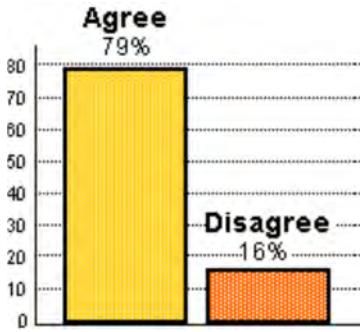
2009 California Zogby Poll

CALIFORNIANS SHOW SUPPORT FOR NUDE RECREATION

A public opinion poll commissioned by The Naturist Education Foundation (NEF) tested the responses of Californians to questions about body acceptance, recreation and personal freedoms. The independent survey of 889 California adults was conducted for NEF by the prestigious Zogby International polling firm from 11/6/09 to 11/9/09. Slight weights were added to age, race, gender, and education to more accurately reflect the population. The margin of error for the entire sample is +/- 3.4 percentage points. The margin of error at the subgroup level is higher. Please note that due to rounding up of percentages the total may not add up to 100%.

QUESTION number 1

Do you agree or disagree that people should be able to enjoy nude sunbathing on a beach or other location that is designated for that purpose?



Agree 79%
Disagree 16%
Not Sure 5%

Question #1 Conclusion and Analysis:

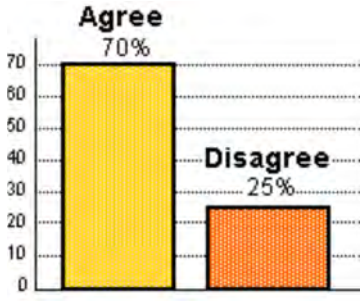
STRONG STATEWIDE SUPPORT FOR NUDE SUNBATHING

Very few Californians object to nude sunbathing that takes place on designated beaches or in other recognized areas. The acceptance of nude sunbathing in California is consistent with national acceptance figures in 1983 (72%), 2000 (80%) and 2006 (74%). Approximately four of every five California adults agree that clothing-optional recreation should be allowed.

- Agreement with Question 1 was high throughout the geographical areas of the state, with a notable peak of 92% in the Sacramento area.
- In San Diego County, where two long established clothing-optional beaches are located in State Parks (Trail 6 at San Onofre State Beach and Black's Beach at Torrey Pines State Park, 78% agreed.
- Even in more conservative Orange County, approval was still high; 70% agreed.

QUESTION number 2

Do you agree or disagree that areas should be set aside for people who enjoy clothing-optional recreation such as nude sunbathing and swimming?



Agree 70%
Disagree 25%
Not sure 5%

Question #2: Conclusion and Analysis:

CALIFORNIANS WANT THEIR STATE GOVERNMENT TO SET ASIDE CLOTHING-OPTIONAL AREAS

The 2009 NEF California Poll indicates that the idea of setting aside areas for nude sunbathing enjoys enormous support. National polls show that public approval for the idea has clearly been building over the years, but governmental agencies have been slow to respond to the emerging demand. Agencies and public land managers must re-evaluate their policies toward the designation of public land for people who enjoy nude sunbathing.

Notable successes already exist where agencies have responded positively to this increasing demand. Among its positive efforts to manage for nude recreation, the National Park Service has recognized clothing-optional areas at the Gateway National Recreation Area in New Jersey and at Canaveral National Seashore in Florida. At the state

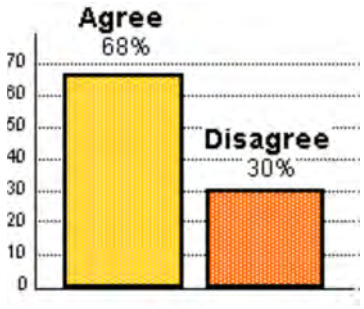
level, Oregon has designated a portion of Rooster Rock State Parks as clothing-optional, and Collins Beach on Sauvie Island has official clothing-optional signage supplied by the State Department of Fish & Wildlife. Miami-Dade County in Florida has shown vision and has reaped economic rewards by setting aside a portion of Haulover Beach for clothing-optional use.

- The majority of all identified racial and ethnic groups favor designation, but support is highest among African-Americans (78.4%) and Hispanics (72.4%).

QUESTION number 3

Do you agree or disagree that people have the right to be nude in their homes or on their property, even if they may occasionally be visible to others?

Agree 68%
Disagree 30%
Not Sure 2%



Question #3: Conclusion and Analysis:

CALIFORNIANS SEE NUDITY AS A PERSONAL RIGHT

In a time of eroding personal freedoms, Californians affirm their support for nudity as a personal right. By a margin of more than two to one, Californians believe that people have the right to be nude in their homes or on their property, even if they may occasionally be visible to others.

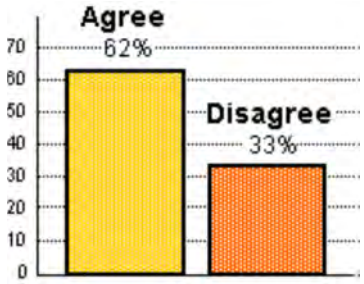
The responses to this question are significant, not only in the contex of personal liberties, but also in the context of a creeping intrusion of "morality" laws into the private spaces and lives of individuals. California state statutes (like the disorderly conduct law, section 647 of the Penal Code) refer to activities that happen in "any public place or in any place open to the public or exposed to public view." This NEF California Poll survey result clearly challenges the acceptability of extending the reach of the law, as it pertains to nudity on one's own property.

Agreement throughout the state is almost equally high among women (67.7%) and men (68.5%).

QUESTION number 4

Do you agree or disagree that the California Department of Parks and Recreation should exercise the legal authority it has to designate clothing-optional areas in state parks?

Agree 62%
Disagree 33%
Not sure 5%



Question #4 Conclusion and Analysis:

SIXTY-TWO PERCENT FAVOR DESIGNATION OF CLOTHING-OPTIONAL AREAS WITHIN CALIFORNIA STATE PARKS

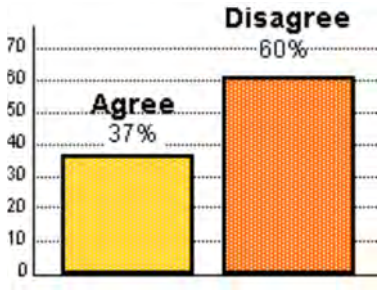
Under Title 14, Section 4322 of the California Code of Regulations, the California Department of Parks & Recreation has the legal authority today to designate clothing optional areas in State Parks. The Parks Department has never done so, a position that that appears to be unresponsive to the public it exists to serve. The NEF California Poll indicates that by an impressive margin, Californians favor the designation of clothing-optional areas in State Parks.

- High rates of agreement exist in areas where traditional (but undesignated) clothing-optional areas are already located in State Park units. The Sacramento area reports **62.5% agreement** with the idea of designating

clothing-optional areas in state parks; Auburn State Recreation Area, located nearby, has seen significant clothing-optional use for decades.

- **Seventy-three percent** of poll respondents in the San Diego area agree that CA Parks should designate clothing-optional areas in state parks. San Onofre State Beach and Torrey Pines State Park are both located in San Diego County, and both have a long history of being clothing-optional beaches.

QUESTION number 5



Do you agree or disagree that you are personally offended by the non-sexual nudity of others?

Disagree 60%
Agree 37%
Not sure 3%

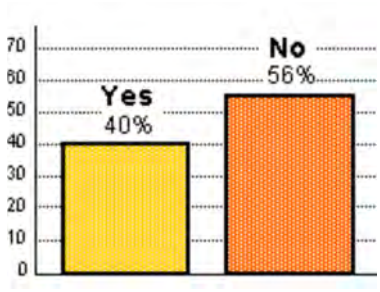
Question #5 Conclusion and Analysis:

MOST CALIFORNIANS ARE NOT OFFENDED BY NUDITY

The notion that most Californians are offended by nudity is shown to be a myth. Sixty percent of California adults say that they are NOT personally offended by the non-sexual nudity of others.

- Within every age group, a majority reports that non-sexual nudity is not personally offensive. Those with college degrees are less likely to agree that they are offended by nudity (26.4%) than those without college degrees (43.9%).
- Regardless, a strong overall majority of Californians disagrees that they are personally offended by the non-sexual nudity of others.

QUESTION number 6



Have you, personally, ever gone "skinny-dipping" or nude sunbathing with others?

No 56%
Yes 40%
Refuse 3%
Not sure 1%

Question #6 Conclusion and Analysis:

TEN MILLION CALIFORNIA SKINNY-DIPPERS?

Forty percent of all California adults have been skinny-dipping or nude sunbathing with others. That calculates to be about 10 million people, more than the entire population of a state the size of North Carolina or Michigan.

- Previous national polling conducted on behalf of the Naturist Education Foundation (NEF Roper Poll 2000, NEF Roper Poll 2006) indicates the level of skinny dippers and nude sunbathers to be approximately 25% of the national population.
- As reflected by the NEF California Poll, a significantly higher percentage of California residents are participants in clothing-optional recreation. Among the California Poll respondents with a college degree, 39.5% answered YES to this question. Among those without college degrees, 41.0% answered YES.

2006 National Roper Poll

NEW NATIONWIDE ROPER POLL SHOWS A MAJORITY NOW SUPPORT DESIGNATED AREAS FOR NUDE BEACHES

Oshkosh, Wisconsin – A new nationwide poll commissioned by the Naturist Education Foundation (NEF) and conducted by the prestigious polling firm of Roper Public Affairs, indicates that close to three-quarters of Americans approve of nude sunbathing on beaches set aside for that purpose.

In the scientific sampling of 1009 U.S. adults conducted recently by Roper, 74 percent of those polled said they believed people who enjoy nude sunbathing should be able to do so without interference from local officials as long as they do so at a beach that is accepted for that purpose. The sustained high approval rating for nude beaches is up slightly from the 72% who responded favorably to an identical poll question posed by Gallup in 1983, and off a bit from the high of 80% who approved in a 2000 poll commissioned by NEF and administered by Roper.

The NEF/Roper Poll 2006 was conducted September 8-10, 2006, and surveyed 1,009 adult U.S. residents. The poll has a margin of error of +/- 3 percentage points. Roper Public Affairs is a subsidiary of GFK-NOP, LLC, an international research business. Responses to other questions in the poll suggest that more than 55 million Americans have, at one time or another skinny-dipped or sunbathed nude in mixed-gender groups.

A majority of Americans favor the proposal that a portion of public land should be set aside by governments for nude recreation, as is often done for other special recreation interests like snowmobiling, surfing and hunting. Approval for government designation of clothing-optional areas has reached 54% in the 2006 survey, up from 39% in 1983 to 48% in 2000. "Public approval has been building continually for designating clothing-optional areas," noted NEF Chair Bob Morton. "But governmental agencies have been slow to respond to the emerging demand. This updated poll demonstrates that the trend is certainly no fluke. A majority now expects governments to respond."

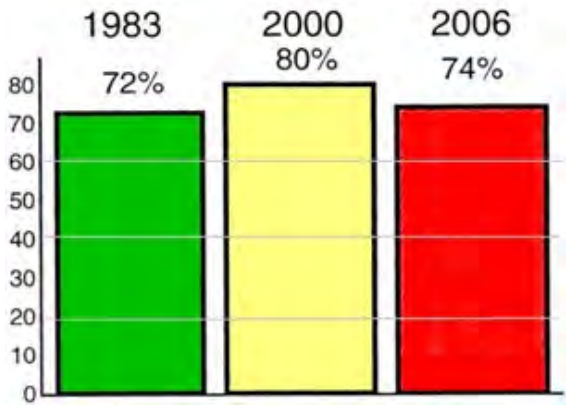
The Naturist Education Foundation, Inc., is the nonprofit educational and informational adjunct to The Naturist Society, an organization with thousands of members who enjoy nude recreation throughout the U.S. and Canada. By gathering and disseminating information, NEF promotes body acceptance and an understanding of naturist issues.

The 2006 Poll Results:

Q1.

Do you believe that people who enjoy nude sunbathing should be able to do so without interference from local officials as long as they do so at a beach that is accepted for that purpose?

Yes	**74%**
No	24%
Refuse to Answer	2%

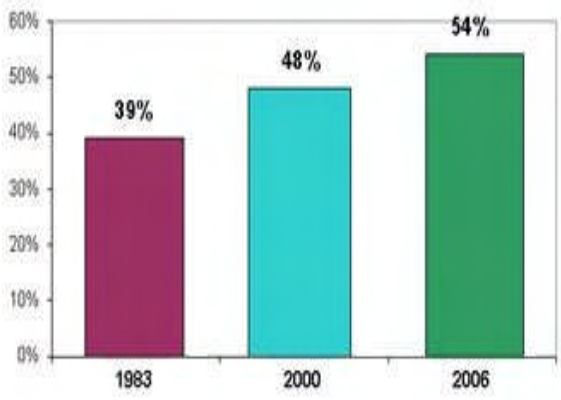


Q2.

Local and state governments now set aside public land for special types of recreation such as snow-mobiling, surfing, and hunting. Do you think special and secluded areas should be set aside by the government for people who enjoy nude sunbathing?

Yes	**54%**
No	43%
Refuse to Answer	3%

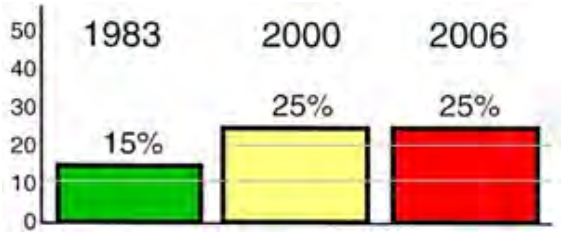
The same question was asked in 1983 and 2000. The graph at right shows how the Yes votes compares over the years.



Q3.

Have you, personally, ever gone "skinny-dipping" or nude sunbathing in a mixed group of men and women at a beach, at a pool, or somewhere else?

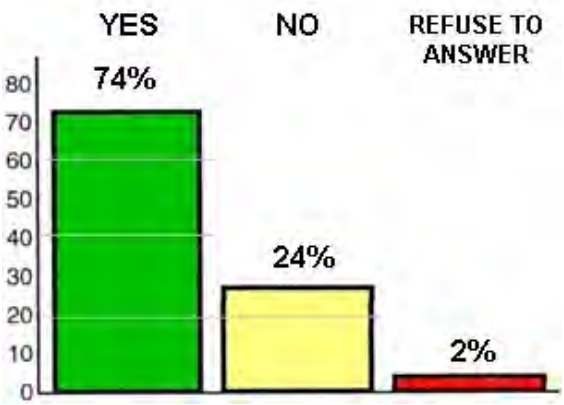
Yes	**25%**
No	73%
Refuse to Answer	2%



Q4.

Do you believe people should be able to be nude in their backyard without interference, if they are not visible to others?

Yes	**74%**
No	24%
Refuse to Answer	2%



The margin of error on all questions is +/- 3%

First published by the Naturist Education Foundation, 10/16/2006. Reprinted with permission.

About the Naturist Education Foundation

NEF is the educational and informational adjunct to The Naturist Society, a membership society serving North America. NEF is a 501(c)(3) nonprofit organization of volunteers.

Naturist Education Foundation
P.O. Box 132
OSHKOSH, WI 54903
TEL (512) 282-6621
FAX (512) 282-2503
EMAIL nef@naturisteducation.org

Maybe You Wondered…

Nude or Clothing-Optional?

Nudity, even at a "nude" public beach, is never a requirement or an exclusionary designation. It's a personal option that many people choose when they're permitted to do so. Places where such a choice exists are often called "clothing-optional."

Who Chose the Questions?

The questions were selected by a subcommittee of NEF board members, inspired by the original 1983 questions of Lee Baxandall, founder of The Naturist Society, and informed and refined by the experience of subsequent NEF polls. Questions were reviewed for form by Zogby International, the independent polling organization that conducted the survey.

Local Poll Results, 2006-2008

PUBLIC SUPPORTS ESTABLISHMENT OF CLOTHING-OPTIONAL BEACHES

JUNE 5, 2008 BATES BEACH

CONDUCTED BY SANTA BARBARA INDEPENDENT

A lengthy article was published on the front page of the *Ventura County Star* about our efforts, complete with several photographs. The largest photo on page one was near 5x7 inches in size.

A few days later, a reporter from the *Santa Barbara News Press* showed up at the beach. He took a couple of pictures of us playing volleyball, and that photo and caption was published June 10.

Those two articles prompted the requests for radio time from CNN reporter Maria Sanchez. We did an interview for her June 22.

Following that radio interview, we were contacted by a reporter for the *Santa Barbara Independent.* Their article appeared on-line June 26 and included a poll for readers to take on whether they approved of the idea of a special section of beach set aside for nude use. The results of the poll surprised everybody, even us.

Do You Support The Idea Of A Beach In Santa Barbara County Being Set Aside For Nude Use?

Yes, Absolutely	757	**81%**
Yes, **With Signage**	164	**17%**
Definitely Not	6	<1%

Poll was active: June 26 – July 4, 2008

MAY 2008: SAN ONOFRE BEACH

CONDUCTED BY ORANGE COUNTY REGISTER

What Do You Think Of The Nude Beach?

I support it	2648	**76%**
Doesn't bother me, but I wouldn't do it	495	14%
The state should shut it down	278	8%
Don't Know	80	2%

Poll was active: May 30 – June 30, 2008

NOV 2006: AVILA BEACH (SAN LUIS OBISPO)

CONDUCTED BY SAN LUIS OBISPO TRIBUNE

In response to the probable sale of the land, the *San Luis Obispo Tribune* newspaper ran an on-line poll last week, asking its readers to vote, "Should Pirate's Cove remain a nude beach?"

The response has been overwhelmingly in favor of keeping the beach nude. As of 10/28/2006, 1376 people have voted and the results show:

Should Pirate's Cove Remain A Nude Beach?

Yes	1313	**95%**
No	63	5%

Poll was active Oct 1 – Oct 30, 2006

County officials were quoted as saying the overwhelming preference for the nude beach means the County "will probably lean toward maintaining its clothing-optional status." Footnote: the sale of the beach to the county was approved in October 2008 and the county agreed to retain the clothing optional status of the beach.

THE CHAD MERRILL SMITH CASE, 1972

"…Mere nudity does not constitute a form of sexual activity."

In re Smith , 7 Cal.3d 362

[Crim. No. 15986. Supreme Court of California. June 13, 1972.]

In re CHAD MERRILL SMITH on Habeas Corpus

In Bank. (Opinion by Mosk, J., expressing the unanimous view of the court.)

COUNSEL

Odorico & Franklin and J. David Franklin for Petitioner.

Evelle J. Younger, Attorney General, Herbert L. Ashby, Chief Assistant Attorney General, Doris H. Maier, Assistant Attorney General, Mark L. Christiansen and Alexander B. McDonald, Deputy Attorneys General, for Respondent.

OPINION

MOSK, J.

This is a petition for writ of habeas corpus by Chad Merrill Smith, who is under the constructive restraint of probation following his conviction of indecent exposure. (Pen. Code, § 314, subd. 1.)

The issue is whether the act of sunbathing in the nude on an isolated [7 Cal.3d 364] beach, without intent to engage in sexual activity, is punishable under a statute which makes it a crime to "willfully and lewdly" expose the private parts of the body. We conclude that the conduct in question is not prohibited by this statute, and hence that the writ should issue.

The facts are undisputed. On the morning of August 7, 1970, petitioner and a male friend went to a beach for the purpose of sunbathing. Although the beach was open to the public, it was not in a residential area and was apparently used by relatively few people. [1] Petitioner removed all his clothes, lay down on his back on a towel, and fell asleep.

Some hours later the police appeared on the scene and arrested petitioner on a charge of indecent exposure. By that time several other persons were present on the beach. [2] It was stipulated, however, that petitioner at no time had an erection or engaged in any activity directing attention to his genitals.

Petitioner was found guilty as charged; the imposition of sentence was suspended for three years, and he was placed on informal probation to the court on the condition he pay a fine of $100. He subsequently learned he was also required to register as a sex offender pursuant to Penal Code section 290. He appealed, but the superior court appellate department affirmed the conviction and the Court of Appeal denied his application to transfer the case for further review.

Penal Code section 314, the statute which petitioner was convicted of violating, provides in relevant part that: "Every person who willfully and lewdly, either 1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby ... is guilty of a misdemeanor." (Italics added.)

As used in our penal statutes, the word "willfully" "implies simply a purpose or willingness to commit the act" (Pen. Code, § 7, subd. 1). There is no doubt that a person, as here, who fully disrobes in a public place for the purpose of sunbathing, "willfully" -- i.e., intentionally -- exposes himself within the meaning of section 314. The issue is whether he also does so "lewdly." [7 Cal.3d 365]

[2] The separate requirement that the intent of the actor be "lewd" is an essential element of the offense declared by section 314. (In re Mikkelsen (1964) 226 Cal.App.2d 467, 472, fn. 2 [38 Cal.Rptr. 106]; In re Correa (1918) 36 Cal.App. 512 [172 P. 615] [construing § 311, predecessor to § 314].) The relevant dictionary meaning of "lewd" is "sexually unchaste or licentious," "dissolute, lascivious," "suggestive of or tending to moral looseness," "inciting to sensual desire or imagination," "indecent, obscene, salacious." (Webster's New Internat. Dict. (3d ed. 1961) p. 1301.)

The term has most often been judicially defined in cases applying the statute which makes it a crime to "wilfully or lewdly commit any lewd or lascivious act" upon a child (Pen. Code, § 288.) In that context "lewd" is said to mean "dissolute," "wanton," "debauched" (People v. Loignon (1958) 160 Cal.App.2d 412, 420 [325 P.2d 541]), and "lustful, immoral, seductive or degrading" (People v. Webb (1958) 158 Cal.App.2d 537, 542 [323 P.2d 141]). The statute itself declares that to commit such an act "wilfully and lewdly" means to do so "with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires" of the persons involved.

We are referred to no case defining "lewdly" as used in section 314; but in the reported decisions upholding convictions of that offense against a claim of insufficient evidence, something more than mere nudity has usually been shown. Thus in People v. Succop (1967) 67 Cal.2d 785, 787 [63 Cal.Rptr. 569, 433 P.2d 473], the defendant stood naked outside his home and "moved his hand over his private parts" in the presence of women and children. In People v. Merriam (1967) 66 Cal.2d 390, 392-393 [58 Cal.Rptr. 1, 426 P.2d 161], the defendant in one count stood masturbating in front of the female tenant whose apartment he had entered, while in another count he entered a laundromat and a female customer "looked up and saw that he had exposed himself and was holding his penis in his hand, facing her." In People v. Sanchez (1965) 239 Cal.App.2d 51, 53 [48 Cal.Rptr. 424], the defendant was seen to masturbate in the doorway of an apartment house, and admitted to the police that he had taken out his penis and "played with it." In People v. Williams (1960) 183 Cal.App.2d 689, 690 [7 Cal.Rptr. 56], the defendant exposed himself by positioning his body so that his head was inside his parked car while the lower portion of his body was outside. In People v. Evans (1956) 138 Cal.App.2d 849, 850-851 [292 P.2d 570], the defendant exposed himself while seated in his car and invited a 14-year-old girl, whom he had previously followed on a number of occasions, to look inside. And in In re Bevill (1968) 68 Cal.2d 854, 862 [69 Cal.Rptr. 599, 442 P.2d 679], we held [7 Cal.3d 366] that a defendant who masturbated in the presence of two children should have been convicted of violating section 314 rather than another statute. [3]

[3] From the foregoing definitions and cases the rule clearly emerges that a person does not expose his private parts "lewdly" within the meaning of section 314 unless his conduct is sexually motivated. Accordingly, a conviction of that offense requires proof beyond a reasonable doubt that the actor not only meant to expose himself, but intended by his conduct to direct public attention to his genitals for purposes of sexual arousal, gratification, or affront. [4]

[4] The necessary proof of sexual motivation was not and could not have been made in the case at bar. **It is settled that mere nudity does not constitute a form of sexual "activity."** (See, e.g., Manual Enterprises v. Day (1962) 370 U.S. 478, 490 [8 L.Ed.2d 639, 648, 82 S.Ct. 1432]; Sunshine Book Co. v. Summerfield (1958) 355 U.S. 372 [2 L.Ed.2d 352, 78 S.Ct. 365] (per curiam); In re Panchot (1969) 70 Cal.2d 105, 108 [73 Cal.Rptr. 689, 448 P.2d 385]; People v. Noroff (1967) 67 Cal.2d 791, 794 and fn. 6 [63 Cal.Rptr. 575, 433 P.2d 479]; cf. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85, 101-102 [84 Cal.Rptr. 113, 465 P.2d 1]; Robins v. County of Los Angeles (1966) 248 Cal.App.2d 1, 10-11 [56 Cal.Rptr. 853].) [5] Absent additional conduct intentionally directing attention to his genitals for sexual purposes, a person, as here, who simply sunbathes in the nude on an isolated beach does not "lewdly" expose his private parts within the meaning of section 314.

Our reading of the statute is reinforced by a consideration of its consequences. Since 1969, the fingerprints and description of every person arrested on a charge of violating section 314 must immediately be filed with the State Bureau of Criminal Identification and Investigation -- i.e., [7 Cal.3d 367] before the suspect is even convicted of the offense. (Pen. Code, § 11112; see also Pen. Code, § 11107.) If he is convicted, Penal Code section 290 then compels him to register as a sex offender with the chief of police of the city in which he temporarily or permanently resides. The required registration documents include a signed informational statement, fingerprints, and photographs, all of which are promptly forwarded to the above-mentioned state bureau. Every change of address must thereafter be reported within 10 days by the registrant, and failure to comply with any of the terms of the law is punishable as a misdemeanor. Section 290 comes automatically into operation upon a conviction of violating section 314, and

results in a lifelong regime of registration and reregistration unless and until a court releases the offender from the disabilities of that conviction (see Pen. Code, § 1203.4).

In Barrows v. Municipal Court (1970) 1 Cal.3d 821 [83 Cal.Rptr. 819, 464 P.2d 483], we had occasion to consider the bearing of section 290 on a similar issue, i.e., whether the vagrancy statute prohibiting "lewd or dissolute conduct in a public place" (Pen. Code, § 647, subd. (a)) was intended to apply to live theatrical performances. Conviction under that statute also triggers the operation of section 290. We explained that "The purpose of section 290 is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future." (Id. at pp. 825-826.) Turning to the nature of the offense actually charged, we reasoned (at pp. 826-827): "It would be irrational to impose upon an actor in a theatrical performance or its director a lifetime requirement of registration as a sexual offender because he may have performed or aided in the performance of an act, perhaps an obscene gesture, in a play. It is an errant concept we cannot attribute to the Legislature that persons convicted of such an offense will require constant police surveillance in order to prevent them from committing similar crimes against society in the future." (Fn. omitted.) We concluded that section 647, subdivision (a), was therefore not intended to apply to live theatrical performances.

By parity of reasoning, **we cannot attribute to the Legislature a belief that persons found to be sunbathing in the nude on an isolated beach "require constant police surveillance" to prevent them from committing such "crimes against society"** in the future. Lacking that belief, the Legislature could not reasonably have intended that section 314, subdivision 1, apply to the conduct here in issue.

It follows that on the undisputed facts of this case petitioner's conduct was not prohibited by the statute under which he was convicted. In such [7 Cal.3d 368] circumstances, he is entitled to the relief of habeas corpus. (In re Zerbe (1964) 60 Cal.2d 666, 668 [36 Cal.Rptr. 286, 388 P.2d 182, 10 A.L.R.3d 840]; In re Bevill (1968) supra, 68 Cal.2d 854, 863.)

The writ is granted. The judgment is vacated, and petitioner is discharged from the restraints thereof.
Wright, C. J., McComb, J., Peters, J., Tobriner, J., Burke, J., and Sullivan, J., concurred.

FOOTNOTES

1. According to petitioner's statement to the probation officer, he and his friend "walked down the beach far enough that we were out of sight from anyone and appeared to be isolated."

2. The trial court summarized the police report as stating that "A young couple had just walked by [Smith]. A group of juvenile boys came out of the surf about fifty feet west of Smith. Three juvenile girls were lying on the beach approximately fifty feet south of Smith. One of the girls was looking up, looking in Smith's direction."
3. The People's reliance on People v. Kerry (1967) 249 Cal.App.2d 246 [57 Cal.Rptr. 289], is misplaced. There the issue was not sufficiency of the evidence but the propriety of admitting proof of prior offenses of the same nature. In any event, in one count in that case the defendant stepped naked from behind some trash cans in the presence of two schoolgirls, while in the second count he appeared naked in a laundromat, "touched his private parts, knelt to his knees in front of [a female customer] and performed an act." (Id. at p. 249.)

4. Wainwright v. Procunier (9th Cir. 1971) 446 F.2d 757, is in accord. There a Berkeley policeman on evening patrol observed the defendant urinate against the wall of an abandoned service station. When questioned, the defendant explained he had recently undergone surgery making it necessary for him to urinate frequently. No other persons were present but the defendant's own companions. The federal appellate court rejected the People's contention that the officer had probable cause to arrest the defendant for indecent exposure under section 314, subdivision 1. Emphasizing the sexual connotations of the requirement that the act be performed "lewdly," the court held the statute inapplicable as a matter of law to the defendant's conduct.

THE DON BARRY PRYOR CASE, 1979

"…the phrase "lewd or dissolute conduct"…prohibits only the solicitation or commission of conduct in a public place…which involves the touching of the genitals, buttocks, or female breast, for purposes of sexual arousal, gratification, annoyance or offense."

Pryor v. Municipal Court, 25 Cal.3d 238
L.A. No. 30901. Supreme Court of California. September 7, 1979.

DON BARRY PRYOR, Petitioner, v. THE MUNICIPAL COURT FOR THE LOS ANGELES JUDICIAL DISTRICT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest

(Opinion by Tobriner, J., with Bird, C. J., Mosk and Newman, JJ., concurring. Richardson and Manuel, JJ., concurred in the judgment. Separate concurring and dissenting opinion by Clark, J.)

COUNSEL
Thomas F. Coleman and Coleman & Kelber for Petitioner.
Donald C. Knutson, Jerel McCrary, Paul Edward Geller, Jill Jakes, Fred Okrand, Terry Smerling, Mark D. Rosenbaum, Steven T. Kelber, Arthur C. Warner and Martha Goldin as Amici Curiae on behalf of Petitioner.

No appearance for Respondent.
Burt Pines, City Attorney, Laurie Harris and Mark L. Brown, Deputy City Attorneys, for Real Party in Interest.
John W. Witt, City Attorney (San Diego), Jack Katz, John M. Kaheny and James J. Thomson, Jr., Deputy City Attorneys, as Amici Curiae on behalf of Real Party in Interest.

OPINION
TOBRINER, J.

Defendant Don Pryor seeks prohibition to bar his trial on a charge of violating Penal Code section 647, subdivision (a). This section declares that a person is guilty of disorderly conduct, a misdemeanor, "Who solicits anyone to engage in or who engages in lewd or **[25 Cal.3d 244]** dissolute conduct in any public place or in any place open to the public or exposed to public view." [1a] (Italics added.) We agree with defendant that **the phrase "lewd or dissolute conduct" as construed by past decisions is unconstitutionally vague.** If, however, we can reasonably construe the statute to conform with the mandate of specificity, we should not, and will not declare the enactment unconstitutional. Consequently, rejecting prior interpretations of this statute, we adopt a limited and specific construction consistent with the present function of section 647, subdivision (a), in the California penal statutes; **we construe that section to prohibit only the solicitation or commission of conduct in a public place or one open to the public or exposed to public view, which involves the touching of the genitals, buttocks, or female breast, for purposes of sexual arousal, gratification, annoyance or offense, by a person who knows or should know of the presence of persons who may be offended by the conduct.** As so construed, section 647, subdivision (a), complies with constitutional standards; we therefore deny defendant's petition for writ of prohibition.

On May 1, 1976, defendant solicited an undercover police officer to perform an act of oral copulation. He was arrested; a search incident to that arrest revealed defendant's possession of less than one ounce of marijuana. Defendant was charged with violating Penal Code section 647, subdivision (a), by soliciting a lewd or dissolute act, and with violating Health and Safety Code section 11357, subdivision (b), by possession of less than one ounce of marijuana.

Defendant moved to suppress the introduction of the marijuana, contending that section 647, subdivision (a) was unconstitutional on the ground of vagueness, and hence that the search was not incident to a lawful arrest. When that motion was denied, defendant pled guilty to the marijuana charge. He subsequently appealed that conviction under Penal Code section 1538.5, but the appellate department affirmed the conviction.

Defendant proceeded to trial on the charge of soliciting a lewd or dissolute act in violation of section 647, subdivision (a). At trial, the officer testified that he parked his car a few feet from where defendant was standing. Defendant came over, and after a brief conversation, suggested oral sex acts. Looking at a nearby parking lot, defendant said "We could probably sit and park in the parking lot." The officer suggested instead that they go to his home. Defendant agreed, entered the car, and was arrested. **[25 Cal.3d 245]**

Defendant's version of the incident differs only in that he denies making any statement about the parking lot, but maintains instead that the only situs discussed was the officer's home. Thus both defendant and the officer agree that defendant, while in a public place, solicited an act of oral sex; they disagree only whether defendant suggested the act itself occur in a public place.

Over defendant's objection, the trial court instructed the jury that oral copulation between males is "lewd or dissolute" as a matter of law. The court further instructed over objection that "If the solicitation occurred in a public place, it is immaterial that the lewd act was intended to occur in a private place." (CALJIC No. 16.401.) Despite these instructions, which virtually compelled the jury to find defendant guilty, the jury deadlocked and the court declared a mistrial.

Defendant then filed the instant petition for writs of prohibition and mandate with this court, raising various points in connection with the marijuana conviction and the pending retrial for solicitation of lewd or dissolute conduct. We issued an alternative writ of prohibition "limited to the proceedings in the municipal court related to retrial of the charge of violating section 647, subdivision (a) of the Penal Code. ..." Thus no issue respecting the marijuana conviction is presently before this court.

With respect to the approaching retrial, defendant first seeks to prohibit the court from instructing the jury that public solicitation of an act to be performed in private is criminal and that oral copulation between males is lewd and dissolute as a matter of law. [2] Because the writ of prohibition does not lie to prevent merely anticipated error (see 5 Witkin, Cal. Procedure (2d ed. 1971) p. 3810 and cases there cited), defendant's objection to anticipated jury instructions states no basis for present relief. [3] Defendant's further contention that section 647, subdivision (a) is unconstitutionally vague, however, states a basis for issuance of prohibition since a court lacks jurisdiction to proceed to trial under a facially unconstitutional statute. (Dillon v. Municipal Court (1971) 4 Cal.3d 860, 866, fn. 6 [94 Cal.Rptr. 777, 484 P.2d 945]; see In re Berry (1968) 68 Cal.2d 137, 145 [65 Cal.Rptr. 273, 436 P.2d 273]; In re Cregler (1961) 56 Cal.2d 308, 309 [14 Cal.Rptr. 289, 363 P.2d 305].)

Past decisions of the Court of Appeal and the appellate department of the superior court have held that section 647, subdivision (a), is not **[25 Cal.3d 246]** unconstitutionally vague. fn. 1 That issue, however, reached this court on only one prior occasion. In In re Giannini (1968) 69 Cal.2d 563 [72 Cal.Rptr. 655, 446 P.2d 535], a topless dancer was charged with violating section 647, subdivision (a). Reasoning that her dance was presumptively a communication protected by the First Amendment and that such communications lose protection only if they are "obscene," we equated the statutory term "lewd or dissolute" with obscenity. So interpreted, we stated that the vagueness objection to the statute was not tenable. (69 Cal.2d at p. 571, fn. 4.)

We do not regard Giannini as controlling in the present case. In the first place, we expressly limited our interpretation of "lewd or dissolute" as "obscene" only to the "present purpose of determining the alleged obscenity of a dance performed before an audience for entertainment," (p. 571, fn. 4) an activity which, we reasoned, involved "communication of ideas, impressions and feelings" (p. 570) and could not be banned unless it were obscene. Defendant Pryor, by way of contrast, is not charged with a lewd, dissolute or obscene communication, but with soliciting a lewd or dissolute act; the Giannini definition of the statutory terms thus does not apply to the present case. Moreover, the reasoning which led this court to apply an obscenity test to reverse the conviction in In re Giannini was itself repudiated by a majority of this court in Crownover v. Musick (1973) 9 Cal.3d 405 [107 Cal.Rptr. 681, 509 P.2d 497].

We therefore turn afresh to the issue whether the language of section 647, subdivision (a), is sufficiently specific to meet constitutional standards. In analyzing this issue, we look first to the language of the statute, then to its legislative history, and finally to California decisions construing the statutory language. (See In re Davis (1966) 242 Cal.App.2d 645 [51 Cal.Rptr. 702].)

[4] The statutory terms "lewd" and "dissolute" are not technical legal terms, but words of common speech. (Cf. In re Newbern (1960) 53 Cal.2d 786, 795 [3 Cal.Rptr. 463, 350 P.2d 116].) In ordinary usage, they do not imply a definite and specific referent, but apply broadly to conduct which **[25 Cal.3d 247]** the speaker considers beyond the bounds of propriety. Thus, speaking of the term "lewd," the court in Morgan v. City of Detroit (E.D.Mich. 1975) 389 F.Supp. 922, 930, observed that all definitions of that term in ordinary usage are "subjective," dependent upon the speaker's "social, moral, and cultural bias." The term "dissolute" is, if anything, even less specific; while "lewd" implies a sexual act, "dissolute" can refer to nonsexual acts which exceed subjective limits of propriety. (Edelman v. California (1953) 344 U.S. 357, 365 [97 L.Ed. 387, 394, 73 S.Ct. 293] (Black, J. dis.); see People v. Jaurequi (1956) 142 Cal.App.2d 555, 560-561 [298 P.2d 896] (narcotics addict a "dissolute person").)

[5a] Finding, therefore, that the facial language of section 647, subdivision (a) is not sufficiently certain to bring the statute into compliance with due process standards, we turn to examine legislative history as a guide to its construction. The Legislature enacted present section 647, subdivision (a) in 1961 to replace former section 647, subdivision 5, which provided that "Every lewd or dissolute person ... is a vagrant, and is punishable [as a misdemeanant]." That earlier enactment formed part of California's vagrancy law, a venerable but archaic form of status crime which dates from the economic crisis occasioned by the Black Death in early 14th century England. (See 3 Stephen, History of the Criminal Law of England (1883) pp. 266-275.) [6] As Justice Frankfurter noted, vagrancy statutes were purposefully cast in vague language; "[d]efiniteness is designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of the police and prosecution. ..." (Winters v. New York (1948) 333 U.S. 507, 540 [92 L.Ed. 840, 862, 68 S.Ct. 665].) fn. 2

Our 1960 decision in In re Newbern, supra, 53 Cal.2d 786, holding the "common drunk" provision (Pen. Code, § 647, subd. 11) of the California Vagrancy Law void for vagueness, and an analysis of vagrancy statutes by Professor Arthur Sherry (Sherry, Vagrants, Rogues, and Vagabonds -- Old Concepts in Need of Revision (1960) 48 Cal.L.Rev. 557) prompted the 1961 revision of section 647. That revision changed the criminal proscription from status ("lewd or dissolute person") to behavior ("lewd or dissolute conduct"). It also added, for the first time, a specific proscription against solicitation; decisions under the former law treated solicitation simply as evidence that the solicitor was leading a lewd or **[25 Cal.3d 248]** dissolute life. (See People v. Woodworth (1956) 147 Cal.App.2d Supp. 831 [305 P.2d 721]; fn. 3 cf. People v. Bayside Land Co. (1920) 48 Cal.App. 257 [191 P. 994] (red light abatement act case).)

[5b] The legislative history, however, suggests no intent to change the definition of "lewd or dissolute" established by the decisions under the former vagrancy statute. (See 22 Assem. Interim Com. Rep. No. 1, Crim. Procedure, 2 Appen. Assem.J (1961 Reg. Sess.); Sherry, op. cit, supra, 48 Cal.L.Rev. 557, 569.) According to People v. Dudley, supra, 250 Cal.App.2d Supp. 955, 958, new Penal Code section 647, subdivision (a), "was designed to cover acts of the kind usually committed by persons falling within the old 'vag-lewd' concept as theretofore set forth in 647, subdivision 5."

The legislative history thus reveals section 647, subdivision (a), to be the lineal descendant of the archaic vagrancy statutes which were designedly drafted to grant police and prosecutors a vague and standardless discretion. Under these circumstances, we cannot look to legislative history to supply section 647, subdivision (a), with a clear and definite content; such construction must come, if at all, from judicial interpretation of the statute.

Turning to the cases which have construed section 647, subdivision (a) and its predecessor is like opening a thesaurus. The cases do not define "lewd or dissolute" by pointing to specific acts, but by pejorative adjectives. "[T]he words 'lewd' and 'dissolute' are synonymous, and mean lustful, lascivious, unchaste, wanton, or loose in morals and conduct." (CALJIC (Misdemeanor) No. 16.402, quoted in People v. Williams (1976) 59 Cal.App.3d 225, 229 [130 Cal.Rptr. 460]; see People v. Babb (1951) 103 Cal.App.2d 326, 330 [229 P.2d 843].) fn. 4 "Dissolute" behavior is that which is "'loosed from restraint, unashamed, lawless, loose in morals and conduct, recklessly abandoned to sensual pleasures, profligate, wanton, lewd, debauched.'" (People v. Jaurequi, supra, 142 Cal.App.2d 555, 561; **[25 Cal.3d 249]** People v. Scott (1931) 113 Cal.App. Supp. 778, 783 [296 P. 601].) A dissolute person is one who is "'indifferent to moral restraint'" and "'given over to dissipation. ...'" (People v. Jaurequi, supra, 142 Cal.App.2d 555, 560.) The terms "lewd" and "dissolute" ordinarily include conduct found "disgusting, repulsive, filthy, foul, abominable [or] loathsome" under contemporary community standards. (Silva v. Municipal Court (1974) 40 Cal.App.3d 733, 741 [115 Cal.Rptr. 479].) fn. 5

This impressive list of adjectives and phrases confers no clarity upon the terms "lewd" and "dissolute" in section 647, subdivision (a). Indeed, "the very phrases and synonyms through which meaning is purportedly ascribed serve to obscure rather than to clarify terms." (State v. Kueny (Iowa 1974) 215 N.W.2d 215, 217 (holding the phrase "open and gross lewdness" unconstitutionally vague).) To instruct the jury that a "lewd or dissolute" act is one which is morally "loose," or "lawless," or "foul" piles additional uncertainty upon the already vague words of the statute. [7] In short, vague statutory language is not rendered more precise by defining it in terms of synonyms of equal or greater uncertainty.

Only one California decision, Silva v. Municipal Court, supra, 40 Cal.App.3d 733, has attempted to refine the uncertainty of the statutory language. Relying on In re Giannini, supra, 69 Cal.2d 563, in which we equated "lewd" and "dissolute" with "obscene," Silva attempted to adapt an obscenity test to section 647, subdivision (a). Section 647, subdivision (a), Silva concluded, prohibits "that sort of sexual conduct which is 'grossly repugnant' and 'patently offensive' to 'generally accepted notions of what is appropriate' and decent according to statewide contemporary community standards." (40 Cal.App.3d 733, 741.)

The test proposed by Silva, however, rests on a misunderstanding of our language in In re Giannini, and adds little certainty to the meaning of section 647, subdivision (a). As we explained earlier, Giannini defined "lewd or dissolute" as obscene only in a context in which a presumptively protected communication was itself charged with being a "lewd or dissolute" act (see, ante, at p. 246); we did not provide a definition **[25 Cal.3d 250]** applicable to all solicitations or conduct, which might fall within the ambit of section 647, subdivision (a). The obscenity test as developed in Supreme Court decisions was not framed to measure noncommunicative conduct; with no audience to be aroused pruriently or redeemed socially, all that is left of the test is its appeal to contemporary community standards. That appeal is the vaguest part of the test (see Bloom v. Municipal Court (1976) 16 Cal.3d 71, 89-90 [127 Cal.Rptr. 317, 545 P.2d 229] (Tobriner, J., dis.)), and, standing alone, does not provide a sufficient standard to judge the criminality of conduct. [8] Indeed in Miller v. California (1973) 413 U.S. 15 [37 L.Ed.2d 419, 93 S.Ct. 2607], which established the current test of obscenity, the court insisted that a viable obscenity statute must spell out in specific terms the sexual conduct whose depiction it proscribes. (413 U.S. at p. 24 [37 L.Ed.2d at p. 431].) The test set out in Silva does not comply with this standard.

Moreover, subsequent California decisions have not consistently followed the lead of Silva. Although People v. Rodrigues, supra, 63 Cal.App.3d Supp. 1, 4, applied the Silva test generally to lewd and dissolute conduct, in People v. Williams (1976) 59 Cal.App.3d 225 [130 Cal.Rptr. 460], the Court of Appeal held that Silva's test applies only when the conduct in question involved a theatrical performance. People v. Deyhle, supra, 76 Cal.App.3d Supp. 1 agreed with Williams.

[5c] Thus the California cases to date have produced neither a clear nor a consistent definition of the term "lewd or dissolute conduct" in section 647, subdivision (a). The decisions have also failed to adopt possible interpretations of the statute which would narrow its scope and in that manner increase its specificity. Refusing to confine the phrase "lewd or dissolute conduct" to sexual conduct, the courts have applied the term "dissolute" to sustain the conviction under former section 647, subdivision 5, of a defendant who was addicted to narcotics (People v. Jaurequi, supra, 142 Cal.App.2d 555, 560), of a defendant who gave inflammatory speeches (see Edelman v. California, supra, 344 U.S. 357; id., at p. 365 [97 L.Ed. at p. 394] (Black, J., dis.)), and to sustain juvenile court jurisdiction over a minor who sold marijuana (In re Daniel R. (1969) 274 Cal.App.2d 749 [79 Cal.Rptr. 247]) on the ground that he was "in danger of leading a dissolute life." Courts also have rejected invitations to limit the statute to public conduct (People v. Mesa, supra, 265 Cal.App.2d 746, 750-751; People v. Dudley, supra, 250 Cal.App.2d Supp. 955, 957-958) or to conduct otherwise illegal (Silva v. Municipal Court, supra, 40 Cal.App.3d 733; In re Steinke (1969) 2 Cal.App.3d 569, 573 [82 Cal.Rptr. 789]). Thus the statute as construed by prior California **[25 Cal.3d 251]** decisions appears to reach any public conduct, or public solicitation to public or private conduct, if that conduct might be described as "lustful," "loose in morals," "disgusting," or by other epithetical adjectives. fn. 6

We conclude that California decisions do not provide a specific content for the uncertain language of section 647, subdivision (a). [9] Such vague statutory language, resulting in inadequate notice of the reach and limits of the statutory proscription, poses a specially serious problem when the statute concerns speech, for uncertainty concerning its scope may then chill the exercise of protected First Amendment rights. (See Lewis v. City of New Orleans (1974) 415 U.S. 130, 133-134 [39 L.Ed.2d 214, 219-220, 94 S.Ct. 970]; Gooding v. Wilson (1972) 405 U.S. 518, 521 [31 L.Ed.2d 408, 413, 92 S.Ct. 1103].) Section 647, subdivision (a), we observe, does not proscribe lewd,

dissolute, or obscene solicitations; it bans any public solicitation, however discreet or diffident, of lewd or dissolute conduct. Cases have extended that ban to solicitations seeking private, lawful, and consensual conduct. (People v. Mesa, supra, 265 Cal.App.2d 746; People v. Dudley, supra, 250 Cal.App.2d Supp. 955.)

But what private, consensual, lawful sexual acts are nonetheless lewd or dissolute, such that public solicitation of them is criminal? The answer of the prior cases -- such acts as are lustful, lascivious, unchaste, wanton, or loose in morals and conduct -- is no answer at all. Some jurors would find that acts of extramarital intercourse fall within that definition; some would draw the line between intercourse and other sexual acts; others would distinguish between homosexual and heterosexual acts. Thus one could not determine what actions are rendered criminal by reading the statute or even the decisions which interpret it. He must gauge the temper **[25 Cal.3d 252]** of the community, and predict at his peril the moral and sexual attitudes of those who will be called to serve on the jury. fn. 7

[10] As we noted in In re Newbern, supra, 53 Cal.2d 786, 796, vague statutory language also creates the danger that police, prosecutors, judges and juries will lack sufficient standards to reach their decisions, thus opening the door to arbitrary or discriminatory enforcement of the law. The danger of discriminatory enforcement assumes particular importance in the context of the present case. Three studies of law enforcement in Los Angeles County indicate that the overwhelming majority of arrests for violation of Penal Code section 647, subdivision (a), involved male homosexuals. fn. 8 People v. Rodrigues, supra, 63 Cal.App.3d Supp. 1, presents another striking illustration of discriminatory enforcement of section 647, subdivision (a). Such uneven application of the law is the natural consequence of a statute which as judicially construed measured the criminality of conduct by community or even individual notions of what is distasteful behavior. **[25 Cal.3d 253]**

Court decisions have struck down laws as unconstitutionally vague which contained language similar to section 647, subdivision (a). In Perrine v. Municipal Court (1971) 5 Cal.3d 656 [97 Cal.Rptr. 320, 488 P.2d 648], we considered an ordinance mandating denial of a bookseller's license to one who had permitted "acts of sexual misconduct" in his business operations; we held the quoted phrase unconstitutionally vague. (Accord, Sanita v. Board of Police Comnrs. (1972) 27 Cal.App.3d 993, 997-998 [104 Cal.Rptr. 380].) In Gonzalez v. Mailliard (N.D.Cal. 1971) (No. 50424 SAW) a three-judge federal court held Welfare and Institutions Code section 601, which then authorized a wardship over a juvenile in danger of leading "an idle, dissolute, lewd or immoral life," void for vagueness. fn. 9 Finally, In re Davis, supra, 242 Cal.App.2d 645, invalidated Penal Code section 650-1/2 which declared it criminal to "wilfully and wrongfully" commit any act "which outrages public decency"; the Court of Appeal observed that the statute was drafted in deliberately vague terms so as to grant excessive discretion to the prosecutor and the jury. fn. 10

[5d] Supported by the foregoing decisions, we conclude that section 647, subdivision (a), as construed by prior California decisions, does not meet constitutional standards of specificity. [11] That conclusion, however, does not dispose of this case. The judiciary bears an obligation to "construe enactments to give specific content to terms that might otherwise be unconstitutionally vague." (Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 598 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038].) Thus we have declared that "A statute will not be held void for uncertainty if any reasonable and practical construction can be given its language." (American Civil Liberties Union v. Board of Education (1963) 59 Cal.2d 203, 218 [28 Cal.Rptr. 700, 379 P.2d 4].) If by fair and reasonable interpretation we can construe section 647, subdivision (a), to sustain its validity, we must adopt such interpretation (see Braxton v. Municipal Court (1973) 10 Cal.3d 138, 145 [109 Cal.Rptr. 897, 514 P.2d 697]; San Francisco Unified School District v. Johnson (1971) 3 Cal.3d 937, 948 [92 Cal.Rptr. 309, 479 P.2d 669]), even if that course requires us to depart from prior precedent which fastened an **[25 Cal.3d 254]** unconstitutionally broad interpretation on the statute. We believe that such a construction can be derived from analysis of the role of section 647, subdivision (a), in the structure of the California penal law.

We begin with the portion of the statute proscribing "solicitation" of lewd or dissolute conduct. The term "solicitation" itself is not unconstitutionally vague. (People v. Superior Court (Hartway) (1977) 19 Cal.3d 338, 346 [138 Cal.Rptr. 66, 562 P.2d 1315].) Instead our difficulties stem from the decisions in People v. Mesa, supra, 265 Cal.App.2d 746 and People v. Dudley, supra, 250 Cal.App.2d Supp. 955, holding that public solicitation of private conduct falls within the statutory compass. Mesa and Dudley, however, were decided at a time when many forms of private consensual sexual acts were illegal. With the enactment of the Brown Act (Stats. 1975, chs. 71 and 877), however, most such acts are no longer within the purview of the criminal law. [1b] Thus, as the Los Angeles City Attorney states in a brief filed in this case, we conclude that Mesa and Dudley are inconsistent with the protection of

private conduct afforded by the Brown Act and are no longer viable; we believe section 647 subdivision (a), must be limited to the solicitation of criminal sexual conduct. (See Silva v. Municipal Court, supra, 40 Cal.App.3d 733, 742 (Sims, J., conc.).) More specifically, we hold that this section prohibits only solicitations which propose the commission of conduct itself banned by section 647, subdivision (a), that is, lewd or dissolute conduct which occurs in a public place, a place open to the public, or a place exposed to public view.

By so limiting the reach of the statute, we avoid two substantial constitutional problems. First, we need not attempt the probably impossible task of defining with constitutional specificity which forms of private lawful conduct, protected by the Brown Act, are lewd or dissolute conduct, the solicitation of which is proscribed by this statute. Second, we avoid the First Amendment issues which, as we noted earlier, attend a statute which prohibits solicitation of lawful acts. (See ante at pp. 251, 252.) [12] A statute which by judicial construction prohibits only the solicitation of criminal acts does not abridge freedom of speech. (See Silva v. Municipal Court, supra, 40 Cal.App.3d 733, 737-738; cf. Dennis v. United States (1951) 341 U.S. 494, 504-508 [95 L.Ed. 1137, 1149-1152, 71 S.Ct. 857]; Goldin v. Public Utilities Comm. (1979) 23 Cal.3d 638 at pp. 654-657.) fn. 11 **[25 Cal.3d 255]**

[1c] Turning to the portion of the statute banning "lewd or dissolute conduct," we hold that the terms "lewd" and "dissolute" are synonymous (see People v. Williams, supra, 59 Cal.App.3d 225, 229; People v. Babb, supra, 103 Cal.App.2d 326, 330) and refer to sexually motivated conduct (see In re Birch (1973) 10 Cal.3d 314, 318-319, fn. 4 [110 Cal.Rptr. 212, 515 P.2d 12]; Silva v. Municipal Court, supra, 40 Cal.App.3d 733, 739; People v. Swearington (1977) 71 Cal.App.3d 935, 944 [140 Cal.Rptr. 5]). We recognize that in People v. Jaurequi, supra, 142 Cal.App.2d 555, the Court of Appeal held that a narcotics addict was a "dissolute person," and that the Assembly Committee Report recommending enactment of section 647, subdivision (a), cited Jaurequi with approval. Against that indicia of legislative intent, however, we must weigh the legislative determination that all persons convicted of violating section 647, subdivision (a), must register as sex offenders. (Pen. Code, § 290.) It is inconceivable that the Legislature intended that narcotics addicts, or other persons who, in Jaurequi's language, engage in "unashamed, lawless, [or] abandoned" behavior of a nonsexual character should so register. Whatever the situation in 1955 when Jaurequi was decided, it is apparent that section 647, subdivision (a), does not presently serve the function of controlling nonsexual conduct. The next step in constructing a constitutionally specific interpretation of section 647, subdivision (a), thus is to narrow its reach to sexually motivated conduct.

The final step is to define specifically the sexually motivated conduct proscribed by the section. (Cf. Miller v. California, supra, 413 U.S. 15, 24-26 [37 L.Ed.2d 419, 430-432].) We proceed by deriving the function of this section in the penal statutes pertaining to sexual conduct. Section 647, subdivision (a), unlike statutes which ban sexual assault or exploitation of minors, is limited to conduct in public view. The statute thus serves the primary purpose of protecting onlookers who might be offended by the proscribed conduct.

Two other statutes partially serve that same purpose. [13] Penal Code section 314, subdivision 1, prohibits indecent exposure "in any public place, or in any place where there are present other persons to be offended or annoyed thereby. ..." Section 311.6 prohibits "obscene live conduct to or before an assembly or audience ... in any public place or in any place exposed to public view, or in any place open to the public or to a segment thereof. ..." Neither statute, however, is directed at sexual **[25 Cal.3d 256]** conduct, as distinguished from indecent exposure, when such conduct is not intended to arouse the prurient interest of an audience. Section 647, subdivision (a), we believe, serves the function of filling this gap in the penal law.

[1d] Clearly, the statute cannot be construed to ban all sexually motivated public conduct, for such a sweeping prohibition would encompass much innocent and nonoffensive behavior. A constitutionally specific definition must be limited to conduct of a type likely to offend. Although the varieties of sexual expression are almost infinite, virtually all such offensive conduct will involve the touching of the genitals, buttocks, or female breast, for "purposes of sexual arousal, gratification, or affront." The quoted phrase, taken from In re Smith, supra, 7 Cal.3d 362, 366, serves not only to define the reach of the law but also to add a requirement of specific intent, a feature which has often served to avert a determination that a statute is unconstitutionally vague. (See, e.g., In re Cregler, supra, 56 Cal.2d 308.)

[14] [1e] Finally, in In re Steinke, supra, 2 Cal.App.3d 569, 576, the court stated that "the gist of the offense proscribed in [Penal Code section 647] subdivision (a) ... is the presence or possibility of the presence of some one to be offended by the conduct." We agree; even if conduct occurs in a location that is technically a public place, a

place open to the public, or one exposed to public view, the state has little interest in prohibiting that conduct if there are no persons present who may be offended. fn. 12 The scope of section 647, subdivision (a), should be limited accordingly.

For the foregoing reasons, we arrive at the following construction of section 647, subdivision (a): The terms "lewd" and "dissolute" in this section are synonymous, and refer to conduct which involves the touching of the genitals, buttocks, or female breast for the purpose of sexual arousal, gratification, annoyance or offense, if the actor knows or should know of the presence of persons who may be offended by his conduct. The statute prohibits such conduct only if it occurs in any public place or **[25 Cal.3d 257]** in any place open to the public or exposed to public view; it further prohibits the solicitation of such conduct to be performed in any public place or in any place open to the public or exposed to public view. fn. 13

Under the construction we have established in this opinion, section 647, subdivision (a), prohibits only the solicitation or commission of a sexual touching, done with specific intent when persons may be offended by the act. It does not impose vague and far-reaching standards under which the criminality of an act depends upon the moral views of the judge or jury, does not prohibit solicitation of lawful acts, and does not invite discriminatory enforcement. We are confident that the statute, as so construed, is not unconstitutionally vague.

[15] In addition to the charge of vagueness, defendant attacks the constitutionality of section 647, subdivision (a), on other grounds: he contends that the statute abridges his freedom of speech and association, invades his right to privacy, and denies him the equal protection of the laws. Those contentions rest upon the vague and sweeping interpretation which past decisions have given this section, and upon the manner in which courts and law enforcement officials, acting pursuant to such decisions, have enforced the statute. Nothing in defendant's argument suggests that the statute as construed in this present opinion invades constitutionally protected rights. fn. 14

[16] In determining whether to give retroactive effect to our holding in this case, we look to three considerations: "(a) the purpose to be served by the new standards, (b) the extent of reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of retroactive application of the new standards." (Stovall v. Denno (1967) 388 U.S. 293, 297 [18 L.Ed.2d 1199, 1203, 87 S.Ct. 1967]; People v. Hitch (1974) 12 Cal.3d 641, 654 [117 Cal.Rptr. 9, 527 P.2d 361].) **[25 Cal.3d 258]** We have also stated that "the factors of reliance and burden on the administration of justice are of significant relevance only when the question of retroactivity is a close one after the purpose of the new rule is considered." (In re Johnson (1970) 3 Cal.3d 404, 410 [90 Cal.Rptr. 569, 475 P.2d 841]; People v. Kaanehe (1977) 19 Cal.3d 1, 10 [136 Cal.Rptr. 409, 559 P.2d 1028].)

[17] The purpose underlying our adoption of a new construction of Penal Code section 647, subdivision (a), is not to deter improper police action (compare In re Lopez (1965) 62 Cal.2d 368, 377-379 [42 Cal.Rptr. 188, 398 P.2d 380]), but to establish a specific, constitutionally definite test of what conduct does or does not violate that section. That purpose implicates questions of guilt and innocence, for conduct which a trier of fact might have found criminal under the older vague definition may clearly fall beyond the scope of the statute as construed in the present case. "Given this critical purpose, neither judicial reliance on previous appellate endorsements of [the prior statutory construction] nor any effects on the administration of justice require us to deny the benefits of this rule to cases now pending on appeal." (People v. Gainer (1977) 19 Cal.3d 835, 853 [139 Cal.Rptr. 861, 566 P.2d 997].) A defendant whose conviction is now final, however, will be entitled to relief by writ of habeas corpus only if there is no material dispute as to the facts relating to his conviction and if it appears that the statute as construed in this opinion did not prohibit his conduct. (People v. Mutch (1971) 4 Cal.3d 389, 396 [93 Cal.Rptr. 721, 482 P.2d 633] and cases there cited.)

Since section 647, subdivision (a), is constitutional as construed, defendant is not entitled to a writ of prohibition to bar his trial on the charge of violating that provision. fn. 15 Accordingly, the alternative writ of prohibition is discharged and the petition for a peremptory writ is denied. Because defendant Pryor by this proceeding secured a favorable interpretation of section 647, subdivision (a), he shall recover costs in the matter. **[25 Cal.3d 259]**

Bird, C. J., Mosk, J., and Newman, J., concurred.
Richardson, J., and Manuel, J., concurred in the judgment.

CLARK, J.,
Concurring and Dissenting

I concur only in discharging the alternative writ of prohibition and in denying the petition for peremptory writ, and specifically dissent from giving retroactive effect to the majority's holding.

Retroactive application of the narrow construction of Penal Code section 647, subdivision (a), announced today provides a windfall to defendants validly convicted under the statute. The injustice of so applying today's decision may be illustrated by the following example. Prior to the enactment of the Brown Act (Stats. 1975, chs. 71 and 877), one man solicits another, publicly, to commit sodomy, the act to be performed privately, and is convicted of violating section 647, subdivision (a). At that time the Legislature unquestionably intended such solicitation to be punishable under the statute. Then, as now, legislative prohibition of such conduct was constitutional. (See Doe v. Commonwealth's Attorney for City of Richmond (1976) 425 U.S. 901 [47 L.Ed.2d 751, 96 S.Ct. 1489], affirming 403 F.Supp. 1199.) Nevertheless, the criminal would be entitled to "relief" under today's holding. The majority create a remedy for which there is no wrong.

FN 1. People v. Williams (1976) 59 Cal.App.3d 225, 231 [130 Cal.Rptr. 460]; Silva v. Municipal Court (1974) 40 Cal.App.3d 733, 736-737 [115 Cal.Rptr. 479]; People v. Mesa (1968) 265 Cal.App.2d 746, 750-751 [71 Cal.Rptr. 594]; People v. Deyhle (1977) 76 Cal.App.3d Supp. 1 [143 Cal.Rptr. 135]; People v. Rodrigues (1976) 63 Cal.App.3d Supp. 1, 4 [133 Cal.Rptr. 765]; People v. Dudley (1967) 250 Cal.App.2d Supp. 955 [58 Cal.Rptr. 557]; cf. In re McCue (1908) 7 Cal.App. 765 [96 P. 110] (upholding former Pen. Code, § 647, subd. 5).

FN 2. Although courts initially upheld vagrancy statutes against constitutional challenge (see, e.g., In re McCue, supra, 7 Cal.App. 765), in 1972 the United States Supreme Court finally resolved that vagrancy statutes cast in the classic mode are unconstitutionally vague. (Papachristou v. City of Jacksonville (1972) 405 U.S. 156 [31 L.Ed.2d 110, 92 S.Ct. 839].)

FN 3. The Woodworth court asserts vaguely that "the approach and subsequent conduct [of defendant] was that of a homosexual." (147 Cal.App.2d Supp. at p. 831.) It does not state that his offense was solicitation. In People v. Dudley, supra, 250 Cal.App.2d Supp. 955, the court by reference to the record on appeal in Woodworth determined that the evidence in Woodworth related to a homosexual solicitation. (See 250 Cal.App.2d Supp. 955, 958, fn. 4.)

FN 4. See also In re Smith (1972) 7 Cal.3d 362, 365 [102 Cal.Rptr. 335, 497 P.2d 807] (construing the word "lewdly" in Pen. Code, § 314); People v. Loignon (1958) 160 Cal.App.2d 412, 419 [325 P.2d 514] (construing "lewd" in Pen. Code, § 288); People v. Deibert (1953) 117 Cal.App.2d 410, 419 [256 P.2d 355] (construing "lewd" and "dissolute" in former Welf. & Inst. Code, § 702).

FN 5. The earliest decision, In re McCue, supra, 7 Cal.App. 765, 766, defined "lewd or dissolute" behavior as the "unlawful indulgence of lust, whether in public or private." Since the issue is generally whether defendant's behavior is "lawful," the McCue definition is circular. Another earlier decision, People v. Bayside Land Co., supra, 48 Cal.App. 257, a red light abatement act case, defined "lewdness" as "immoral or degenerate conduct or conversation between persons of opposite sexes. ..." (48 Cal.App. at p. 260.)

FN 6. Decisions of other jurisdictions construing similar statutes offer little help. Some simply add additional adjectives to our list. Others have held statutes with wording similar to section 647, subdivision (a), unconstitutionally vague. (District of Columbia v. Walters (D.C.Ct.App. 1974) 319 A.2d 332 ("to commit any ... lewd, obscene, or indecent act" unconstitutionally vague); Jellum v. Cupp (9th Cir. 1973) 475 F.2d 829 ("act of sexual perversity" unconstitutionally vague); Morgan v. City of Detroit, supra, 389 F.Supp. 922 ("to do any ... lewd immoral act" unconstitutionally vague); Balthazar v. Superior Court of Com. of Mass. (D.Mass. 1977) 428 F.Supp. 425, affd. (1978) 23 Crim.L.Rptr. 2113 ("unnatural and lascivious" acts unconstitutionally vague); State v. Kueny, supra, 215 N.W.2d 215 ("open and gross lewdness" unconstitutionally vague).) Finally, a few courts have adopted narrow definitions which supply specificity to their statute (see Riley v. United States (D.C.Ct.App. 1972) 298 A.2d 228 ("lewd purpose" defined as sodomy); State v. Dorsey (1974) 64 N.J. 428 [316 A.2d 689] ("act of lewdness" means indecent exposure or child molestation)), but any similarly limited constructions of section 647, subdivision (a), would violate legislative intent and render that statute superfluous.

FN 7. Recognizing the First Amendment problems with the solicitation provision in section 647, subdivision (a), courts have upheld that provision on the ground that such solicitations are necessarily obscene (Silva v. Municipal Court, supra, 40 Cal.App.3d 733, 737) or that they constitute "fighting words," words which may incite an immediate breach of the peace (People v. Mesa, supra, 265 Cal.App.2d 746, 751; People v. Dudley, supra, 250 Cal.App.2d Supp. 955, 959). Neither theory is adequate. It is possible -- in fact, commonplace -- to solicit sexual activity in language which itself is not obscene. (See Willemsen, Sex and the School Teacher (1974) 14 Santa Clara Law. 839, 859-860.) Similarly, in the right context and to an apparently receptive listener, a solicitation is unlikely to provoke a breach of the peace. (See City of Columbus v. Scott (1975) 47 Ohio App.2d 287 [353 N.E.2d 858, 861].)

FN 8. A perusal of those studies suggests both that the police selected techniques and locations of enforcement deliberately designed to detect a disproportionate number of male homosexual offenders, and that they arrested male homosexuals for conduct which, if committed by two women or by a heterosexual pair, did not result in arrest. (See Project, The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County (1966) 13 UCLA L.Rev. 643; Copilow & Coleman, Enforcement of Section 647(a) of the California Penal Code by the Los Angeles Police Department (1972); Toy, Update: Enforcement of Section 647(a) of the California Penal Code by the Los Angeles Police Department (1974).) The 1972 and 1974 studies were privately printed, and are attached as exhibits to the amicus curiae brief of the National Committee for Sexual Civil Liberties.
The city attorney's brief in response to the petition for writ of prohibition states that since January of 1977 the city attorney's office has followed specific guidelines in deciding whether to prosecute cases under section 647, subdivision (a). The guidelines indicate that solicitation seeking private conduct will form the basis of a prosecution only if the solicitation is offensive, or the person solicited is under 18. Although these guidelines represent a substantial improvement in even-handed law enforcement when compared to past practices, their very detail and the extent to which they depart from judicial decisions construing section 647, subdivision (a), emphasizes the vast discretion granted the prosecutorial authorities under the statute.

FN 9. The district court decision was vacated and remanded by the United States Supreme Court for reconsideration of the appropriateness of granting injunctive relief. (Mailliard v. Gonzalez (1974) 416 U.S. 918 [40 L.Ed.2d 276, 94 S.Ct. 1915].) The federal district court decision is not reported in the Federal Supplement, but appears in full in 1 Pepperdine L.Rev. 12 (1973).

The Legislature amended Welfare and Institutions Code section 601 in 1974 to remove the language found vague by the district court decision.

FN 10. Decisions of other jurisdictions holding statutes similar to section 647, subdivision (a), unconstitutionally vague are cited in footnote 6 page 251, ante.

FN 11. Under this construction, the statute does not prohibit offensive public solicitations proposing private lawful acts. Some such solicitations could be punished under Penal Code section 415, subdivision (3), which prohibits the use of "offensive words in a public place which are inherently likely to provoke an immediate violent reaction." It is questionable whether the state could constitutionally punish nonobscene solicitations of lawful acts which are not inherently likely to provoke a breach of the peace. (Cf. Cohen v. California (1971) 403 U.S. 15, 20 [29 L.Ed.2d 284, 291, 91 S.Ct. 1780].)

FN 12. In re Steinke, supra, which involved sexual acts in a closed room in a massage parlor, suggested that a closed room made available to different members of the public at successive intervals was a place "open to the public" under section 647, subdivision (a). (See 2 Cal.App.3d at p. 576; People v. Freeman (1977) 66 Cal.App.3d 424, 428-429 [136 Cal.Rptr. 76].) We do not endorse that interpretation, which would render a fully enclosed toilet booth (cf. Bielicki v. Superior Court (1962) 57 Cal.2d 602 [21 Cal.Rptr. 552, 371 P.2d 288]), a hotel room (cf. Stoner v. California (1964) 376 U.S. 483 [11 L.Ed.2d 856, 84 S.Ct. 889]), or even an apartment a place "open to the public" under this section.

FN 13. Prior decisions construing section 647, subdivision (a) and its predecessor statute have, as this opinion explains, interpreted the statutory language so broadly as to render the statute vulnerable to the charge of

unconstitutional vagueness. Accordingly, language in the following decisions inconsistent with the present opinion is disapproved: People v. Freeman, supra, 66 Cal.App.3d 424; People v. Williams, supra, 59 Cal.App.3d 225; Silva v. Municipal Court, supra, 40 Cal.App.3d 733; In re Steinke, supra, 2 Cal.App.3d 569; People v. Mesa, supra, 265 Cal.App.2d 746; People v. Jaurequi, supra, 142 Cal.App.2d 555; People v. Babb, supra, 103 Cal.App.2d 326; In re McCue, supra, 7 Cal.App. 765; People v. Deyhle, supra, 76 Cal.App.3d Supp. 1; People v. Rodrigues, supra, 63 Cal.App.3d Supp. 1; People v. Dudley, supra, 250 Cal.App.2d Supp. 955.

FN 14. Defendant's attack on the constitutionality of Penal Code section 290, the sex registration law, is premature; he has not yet been convicted and is not presently subject to registration.

FN 15. In view of the narrowing construction given to the statute by this opinion, we do not believe that defendant can properly maintain that he was not on notice that conduct which violates the statute as construed herein was subject to criminal sanction. Although we have held that section 647, subdivision (a), as interpreted in prior judicial authorities, was not sufficiently clear or specific to pass constitutional muster, we believe that it was clear under those authorities that conduct proscribed by the statute as now interpreted would be criminal. Accordingly, defendants who committed such "hardcore" conduct cannot claim a denial of due process in having their conduct judged under the present, narrowly construed provisions of the statute. (See, e.g., Screws v. United States (1945) 325 U.S. 91 [89 L.Ed. 1495, 65 S.Ct. 1031]; see generally Amsterdam, The Void for Vagueness Doctrine in the Supreme Court (1960) 109 U.Pa.L.Rev. 67, 85-88.)

CALIFORNIA VS. BOST, 1988

"…Simple beach nudity is not indecent exposure…Fair notice must be given before a citation is issued..."

RECEIVED MAY 16 1989
FILED FEB 22 1988
MARY ANN HULSE
COUNTY CLERK OF PLACER COUNTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER
APPELLATE DEPARTMENT

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. 75689
	)	(Muni.Ct.No.CRl-2947)
Plaintiff & Respondent,	)	
	)	OPINION
vs.	)	
ERIC JOHN BOST,	)	
Defendant & Appellant.	)	

Eric John Bost (Bost) appeals his conviction after court trial of violating Section 4322 of Title 14 of the California Administrative Code ("Section 4322"), prohibiting nudity within the state parks. Bost contends that his conviction must be reversed because Section 4322 unconstitutionally infringes his right to "skinny dip"; because the policies adopted by the state parks with respect to enforcement of the statute as applied in Bost's case render its enforcement arbitrary and discriminatory; and because Bost's conduct was not prohibited by the statute and administrative policies concerning its enforcement. We conclude that long-standing and well- publicized policies concerning nudity in the State Park System define and limit conduct prohibited by Section 4322 and that Bost's activities were not in violation of that section. Accordingly, we shall reverse.

Section 4322 of Title 14 of the California Administrative Code provides:
"No person shall appear nude while in any unit of the State Park System except in authorized areas set aside for that purpose. The word nude as used herein means unclothed or in such a state of undress as to expose any part or portion of the pubic or anal region or genitalia or any portion of the breast at or below the areola thereof of any female."

Violation of that administrative regulation of the state park system is made punishable as a misdemeanor by Section 5008 of the California Public Resources Code.

After public hearings conducted by the State Park System on the question of whether and what areas of the state parks should be set aside as "clothing optional" areas of the state parks, the then Director of the California Department of Parks and Recreation, Russell W. Cahill, adopted a policy that, "No clothing optional beaches will be designated within the California State Park System at this time. During the public meeting process, it became clear to me that the public is extremely polarized on this issue. It also became clear that there is a serious concern on the part of clothing optional beach opponents about the extra costs of patrolling beaches so designated. [P] Proponents' arguments that a few miles of beach be set aside for their use were pervasive (sic). However, serious opposition from legislators, county supervisors and local governing bodies leads me to believe that designating such areas will focus opponents' attention upon what seems to be a victimless crime at worst, and certainly an innocuous action. [P]

The cost of extra services argument is a good one. Therefore, it shall be the policy of the Department that enforcement of nude sunbathing regulations within the State Park System shall be made only upon the complaint of a private citizen. Citations or arrests shall be made only after attempts are made to elicit voluntary compliance with the regulations. This policy should free up enforcement people to concentrate on other pressing duties."[1]

The "Cahill Policy" has remained the enforcement policy of the State Park System throughout the State of California. The policy has been widely disseminated and is well known within the public, and particularly among those who enjoy nude sunbathing at the state parks. In addition, while the Department has declined to designate specific areas as clothing optional as permitted by the provisions of Section 4322, a number of locations within various state parks have, by custom and practice, become known and accepted as areas where clothing optional activities are tolerated. Indeed, evidence introduced at the trial suggests that the Department has, if not overtly encouraged, at least knowingly failed to discourage in any way individual and organized nude activities at various locations within the State Park System over the years.

The Bear (sic)[2] Cove area has become well known as a location within Folsom State Park where clothing optional activities can take place with the knowledge and without complaint from enforcement authorities except as specified by the Cahill policy. For example, approximately one month before Eric Bost was arrested at Bear Cove, the Department of Parks and Recreation acquiesced in the holding of organized "National Nude Weekend" activities at Bear Cove.

The availability of clothing optional facilities in various areas of the state park, including the Bear Cove area, has been featured in a number of widely available private publications. In addition, though the Department of Parks and Recreation has not officially designated any "clothing optional" areas within the State Park System, an official publication of a sister state agency lists areas within several state parks as being available for clothing optional activities. The "California Coastal Access Guide" published by the California Coastal Commission of the State of California, lists four "clothing optional" locations in four separate state parks, though not including Bear Cove. The listings do not include references to the prohibition of Section 4322 and, indeed, are put forth in inviting terms, describing the locations as, "sandy, clothing optional beach", "popular clothing optional beach", "popular sunbathing beach; clothing optional", and, simply, "clothing optional."

In addition to the testimony of Mr. Bost, who indicated his awareness of the general acceptance of nudity at the Bear Cove area of Folsom State Park and, in general, of the tolerance of clothing optional activities throughout the State Park System, the testimony of a number of other individuals active in individual and organized nude activities was introduced to establish that innocent nude sunbathing and swimming is at least tolerated, if not encouraged, in various areas of the state parks.

Bear Cove, part of the popular Granite Bay recreation portion of Folsom, is a rather secluded area of beach located in a cove which, while accessible from the water, is not easily visible to those passing by on the water or by land. Because of this seclusion, it has become a popular location for nude sunbathing and swimming. Because of this seclusion, these innocent activities of nude sunbathers and swimmers has attracted little private or public attention or criticism.

On Saturday, August 10, 1985, Mr. Bost was on the Bear Cove beach dressed only in a pair of scuba diving boots. A park ranger entered Bear Cove in a boat, spoke with a number of nude recreators and ultimately approached Bost. The ranger stated that there had been complaints concerning the Bear Cove activities that day and directed Bost, as he had others, to dress or that a citation would be issued. In fact there had been a single complaint by a passing fisherman. Appellant complied, dressed and left the area.

Bost returned to Bear Cove on August 11 and was again swimming, nude at the Bear Cove area.[3] The same ranger again approached the area and Bost. The ranger advised Bost that he had been warned yesterday and then, without further warning, cited him for violation of Section 4322 and asked him to dress. No complaint had been received of the activities of appellant or of any others at the Bear Cove area on that Sunday. A number of other nude sunbathers present on Sunday were warned and told to dress. Evidence was also introduced of one individual who received a citation on Sunday who had not received a previous warning either on Sunday or on the previous Saturday.

Bost's citation led to trial before the municipal court and the conviction from which he appeals.

We deal first with Bost's contention that Section 4322 violates his constitutionally protected right to nude sunbathing. Bost refers us to Williams v. Kleppe (1976) 539 Fed.2d 803. There, a Federal Circuit Court upheld a national park regulation prohibiting nude activities on the Cape Cod Seashore National Park. In upholding the regulation, however, the court recognized some constitutionally cognizable interest in nude bathing where such activities had been historically conducted in secluded areas where the conduct was unlikely to be offensive to passers-by. (Williams v. Kleppe, supra, 539 Fed.2d at 807, citing Williams v. Hathaway (1975) 400 Fed.Supp.122, 127.) Appellant does not contend, nor could he based upon any authority we have found, that the right to engage in nude activities in the state parks or elsewhere is a fundamentally protected right. While we do not mean to equate nude sunbath- ing with activities such as seductive nude dancing or other purposeful public displays of nudity involving sexuality, the cases upholding regulation of the latter activities recognize that there are legitimate state interests in prohibiting nudity which might be offensive to others in public places. (Crownover v. Musick (1973) 9 Cal.3d 405; 107 Cal.Rptr. 681; Eckl v. Davis (1975) 51 Cal.App.3d 831, 124 Cal.Rptr. 685). We conclude that the potential that simple nude sunbathing or swimming activities may be offensive to the sensibilities of other state park users is sufficient to warrant the prohibition of such activities within the State Park System. Section 4322 is a valid and constitutional exercise of the police power of the state.

We will address Appellant's contentions concerning the interpretation of Section 4322 and the policies concerning its enforcement together, as their resolution raises common issues.

We note, first, that Appellant has made no contention, nor is there any evidence, that his prosecution was grounded on enforcement policies that singled him out for prosecution based on some constitutionally prohibited basis. Absent such evidence, the fact that certain persons, including Appellant, are cited for violation of Section 4322 while others are not, is not grounds for reversal of his conviction. (See, for example, Murgia v. Municipal Court (1975) 15 Cal.3d 286, 124 Cal.Rptr. 204, Oyler v. Boles (1962) 368 U.S. 448, 456, 7 L.Ed.2d. 446, 453.) Appellant's contentions concerning "arbitrary and discriminatory enforcement" are more appropriately seen as a challenge to the section as being rendered unconstitutionally vague due to the application of the enforcement policy of the Department of Parks and Recreation as typified in this case. The contention has substantial merit.

It is a fundamental component of due process, protected both under Article 1, Section 7, of the California Constitution and the Fourteenth Amendment to the United States Constitution, that there must be a certain level of definiteness in criminal statutes. (Burg v. Municipal Court (1983) 35 Cal.3d 257, 198 Cal.Rptr. 145.) "Today it is established that due process requires a statute to be definite enough to provide (1) a standard of conduct for those whose activities are proscribed and (2) a standard for police enforcement and for ascertainment of guilt." (ibid.)

In order to meet the first test of definiteness, a statute must give fair notice of what conduct it seeks to prohibit. "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." (Connelly v. General Construction Company (1926) 269 U.S. 385, 391; 46 S.Ct. 126, 127; 70 L.Ed. 322. It is evident that the prohibitory language of Section 4322 itself gives at least reasonably fair notice of the total prohibition of nudity in the state parks, except in authorized areas. Passing for the moment, the question of "authorized areas", we note that the statute, without more, is sufficiently clear and precise to warn people of common intelligence of the conduct it prohibits. To end the analysis of the problem here, as respondent suggests, however, would impermissably ignore the uncontroverted evidence of the long-standing tolerance and encouragement of nude activities in certain areas of various state parks.

The due process requirement of precision is intended to provide ordinary individuals with knowledge of what it is the state seeks to prohibit them from doing. "The notice provided must be such that prosecution does not 'trap the innocent' without 'fair warning' (Grayned v. City of Rockford (1972) 408 U.S. 104, 108, 92 S.Ct. 2294, 2299, 33 L.Ed.2d 222.)" (Burg v. Municipal Court, supra, 35 Cal.3d at 271; 198 Cal.Rptr. at 153.) While the usual problem is the vagueness of statutory language, we conclude that where long-standing and well publicized official policies of the state expressly permit or encourage activities which are technically unlawful, prosecution based upon such conduct offends basic notions of due process.

Courts routinely refer to external indicia of precision, including announced administrative policy, to interpret otherwise vague statutes with the precision necessary to avoid their unconstitutionality. (See, for example, Pennisi v. State Fish and Game (1979) 97 Cal.App.3d 268; 158 Cal.Rptr. 683; Burg v. Municipal Court, supra, 35 Cal.3d 257, 272; 198 Cal.Rptr. 145, 154; County of Nevada v. McMillan (1974) 11 Cal.3d 662, 673; 114 Cal.Rptr.345.)

In Pennisi, for example, the court considered evidence of well publicized policies of the Fish and Game department concerning methods of measuring fish net mesh to determine their legality to clarify the language of a purportedly vague statute providing for civil and criminal penalties.

In Burg, the Supreme Court looked to external evidence acquainting the public with the effects of drinking on determined blood alcohol levels in holding that the provisions of subsection (b) of Vehicle Code section 23152, prohibiting driving with a blood alcohol level of .10% by volume, provided fair notice of the conduct prohibited. Among the external indicia of notice relied on by the court was the common Department of Motor Vehicles driver information pamphlet.

These cases demonstrate that apparently vague statutory language can be given meaning so as to provide fair notice by reference to external indicia of meaning, including broadly disseminated enforcement policies. We believe that similar external indicia, when in the form of well publicized and widely known policy statements and practices, can create sufficient confusion in the mind of a reasonable person as to what conduct is actually prohibited by the state so as to render enforcement of an otherwise clear Penal statute violative of due process in particular circumstances.

Before declaring a statute unconstitutional, however, we are obligated to ascertain if it is subject to definition consistent with legislative intent that avoids its unconstitutionality. (Pryor v. Municipal Court (1979) 29 Cal.3d 238; 158 Cal.Rptr. 330; People v. Soto (1985) 171 Cal.App.3d 1158; 217 Cal.Rptr. 795.) As we have just noted, such interpretation may make reference to external indicia. with its enforcement is entitled to great weight. (California Welfare Rights Organization v. Bryan (1974) 11 Cal.3d 237, 113 Cal.Rptr. 154; Pennisi v. State Fish and Game Department, supra, 97 Cal.App.3d 272, 284, 158 Cal.Rptr. 683, 687.) We believe that the statutory language and policies can be harmonized to arrive at a statutory construction consistent with legislative intent and due process notice requirements.

Applying these rules to the statute in question we reach several conclusions. First, we conclude that, though the 1979 Cahill policy eschews an intention on the part of the Department to designate clothing optional beaches, the subsequent enforcement practices and policies of the Department have resulted in the designation of certain areas as "clothing optional", Bear Cove is such an area. Secondly, we conclude that the department has availed itself of the discretion granted it by the legislature to make the clothing optional use of these beaches conditioned upon the absence of citizen complaint to law enforcement officers. We also conclude that a reasonable construction of this policy which is consistent with legislative intent and the policies and practices established at the trial is that a warning to discontinue nude activities cannot be construed to be a ban "forever" of the future pursuit of nude activities at the state park. We find that the policy contemplates that an individual may return to the same location on a subsequent day after a complete cessation of nude activities on request of an enforcement officer.

This construction meets the two elements of due process notice required by Burg and similar cases. By reading the long-applied policy as a conditional designation of clothing optional beaches, the public receives fair notice that clothing optional activities like "skinny dipping" are permitted only at recognized locations within the state parks, unless a request for cessation of such activities is made by an enforcement officer upon public complaint. Upon such warning, the activity must stop for the day. By prohibiting the activity for the balance of the day, it is likely that the skinny dipper and complaining party will not encounter one another again, thus serving the purpose of the "Cahill policy" in a rational, easily understandable way.

This construction also fairly advises law enforcement and prosecutors of how the law is to be enforced. So long as the activity takes place in a traditionally recognized area, it is legal unless and until a complaint from a member of the public is received. Upon such complaint, a warning is to be issued and, if not heeded, a violation has occurred. Further activities of a person so warned are prohibited for the balance of the day, but activities on later days are proscribed only if preceded by a new public complaint and renewed warning.

For these reasons, we conclude that the conduct which Appellant engaged in on Sunday, August 11, 1985, was not in violation of Section 4322 and that, accordingly, his conviction must be reversed.

Dated: February 22, 1988
GILBERT, P.J.
I concur: [4] COUZENS, J.

Footnotes:

1 The evidence concerning the adoption of policies their dissemination and public awareness of the policy were not controverted at the trial. So too, the essential facts surrounding Mr. Bost's arrest were not in substantial dispute.

2. The record does not tell us if the choice of this area was an intended pun.

3. Perhaps establishing a use of the phrase "double dipping" outside of the area of public retirement.

4. By stipulation of the parties at oral argument, this matter was submitted to a two judge panel of the court.

NUNEZ VS. HOLDER, 2010

"...a sunbather who removes all his clothes [has] done nothing either lewd or depraved and thus is neither in violation..."

Nunez v. Holder
9th Circuit Court of Appeal, February 16, 2010

Excerpted from the ruling…

> "We start by recognizing one point that does not appear to be in dispute. Exposing oneself in a public place is not necessarily lewd, or base, vile and depraved as traditionally required by our traditional definition of moral turpitude. For example, the Board of Immigration Appeals and the California courts appear to agree, **a sunbather who removes all his clothes to tan on an unoccupied public beach and wakes to find himself surrounded by offended beachgoers has done nothing either lewd or depraved and thus is neither in violation… nor guilty of a morally turpitudinous act."**
>
> Judge Stephen Reinhardt,
> 9th Circuit Court of Appeal

SHERIFF LEE BACA LETTER, 2006

"Simply being nude in the Angeles National Forest is not prohibited by law."

LEROY D. BACA, SHERIFF

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

November 8, 2006

Mr. R. Allen Baylis
Attorney at Law
4050 Katella Avenue
Los Alamitos, California 91001

Dear Mr. Baylis:

I have received your letter that states your concerns that some of our deputies may be misinterpreting the law as it pertains to section 314. 1 of the California Penal Code. I asked my staff to research the applicable laws and ordinances to determine if simple nudity in the unincorporated county area of the Angeles National Forest was prohibited. Their research revealed that simply being nude in the Angeles National Forest is not prohibited by law. Therefore your client appears to be within his legal rights to hike in the forest in the nude.

Altadena Station Deputies will be briefed that simply hiking in the forest, in the nude, is not a violation of the law. They will also be briefed about section 314.1 of the California Penal Code to ensure that law is being properly enforced.

If you have questions regarding this matter, please contact me at (626) 798-1131.

Sincerely,

LEROY D. BACA, SHERIFF

Joe L. Gutierrez, Captain
Altadena Station

A Tradition of Service

NUDIST BEACH AT PIRATES COVE JOINS SLO COUNTY PARK SYSTEM

February 26, 2013 - After decades of informal public use, the nudist beach at Pirates Cove section of Avila Beach is now a part of San Luis Obispo County's park system.

Background: In November, 2008, we reported that the San Luis Obispo County Board of Supervisors were considering buying 67 acres of private land along Avila Beach, 32 acres of which included the nude beach at Pirate's Cove. Unfortunately the county could not afford to buy the entire area so they settled on just the bluffs above the beach. Now, almost five years later, the county has the funds to purchase the balance of the property. Some locals nudists emailed us that they were nervous about losing their 3,100-foot stretch of beach area but Supervisor Adam Hill made it clear at the 2/26 hearing that he "would not support a change in its historical use.".

The hearing made it clear, however, that improvement to the surrounding cliff paths and parking areas must be done for public safety and liability reasons.

The bottom of the stairs on the main trail from the west side parking lot above is constantly being degraded by waves, sand, and mud erosion. A second access trail on the east (Pismo Beach) side known as the "Rope Trail" is far more precarious, and there is discussion that it may just be closed, leaving beachgoers with only one way to and from the beach. This could leave beachgoers trapped on days with a very high tide.

Second, the county wants to pave and stripe the dirt parking lot above the beach where everyone now parks. They also install safety rails along the edges to prevent cars from accidentally going off the cliff. This will reduce the number of cars allowed to just 35. Currently up to 80 cars have been known to squeeze together on a typical summer day. This means more cars will have to park along the narrow 2-lane road that runs up the hill to the parking lot, a road really too narrow to support two-way traffic AND parked cars. Some beachgoers may have to walk more than a mile up the hill to reach the trail head before descending to the beach. It will also potentially impact trash pickup and road erosion of the paving and shoulders. The county also intends to install restrooms at the trail head, and build a new trail connecting Pirates Cove to Shell Beach.

These trail and parking improvements will be paid for by a series of grants from three state agencies. After the initial $1.4 million upgrade is complete in a few years, it is estimated the park will cost $42,500 a year to maintain. But first, all improvements must be approved by the California Coastal Commission, a process that could take 18 months to two years. So nothing will change for nudists, for the trail, or for parking in the meantime.

Lastly, the county is concerned about continued vandalism and graffiti on the rocks, trees and on the trail itself. Everyone agrees all parties need to do a better job here.

The group in the middle of all this is the Whales Cave Conservancy. They recently re-instated the WCC non-profit 501c3 status so the county would have a formal group to negotiate with (instead of a gaggle of disorganized volunteers). One of the things they are considering is to establish a group of Beach Ambassador volunteers, similar to what is used at Haulover and Black's Beaches, to patrol the area to discourage any potential misbehavior or graffiti. . This would be better than having Park Rangers do the patrols.

By David Sneed,
The San Luis Obispo Tribune
Reproduced with Permission
http://www.sanluisobispo.com/2013/02/26/2408341/pirates-cove-avila-beach.html

Note: This is an example of how a local beach support group can work with the local government to create a profitable partnership at a traditional clothing-optional county beach

WHAT IS A BEACH WATCH AMBASSADOR?

Beach Ambassadors are volunteers who observe and report what is going on at our particular beach.

But Beach Ambassadors also watch out for those occasional individuals who may spoil the beach experience for others.

Because we are citizen volunteers, we are not authorized to intercede or detain persons we think are acting improperly.

Beach Ambassadors provide an avenue for beach regulars to get to know one another and to build a sense of community.

HOW DO I BECOME A BEACH WATCH AMBASSADOR?

Currently, our Beach Ambassador program is established at North Rincon (Bates) Beach, Hope Ranch/More Mesa Beach, and at Gaviota State Beach.

We hope to expand to other Santa Barbara beaches in the near future. To do that, we need additional volunteers, willing to devote some of their beach-going time to walking a foot patrol and then reporting what they see to local authorities if it seems appropriate to do so.

3-HOUR CERTIFICATION CLASSES ARE HELD MONTHLY

All applicants then are required to undergo a basic background check. Once the required training course is completed, the Director of Friends of Bates Beach has final approval of all appointments.

Once approved, Beach Ambassadors carry a distinctive form of identification: a hat with logo and/or a name medallion, to make them easily visible on the beach should a beachgoer have a problem or need a question answered.

Clear recognition of the presence of Beach Ambassadors on the beach can in itself go a long way toward maintaining a friendly family atmosphere at the beach.

For further information, contact:

FRIENDS OF BATES BEACH
WWW.FRIENDSOFBATESBEACH.ORG
(818) 225-2273

Friends of Bates Beach (FOBB), a non-profit organization based in Santa Barbara County. FOBB is a division of the Southern California Naturist Association, Calabasas, California

JOIN OUR BEACH WATCH AMBASSADOR PROGRAM

And Earn Your Own Hat as a Proud Member of Our Team!

WHO WE ARE…

- **Volunteers** – We assume the care and mentorship of our assigned beach.
- **Diplomats** – We work to ensure the trust and mutual respect of visitors for the beach environment and its surroundings.
- **Committed** - We work within the law to establish behavior guideline standards so that no one person or group of people can ruin the beach experience for the others.

WHAT DO BEACH WATCH AMBASSADORS DO?

In practice far more time is spent on **providing information** and explaining the accepted standards of beach etiquette and courtesy.

We find one of our most effect tools to deter crime is simply **walking around**. People who want to break into cars, to sell drugs or paint graffiti on walls prefer to do it when nobody is around to watch it happen. Our very presence acts as a deterrent and sends a message to those on the beach that inappropriate behavior and crime will not be tolerated.

When we see a problem, **our job is to report** it to a park ranger, sheriff deputy, or city/county park personnel to make sure that problem receives a prompt and effective response.

It is NOT our role to enforce the law, but simply encourage people to do the right thing, and if not, to report our concerns to those in authority for their consideration and possible action.

Beach Ambassadors coordinate the annual **California Beach Cleanup each September** at our designated beaches.

Beach Ambassadors **observe and report** to the authorities when there is **suspicious activity** around vehicles.

Beach Ambassadors help the parks department **remove graffiti** from parking lots and sea walls.

By taking **good notes** on what we observe, Beach Ambassadors assist law enforcement in their investigation.

Beach Ambassadors gently remind dog owners to **pick up after their animal.** (Sometimes we also remind dog owners that county laws require they keep their **dogs on a leash**.)

A Beach Ambassador foot patrol is in the best position to notice and report **sick sea lions or other wounded wildlife** on the beach, or injured/sick people who may need immediate medical attention.

I ♥ Bates Beach
Carpinteria, California
friendsofbatesbeach.org (818) 225-2273

NUDE BEACH ETIQUETTE

A Guide to Courtesy& Common Sense Behavior at Beaches and Hiking Trails Supporting Clothing-Optional Use

Free beach etiquette is not much different from the same good manners that you should exhibit wherever you go. Be polite and respect the rights of others and others will do the same for you.

Gawking is Impolite

Gawking, or staring at nude sunbathers, is impolite. It is always rude to stare at others, but it is especially so when you use binoculars or a camera to look at nude people. If you came to a clothing-optional (CO) beach to see for yourself what the experience is like, please, join in. You will have a great time. If you came to "look at the nudies," do yourself a favor and buy a magazine and read it at home.

Obey all Parking Rules and Regulations

Park only in designated areas. In some areas parking is limited and fills up early. If this is true at your beach you can:

- Arrive Early - before the crowds
- Carpool - saving both gas and parking spots.
- Help others carry their stuff from the parking area to the beach. Someone may do the same for you.

Respect the Environment

Keep out of areas that may be environmentally sensitive. Leave any wild animals (seagulls, sea lions, etc.) alone. We can loose access to CO areas by impairing the environment or preventing the wild animals from roaming free.

Help Keep the Area Clean

Bring and use trash bags. Always try to carry out more trash than you carried in. Leave nothing but footprints, take only memories.

Get Dressed When Leaving Established CO Areas

Many of the clothing optional beaches, while not strictly legal, are accepted by the local population. To avoid offending people, do not go nude into parking lots or textile beaches. Always be dressed if taking a stroll outside the boundary of the CO area.

Avoid Any Sexual Activity

Avoid any hint of sexuality in clothing-optional areas. Complaints about sex in public have caused problems at some CO beaches. Please, do not give the prudes an excuse to close down another CO recreation site.

Respect Private Property

Show respect for the private property of others as you go to and from the beach. Don't litter or park on private property.
That means don’t park your blanket directly alongside or below another person if there is plenty of other space left on the beach.

Respect the privacy of others. Many folks come to the beach to enjoy nature and do not want to be disturbed. It is OK to be friendly, but if someone doesn't seem to respond, please respect their right to privacy. “No” means no.

Avoid Taking Photos or Movies

We recommend you leave the camera at home - including the one in your cell phone. If you insist on taking a picture, confine it to just the people in your party, and that means avoiding having anyone in the background without their verbal (if not written) consent. Also, totally avoid taking photos of nude under-age children at the beach as it just isn't worth the confrontation you will be inviting.

Be Prepared

Most CO beaches are remote and do not offer the services and amenities found at textile beaches. Therefore you should bring everything you may need including: Water/Beverages, Food , Cooler, Sunscreen, Towel, Chair or Mattress. Use the bathroom in the parking lot before coming down the ramp to the beach.

Speak up for Standards

If you see someone who is violating the accepted standards, please explain to them clearly and politely just how they are violating the rules and just what the proper behavior is. You will find most voyeurs will leave immediately after being discovered.

MIAMI-DADE COUNTY

miamidade.gov

Parks, Recreation and Open Spaces Department
275 Northwest 2nd Street
Miami, Florida 33128
T 305-755-7910 / F 305-755-7846

June 12, 2014

Shirley Mason, Executive Director
B.E.A.C.H.E.S Foundation Institute, Inc.
P.O. Box 530702
Miami Shores, FL 33153

Mrs. Mason,

We would like to take this opportunity to thank you and your organization for your efforts in continuing to provide quality services at the clothing optional beach at Haulover Beach Park. The work that you do alongside members of the South Florida Free Beaches, Florida Naturist Association is invaluable and is the reason why we are able to continue to provide this service. Through your tireless efforts in helping to identify the needs for Haulover Beach Park we continue to make much needed improvements that support the long term sustainability of this section of beach.

Part of our joint success has come from having the well-established Beach Ambassador Program that is a model for all other clothing optional beaches around the world. It is essential in safeguarding the rights of the visitors, deterring inappropriate behavior, and ensuring that the rules of the park are adhered to. More importantly it serves as a platform for educating the public about the benefits of providing nude recreation opportunities in public venues that are safe and family-friendly.

We look forward to working with you in the years to come. We know that getting to this point has been no easy feat but with open communication and a commitment to continue to make progress we can make Haulover Beach Park the premier clothing optional beach in the world.

Sincerely,

Kevin M. Kirwin
Assistant Director for Operations

Endorsements and References Letters About Haulover Beach, Florida

CITY OF SUNNY ISLES BEACH
18070 Collins Avenue
Sunny Isles Beach, Florida 33160
305.947.0606
www.sibfl.net

TO WHOM IT MAY CONCERN:

RE: HAULOVER BEACH PARK'S DESIGNATED NATURIST FAMILY BEACH

As Mayor of the City of Sunny Isles Beach, I am writing this letter of support for the clothing-optional naturist beach at Haulover Beach Park. The naturist beach is less than 100 feet from our city.

We have seen this beach grow from a few hundred visitors a day to 8,000 to 10,000 visitors on a weekend day. With over one million visitors a year within a few feet of our beautiful city, naturally we are going to be diligent observers of the behavior of these beach visitors.

The City of Sunny Isles Beach is comprised of luxury condominiums, rental apartments, oceanside hotels, *as* well as townhouses and single family homes. We are extremely conscious of our image as a tourist destination. The City is home to numerous high-end hotels, which include the Trump International Hotel and the ultra luxurious Acqualina Hotel.

Some of the visitors to Haulover's naturist family beach are citizens of my city and our hotels are enjoying high occupancy rates as tourists come here to enjoy this beach. Some of these visitors have bought condos here and have made Sunny Isles Beach their home. These visitors have contributed to our resort and sales tax base.

The visitors to this beach have been well behaved, they keep the beach clean and they stay within the designated area. The naturist family clothing-optional beach has had no adverse secondary effects on our city or on our citizens who enjoy Haulover Park. Myself as mayor, our police department or our citizens simply would not tolerate otherwise. The citizens of Sunny Isles Beach walk and jog within a few feet of the length of the clothing optional beach and we have received virtually no complaints.

The City of Sunny Isles Beach and its police have developed a good working relationship with the South Florida Free Beaches/Florida Naturist Association. We have witnessed their Beach Ambassadors working closely with the lifeguard service, the county police and the park management. The naturist beach visitors have been good stewards of the beach and have been good neighbors.

I trust that this letter of support will encourage you to support the naturist beach.

Sincerely,

Norman S. Edelcup
Mayor

CITY OF SUNNY ISLES BEACH
18070 Collins Avenue
Sunny Isles Beach, Florida 33160
305.947.0606
www.sibfl.net

Office of the Mayor and Commissioners of Sunny Isles Beach

January 18, 2011

Honorable Carlos Alvarez, Mayor Miami-Dade County and The Miami-Dade Board of County Commissioners

111 Northwest First Street, 29[111]Floor

Miami, Florida 33128

SUBJECT: Support for B.E.A.C.H.E.S. Concession Services at Haulover Beach

Dear Honorable Mayor and Commissioners:

As you may know, Miami-Dade County RFP No. 757 requests proposals for providing concession 29th Flooro the users of Haulover Beach. We are writing in support of the joint venture proposal submitted by ***B.E.A.C.H.E.S. Foundation Institute, Inc.*** (Shirley Mason, Founder and Executive Director) and ***Kissing Pelicans Inc.,*** (Robert Hoadley, owner of the Pelican Restaurant at the Newport Pier).

Shirley Mason is also the founder of the world-famous clothing-optional beach at Haulover Park. For nearly 20 years she and a group of leaders and supporters have volunteered on a daily basis to mentor this beach, using their professional time and financial resources, working tirelessly to protect and improve Haulover Beach Park for our community. We are grateful that the City of Sunny Isles Beach has been a primary beneficiary of this international tourist destination that they created.

All of their work has been done <u>for free</u> by the organization's volunteer leaders and volunteer supporters. This organization deserves our thanks, and it deserves to be awarded the concession contract. No other responder to this RFP has worked like this for the people of Miami-Dade and the millions of tourists who come to Miami solely because of this beach. Work by B.E.A.C.H.E.S. and its affiliates have had the following results:

- Trip Advisor ranks Haulover Beach as the r[i] most popular destination in Miami
- County revenues from parking fees have increased 450% since Shirley's group became involved
- Businesses in Sunny Isles Beach report an increase in customers from the beach
- Hotels in Sunny Isles Beach r3rdort that many of their guests come specifically because of Haulover Beach
- Condominium association presidents report that many residents in their buildings bought their units specifically because of Haulover Beach

CITY OF SUNNY ISLES BEACH
18070 Collins Avenue
Sunny Isles Beach, Florida 33160
305.947.0606
www.sibfl.net

Because B.E.A.C.H.E.S. leaders have worked so hard to create, improve and protect Haulover Beach, they know Haulover beach users better than any other organization possibly could. They have proven their commitment to serving their customers, and they will continue to reinvest their profits back into Haulover Beach improvement and amenities. Other vendors will simply take their profits home at the end of the day.

We believe B.E.A.C.H.E.S. and its team has proven themselves over the past 20 years with a track record that makes them the strongest applicant. This team has earned this concession contract through hard work, skill, dedication, knowledge, experience and imagination. The joint venture team includes the following:

- B.E.A.C.H.E.S. Foundation — which has 5 years of concession experience on-site at Haulover Beach as a Miami-Dade Programming Partner
- Shirley Mason — who created the Haulover Beach Ambassador Program whose 36 official volunteer Ambassadors monitor the beach and educate beach users
- Robert Hoadley — who has 36 years of experience in the food/beverage service industry, and 14 years' experience in beach equipment rental service on Miami Beach and Sunny Isles Beach for beach-front hotels.
- A large, multi-facility international hotel and resort corporation with years of experience creating high-end resorts and providing outstanding customer service

In summary, we believe the joint venture headed by B.E.A.C.H.E.S. should win this contract because:

- They deserve to win it
- They have the business experience, financial stability, human resources, and capital resources that are necessary for this project
- They have created the strongest team to provide the best services to Haulover Beach, the surrounding communities, and Miami-Dade County

We hope you will agree. Thank you for your consideration of our thoughts

Sincerely,

CITY OF SUNNY ISLES BEACH
18070 Collins Avenue
Sunny Isles Beach, Florida 33160
305.947.0606
www.sibfl.net

Mayor Norman S. Edelcup

Vice Mayor Lewis J. Thaler

Commissioner Isaac Aelion

Commissioner Jeanette Gatto

C: Greg Nicklas
Shirley Mason

SUNNY ISLES BEACH
TOURISM AND MARKETING COUNCIL

As a business and tourist-related industry association, we keep in close communication with the local police and park department authorities for obvious reasons. The clothing optional beach area has proven to be safe, is extremely clean, and as a result of self-regulation and self-policing by its attendees, through all these years there has been no reports of negative conduct nor any reported serious crime.

Relative to benefits, weekly our association office responds to numerous visitors' inquiries on the clothing-optional beach and requests for lodging arrangements, in order that guests may enjoy this resource. Well over one million people visit the clothing optional beach and the assigned parking area generates over $1 million in annual revenue to the County. Additionally, our local restaurants and retailers also financially benefit from the infusion of these guests.

It is worth noting that the regional core of the naturist beach users: participate in assuring that the beach resources are maintained at the highest quality level; work with the county to initiate safety programs; organize fund raising efforts for needy causes; and effect social functions, which greatly add to the enjoyment of a beach visit.

In essence, the decision made almost a decade ago by our Board of Directors to support the establishment of a clothing optional beach has brought our community many positive returns.

Sunny Isles Beach Resort Association

Ibis Romero
Executive Director

18070 Collins Avenue | Sunny Isles Beach, FL 33160 Phone: 305.947.5826 Fax: 305.792.1672 sunnyislesbeachmiami.com