

Police can't keep hands off Gays

by JOEL TLUMAK

When Los Angeles City Atty. Burt Pines announced in April a new, relaxed gay bar policy—he said he was going to prosecute only arrests for “grossly offensive” behavior in gay bars—the general praise coming from the gay community was coupled in many cases with two reservations.

Would the police continue to make lewd conduct busts in bars even if Pines will not prosecute them? There were suspicions that the police would ignore the city attorney's policy.

And if police were going to let up on gay bar arrests, what about police activity outside the bars, commonly regarded as harassment in the gay community?

“If police don't arrest Gays in bars, they will arrest Gays in other places,” predicted attorney Al Gordon at the time of the Pines announcement.

Caseload Grows

Since then, Gordon said his gay bust workload—he is handling a large number of tearoom and park arrests—has increased. The same thing has happened to another attorney, Thomas Hunter Russell, who also handles gay street arrests.

A check of Section 647(a) lewd conduct arrest statistics before and after the new gay bar policy reveals no significant change in monthly totals. But there has been a shift in where those arrests were made.

In March, before the new policy was announced, 177 men were arrested for lewd conduct in Los Angeles. The breakdown: 25 per cent in bars, 75 per cent on the streets.

In April, when Pines privately informed the police of his new policy, lewd conduct busts of men in Los Angeles totaled 179. But the breakdown here was significantly different: 10 per cent in bars, 90 per cent on the streets.

And during May (the figures for this month were not quite complete

at deadline) the breakdown for 174 male lewd conduct arrests was eight per cent in bars, 92 per cent on the streets.

Presumed Gay

These statistics were compiled by the city attorney's office at the request of the *ADVOCATE*. Since they are only a quick tally without details, they do not show how many of the men arrested were gay, but it is presumed that most of them, if not all, were homosexuals.

To balance this rough survey, figures on female lewd conduct arrests in Los Angeles were supplied for two of the three months. In April, two women, and in May, seven women were arrested for lewd conduct.

The conclusions are obvious: (1) Lewd conduct enforcement appears to be directed almost exclusively against gay males, and (2) although police have let up on gay bar arrests, they have intensified their activities on the streets.

But from here, this analysis branches out into two different directions:

- How valid is the lewd conduct statute?
- How valid are police methods in enforcing the statute on the streets?

Pines is in a peculiar position because of his gay bar policy. What he really did, in effect, was tell police that section 647(a) is not defined in concrete terms, and he is interpreting it more liberally than the police when it comes to behavior in gay bars.

Law Challenged

Since his policy announcement, however, Gordon and attorney Thomas Coleman have filed a taxpayer's suit against the city and county of Los Angeles claiming that section 647(a) is unconstitutional because it is vague and subject to arbitrary interpretation.

Pines, as the city's attorney, now has to defend section 647(a). And Pines cannot wriggle out of the dilemma because city officials, including Police Chief Ed Davis, aren't about to disclaim the lewd conduct statute.

Gordon and Coleman are so determined to challenge the constitutionality of the statute that they are prepared to file similar suits against more than 80 cities and several other counties if the Los Angeles action doesn't bring results.

From one of those suits they hope to get the issue before higher courts, perhaps even the U.S. Supreme Court, for a definitive ruling. Their suit calls for an injunction to stop the city and county from spending tax dollars to implement and enforce section 647(a).

Policy Ignored

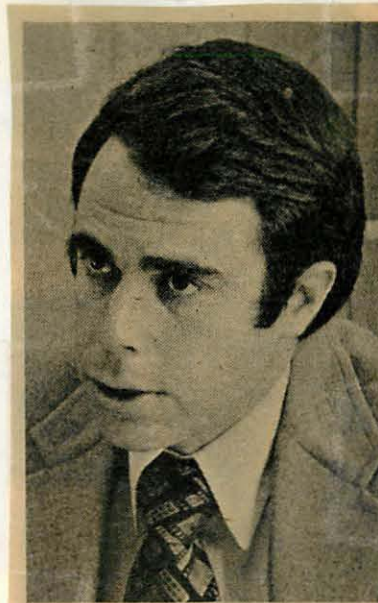
But on the question of police enforcement methods in regard to lewd conduct, even if the statute were declared constitutional, the police appear to be using methods that violate what they say is department policy.

A month before Pines announced his new gay bar policy, the vice division issued an enforcement guide for lewd conduct.

Rule 4 of that guide says: “Officers shall not use restrooms where lewd conduct violations are prevalent. In no case shall officers dress in the manner indicative of or make movements suggestive of homosexuality.”

But what this rule prohibits is precisely what vice officers have been reported doing in Griffith Park. Attorney Gordon, for example, reported two Hollywood vice officers making lewd conduct busts in restroom No. 4 off Fern Dell Road at about 8PM almost nightly.

Two observers from the American Civil Liberties Union checked out the report and one night found two



BURT PINES

vice officers cruising the tearoom for about 50 minutes. Trying to dress in a manner indicative of homosexuality, the officers also tried to make movements suggestive of homosexual conduct, reported the ACLU observers.

Discovery or Entrapment

This is not something new. Unless officers making a quick routine check of a restroom surprise people in a sex act, which is rare, the officers have to resort to entrapment to make such lewd conduct arrests or act gay and hang around the restroom, actions which are contrary to Rule 4 of the department.

Police methods are also suspect in lewd conduct arrests made under section 647(b), prostitution.

In the recent sweep of Selma Avenue in Hollywood, in which 40 persons were arrested for hustling, the ACLU gay rights project monitoring police activity received three police brutality complaints from young men on the street who claim they were roughed up in lieu of being arrested.

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L.A. ARRESTS ANALYZED

And now the ACLU has what project officials believe is a case of police malpractice. A young man on Selma Avenue said he refused to get into a car driven by someone he suspected was a vice officer and was shortly thereafter arrested by that officer and a companion.

'Parole' Arrest

Taken to the Hollywood police station, he was booked on suspicion of violating parole, according to the ACLU's account of the incident. But the young man had never been on parole; he had to be released, and, says an attorney the ACLU consulted, the officers should have known common procedure, which is to report a parole violation to the courts rather than make an arrest when the parolee isn't charged with another crime.

City Atty. Pines has no relaxed policy on male prostitution busts. Of 14 cases reported disposed out of the 40 arrests during the hustling sweep in May, the one defendant who decided to go to trial got acquitted. One case, however, was dismissed by the city attorney's office, and 12 lewd conduct suspects copped out to lesser pleas—trespassing or disturbing the peace—and a \$50 fine.

Lt. Robert Jones, head of the Hollywood vice squad, has warned that continued major vice sweeps of hustling activity around Selma Avenue are in the offing this Summer if hustlers refuse to be forced off the streets, as appears to be the case at present.

If that does happen, male prostitution arrests could equal or maybe even surpass the number of females busted each month for prostitution in Los Angeles. In April, for example, 98 women were arrested for prostitution in the city, compared to 86 men. In May, the comparison showed 112 females arrested to 72 men.

Creating Crimes

Prostitution arrests seem to be almost exclusively entrapment busts. On Selma Avenue, a vice officer posing as a trick picks someone up in his car, tries to make a deal for sex, and then busts the young man.

The only other way to make prostitution arrests is to respond to a complaint by a dissatisfied custo-

The question of complaints, in fact, puts the whole question of victimless crimes into focus. People who favor wiping so-called victimless crimes off the books contend that police are enforcing laws that few, if any, private citizens cite in complaints. Virtually all 647(a) and 647(b) complaints are signed by police officers.

In a study of 664 lewd conduct arrests, co-authored by attorney Coleman during the Summer months of 1972, he found only five busts made in response to "citizen" complaints—and those were from security officers.

Coleman is not only challenging the constitutionality of the lewd conduct section of the California Penal Code with a taxpayer's suit, but he argues in a brief before the Appellate Department of the Superior Court of Los Angeles that the prostitution statute is also unconstitutional.