Van Nuys Judge Voids Loitering Law

A municipal court judge in Van Nuys has declared California's "loitering" statute, 647 (d), unconstitutional. The statute has been used by vice police to arrest thousands of gay men in public toilets over the years.

As in all local court decisions, the ruling affects only the courtroom of the judge who made it—in this instance, Judge Harold Sinclair.

However, the decision could become a landmark in Gay Liberation history if the Los Angeles city attorney's office decides to appeal it and Sinclair's ruling is upheld. State appellate court decisions become binding on all California courts.

Sinclair's ruling was handed down Sept. 8 in connection with a restroom arrest in Reseda Park in February. Defense lawyer Tom Coleman had filed a demurrer on behalf of his male client challenging the constitutionality of the law on grounds of "vagueness."

Under 647 (d), it is misdemeanor to "loiter in or about any public toilet for the purpose of engaging in or soliciting any lewd or lascivious or unlawful act."

Coleman's demurrer specifically contended that the law punishes persons for "a state of mind," requires "no overt criminal act" to be enforced, and makes it unlawful for persons to obtain consent for private acts which will become legal Jan. 1, when the Brown Bill takes effect.

In upholding Coleman's challenge, Judge Sinclair cited a 1973 decision in state appeals court regarding the constitutionality of the so-called "vagrancy" statute, 647 (e), which requires suspicious-looking persons to identify themselves when questioned by police.

That statute is currently being used on a wholesale basis by Hollywood police to stop and question apparent drifters on the streets.

Ironically, it was Judge Sinclair himself who had ruled the "vagrancy" statute unconstitutional on the grounds that it requires no "overt criminal act."

Although the three-judge appeals court panel overruled Sinclair, it conceded that a test of any law's validity is that it involve an overt act. They simply ruled, however, that refusing to give a cop an I.D. card is an overt act.

In citing that 1973 decision, Sinclair said the "loitering" statute fails to meet the overtness test.

As for Coleman's client, the decision doesn't mean he's off the hook. The man was arrested for allegedly mastrubating in a public place, and the city attorney's office can file a new case under 647 (a), "lewd conduct."

However, Coleman and his client are both hoping the city attorney will challenge Judge Sinclair's decision declaring the "loitering" statute unconstitutional. Coleman told NewsWest there is "a very good chance" that an appeals court would agree that the law punishes one's "state of mind" and requires no overt act.

Coleman noted that even though 647 (d) is punishable only as a misdemeanor, it also a registerable sex offense.

"It's a bad law," said Coleman. "We have to get it off the books."