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Sarong Gals: Green Light for the Red Light Abatement Law

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Introduction

In *People* ex rel. *Hicks v. Sarong Gals*,[1] decided August 3, 1972, the Fourth District Court of Appeal held that the Red Light Abatement Law[2] may be applied to enjoin obscene stage entertainment in the form of nude dancing. The Court ruled that the Act applies even though there is no evidence of prostitution.

Sarong Gals represents the first time an appellate court has reviewed the validity of the Red Light Abatement Law as it applies to lewd dancing. The Court, however, declined the opportunity to review the constitutionality of the Act's remedies, reasoning that the entertainment offered by the bar was so patently obscene that no countervailing constitutional consideration was needed.

It is the purpose of this case note to call attention to the fact that serious constitutional questions do arise when the Red Light Abatement Law is applied in the field of obscenity. In order to accomplish this objective, it will be necessary to examine the decision itself, the rationale and authorities employed by the Court in arriving at the decision, the Red Light Abatement Law, and the constitutional effect which the Act will have upon First Amendment rights.

The Red Light Abatement Law

The Act itself was initially adopted in 1913,[3] and as its name implies had for its principal objective the abatement of houses of prostitution.[4] Such a narrow interpretation, however, never has been given the Act in application. Indeed, the Act has been read broadly as applying to all places used for the purposes of illegal sexual activity.[5]

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1. 27 Cal. App.3d 46, 103 Cal. Rptr. 414 (1972).
2. California Penal Code, sections 11225-11235 (West 1970).
3. Additions and amendments by Statutes in 1953 and 1969.
4. Board of Supervisors, County of Los Angeles v. Simpson, 36 Cal. 2d 671, 227 P.2d 14 (1951).
5. *See* notes 17-18 *infra*.

The Act is penal in nature, and thus auxiliary to the enforcement of the criminal law; but a case brought under the Act is considered to be a civil case.[6] The proceedings are in equity and designed to facilitate a summary method for initiating an in rem action against property deemed a public nuisance.[7]

The Statute begins by defining a "Red Light" nuisance:

> Every building or place used for the purpose of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution and every building or place in or upon which acts of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution, are held or occur, is a nuisance . . .[8]

The Statute then provides that such place shall be enjoined and abated. The Court petitioned for relief is empowered to issue a preliminary injunction to prevent the continuance of the nuisance.[9] This injunction remains in effect pendente lite. Of particular importance is the fact that the temporary injunction can be ordered without the necessity of an adversary hearing or notice to the named defendant, and may be based on the allegations of the verified complaint alone.[10]

The heart of the Red Light Abatement Law, CALIFORNIA PENAL CODE Section 11230, describes the permanent relief available under the Act.

> If the existence of a nuisance is established in an action as provided in this article, an order of abatement shall be entered as part of the judgment in the case, directing the removal from the building or place of all fixtures, musical instruments and movable property used in conducting, maintaining, aiding or abetting the nuisance, and directing the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and that

6. Courts have variously referred to the Act as both penal in nature, and civil in nature. It seems more accurate to refer to the Act as penal in nature when it is employed to aid in the enforcement of obscenity regulation. *See* People *ex rel.* Bradford v. Arcega, 49 Cal. App. 239, 193 P. 264 (1920).

7. People *ex rel.* Bradford v. Barbiere, 33 Cal.App. 770, 166 P. 812 (1917).

8. CALIFORNIA PENAL CODE, section 11225 (West 1970).

9. CALIFORNIA PENAL CODE, section 11227 (West 1970).

10. Id. However, this was not the case in *the Sarong Gals* case where the issuance of the temporary injunction was preceded by an adversary hearing.

it be kept closed for a period of one year, unless sooner released . . .[11]

The proceeds from the sale of the movable property are applied to pay for the costs of the removal and sale of the property, the cost of keeping the building closed, and the petitioner's costs of litigation.[12] If the proceeds from the sale of the buildings furnishings do not fully discharge these costs, then the building itself may be sold to make up the deficiency.[13] Evidence of the general reputation of the premises in the community is sufficient to prove the character of the house as a public nuisance and condition the above relief.[14] More importantly, because the action is in rem against the property sought to be abated, the knowledge of the owner that the premises are being used for the purposes of lewdness or prostitution is not required to obtain a forfeiture against him.[15]

It was with no detailed consideration of the above provisions that the Court arrived at its decision in *Sarong Gals*. Had the Court considered them, it would have discovered the serious constitutional questions inherent in the application of the Act. The following section will examine the Court's decision and the reasons behind the failure to give a thorough inspection to the constitutional implications of the Red Light Abatement Law.

THE CASE

On December 23, 1970, culminating months of surveillance and observation, the Orange County District Attorney filed a complaint under the Red Light Abatement Law seeking to abate and enjoin the Sarong Gals bar and its entertainment as a public nuisance. After a hearing on the merits of the complaint, at which the District Attorney presented numerous affidavits of undercover agents, the Court issued a temporary injunction prohibiting the named defendants "Sarong Gals" and Seemaygro,

11. CALIFORNIA PENAL CODE, section 11230 (West 1970). But ". . . prior to judgment the court may not take possession of the questioned premesis, by placing keepers therein, nor may it order the same closed." People *ex rel.* Woolwine v. Feraud, 45 Cal. App. 765, 768, 188 P. 843, 844 (1920).

12. CALIFORNIA PENAL CODE, section 11231 (West 1970).

13. *Id.*

14. *See* People v. Macy, 43 Cal.App. 479, 184 P. 1008 (1919). ". . . evidence of the general reputation of a place is admissible for the purpose of proving the existence of a nuisance." CALIFORNIA PENAL CODE, section 11228 (West 1970).

15. "The fact that the court did not find that Ingersoll had knowledge, etc., that such nuisance was being conducted on his premises, we think is immaterial." People v. McCaddon, 48 Cal. App. 790, 792, 192 P. 325, 326 (1920). *See also*, People *ex rel.* Bradford v. Barbiere, 33 Cal.App. 770, 166 P. 812 (1917); People v. Casa Co., 35 Cal. App. 194, 169 P. 454 (1917).

Inc., from: a) using the premises for the purpose of lewdness, b) permitting performances graphically depicting sexual activity, c) conducting any entertainment whereby the performer's genitalia or anus was visible to any other person.[16]

Two subsequent petitions by defendants for writs of prohibition seeking to annul and vacate the temporary injunction were denied without opinion. The defendants then petitioned the issuing court to dissolve the injunction; this petition was denied, and the defendants appealed to the Fourth District Court of Appeal. The Court modified the injunction by striking paragraph (c), but affirmed the remaining sections (a) and (b).

THE COURT'S DECISION

The initial question which the Court had to resolve was whether the Red Light Abatement Law could properly be used to enjoin continuing acts of lewdness without the accompanying incidents of prostitution. *People v. Bayside Land Company*[17] had determined that the word "lewdness" as used in the Act is of broader significance than the words "assignation" or "prostitution," and includes all immoral and degenerate conduct or conversation. The Court in *Bayside* decided that the term "lewdness" was adopted specifically to prevent acts revolting and disgusting in themselves, although not technically qualifying as acts of prostitution.

16. In toto, the injunction read:
IT IS HEREBY ORDERED that during the pendency of this action, all defendants herein who have been served, and each of them, shall be and they are hereby enjoined and restrained from in any way or manner, personally or through any agent, servant, tenant, representative, employee or inmate, directly or indirectly, or in any manner whatsoever, any of the following acts
a. Erecting, establishing, conducting, using, owning or releasing the grounds, building or premises described in the complaint, to further use for the purpose of lewdness, assignation or interferences with the comfortable enjoyment of life or property by the neighborhood, and
b. Conducting or permitting to be conducted upon or within said grounds, building and premises any performance which demonstrates or graphically depicts sexual intercourse, masturbation, fellation (sic) cunnilingus, bestiality, buggery, or masochism, and
c. Conducting or permitting to be conducted upon or within said grounds, building or premises any performance wherein or whereby any person's genitalia or anus is visible to any other person.

17. 48 Cal. App. 257, 191 P. 994 (1920).

Again, in *People* ex rel. *Bradford v. Arcega*, this interpretation of the Act was reaffirmed.

> Even if prostitution or assignation was not thus sufficiently shown to have been practiced in the place, it is clear that lewdness was so shown, and obviously the nuisance upon which the statute places its ban may consist alone of acts of lewdness.[18]

Thus, supported by this interpretation, *Sarong Gals* held that the Red Light Abatement Law *can* be used to abate acts of lewdness sans evidence of prostitution.

The most important issue raised in the case was whether the injunctive relief provided for under the Act could properly be used to enjoin live entertainment taking the form of lewd dancing. The defendant's argument, as interpreted by the Court, against allowing the Act to be used to enjoin such entertainment was basically this: Since nude dancing is protected under the First Amendment, lewd, nude dancing should also receive First Amendment protection.[19] To enjoin lewd, nude dancing would, therefore, be unconstitutional as a violation of the right to freedom of expression. The Court, however, quickly rejected this argument by holding that although nude dancing is protected by the First Amendment, it is a long and illogical step to the conclusion that lewd, nude dancing is likewise protected. The dancing performed in the Sarong Gals bar was labeled by the Court as simple obscene conduct calculated to arouse the latent sexual desires and imaginations of the viewers, and not a mode of expressing emotion or dramatic feeling. Whatever element of communication there may have been in such conduct was overshadowed by its emphasis upon and preoccupation with gross sexuality.[20] In conclusion, the court admonished that the patina "free expression" is not a self-serving sword which can be used to draw commercialized lewdness under the mantel of First Amendment protection.

There is a major shortcoming in the Court's inspection of the above issue. This lies not in the conclusion reached or the reasoning used, but in the argument considered. The weakness results from

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18. 49 Cal. App. 239, 193 P. 264 (1920).
19. 27 Cal.App.3d 46, 50, 103 Cal. Rptr. 414, 417 (1972).
20. Although the *Sarong Gals* opinion does not specifically cite *United States v. O'Brien*, 391 U.S. 367 (1968), it is obvious that the Court had the principles of that case in mind when they variously referred to the dancing involved as "conduct," "behavior," "activity," and "exhibitions." In *O'Brien* the United States Supreme Court held that the extent to which conduct is protected by the First Amendment depends upon the presence of a communicative element. "We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." 391 U.S., at 376.

the fact that there is no real controversy presented by the argument that lewd dancing should be a constitutionally protected form of expression. The law is too well settled to seriously dispute that obscene expression in whatever form is not protected by the First Amendment. A more representative argument, and the argument which the defendant claims to have made to the Appellate Court, would have been the following:

> While lewd or obscene dancing is *not* protected by the First Amendment, it, like obscenity, which is likewise not protected by the First Amendment, must be analyzed with First Amendment principles and tools.[21]

Consideration of this proposition would have necessitated a thorough examination of the Red Light Abatement Law and the constitutional questions raised by the use of the Act against live stage entertainment. However, these considerations were not needed in order to dispose with the illusory argument actually considered by the Court, and therefore must be left for future decisions.

In holding that the Red Light Abatement Law could be used against lewd, nude dancing the Court cited as authority for this conclusion the case of *Harmer v. Tonylyn Productions, Inc. Harmer* had previously rejected the applicability of the Act to enjoin obscene films, but by way of dicta had specifically distinguished live stage entertainment, stating:

> The Red Light Abatement Law has been held by judicial construction to apply to lewd live stage shows and exhibitions.[22]

No authority is cited by the *Harmer* Court in support of the conclusion that there exists in the law a distinction between motion pictures and live stage entertainment. Indeed, when these two forms of entertainment are viewed in a constitutional light they are generally compared—not contrasted. The United States Supreme Court in *California v. LaRue* referred to the two in the conjunctive, stating:

> . . . both motion pictures and theatrical productions are within the protection of the First and Fourteenth Amendments.[23]

Likewise, in *Barrows v. Municipal Court* the California Supreme Court, while considering the validity of certain Penal Code prohi-

21. Appellant's Brief, Petition for Hearing, 4th Civil No. 11982, p.10 (People ex rel. Hicks v. Sarong Gals).
22. 23 Cal. App. 3d 941, 943-944, 100 Cal. Rptr. 576, 577 (1972).
23. 409 U.S. 109, 112 (1972).

bitions against disorderly conduct and obscenity as they applied to theatrical performers, noted that:

> . . . live plays performed in a theater before an audience are entitled to the same protection under the First Amendment as motion pictures . . .[24]

For California courts to distinguish between live entertainment, whether it be in the form of stage plays as in *Barrows* or in the form of nude dancing as in *Sarong Gals* and motion pictures for the purposes of the Red Light Abatement Law, while comparing the two for the purposes of constitutional considerations would seem an arbitrary distinction.

In the wake of the Court's decision it becomes necessary to examine the question of whether lewd entertainment, although not protected by the Constitution, is nevertheless entitled to be analyzed by First Amendment principles before it may be enjoined.

Nude Dancing and the Bill of Rights

Application of the Red Light Abatement Law to enjoin acts of gambling, prostitution, assignation, or lewdness standing alone raises no countervailing constitutional implications. These illegal activities, by themselves, are nowhere given protection under the United States Constitution. Lewdness, the Court candidly observes, is lewdness; as such it is purely and simply a forbidden form of unlawful behavior. A critical problem arises, however, when the word *lewdness* is used descriptively to define a form of nude dancing. In the context the term *lewdness* becomes synonymous with obscenity and must be analyzed accordingly.

The First Amendment does not purport to protect obscenity.[25] Yet "it does guarantee that certain standards shall be met if obscenity is to be found."[26] "Neither nudity nor the depiction of sexual activity . . . are obscene as a matter of law."[27] In fact, *In re Giannini* specifically holds that nude dancing is prima facie protected by the First Amendment as both a form of expression and communication.

> The prima facie applicability of the First Amendment . . . does not fail merely because the particular form of its manifestation may be obnoxious to many persons . . . it is as much entitled to the protection of free speech as the best of [dance].[28]

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24. 1 Cal. 3d 821, 824, 464 P.2d 483, 485, 83 Cal. Rptr. 819, 821 (1970).
25. Roth v. U.S., 354 U.S. 476 (1957).
26. Dixon v. Municipal Court of the City and County of San Francisco, 267 Cal. App. 2d 789, 73 Cal. Rptr. 587 (1968).
27. Sanita v. City of Los Angeles Board of Police Commissioners, 27 Cal. App. 3d 993, 104 Cal. Rptr. 380 (1972) n.4.
28. 69 Cal. 2d 563, 570, 446 P.2d 535, 540, 72 Cal. Rptr. 655, 660 (1968).

California courts have gone to great lengths to assure the constitutional protection of live entertainment. In *Sanita v. Board of Police Commissioners*[29] a nightclub performance entitled "The Dance of Love," which consisted of two nude entertainers, a male and a female, simulating acts of sexual intercourse and fellatio was held to have, prima facie, the protection of the First and Fourteenth Amendments to the United States Constitution.

The dividing line separating protected speech from obscenity is too elusive to allow for an abitrary determination of what is, or is not obscene.[30] Nude dancing must retain the preferred position under the First Amendment as does the most pristine of speech until it is judicially determined that to the average person, applying contemporary standards, the predominant appeal of the dance, taken as a whole, is to the prurient interest and affronts the standards of decency accepted in the community.[31] Only after such judicial sorting can a prima facie legitimate form of expression be condemned as obscene.

A CONSTITUTIONAL EXAMINATION OF THE RED LIGHT ABATEMENT LAW

A state is not limited to the criminal process in seeking to protect its citizens from the dissemination of obscenity.

> Whether proscribed conduct is to be visited by a criminal prosecution or by a qui tam action or by an injunction or by some or all of these remedies in combination is a matter within the legislature's range of choice.[32]

The Red Light Abatement Law utilizes the equitable relief of the injunction. This relief is intended to abate and prevent the con-

29. 27 Cal. App. 3d 993, 104 Cal. Rptr. 380 (1972). Other State courts have applied constitutional protection to various types of stage entertainment. Hudson v. United States (D.C. Ct. App. 1967), 234 A.2d 903. Burlesque Shows. In Adams Theatre Co. v. Keenan, 12 N.J. 267, 270, 96 A.2d 519 (1953), the New Jersey Supreme Court held: "The performance of a play or show, whether burlesque or other kind of theatre, is a form of speech and prima facie protected by the State and Federal Constitutions . . ."

30. Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).

31. This is generally what is referred to as the "Roth Test." Adopted by statute in CALIFORNIA PENAL CODE, section 311 (West 1970). Amended by statutes 1970.

32. Kingsley Books, Inc. v. Brown, 354 U.S. 436, 441 (1957).

tinuance or reoccurrence of the acts which constitute the claimed nuisance. Acting as it does, the temporary injunction operates as a *prior restraint* on acts threatened to occur in the future. Not all prior restraints are deemed to be unconstitutional, yet they all come before the courts bearing a heavy presumption against their constitutional validity.[33] This burden is even heavier in the case of live expression.

> A prior restraint on live expression, as opposed to films or books, would bear an even heavier burden of justification because the content of the future expression is unknown and cannot be presumed to be obscene.[34]

A system of prior restraints has come to be tolerated only where it is administered under the most careful judicial superintendence, and where it provides for the most vigorous procedural safeguards to insure against curtailment of constitutionally protected expression.[35] In light of this rationale, the procedures for obtaining a preliminary injunction under the Red Light Abatement Law must be reconsidered.

The Act allows a temporary injunction to issue ex parte without the need of notice or opportunity to be heard being served on the defendant to the action. In *Carroll v. President and Commissioners of Princess Anne,* the procedure of granting injunctive relief ex parte was condemned outright.

> . . . there is no place within the area of basic freedoms guaranteed by the First Amendment for such orders where no showing is made that it is impossible to serve or to notify the opposing parties and give them an opportunity to participate.[36]

The majority of Supreme Court decisions which have considered the issue of whether an adversary hearing must precede a restraint on expression have involved the seizures of allegedly obscene books and films pursuant to a search warrant. It has been uniformly held by the high court that by not providing for an adversary hearing, the procedure leading to the seizure becomes constitutionally defective.[37] Logically, it would seem to follow that if, as the court observes, prior restraint of live expression bears an even heavier burden in proving its validity than does a prior restraint upon

33. Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).
34. 27 Cal. App. 3d 46, 52, 103 Cal. Rptr. 414, 418.
35. See Marcus v. Search Warrant, 367 U.S. 717 (1960).
36. 393 U.S. 175 (1968).
37. The teaching of our cases is that, because only a judicial determination in an adversary proceding insures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint." Freedman v. State of Maryland, 380 U.S. 51, 58 (1965).

books or movies, an injunction against nude dancing, a fortiori, must be preceded by an adversary hearing.

The Act further provides that the temporary injunction may issue on the bases of a verified complaint or accompanying affidavits alone—no other proof is necessary if it appears from the face of the complaint that a nuisance exists. One must wonder if this sensitive procedural tool is what the Supreme Court had in mind when they insisted ". . . that regulations of obscenity scrupulously embody the most vigorous procedural safeguards."[38]

Even rejecting the possibilities inherent under such a system that protected expression may be enjoined on the basis of a false complaint or overzealous affiant, cognizance should be made that such a procedure cannot possibly consider the predominant appeal of the matter taken as a whole.

> . . . acts which are unlawful in a different context, circumstance, or place, may be depicted or incorporated in a stage or screen presentation and come within the protection of the First Amendment . . .[39]

To determine obscenity, the context in which the acts occurred must be examined.[40] It seems patently impossible for a magistrate to make a searching determination of the obscenity of a live performance on the basis of a complaint which need only plead the conclusion of the petitioner that acts of lewdness occur continually.

As noted, the Red Light Abatement Law provides that a judgment under the Act may order the closing and sale of a building and its furnishings. In *People v. Bayside Land Company*[41] this relief was referred to as "drastic," but the Court concluded that the evils sought to be remedied demanded such extreme treatment.

It is granted that a state may resort to various weapons in its fight against obscenity; but it is far from free to adopt whatever penalties it pleases in supplementing those laws. The prohibitions which a state adopts must be drawn so as to insure against the curtailment of constitutionally protected expression. The extreme relief available under the Act necessarily invites inquiry as to

38. Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).
39. *In re* Giannini, 69 Cal. 2d 563, 572, 446 P.2d 535, 541, 72 Cal. Rptr. 655, 661 (1968).
40. *See* Zeitlin x. Arnebergh, 59 Cal. 2d 901, 383 P.2d 152, 31 Cal. Rptr. 800 (1963).
41. 48 Cal. App. 257, 261, 191 P. 994, 995 (1920).

whether these prohibitions are overly broad and repressive of free speech. If the Red Light Abatement Law restricts protected speech as well as obscenity, then it places an unconstitutional restraint upon First Amendment rights, and as such must be judicially condemned.

The rationale underlying so severe a penalty as the closing of a bar offering lewd entertainment is the assumption that lewd conduct continually offered in the past will undoubtedly continue in the future, and the total abatement of the bar itself is the only way to prevent the reoccurrence of the illegal acts. There can be no dispute that the remedy will prevent the recurrence of the illegal acts, but the assumption that the prior illegal conduct will undoubtedly recur is questionable.

Perrine v. Municipal Court[42] examined the validity of such an assumption. There the Court held that it was constitutionally impermissible to deny an applicant a license to operate a bookstore on the grounds that he had suffered a prior obscenity conviction. The Court reasoned that a prior course of conduct does not lead to the conclusion that the same offense would be committed in the future. The rationale of *Perrine* and the rationale of the Act are in direct conflict. If the holding of the California Supreme Court is to be followed, must not the extreme penalties of the Red Light Abatement Law be rejected as unsupported by logic?

The *Sarong Gals* decision itself cautioned against the repressive effect which the Statute has upon protected speech, stating:

> While the Red Light Abatement Law can be applied to enjoin obscene stage conduct such as the graphic depiction of sexual activity . . . it cannot be used to prohibit free expression that is not obscene.[43]

This warning presents a dilemma in that future courts which are petitioned to order the complete closing of an establishment must first determine whether legitimate entertainment is involved. If the bar offers legitimate nude dancing as well as lewd, nude dancing, the Red Light Abatement Law may not be relied upon. An order closing a bar under such circumstances would likewise be in conflict with the constitutional mandate prohibiting overly-broad penalties in the area of First Amendment rights.

> When a statute . . . completely prohibits protected activities although a narrower measure would fully achieve the intended ends and at the same time preserve an effective place for the

42. 5 Cal. 3d 656, 488 P.2d 648, 97 Cal. Rptr. 320 (1971).
43. 27 Cal. App. 3d 46, 52, 103 Cal. Rptr. 414, 418 (1972).

> dissemination of ideas, its overbreadth may render it unconstitutional.[44]

One final problem is presented by the Red Light Abatement Law. Since it is an action in rem to abate specific property used for the purposes of lewdness, it is not necessary that the owner of the property involved have knowledge of the illegal purpose to which the property is put as a condition to relief.

> If, therefore, a building or property is so used as to make it a nuisance under the statute, the nuisance may be abated . . . notwithstanding that the owner had no knowledge that it was used for the unlawful purpose constituting the nuisance.[45]

For the purposes of the Act knowledge of illegal activities is imputed to the owner. It is presumed that one who owns a bar is aware, or with a minimum of effort could be aware, of any unlawful entertainment offered by his establishment. As a result of this presumption, actual knowledge is not considered to be a condition to relief. Such reasoning, however, has recently been rejected. In People v. Andrews the defendants were charged with the illegal sale of obscene material. There was no proof offered by the prosecution that the defendants had knowledge of the character of the material (photographs), although they were shown to be the owners of the property where the sales were made. The Court reversed the convictions.

> The showing that the defendants Andrews and Smith owned the establishments where the sales were made was not enough to prove they knew the character of the material.[46]

Beginning with *Smith v. California*[47] it has become accepted that an obscenity prosecution requires proof of the element of scienter. It is necessary to show that a defendant at least had some knowledge of the character of the material he is charged with disseminating. The California Penal Code defines "knowingly" as "being aware of the character of the matter or live conduct."[48] This does not mean that an accused need have specific knowledge that the material or conduct will actually be held obscene in a

44. Mandel v. Municipal Court For Oakland-Piedmont Judicial District, County of Alameda, 276 Cal.App.2d 649, 662, 81 Cal. Rptr. 173, 181 (1969).
45. People *ex rel.* Bradford v. Barbiere, 33 Cal.App. 770, 779, 166 P. 812, 815 (1917).
46. 23 Cal. App. 3d Supp. 1, Supp. 8, 100 Cal. Rptr. 276 (1972).
47. 361 U.S. 147 (1959).
48. CALIFORNIA PENAL CODE, section 311(e) (West 1970). Amended by Statutes 1970.

court of law; such a burden of proof would all but nullify the power of a state to deal with obscenity. On the other hand, a statute imposing strict liability for the mere possession of obscene material is unconstitutional on its face. Yet the Red Light Abatement Law imposes strict liability in the form of a forfeiture upon the legal owner of an establishment found to offer obscene entertainment, irrespective of the owner's knowledge or innocence of the illegal entertainment. An absolute penalty such as this cannot be tolerated, especially in the area of First Amendment guarantees. The result of imposing strict liability would lead to a self-imposed system of prior restraints upon legitimate dance out of fear of forfeiture.

Conclusion

The *Sarong Gals* decision does not purport to be a searching inquiry into, and ratification of, the Red Light Abatement Law as it applies to the field of obscenity. The Court limited itself to the issue of whether an injunction ordered under the authority of the Act, and preceded by an adversary hearing, was a proper means of prohibiting patently obscene nude dancing. Concluding that the dancing was purely and simply obscene and therefore involved no First Amendment considerations, the Court refrained from undertaking a constitutional examination of the Act.

The immediate effect of the decision will undoubtedly result in a marked increase in the use of the Red Light Abatement Law to combat all forms of obscenity. Caution should be taken, however, that such reliance is not misplaced. Many questions remain unanswered in the wake of *Sarong Gals,* and the likelihood of a thorough judicial examination of the Act, and in particular its constitutional implications upon the First Amendment must be anticipated.

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