

P R E S S R E L E A S E

State of New York
Temporary Commission on Revision
of the
Penal Law and Criminal Code
Room 654
155 Leonard Street
New York, New York
Co. 7-1708

RELEASE: A.M. Friday, October 23, 1964

Public hearings on the proposed revision of New York's Penal Law will be held in Albany, Syracuse, Rochester, Buffalo, and New York City during November by the Temporary Commission on Revision of the Penal Law and Criminal Code, it was announced today by its Chairman, Assemblyman Richard J. Bartlett.

The hearings will open in Albany at the Capitol on November 12th, 13th, and, if necessary, on Saturday, November 14th. The hearings will then continue in Syracuse on November 18th at the Onondaga County Court House; in Rochester on November 19th at the Hall of Justice and in Buffalo on November 20th at the State Office Building on Court Street. The Commission will conclude its hearings in New York City on November 23rd, 24th and 25th at the County Lawyers Association Building, 14 Vesey Street. All hearings will start at 9:30 A.M.

"In order to assure that everyone wishing to be heard is afforded an opportunity to speak," Mr. Bartlett urged, "those planning to testify should, as soon as possible, communicate with the Commission at its offices at 155 Leonard Street, New York 13, New York".

The proposed Penal Law revision was introduced by the Commission as a study bill at the last session of the legislature and more than 20,000 copies were circulated throughout the state. Chairman Bartlett has announced that he will press for passage of the Commission's proposal at the 1965 session. He is supported in this effort by Assemblyman Julius Volker, Chairman of the Assembly Codes Committee and by Senator John H. Hughes, Chairman of the Senate Codes Committee, both of whom are also members of this Commission.

The bill provides that the new law is not to become effective until 1967. "The purpose of this deferred effective date," Bartlett said, "is to give judges, lawyers, law enforcement officials, and the public sufficient opportunity to become acquainted with the new law. In the interim the Commission will continue with its assigned task of revising the Code of Criminal Procedure and the Correction Law."

Bartlett pointed out that this proposal is the first attempt at a complete revision of this state's penal laws in over eighty years. "The Commission's proposal," he said, "is more than a mere rearrangement of existing statutes. It is the result of a thorough reappraisal of many of the fundamental concepts underlying this state's criminal laws. It is important, therefore, that the Commission have the benefit of the views and comments of experts in the field, interested groups and members of the public. For only in this way can the Commission evaluate its work to date and consider any appropriate changes in its proposal before submission to the legislature".

TO: The American Social Health Association
1790 Broadway, New York, N. Y. 10019

The Undersigned:

(Please check one of the following:)

1) will present testimony at the public hearing held by the New York State Temporary Commission on Revision of the Penal Law and Criminal Code in _____, on _____, on the proposal that the new Penal Law as recommended by the Commission, be amended by inserting the following section:

"Patronizing Prostitutes: A person commits a violation if he hires a prostitute to engage in sexual activity with him, or if he enters or remains in a house of prostitution for the purpose of engaging in sexual activity."

2) will adopt, sign and return the attached resolution signifying its support of the amendment proposed by the American Social Health Association.

3) is considering what action it will take on the above proposal and will inform you of its decision not later than _____.

4) does not plan to take any action on the above proposal.

5) has other plans for action. (Please specify)

Signed:

Name _____

Title _____

Organization _____

Address _____

Date _____

RESOLUTION

WHEREAS the New York State Temporary Commission on Revision of the Penal Law and Criminal Code has proposed, in a draft of the new Penal Law recommended for enactment by the Legislature of the State of New York, that any reference to the patron or customer of a prostitute be omitted from the new Penal Law, and

WHEREAS such omission would absolve the patron or customer of a prostitute of all responsibility for his action and would in effect legalize for the patron or customer sexual intercourse for money, and

WHEREAS the act of prostitution should involve culpability on the part of both participants,

BE IT RESOLVED that in order that the laws of New York State may contain substantive provisions for the prevention and control of prostitution, the _____,
(name of organization or individual) (address)

urges the New York State Temporary Commission on Revision of the Penal Law and Criminal Code to reconsider its proposed section on "Prostitution and Related Offenses" and to add the following new provision as recommended by the American Social Health Association:

"Patronizing Prostitutes. A person commits a violation if he hires a prostitute to engage in sexual activity with him, or if he enters or remains in a house of prostitution for the purpose of engaging in sexual activity."

Signed:

Name _____

Title _____

Organization _____

Address _____

Date _____

IT TAKES TWO - BUT THE CUSTOMER IS ALWAYS GUILTLSS

by

Dorris Clarke, Attorney
Chief Probation Officer
New York City Magistrates Courts (Retired)

INTRODUCTION

The "ad" man who dreamed up the slogan "The customer is always right" may have increased sales for merchants and pleased purchasers of consumer goods; but when such a concept extends to traffic in human bodies, the anomaly points up the large discrepancy between law and justice.

The law of supply and demand permeates the field of human relations. As long as there are customers their demands will be supplied by an endless stream of recruits to the age-old social disorder - PROSTITUTION. No matter how often a prostitute or her pimp, procurer, madam may be arrested, convicted, fined, imprisoned - prosecuted to the full extent of the penal law; as long as the customer goes "scot-free" efforts to control or regulate prostitution will be futile, meaningless, a travesty on justice, a mockery of law and hypocrisy at its ugliest.

To codify prostitution, "sexual intercourse for a fee or consideration", as a criminal offense may or may not be desirable. But, having done so, to hold that only the offeror is guilty, and that the offeree, patron or customer is guiltless is a fantastically unbelievable piece of legal hocus-pocus and philosophical hair-splitting that defies all common sense, logic, sportsmanship, fair play, and presents an urgent challenge to the conscience of the community.

Having spent more than a quarter of a century in intensive professional service to the Probation Department of the New York City Magistrates Courts, I am convinced that personal morality cannot be legislated nor enforced by statutes. I have had direct or indirect contact with tens of thousands of persons who have been processed through these courts, on penal charges, for involvement with prostitution, drug addiction, homosexuality, alcoholism and similar behavior manifestations that reflect the social disorders of our complex society; individuals whose personality patterns deviate from the avowed norms of our proclaimed culture; whose sense of values gives little incentive toward the constructive

fulfillment of life's creative purposes. Without exception they were more to be pitied than condemned. I know of no way in which the profound wisdom of the ages could codify a law that would make them better human beings. The moral drive comes from within. It cannot be compelled from without!

To subscribe to the concept that the law should not interfere in private lives nor attempt to regulate personal morality as long as it does not affect "law, order and outward decency", in no way controverts the fact that there is a public duty to control and regulate by enforceable laws, the exploitation of human bodies, and the corollary criminal aspects of commercialized sex. It is important to distinguish clearly between private morality - a highly individual matter - and public decency which is universally recognized as a proper concern of regulatory statutes.

It is precisely because prostitution is considered a matter of public decency that laws relating to it are, in most jurisdictions, found within the criminal rather than civil codes. For the most part, such laws are harsher in their condemnation of the exploitation of the prostitute - containing severe penalties for convicted pimps, procurers, madams, promoters, and those who profit from the proceeds of prostitution, while the prostitute herself may be subject to much lighter penalties. But few jurisdictions place any blame upon the customer; and where there are such laws, enforcement is sporadic or non-existent. YET, WITHOUT CUSTOMERS, THERE WOULD BE NO PROSTITUTES.

It is my personal conviction that stringent laws, inexorably enforced, should make it a criminal offense to participate in any way in the exploitation of human beings; that "sex for sale" is morally insupportable, culturally degrading, and socially repugnant. Under such a concept it is utterly non-sensical and blindly stupid to regard the purchaser of sex as an innocent bystander. He is as crass an exploiter of a person as is the "solicitous" pimp, the "valiant" protector, the "motherly" madam.

The New York State Commission on Revision of the Penal Law and Criminal Code has submitted proposed revisions of the sections on PROSTITUTION AND RELATED OFFENSES. While I am persuaded that it would be more in keeping with modern approaches to the prostitute herself, to deal with her under the PUBLIC HEALTH LAW than under the Penal Law, since the pending proposals retain the punitive approach to her behavior, these comments are addressed to what is before the Legislature. I submit that to undertake a revision of the penal law regarding the handling of prostitution and to omit a sound "customers law" is to preserve an outworn, ostrich-like attitude that belittles our sense of decency and affronts our concept of human dignity.

Let me try to show you why!

GENTLEMEN PREFER ANONYMITY --- AND THE LAW AIDS AND ABETS THEM

"New York Vice Law Jails Woman, Releases Man"

This is a headline from the New York Daily News of December 30th, 1936. The yellowed clipping is in my files. I quote:

"Men who consort with prostitutes are not guilty of any crime under the laws of New York, Magistrate Mark Rudich of Brooklyn decided yesterday.

"Rudich rendered the opinion when he dismissed a charge of vagrancy against a man arrested in the company of a prostitute who pleaded guilty to committing prostitution with him.

"'In this enlightened day and age' (italics mine) declared the magistrate in his seven-page opinion, "when there is strong support for the movement toward lifting the stigma of criminality from the woman, I am loath to put the stamp upon the man".

"However, the Magistrate took pains to point out that his opinion was not based upon moral considerations but upon the strict interpretation of the letter of the vagrancy law.

"Rudich reviewed a number of decisions on related questions. He quoted one court as deciding that a man "could not commit an act of prostitution". And he quoted another judge as declaring that the time has come when jailing the woman and letting the man go free must be stopped as an unjust discrimination against women.

"The gentleman was described as "Anonymous" in the opinion and Rudich declined to make public the name of the prostitute who pleaded guilty and was given a jail term in Women's Court.

"'Anonymous' was tried before Rudich in Bay Ridge Court December 3rd and on advice of his counsel refused to take the Stand. His lawyer, Jacob R. Rosenthal, moved for a dismissal and it was upon this motion that Rudich yesterday ruled."

December, 1936. Twenty-eight years ago. I was a fledgling Probation Officer, with scarcely a year of service behind me, but during that year I had learned more about the "seamy" side of life than a library of technical books on psychology, sociology, anthropology, medicine, and psychiatry could teach; more than a voracious reading of Greek and Latin Classics, sophisticated novels and dramas, and "unexpurgated" shockers could portray. I kept that clipping because I had investigated that "unnamed prostitute". She, and hundreds of others who told me their stories, were responsible for my conviction, unswerving through the years, that our criminal prosecution of the prostitute juxtaposed with our protection of the customer is a ludicrous buffoonery unworthy of the majesty of the law. I cannot begin to enumerate all the cases of which I was personally aware in which "black books" containing the names of customers - distinguished or otherwise - were hidden or destroyed; nor the number of times vice-squad officers told me of the "famous johns" they let down the back stairs when a particularly publicized raid was made; nor how often I have sat in court, listened to a customer testify to his activities with the arrested girl, only to be sent joyfully on his way - free to seek another prostitute whenever he wished - with the judge's congratulations ringing in his ears for having done his "civic duty" in helping the Court to convict his erstwhile sexual partner.

There are many who have always felt that the wording of the present law, C.C.P. 887, Subd.(f): "who in any way, aids or abets or participates in the doing of any of the acts or things enumerated..." (italics mine) clearly applies to the patron or customer; but, in New York, the Judge-made law, that a man cannot commit an act of prostitution, continues to prevail. Sporadically, when a widely publicized case, like the Choremi or Jelke headline-makers, produces a spate of tabloid details, or serious columnist commentary, one will find an enlightened male commentator devoting an instant column to a polemic on the injustice to the woman. But, there is seldom any follow-up or crusade.

My files of the middle fifties contain two interesting clippings. From the New York Law Journal of March 1st, 1956, the following quotes from a Judge presiding in a higher criminal court, in which a Madam had been tried and convicted on the testimony of a "customer":

"Consideration of the sentence poses the problem of whether justice should be administered on the basis of a double standard. Great solicitude which I did not and do not share has been shown to the man who enlisted the services of the defendant and induced her to function as his procurer. He was presented

as a witness under an assumed name, a procedure that I regard as most unusual, also undesirable. Thus he was shielded even from consequences other than those flowing from criminal prosecution notwithstanding that he was, as our Court of Appeals recently has had occasion to observe, a "despicable participant in this ancient vice".

"It may be unreasonable to expect that criminal prosecution will serve to eliminate completely this 'ancient vice'. Certain it is however that the objective of our applicable criminal statutes is to curtail so far as possible and deter participation in it. It is questionable whether the public policy of our statutes can be effectively achieved by such over-protection of the "despicable participant", the man who enlists the services of the 'madam', however vigorous may be the prosecution and severe the punishment against her. As our highest court has pointed out.....our criminal statutes also 'seek to strike' at the 'despicable participant in this ancient vice - the organizer or instigator who remains behind and above the pimps and prostitutes he enlists' (People v. Moss)

"These considerations have increased the misgivings I entertained at the trial with respect to affording the 'despicable participant' the protection of anonymity. Accordingly it will be directed that his identity be truthfully indicated by the court records of these proceedings. That will at least serve as a deterrent to one who enlists the services of a madam in the belief that she may suffer court prosecution while he at the same time will not only escape it but will be further shielded from having his guilty participation become part of the public record.

"Accordingly, the guilty participant here will not with this Court's assistance achieve complete immunity from his guilty participation. Defendant, on the other hand, who has been prosecuted and found guilty, must be sentenced.

"These conclusions may to some extent dispel any notion that justice is being administered on the basis of a double standard."

From the Daily News of March 8th, 1956, an account of a proceeding in the Women's Court. The case involved a widely publicized Park Avenue Madam and her call-girl. I quote:

"The Judge gave the hardest time to the absent 'john' who had testified under an alias..... (the Judge) several times insisted that the true name be given to the court. The lawyer for the customer pleaded almost tearfully that 'there will be a tragedy' if his identity was disclosed. The man's son, he said, will be a college honor graduate this June, and his wife is very sensitive.

"'His wife does a lot of charitable work', the lawyer explained.

"'While he sleeps around in hotels with strange women', the Judge interjected.

"'Judge, do you want to kill his wife?' the lawyer pleaded.

"Finally after deep meditation, the Judge decided to go along with the lawyer's plea but warned that "Johnson" was the last 'john' who would ever get away with it."

Perhaps the Judge sitting in Women's Court was momentarily swayed by what he had read a week previously in the New York Law Journal. One wonders, however, by what process of ratiocination, ANY judge concludes that merely removing the aegis of anonymity from a "despicable participant" may "to some extent dispel any notion that justice is being administered on the basis of a double standard". HIS NAME becomes part of the "public record" --- an esoteric compilation seldom consulted save by a diligent researcher, or an avid newshound; while SHE, on HIS testimony, is convicted of a crime, and sentenced accordingly!

Lest you think that quotations from 1936 - or twenty years later, 1956 - are not au courant, let me refresh your recollection on more timely headlines you could not have missed. During the Spring and Summer of 1963 the entire world was regaled with the most intimate details of the Profumo scandal that rocked the British Empire and almost overthrew a government. The principal "customer" could, under the circumstances, hardly escape into anonymity - but, no matter how sinister the hints in gossip columns of other customers "highly placed and of noble lineage", few names were mentioned. Indeed, the meticulous official report prepared by Lord

Denning, while it explored and 'exploded' the most widely publicized rumors, carefully veiled the identities of the alleged participants. The British people and Press, as a matter of fact, seemed much more shocked that a British Minister would LIE to Parliament than that his private life was scarcely "above reproach". And, attendant upon our own Bobby Baker "case", have been detailed accounts of an alleged "sex for sale" set-up in Washington "catering to officialdom". Names of the "dolls" alleged to be involved have been publicized; but the supposed clientele is referred to in such generalities that almost any public official, or private citizen with known "connections", COULD be suspected. And in the most recent past - as well as presently - the papers are having a hey-day with exposes of "suburban housewives" offering "sex for sale" at their homes, in motels or hotels or other "places of assignation". When arrests are made, there is no hesitancy in publishing the names and addresses of the females. Even their husbands are not immune from publicity, but the "customers", while usually referred to as "well-to-do businessmen", or "upper-class" remain cloaked in anonymity.

Yes, the very person who is essential to commercialized vice - THE PURCHASER - continues to be treated by the law - and the Press - with the touching solicitude that ensures a continuation of the profession at a profitable return. How many times have I said to a convicting Judge: "What did she do that he was not equally guilty of?"

If we are serious about our present attempt to revise the Penal Code as it relates to Prostitution and Related Offenses, in the name of common sense and decency, let's eliminate this schizophrenia of the Law.

THE RATIONALE OF IT

Let us look at some of the "reasons" given for NOT including the one person in the whole complex picture of prostitution who is absolutely basic to the existence of the business.

Morris Ploscowe, former Magistrate who presided many times in the Women's Court of New York City, in his book SEX AND THE LAW, says: "If men could be discouraged by criminal penalties from resorting to prostitutes, then prostitution would become only a minor nuisance". He then cites statutory "attempts" at discouragement, principally those which make it a crime for a customer to frequent or resort to a house of ill-fame or to meet with a woman for the purposes of prostitution. "In other states the punishment of the male customer of a prostitute may be achieved by applying the rule

that any one who aids or abets in the commission of a crime is himself guilty of criminal conduct. A prostitute cannot commit an act of prostitution by herself, and the man, in this view of the law, is her accomplice in violating the criminal statutes against prostitution." He then questions the practicality of such statutes in discouraging men from resorting to prostitutes because "the number of cases in which this legislation is enforced is infinitesimal in relation to the number of violations.....No police department is geared to uncover such volume of prostitutional activity. Thus arrests of customers of prostitutes are few and far between and have little effect in dealing with problems of prostitution in any community."

As I interpret his position, customer laws are legally valid by the very nature of the act, but undesirable because they are not enforced.

Would one argue that there should be no laws against speeding because people will speed anyway? Or against illegal parking because people will park anyway and there are not enough police officers to cope with the increasing volume of traffic?

Another reason frequently cited is the difficulty of prosecuting since one co-conspirator cannot testify against another. Yet the receiver of stolen goods is as guilty as the seller; the co-defendant in a felony murder is as guilty as the principal though he may have been only the "look-out" and not even a witness to the murder. The prosecuting attorneys are charged with the responsibility of "proving the charge". Evidence that an act of prostitution has been committed is not necessarily any more difficult to obtain than in any other criminal case. In fact, as law enforcement in New York City is conducted today, via the vice-squad, more diligence in following through on their observations would enable them to testify directly to the consummation of the act rather than rely on the testimony of the client to convict.

Although laws against prostitution are in the criminal codes, it is interesting and significant to note that much of the rationale for not finding the customer responsible is based on the civil codes - specifically the law of contracts. In one famous case it was held that the relationship was a "contract" to perform and that therefore the offerer only could be guilty, not the offeree. In a French case it was specifically held that "The sexual intercourse of a free prostitute with a man may be regarded as a private contract.....If one of the two contractors deceives the other by concealing venereal disease, the latter has the right to claim damages if there is sufficient proof of infection from this source". And then, there is the famous law-school case-book aphorism that cites

the prostitute who, upon discovering she had been paid with a counterfeit hundred dollar bill, brought suit for fraud and deceit, only to be told she had mischosen her cause of action. She should have sued for breach of contract.

Why this volte-face in statutory interpretation from the field of criminal law, where the principle of equal guilt of co-conspirators is well-established, to the field of contract law where justification for the non-responsibility of the customer is sought? Clearly, it seems to me, because of a reluctance on the part of male legislators, male judges, male police officers to embarrass or "shame" their fellow men whose "human weaknesses" they "understand". That the same "milk of human kindness" does not always extend from such high places to the proverbial "fallen woman" is succinctly brought out in Caroline Slade's incomparable "Mrs. Party's House", a far sounder portrayal of the Madam than Polly Adler's more publicized book. Mrs. Party never could understand why the lawyers and judges who were so charming and generous to her girls when they were entertained in her parlor, became so vindictive and judgmental when she and her girls were haled into court!

I once had occasion to take a distinguished Judicial Visitor from Europe to observe proceedings in the Women's Court. After many hours during which he watched the parade of dramatis personae perform their allotted roles, he said to me, in quizzical cynicism: "Why do you call this the Women's Court? It is obviously a man's world." He even wondered why it should be called a court, where one would expect Justice to be dispensed.

And he was so right.

A male police officer arrests the defendant, escorts her to arraignment before a male judge (one can count on the fingers of one hand the number of female magistrates who have ever presided in the NYC Women's Court). Not an impartial district attorney - sworn to clear the innocent and convict the guilty - prosecutes. No indeed, the case for the "People" is presented and prosecuted by a lawyer from the legal bureau of the police department! Unknown to the defendant - and out of her presence - he has had the opportunity to rehearse carefully with the arresting officer the details of his case, in fact to "school" him as to what elements are necessary to "make" the case. If she hires her own attorney - or is furnished one by her "protectors" - or even assigned a Legal Aid representative by the Court - it is generally a male. Most of the Court Attendants are males; and, of course, if he is available, the male who "purchased his pleasure" from her is there to perfect the case by his sordid testimony.

The controlling principles of criminal law, that a defendant is presumed innocent until proven guilty by competent evidence beyond the possibility of a doubt; that every defendant in a criminal action is entitled to a fair trial, impartially conducted; that such defendants are entitled to legal counsel who will take every precaution to protect the client's constitutional rights; are violated or ignored or ruthlessly trampled upon every time a female charged with prostitution - a criminal offense - is arraigned. In a social order where the prevailing "popular" opinion is that the man must remain unstigmatized for the sake of his reputation or the sensitivity of his family, while the woman who is "in the business and making money" should pay the penalty, what possible chance does such "defendant in a criminal action" have with all of the cards stacked against her? In the present atmosphere of muddle-headed thinking that prostitution is a necessary evil - necessary to the very nature of man - but that she who serves man's "essential" nature is evil, sinful and a criminal, Justice is not only blindfolded but her scales are so overweighted with a preponderance of masculinity that the "marked woman" standing before the court is indeed "a wretched soul, bruised with adversity".

Yet our legal purists question the "practicality" of a "customer's law" because it would be "difficult" or "unrealistic" to try to enforce it. And at enormous public expense we support vice squads to detect, apprehend and testify against the offerer and her pimping, procuring, abetting parasitical associates; Judges and expensively staffed courts to convict her; health departments to treat her venereal infection; probation and correction departments to "rehabilitate" her; reformatories to incarcerate her - unconcernedly oblivious to the fact that the steady stream of guiltless customers only ensures the perpetuation of this age-old social canker.

How long will an informed and enlightened public continue to tolerate such utter folly?

LET'S FACE IT

I know of no one who seriously thinks that prostitution, as a concomitant of civilization, will ever be eliminated. It has too hoary a history; too many sacred as well as profane roots. Throughout the ages it has manifested itself diversely in the lives of individuals, in the fabric of cultures, in the rites of religions, in the rich tapestry of drama and literature, in the political, economic and military evolvment of this enigmatic bi-ped - homo sapiens - who considers himself the epitomy of the animal kingdom and the end and aim of all Creation.

In this age of so-called "sexual enlightenment" the records of law-enforcement agencies indicate that the varieties of "sex for sale" run the gamut of every known form of sexual intercourse, variously classified as "natural", "normal", "abnormal", "perverted" - and the offerer as well as the payers may be and frequently are of either sex.

In this age of anxiety and uncertainty, when the threat of nuclear annihilation, or more immediate personal problems of sheer survival, are uppermost in the minds of the average individual, it is not easy to rouse constructive interest in "prostitution and related offenses". The average reaction is: "So what? We can't do anything about it" or "The only answer is licensed houses. Let's return to the Red-Light districts".

The more sophisticated, smugly proud of their "one-upmanship", achieved either by personal experience or vicariously from the plethora of "realism" currently available through publications, the theater or the movies are apt to shrug it off with "Boys will be boys and girls will be girls, and there are those who will do anything for a buck" or "Sex? Who pays for it when you can always get it for free?"

Without becoming moralistic, can one with Reason refute this indifference and complaisance? We are living in an era in which sexual undertones and overtones permeate our culture from A to Z; from the sex-appeal angle of sophisticated Advertising through the sex-symbols of the Cinema world, the perverts and perversions obsessing our Dramatists, the eroticism of our Literature, the circulation-building emphasis on Scandal in our Tabloids to the monkey-house at the Zoo, (a spot constantly policed for protection against "exhibitionists".) From this kaleidoscope of constantly changing, colorfully alluring patterns of human emotions and behavior can one pinpoint and focus attention upon so relatively minor an aspect as Prostitution? Can one hope to stir public interest in a sound, practical, rational attempt to regulate, control and reduce a social disorder universally accepted as both intolerable AND inevitable?

Let me try.

PRIVATE ACT - PUBLIC MENACE

I disclaimed initially the desirability or feasibility of legislating personal morality; but it is undeniable that all laws of civilized society are based on the "moral law within". They are promulgated for the "good" of society; NOT to make individuals

"good". Traffic regulations of highways, seaways, airways are designed for more efficient movement in our highly mobile communities. That they result in better trained and more responsible drivers, sea-captains and pilots is but a by-product of their main purpose. Rules of banking and finance are passed to facilitate national and international trade and commerce; NOT to prevent crooks. Codifications of felonies, misdemeanors and offenses are primarily to protect potential victims and to preserve law and order: NOT to turn weak humans from a life of "sin and crime". All such laws are basically MORAL - but they are not moralistic.

The Wolfenden Report, so-called because Sir John Wolfenden was chairman of the committee appointed to study Homosexuality and Prostitution in Britain, is one of the most intensive and thorough-going studies of recent years, seeking to present a sound, functional background for revision of laws of Britain relating to such problems. After exhaustive exploration of all available material their findings were released. Their avowed approach was based on their conviction that the function of the State in such matters "is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young and weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence.....It is not...the function of law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behavior, further than is necessary to carry out the purposes we have outlined".

Few informed people would disagree with that concept.

One suggestion arising from the Wolfenden Report was that prostitutes not be arrested, but that they be "kept moving". The theory was that if their availability were not so flagrantly flouted, there would be less demand for their services. The report was published in September, 1957.

In July, 1960, Joseph Gladstone, writing from London for the New York Post, reported that:

"Attempts to clear London's streets of practitioners of "the world's oldest trade" have created a problem even more critical than the original situation which was giving this capital one of the worst reputations in Europe.

"Call girl systems, never widely used in Britain before, are now extensive in London and larger

provincial cities. Operating from their flats, away from police surveillance, prostitutes are more numerous and prosperous than before.....

"A year ago in London's "square mile of vice" - the West End area of Piccadilly and Soho - a man could not walk 10 yards without being accosted.

"Six months ago - under pressure from public opinion.....the government acted.....(and) got a law passed through Parliament that severely increased the penalties for prostitution, and made it virtually impossible for widespread soliciting on the streets to continue.....

"The prostitutes no longer bother to walk the streets. They advertise - by the dozen - in shop windows. Usually they give telephone numbers, "vital statistics" and even photographs. It is now possible to acquire quite easily published directories of call girls.....

"Notable social workers such as the Baroness Ravensdale, a formidably energetic woman, have been arguing in the House of Lords that the first move should be to penalize men customers as well as the call-girls themselves.

"The Baroness is conducting a personal day-to-day investigation....questioning prostitutes and their male "protectors". Her revelations have shocked many of her aristocratic colleagues in the House of Lords, and they have certainly shocked Britain generally.

"But neither Butler nor the government seems to have any new ideas about how the drift toward widespread prostitution can be halted."

Call-girl systems may be new to London, but that they have flourished widely, often under the protection and to the great profit of our national crime syndicate, was widely publicized during the Kefauver investigation. While I doubt that directories, containing pictures and measurements can be readily purchased in this country, CBS' Radio presentation, "The Business of Sex", broadcast in January, 1959, had a "MAN" say: "There's a very famous madam in New York who takes care of your multi-millionaires only. She is a

famous famous name in New York. She puts out a book every year, pictures of the girls she has working for her. And sends this book to her very very exclusive clients. Now this woman is one who works with big business, you know, when big corporations have a party, they'll contact this woman. She'll make a flat fee, three thousand, five thousand, all according to how many girls they want. And she'll send them a book, they'll pick out the girls. There's no guess work here. And she deals with the largest corporations in the United States."

This broadcast, incidentally, received widespread press coverage. It was met with disbelief and pious disavowals by Big Business generally. The District Attorney of New York County conferred with the Police Commissioner; headlined "raids" were made, and each news account carefully reported names and addresses of the "dolls", but "respected the privacy" of the "johns". Ed Murrow, the Commentator, was alternately pressured to reveal sources, and accused of sensationalism; the Internal Revenue Bureau dropped its customary reticence long enough to admit that large income tax payers DID, from time to time, attempt to claim "business" deductions for "entertaining customers" that included the cost of "party girls" - but hastened to add that such deductions were always disallowed. The Bureau also commented at length on the inherent difficulties in collecting taxes from the girls themselves. "The girls generally use the 'income from other sources' line on their tax forms to list their earnings variously as commissions, fees for services rendered and so on. This device is also used by racketeers, gamblers and others on the shady side of the law." The spokesman explained: "You've got to get this thing in its proper perspective. We're just tax collectors, and all we want is the money due the government. Morals or manners are not part of our job."

BUT, no public commentary on "The Business of Sex" even so much as suggested that the CUSTOMERS should be "harassed", arrested, investigated, physically examined for infectious disease, or in any way discouraged or deterred from continuing to support what everyone conceded was at best a "sorry mess". Enlightened public opinion deplores the continued existence of prostitution as degrading to our Moral Climate. Even those who tolerate it, or defend it, concede it is an aspect of human behavior better left unpublicized, protected from too close public scrutiny. Many feel that its greatest "curse" is as a potential source of the spread of venereal disease, which, they optimistically point out, can now be easily "cured". (The increase of reported cases of venereal infection - to say nothing of those unreported - certainly indicates that penicillin alone is not the answer.) I submit that the real reason for attempting to regulate, control and suppress prostitution lies NOT in the nature of the private act - but in its continued existence as a public menace.

Prostitution as a business begins as a commercialized relationship between two human being, but it mushrooms into a vital element of organized vice, founded upon the exploitation of female bodies; a rich source of revenue to support associated criminal activities in the realm of gambling, narcotic selling, the corruption of public officials; it debases law enforcement; it corrupts youth; it promotes drug addiction and alcoholism; black-mail, overt and covert, flourishes in its wake.

If any other business in our system of "free enterprise" were so replete with moral degradation; so far-reaching in its public perils, would we countenance a regulatory system that penalized only the sellers, salesmen and organizers - and left unscathed the CUSTOMER?

A CUSTOMERS LAW - THEN WHAT?

"Would you put the man in jail?" This question is usually asked in a tone of incredulity, horror, shock, dismay - or quizzical bewilderment.

Well, maybe yes; maybe no.

It is customary for penal statutes to include penalties. Some are mandatory, some permissive; but generally the latitude given ranges from suspended sentences, to fines, release under probation supervision, to incarceration.

Law enforcement machinery - from detection, apprehension, arrest, trial, conviction to the maintenance of correctional or penal institutions - functions in this country at a staggering multi-million cost to the taxpayer (and there are many, aware of our rising crime rate and the high percentage of recidivism, who question the effectiveness of our present penal system.) It would be untenable to suggest that every convicted customer of a prostitute should be sent to jail. Certainly all convicted prostitutes are not sent to jail, even where such disposition is possible; and many jurisdictions content themselves with "warning"; ordering forthwith departure from the city or State (like "tidy"housewives sweeping the dust under the rug, or suburbanites raking their leaves to their neighbor's property); or imposing fines of varying severity. So it is not a valid objection to a customers law that the penalty might be jail.

Although volumes have been written on the subject of prostitution, actually there have been few studies of prostitutes themselves; and I know of no research that has ever been done on cus-

tomers. Sporadically, a sociological, or psychological, or psychiatric project will produce a report on a study of a small group of prostitutes - usually available for study because they were incarcerated or under court supervision; but customers under their cloak of anonymity and legal immunity remain nameless, shadowy creatures, always available for solicitation - never subject to analytical scrutiny. If we knew more about the principals we might better understand and more wisely treat the malady. We are amazingly ill-informed as to what emotional drives, what personality patterns, what desires or fears persuade females to sell their bodies and males to pay a price for the fleeting use of those who shortly before collected from "Harry" and soon will collect from "Dick". If the basic aim of a customers law is to reduce the incidence of prostitution by discouraging its patrons, then it follows that the "penalties" imposed must be germane to the objective: deterrence.

What would I propose?

First, that he be arrested and arraigned and tried, equally with the female; that his name and address be as much a part of the record and as available to publicity as is hers. Widespread knowledge that this would happen would cause him to at least pause. Few men would appreciate having publicity given to the fact they have to pay for their sex-life; and nothing is more annoying to busy MR. JOHN Q. PUBLIC than to lose time and money by having to wait for a case to be called in court. (The City of New York takes in millions of dollars annually from alleged traffic violators who plead guilty and mail in their fines rather than waste a day or more in court!)

Secondly, I would subject him to a venereal examination - immediately upon arrest, as is presently done with the arrested prostitute. (If she is found to be infected, medical treatment starts at once - but the results of the examination are not available to the court until conviction. The rationale? If she is infected and in need of treatment, the examination is for her own welfare and as a precaution against the spread of the disease to others. Since the judge is not informed of the state of her health until after conviction, the examination can in no way prejudice her legal rights. Since the male customer is equally as dangerous a source of contagion, likely to communicate the disease to his own family or other sexual partners, his examination and subsequent treatment should be equally mandatory.) In spite of increased publicity and intensive educational drives to alert the general public to the prevalence and dangers of venereal infection, it is well known that thousands of unreported cases are being treated annually. The fact of mandatory examination upon apprehension would undoubtedly reinforce the deterrent aspects of a customers law.

Third, upon conviction, I would require a complete investigation to be made and a report submitted to the court by the Probation Department - not only of the girl, but of her paying partner as well. (A satisfactory probation report on the girl presently includes exhaustive inquiries into all phases of her family background past and present, her educational, employment (if any), and medical records. If available - or possible to obtain - psychological and psychiatric data are included. Why should we not be as interested in her patron's make-up? I wonder how many men, easily susceptible to parting with cash for the sake of a sexual interlude, would, with equanimity, contemplate the prospect of having their biographical sketch presented to the court?)

Fourth, the purpose of a probation report on the customer would be the same as for any offender - to assist the court in imposing sentence. For some, a suspended sentence might serve the purpose, since his arrest, physical examination, court appearance, conviction and investigation might be sufficient to discourage him from further patronage. For others, a heavy fine might impress upon him the fact that "purchased pleasure" can become too costly. And in other cases, I would not rule out the possibility that probation supervision under a competent, trained case-worker would be socially and personally constructive. I am convinced that many of the reasons why men resort to prostitutes are to be found in personal mal-adjustments; family disturbances; and psycho-genetic factors all of which are amenable to therapy. Nor would I rule out the likelihood that more knowledge of the motivations and the proclivities of some customers would indicate them to be as deserving of incarceration as are the prostitute's traditionally recognized exploiters. Many a prostitute has learned to her consternation, and often at great physical pain, that customers sometimes give more than money. Human brutality and bestiality manifest themselves more frequently in commercialized vice than in free consensual associations. A deprivation of liberty might well be indicated as a deterrent to a proven sadist.

Surely, it is clear from the foregoing that there are many ways in which a customer could be handled as an offender - so opposition to a customers law cannot be sustained by the "Would you throw him in jail?" argument.

SUMMARY

The proposals to revise the sections of the Penal Law of New York covering PROSTITUTION AND RELATED OFFENSES retain the concept of the prostitute as a penal offender. By omission, they perpetuate the legal "fiction" that her patron or customer cannot be guilty of any penal offense.

The American Social Health Association has proposed an Amendment to the Penal Law, PATRONIZING PROSTITUTES, which would specifically provide that a person who hires a prostitute to engage in sexual activity, or who enters or remains in a house of prostitution for the purpose of engaging in sexual activity, would be guilty of a violation of the law.

Although, in the opinion of many, the wording of the present law - C.C.P. 887 - could have been interpreted to include the patron or customer as one who "participates in" such activity, judicial interpretation in New York, based primarily on the law of Contracts - not on Criminal Law - has preserved the immunity and the anonymity of these paying participants. The proposed amendment is a positive step forward, which would, by legislative enactment, nullify the existing "Judge-made" cloak of protection for those who, undeterred by prosecution, ensure the continuance of this universally deplored social disorder.

Undeniably, an act of sexual intercourse requires two participants. It is inconceivable and unconscionable, under any concept of equality of justice, to charge one as a criminal and free the other to pursue his "pleasure for a price" wherever and whenever he may wish.

Difficulty of enforcement, as an argument against a customers law, is specious. The same elaborate machinery presently used to process the prostitute and her exploiters is available - and flexible enough to include the customer.

The ruling that a man cannot commit an act of prostitution is based on legal double-talk, motivated by political expediency, a double standard of morality, and illogical reasoning unworthy of this day and age. The only sensible way to control, regulate, and reduce the business of prostitution is to minimize the demand by discouraging and deterring the customers. This sordid debasement of human dignity and worth will flourish unchanged unless and until public opinion demands the enactment - and vigorous enforcement - of a specific and positive customers law.