Louisiana Law Review

Volume 38 | Number 4
Summer 1978

Bringing Order to a Disorderly Place

Matthew Anthony Wellman

Thus, the supreme court in the instant case has correctly limited municipal powers to the extent necessary to protect the state's policy of punishing as "gambling" only such conduct as constitutes commercial gambling. This is a sound policy because it may be unfair to punish a citizen for engaging in conduct which the legislature has seen fit not to prohibit. Furthermore, the result does not greatly impinge upon local governmental police power since municipalities may still enact gambling ordinances which are consistent with Criminal Code article 90. The decision in the instant case therefore promotes state policy without greatly burdening municipal powers, a "balanced" result which certainly appears consistent with the new philosophy of municipal powers under article VI of the 1974 constitution.

James Joseph Sullivan

BRINGING ORDER TO A DISORDERLY PLACE

Defendant was indicted for keeping a disorderly place[1] when police investigation indicated that his two lounges in Bossier City were habitually used for an "immoral sexual purpose." The investigation stemmed from allegations that the normal course of events in these lounges included "B-drinking and lewd dancing."[2] The Louisiana Supreme Court *held* Criminal Code article 104, forbidding the "intentional maintaining of a place to be habitually used . . . for any immoral sexual purpose,"[3] to be unconstitutionally vague. *State v. Defrances*, 351 So. 2d 133 (La. 1977).

The United States Supreme Court has interpreted the due process clause of the fourteenth amendment as guaranteeing individuals the right "to be informed as to what the State commands or forbids."[4] Due process requires that statutory language be sufficiently definite to give a person of ordinary intelligence "fair warning"[5] of what is prohibited, "so

1. LA. R.S. 14:104 (1950) provides in part: "Keeping a disorderly place is the intentional maintaining of a place to be used habitually for any illegal purpose or for any immoral sexual purpose."

2. State v. Defrances, 351 So. 2d 133, 134 (La. 1977).

3. LA. R.S. 14:104 (1950); See note 1, *supra*, for the text of this section.

4. Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).

5. United States v. Harriss, 347 U.S. 612, 617 (1953); American Communications

that he may act accordingly."[6] When a statute is so vague that men of common intelligence "guess"[7] at or "speculate"[8] about its meaning and "differ as to its application,"[9] any penalty for its violation deprives them of liberty or property without due process of law.[10]

In addition to alerting people to prohibited conduct, a precise statute does not force individuals to abstain from lawful activities which lie on "the boundaries of the forbidden areas"[11] out of fear of arrest.[12] Definitive laws also discourage the arbitrary and capricious use of the powers of enforcement and application by providing clear guidelines within which these powers must be exercised.[13]

However, the protections provided by exact language are limited by their underlying fabric, the words themselves. Few words are precise enough to deal with the virtually countless variations in factual situations which may arise,[14] and consequently "no more than a reasonable degree of certainty can be demanded."[15] A statute will be upheld as long as the words or phrases have a well known or commonly understood meaning,[16] even though they might not precisely define the bound-

---

Ass'n v. Douds, 339 U.S. 382, 413 (1949). The Supreme Court in *United States v. Reese*, 92 U.S. 214, 221 (1875), stated that "it would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and should be set at large."

6. Grayned v. City of Rockford, 408 U.S. 104, 108 (1972).

7. Winters v. New York, 333 U.S. 507, 515 (1948); Connally v. General Constr. Co., 269 U.S. 385, 391 (1926).

8. Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).

9. Connally v. General Constr. Co., 269 U.S. 385, 391 (1926).

10. Champlin Ref. Co. v. Corporation Comm'n, 286 U.S. 210 (1964). The Court noted that "[i]t is not the penalty itself that is invalid, but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all." *Id.* at 243. *Accord*, Wright v. Georgia, 373 U.S. 284 (1963); Lanzetta v. New Jersey, 306 U.S. 451 (1939). The void for vagueness doctrine originated in the era of substantive due process involving economic control legislation. *See* Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67, 74 n.38 (1960).

11. Grayned v. City of Rockford, 408 U.S. 104, 109 (1972).

12. *See* Force, *Decriminalization of Breach of the Peace Statute: A Nonpenal Approach to Order Maintenance*, 46 TUL. L. REV. 367, 431 (1972).

13. Grayned v. City of Rockford, 408 U.S. 104 (1972). *Accord*, Cox v. Louisiana, 379 U.S. 559, 568 (1964) ("on-the-spot administrative interpretation by officials charged with responsibility for administering and enforcing" a state criminal statute held impermissible).

14. *See* American Communications Ass'n v. Douds, 339 U.S. 382 (1949). The Court said: "There is little doubt that imagination can conjure up hypothetical cases in which the meaning of these terms will be in nice question." *Id.* at 412.

15. Boyce Motor Lines v. United States, 342 U.S. 337, 340 (1951).

16. United States v. Harriss, 347 U.S. 612, 618 (1953).

aries of statutory coverage.[17]

Conceptually similar, but arising from different sources, is Louisiana's guarantee that penal statutes provide the public with a "reasonably clear standard"[18] of prohibited conduct. The Louisiana Constitution has its own due process clause,[19] but longstanding jurisprudence has utilized a specific indictment requirement[20] as the basis for Louisiana's "void for vagueness" doctrine[21]—a doctrine which "permeates [Louisiana's] system of criminal justice."[22] In applying the doctrine, Louisiana courts are admonished by article 3 of the Criminal Code to give criminal provisions "a genuine construction, according to the fair import of their words, in their usual sense."[23] The statute also requires that words be taken in connection with the context and with reference to the purpose of the provision.[24]

These rules of interpretation are helpful in discovering a well known meaning in nearly all cases. When the application of interpretive rules fails to find a word's commonly understood meaning, the law which contains the word will be held unconstitutionally vague. This problem particularly haunts the area of sex offenses and offenses affecting public morals. To illustrate, the Louisiana Supreme Court has found unconstitutionally vague the phrases "vulgar,"[25] "immoral purpose,"[26] "indecent assaults,"[27] "indecent prints,"[28] and "lewd or indecent act."[29]

---

17. Cameron v. Johnson, 390 U.S. 611, 616 (1968).

18. State v. Robertson, 241 La. 249, 258, 128 So. 2d 646, 649 (1961) (construing La. Const. art. I, § 10 (1921)).

19. LA. CONST. art. I, § 2: "No person shall be deprived of life, liberty, or property except by due process of law."

20. LA. CONST. art. I, § 13. This section is identical to a provision in the 1921 constitution guaranteeing that "in a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him." La. Const. art I, § 10 (1921).

21. In *State v. Lindsey*, 310 So. 2d 89 (La. 1975), the Louisiana Supreme Court said:

> As developed by this court, this guarantee requires that penal statutes describe the unlawful conduct with sufficient particularity and clarity such that ordinary men of reasonable intelligence are capable of discerning its meaning and conforming their conduct thereto.

Id. at 90. *Accord*, State v. Kraft, 214 La. 351, 37 So. 2d 815 (1948); State v. Truby, 211 La. 178, 29 So. 2d 758 (1947).

22. State v. Robertson, 241 La. 249, 258, 128 So. 2d 646, 649 (1961).

23. LA. R.S. 14:3 (1950).

24. *Id.*

25. State v. Hertzog, 241 La. 783, 131 So. 2d 788 (1961).

26. State v. Truby, 211 La. 178, 29 So. 2d 758 (1947). "Immoral act" was held unconstitutionally vague using the same reasoning employed in *Truby*. State v. Vallery, 212 La. 1095, 34 So. 2d 329 (1948).

27. State v. Comeaux, 131 La. 930, 60 So. 620 (1913).

To avoid using " '[c]umbersome enumeration or explicit delineation of all possible situations,' "[30] and still meet the "fair notice" requirement, the legislature has successfully employed the rule *noscitur a sociis* ("It is known from its associates"[31]). *State v. Rose*[32] illustrates the court's application of the rule. In *Rose*, the Louisiana Supreme Court found the exact meaning of a word not "in the abstract, . . . but in the context or combination of words."[33] In interpreting the phrase "lewd dancing," the court admitted that " 'lewd' has no statutory definition, nor technical meaning,"[34] but said that when applied to dancing, it acquired a "very well and generally understood and unmistakable meaning."[35] In essence, the court restricted the meaning of the unclear "lewd" by associating it with the specific "dancing," to make the phrase "lewd dancing" unobjectionable.

The import of *Rose* was to give the legislature the option of adding specific words to a statute which had been declared unconstitutionally vague instead of replacing the vague words. One of the words the legislature chose to use was "sexual." When "indecent,"[36] "immoral act,"[37] and "immoral purpose"[38] were declared unconstitutionally vague, the legislature added "sexual" or "sexually" in an attempt to give the provisions a well understood meaning.[39] *State v. Roth*[40] and *State v. Fulmer*[41] subsequently held that the terms "sexually indecent" and "sexually immoral act" had "an accepted meaning that [was] not susceptible to misunderstanding."[42]

In the instant case, the Louisiana Supreme Court was presented with the opportunity to reconsider the *Roth* and *Fulmer* decisions when

28. State v. Kraft, 214 La. 351, 37 So. 2d 815 (1948).

29. City of Shreveport v. Wilson, 145 La. 906, 83 So. 186 (1919). Adding to the phrase "lewd or indecent act" the qualifying words "grossly scandalous and tending to debauch the morals and manners of the people" failed to add sufficient particularity to withstand a vagueness challenge. State v. Christine, 239 La. 259, 118 So. 2d 403 (1959).

30. State v. Heck, 307 So. 2d 332, 334 (La. 1975), *quoting from* City of Baton Rouge v. Norman, 290 So. 2d 865, 868 (La. 1974).

31. BLACK'S LAW DICTIONARY 1209 (4th ed. rev. 1968).

32. 147 La. 243, 84 So. 643 (1920).

33. *Id.* at 251, 84 So. at 646.

34. *Id.*

35. *Id.* ("indecent, lascivious, lecherous, tending to excite lustful thoughts").

36. State v. Comeaux, 131 La. 930, 60 So. 620 (1913).

37. State v. Vallery, 212 La. 1095, 34 So. 2d 329 (1948).

38. State v. Truby, 211 La. 178, 29 So. 2d 758 (1947).

39. 1950 La. Acts, No. 314; 1948 La. Acts, Nos. 388, 389.

40. 226 La. 1, 74 So. 2d 392 (1954).

41. 250 La. 29, 193 So. 2d 774 (1967).

42. State v. Roth, 226 La. 1, 6, 74 So. 2d 392, 393 (1954).

it scrutinized the meaning of "immoral sexual purpose." In declaring the phrase unconstitutionally vague, the court found "no generally accepted meaning such that a person of ordinary intelligence would be given fair notice of what conduct is forbidden."[43] The court reasoned that the addition of the term "sexual" had not "sufficiently delimited the word 'immoral' so as to pass constitutional muster."[44] It would become necessary "for the courts to decide what acts should be deemed to constitute the offense, a function more properly belonging to the legislature."[45]

The effect of the passage of time on a determination of whether words provide sufficient "fair notice" played a significant role in the *Defrances* decision; archaic phrases may acquire accepted legal meaning[46] while others lose the clarity they once had. In finding that the phrase had become vague the court said, "[W]hat may have been considered to fall clearly within the scope of sexually immoral conduct [twenty-nine years earlier when the statute was amended] may no longer be interpreted as such by a substantial segment of the population."[47] The words are the same, but "the passage of time, and the increasingly more liberal sexual standards"[48] make "achieving a consensus of meaning . . . exceedingly more difficult."[49]

Writing for the majority, Justice Dixon noted that the danger of using outdated language "lies in the potential of this language encompassing certain activity that most would agree is generally not considered to constitute criminal activity."[50] The court illustrated its concern by citing socially permitted conduct that is common in modern life,[51] but

43. State v. Defrances, 351 So. 2d at 135.

44. *Id.* The court examined WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. unabridged 1953) to find the accepted meaning of "sexual." The dictionary definition injected even more uncertainty. "Sexual" is defined as:

1. Pertaining to or associated with sex; as *sexual* differentiation; specif.: pertaining to sex as concerned in reproductive processes; as, the *sexual* instinct or impulse.
2. Pertaining to the sexes; particular to, or relating to, either the male or female or their distinctive organs or functions.
3. Pertaining to the use or abuse of sex functions, appetites, etc.; as, *sexual* morality.
4. *Biol.* Having sex;—opposed to *asexual.*

351 So. 2d at 135 n.1.

45. 351 So. 2d at 135 n.1.

46. State v. Lindsey, 310 So. 2d 89, 92 (La. 1975).

47. 351 So. 2d at 135.

48. *Id.*

49. *Id.* at 136.

50. *Id.*

51. *Id.* As examples, the court said:

[T]he owners of certain establishments are not informed by 14:104's language as to whether the following activity is prohibited: (1) owners of 'swinging singles' apartment

which "some law enforcement personnel could construe . . . as 'sexually immoral.' "[52] This result "could hardly have been what the legislature had in mind when it was aiming to control the proliferation of bawdy houses."[53]

The court distinguished *Defrances* from its earlier decisions which found a "generally accepted meaning" in the terms "sexually indecent"[54] and "sexually immoral act."[55] However, this may not have been necessary in view of the court's belief that the "invalidity of [*State v.*] *Roth* [which upheld "sexually indecent"] was clear after the United States Supreme Court's decision in *Miller v. California* [413 U.S. 15 (1973)]."[56] The same reasoning can be applied to *State v. Fulmer* which relied wholly upon *State v. Roth* to find that the phrase "sexually immoral act" had "an accepted meaning that is not susceptible to misunderstanding."[57] Since *State v. Roth* has apparently not survived the development of the obscenity laws, the basis of the court's decision in *State v. Fulmer* has clearly been undermined.[58]

A probable outgrowth of declaring "immoral sexual purpose" unconstitutionally vague will be an attack on the validity of the statute prohibiting contributing to the delinquency of juveniles, which forbids the "intentional enticing, aiding, or permitting, by anyone over the age of seventeen, of any child under the age of seventeen . . . to: . . . (7) Perform any *sexually immoral act*. . . ."[59] The court's attempt to avert this foreseeable problem in *Defrances* does not withstand close scrutiny. In dictum the court said that "sexually immoral act" is not "unconstitutionally vague today, for it can be read to mean that all sexual acts performed with a child under seventeen are criminal."[60] Apparently the court reasoned that *any* sexual act *with a juvenile* would be a "sexually

---

complexes; (2) owners of places where sparsely-clad 'go go dancers' perform; (3) apartment building owners who rent to unmarried couples who cohabit; (4) owners of bars and lounges that provide comfortable surroundings to accommodate patrons 'making out'; (5) owners of bars and lounges where customers engage in the current dance crazes, such as 'the bump' which is suggestive of sexual intercourse.

Id.

52. *Id.*

53. *Id.*

54. State v. Roth, 226 La. 1, 74 So. 2d 392 (1954). See text at note 43, *supra.*

55. State v. Fulmer, 250 La. 29, 193 So. 2d 774 (1967). See text at note 43, *supra.*

56. 351 So. 2d at 137.

57. State v. Fulmer, 250 La. 29, 30, 193 So. 2d 774, 775 (1967).

58. *See* State v. Defrances, 351 So. 2d 133, 137 (La. 1977).

59. LA. R.S. 14:92 (1950), *as amended by* 1962 La. Acts, No. 394, § 1 (emphasis added).

60. 351 So. 2d at 137. See note 44, *supra*, for the definition of "sexual" that the court obtained from WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. unabridged 1953).

immoral act." However, earlier in its opinion the court resorted to an extremely broad definition of "sexual" from WEBSTER'S NEW INTERNATIONAL DICTIONARY, and the use of this definition to clarify the juvenile statute would lend itself to the kind of arbitrary and capricious enforcement which *Defrances* sought to prevent. The court appears to have ignored its earlier fear that broad language might encompass activity not generally considered criminal.

The elimination of the phrase "sexually immoral act" from Louisiana's statute punishing those who contribute to the delinquency of juveniles would leave a gap in the law which attempts to curb juvenile delinquency by suppressing sexual activity with juveniles. This gap would be partially closed by the obscenity statute, which prohibits the "solicitation or enticement of an unmarried person under the age of seventeen years to commit any act" of obscenity,[61] but acts of obscenity are *public* acts. Therefore, to prohibit "enticing, aiding or permitting" a juvenile to perform a *private* "sexually immoral act," the legislature should enact a specific statute relating to conduct with juveniles similar to its description of "hard core sexual conduct" in the obscenity statute.[62] However, to deal more precisely with the area of private sexual activities of juveniles, the definition of "hard core sexual conduct" should be modified to prohibit only *actual* conduct and to eliminate the requirement of "public portrayal, for its own sake, and for ensuing commercial gain."[63]

The effect of eliminating the phrase "immoral sexual purpose" from Louisiana's keeping a disorderly place statute is presently unclear. It

61. LA. R.S. 14:106(A)(5) (1950), *as amended by* 1974 La. Acts, No. 274, § 1.

62. LA. R.S. 14:106(A)(2) (1950), *as amended by* 1974 La. Acts, No. 274, § 1, provides:
Hard core sexual conduct is the public portrayal, for its own sake, and for ensuing commercial gain of:
(1) Ultimate sexual acts, normal or perverted, actual, simulated or animated, whether between human beings, animals or an animal and a human being; or
(2) Masturbation, excretory functions or lewd exhibition, actual, simulated or animated, of the genitals, pubic hair, anus, vulva or female breast nipples; or
(3) Sadomasochistic abuse, meaning actual, simulated or animated, flagellation or torture by or upon a person who is nude or clad in a costume which reveals the pubic hair, anus, vulva, genitals or female breast nipples, or the condition of being fettered, bound or otherwise physically restrained, on the part of one so clothed; or
(4) Actual, simulated or animated, touching, caressing or fondling of, or other similar physical contact with, a pubic area, anus, female breast nipple, covered or exposed, whether alone or between humans, animals or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or
(5) Actual, simulated or animated stimulation of a human genital organ by any device whether or not the device is designed, manufactured and marketed for such purpose.

63. *Id.*

appears that the statutes remaining in force after *Defrances*[64] will continue to serve the purpose originally intended by the legislature,[65] as revealed in the source provision of the present articles on keeping a disorderly place, Act 199 of 1912.

A "disorderly house" was defined in the 1912 act as any establishment which would "disturb the public peace and quiet of the neighborhood," or "where lewd dancing is permitted," or "where lewd pictures are accessible to view," or which was "used for the purposes of prostitution or assignation."[66] All four of these activities are currently prohibited by other statutes—the first three by Criminal Code article 281 (prohibiting the maintaining of a disorderly place)[67] and the last in article 282 (prohibiting the operation of places of prostitution).[68] The remaining phrase of the statute struck down in *Defrances* prohibits "the intentional maintaining of a place to be used habitually for any illegal purpose." Therefore, the elimination of the phrase "immoral sexual purpose" caused no change in the overall scheme of the law as it was intended to operate.

Although the remaining statutes dealing with keeping a disorderly place include all the prohibitions apparently intended by the legislature, consolidation and revamping of the law is needed to avoid the inevitable future litigation which will arise because of the many vague and outdated terms contained in these statutes. To be effective, such legislative reform should retain all the elements of the present law while clarifying

64. LA. R.S. 14:281, 281, 282 (1950) and LA. R.S. 14:104 (1950) (excluding the phrase "immoral sexual purpose").

65. *See* State v. Defrances, 351 So. 2d 133, 136 (La. 1977) ("to control the proliferation of bawdy houses").

66. La. Acts 1912, No. 199.

67. LA. R.S. 14:281 (1950) provides in part:

> No person shall maintain a place of public entertainment or a public resort or any place, room, or part of a building open to the public in such a manner as to disturb the public peace and quiet of the neighborhood, or in which lewd dancing is permitted, or in which lewd pictures are accessible to view.

Both 104 and 281 seek to prohibit the keeping of a disorderly place. The two differ in that article 104 establishes a more extensive prohibition and provides a stiffer penalty for its violation.

68. LA. R.S. 14:282 (1950) provides in part:

> No person shall maintain, operate, or knowingly own any place or any conveyance used for the purpose of lewdness, assignation, or prostitution, or shall rent or let any place or conveyance to any person with knowledge of or good reason to believe that the lessee intends to use the place or conveyance for the purpose of lewdness, assignation, or prostitution. No person shall engage in lewdness, assignation, or prostitution, or reside in, enter or remain in any place for the purpose of lewdness, assignation, or prostitution.

terms and consolidating definitions. It is suggested that the repeal of Criminal Code articles 104, 281 and 282 and substitution of the following proposed statute would accomplish this goal.

Keeping a disorderly place

Keeping a disorderly place is the intentional maintaining or operating of a place to be used habitually for the purposes of prostitution, assignation, or any illegal purpose. Keeping a disorderly place also includes the intentional maintaining or operating of any place open to the public where obscene pictures are accessible to view, where obscene dancing is permitted, or which disturbs the peace.

The first sentence of the proposed statute combines the prohibitions contained in Criminal Code articles 104 and 282. The proscription of the "intentional maintaining or operating of a place to be used for the purposes of prostitution [or] assignation" in the proposed statute contains the essence of the article 282 prohibition and it has a well known and commonly understood meaning. The statutory definition of "prostitution" is precise[69] and "assignation" has acquired a clear definition in the jurisprudence.[70] Omitted from the proposed statute was the using of a place for the "purpose of lewdness" in article 282 which is questionable at best since "any act of lewdness" has been declared unconstitutionally vague.[71]

The provision of article 282 forbidding a person to "reside in, enter, or remain in any place for the purpose of lewdness, assignation, or prostitution" was omitted from the proposed statute because it lacked a sufficient relationship to the type of conduct that the keeping of a disorderly place statute encompasses.[72] This conduct has a much closer connection to the prohibitions contained in the statutes prohibiting prostitution, solicitation, and vagrancy. The present vagrancy statute declares "persons who live in houses of ill fame or who habitually associate with prostitutes"[73] guilty of vagrancy. This statute could be expanded to include a

69. LA. R.S. 14:82 (1950), *as amended by* 1977 La. Acts, No. 49:

Prostitution is:

(a) The practice by a person of indiscriminate sexual intercourse with others for compensation.

(b) The solicitation by one person of another with the intent to engage in indiscriminate sexual intercourse with the latter for compensation.

70. Assignation is not defined in the criminal statutes but has acquired meaning through judicial interpretation as "solicitation for prostitution and for crimes against nature." Garrison v. Menendez, 158 So. 2d 856, 859-60 (La. App. 4th Cir. 1963).

71. State v. Christine, 239 La. 259, 118 So. 2d 403 (1959).

72. Keeping a disorderly place refers to maintaining or operating a place as opposed to residing in, entering, or remaining in a place.

73. LA. R.S. 14:107(2) (1950) provides:

prohibition of entering or remaining in any place for the purpose of prostitution or assignation. The remaining language of article 282 was excluded because it was either repetitious or covered by article 105 (letting a disorderly place).[74] "Any illegal purpose," from article 104, which was included verbatim in the proposed statute, has the obvious meaning of "contrary to or prohibited by some criminal statute."[75]

The recommended statute's second sentence is derived from Criminal Code article 281 which also prohibits maintaining a disorderly place. "Obscene pictures" is substituted for the suspect "lewd pictures,"[76] thereby incorporating the guidelines for "obscene material" contained in Louisiana's obscenity statute[77] which were derived from the Supreme Court's opinion in *Miller v. California*.[78] "Disturbing the peace" is included in the proposed statute virtually unchanged from the present law ("disturb the public peace and quiet of the neighborhood") except for the elimination of useless words.[79]

Language in *Defrances* indicates that the term "lewd dancing" in article 281, which withstood a vagueness challenge in 1920,[80] may not survive present scrutiny. Changing sexual mores and their effect on the manner of dancing would be the determining factor in a modern consid-

---

"The following persons are and shall be guilty of vagrancy:

. . . (2) Persons who live in houses of ill fame or who habitually associate with prostitutes . . . ."

74. LA. R.S. 14:105 (1950) provides in part:

"Letting a disorderly place is the granting of the right to use any premises knowing that they are to be used as a disorderly place, or allowing the continued use of the premises with such knowledge."

75. State v. Truby, 211 La. 178, 182, 29 So. 2d 758, 762 (1947). *Accord*, State v. Defrances, 351 So. 2d 133 (La. 1977); State v. Bulot, 175 La. 21, 142 So. 787 (1932); State v. Holland, 120 La. 429, 45 So. 380 (1907).

76. Any prohibition of "lewd pictures" that does not encompass the guidelines for obscene material promulgated in *Miller v. California*, 413 U.S. 15, 24 (1973), may not meet the requirements of the first amendment.

77. LA. R.S. 14:106 (1950), *as amended by* 1974 La. Acts, No. 274, § 1. See especially section 106(A)(3) defining "obscene material":

[A]ny tangible work or thing which the trier of fact determines (a) that the average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest; and (b) depicts or describes in a patently offensive way, hard core sexual conduct specifically defined in Paragraph (2) above; and (c) the work or thing as a whole lacks serious literary, artistic, political or scientific value.

See note 62, *supra*, for the explicit definition of hard core sexual conduct.

78. 413 U.S. 15, 24 (1973).

79. The language prohibiting "disturbing the peace" in LA. R.S. 14:103 (1950), *as amended by* 1969 La. Acts, No. 93, withstood a vagueness challenge in *State v. Heck*, 307 So. 2d 332 (La. 1975).

80. State v. Rose, 147 La. 243, 84 So. 643 (1920).

eration of the sufficiency of the term "lewd dancing."[81] To illustrate the possible abuse of enforcement powers, the court in *Defrances* alluded to the chance that "current dance crazes, such as 'the bump' which is suggestive of sexual intercourse,"[82] could be considered criminal conduct. To avoid such an absurd result, "obscene dancing" has been substituted to embody the sanctioned guidelines in Louisiana's obscenity statute.[83] The restriction of "open to the public" is consistent with the present law contained in article 281.

The adoption of the proposed statute would render unnecessary the part of the pandering statute which prohibits "the intentional . . . maintaining [of] a place where prostitution is habitually practiced."[84] Louisiana's letting a disorderly place statute[85] utilizes the definition of disorderly place found in the keeping a disorderly place statute. The proposed statute provides this definition with specific prohibitions including "a place to be used habitually for the purpose of prostitution." Thus the letting statute would render Criminal Code article 85 (letting premises for prostitution)[86] superfluous. Therefore, it is suggested that articles 84(2) and 85 should be repealed.

The holding of *State v. Defrances* furnishes Louisiana's "void for vagueness" doctrine with more than a determination that the phrase "immoral sexual purpose" is invalid. After *Defrances*, a Louisiana court should expand its scrutiny to consider the effect of changing times in deciding whether words have a well known or commonly understood meaning. When changing times blur once clear distinctions, *Defrances* indicates that courts will take cognizance of these uncertainties to guar-

81. 351 So. 2d at 135-36.

82. *Id.* at 136.

83. LA. R.S. 14:106(A)(2) (1950), *as amended by* 1974 La. Acts, No. 274, § 1, prohibits, *inter alia*,

> [p]articipation or engagement in, or . . . performance . . . of, hard core sexual conduct when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political or scientific value.

See note 62, *supra*, for the explicit definition of hard core sexual conduct.

84. LA. R.S. 14:84(2) (1950).

85. LA. R.S. 14:105. See note 74, *supra*, for the text of this section.

86. LA. R.S. 14:85 (1950) provides in part:

> Letting premises for prostitution is the granting of the right of use or the leasing of any premises, knowing that they are to be used for the practice of prostitution, or allowing the continued use of the premises with such knowledge.

antee individuals their "right to know what is prohibited."[87]

Matthew Anthony Wellman

87. Grayned v. City of Rockford, 408 U.S. 104, 108 (1972).