

Argument in Support of David Bigeleisen and Margaret Grover's Proposal to Decriminalize Prostitution in California

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The concept of repealing criminal codes prohibiting sex between consenting adults for “money or other consideration,” as the California State Penal Code defines prostitution, presents a contradiction because on the one hand, it connotes de-criminalizing otherwise legal private sex between consenting adults, and on the other it raises the specter of regulation or, de facto legalization.

The United States already has de facto legalized prostitution in many American cities where massage and massage therapy is licensed, regulated and controlled, ironically, often by the police. In San Francisco for example, it wasn't until a few years ago that the City transferred licensing of massage and escort agencies to the Department of Public Health and away from the police where there existed an obvious conflict of interest. For example, in a letter arguing against the transfer of licensing away from his department, the then chief of police as much as admitted that his department could control prostitution as the licensing authority, because while they accepted over \$250,000 in fees by permitting establishments, and as the regulating authority, they could at the same time, conduct periodic stings to ensure compliance with laws prohibiting vice crimes.

What the chief did not admit to was that the periodic stings resulted in further revenue gained specifically for the vice crimes division, by virtue of the creation of a ‘school for johns’ which forced the clients of prostitutes to choose between a possible court date and a Saturday at what is for all intents and purposes, a seminar not dissimilar to a day in traffic school, but in this case, focuses on sexually transmitted infections and child abuse. The school for johns is increasing in popularity and duplicated around the state and across the country.

As a practical matter, fully informed of his choices, the ‘john’ can either kick his court date and a possible conviction, provided there are no other arrests within a year by attending the seminar, or he can face a possible embarrassing conviction on his record. Overwhelmingly, clients of sex industry workers pay the fine, attend the seminar and kick their case.

California law however is not so lenient with sex industry workers themselves who are similarly charged with solicitation for prostitution.

In contrast, a person convicted of solicitation, in almost all cases sex workers, must submit to a mandatory HIV test, the results of which are read aloud in open court. Under no other circumstances is a person's HIV status similarly compromised under state law.

Upon that individual's second conviction, their HIV+ status elevates their misdemeanor solicitation charge to a felony, the punishment for which is a four-year sentence in a California State prison.

Hence, California has already taken steps to legalize prostitution, both by allowing municipalities to control quality and quantity, and further, by mandating that the supply be free of communicable disease. Our state allows municipalities to raise funds to fight vice by enabling local law enforcement agencies to impose their own brand of community courts, under the auspices of the California Community Dispute Services. And under this rubric, the playing field simply isn't fair.

In Storey County, Nevada, the first county in Nevada to allow legalized prostitution, women working in brothels must submit to periodic health exams eliminating them as workers if STI's or HIV are present in their blood stream. In contrast, no such similar constraints are imposed on their clients. It is imperative to note that overwhelmingly, HIV infection is transferred from men to women, not the other way around.

In addition to periodic health exams, once women are employed at a brothel in Nevada, they must be fingerprinted and photographed by the FBI. Curiously, neither elementary school teachers nor other workers in institutions frequented by youth are typically thus similarly mandated.

In addition, in order to work in a brothel, a woman must submit to never leaving the brothel for an agreed upon time, further ensuring the status of her HIV and STI condition. Again, no precautions however, are taken to prevent the spread of disease from a client of a Nevada brothel worker.

New Zealand recently decriminalized prostitution. Under their system, workers are empowered by the legislation accompanying the decriminalization act, which mandated occupational health and safety standards for workers. In contrast, California state law essentially allows for the occupational health of those who frequent prostitutes, though they are also considered criminals – and increasingly given a pass on court appearances. Nowhere in State law is there a provision that even legal sex workers, strippers and actors in porn, be provided mandated occupational health standards in their occupations.

The New Zealand model takes into account the question of regulation in a decriminalized paradigm accommodating the needs of workers by imposing national standards, thus eliminating the potential random policies of municipalities. It was the direct testimony of the workers themselves that formed the basis of the occupational health and safety standards imposed on brothel owners.