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Defending alleged prostitutes and their customers.

Amsterdam's red light district. (Released into public domain by photograph's creator, Bjarki Sigursveinsson). Here are some thoughts about defending against prosecutions of prostitution other than street-level prostitution. Some of these ideas also apply to defending alleged street-level prostitution cases. In defending escort prostitution cases, it may be helpful to obtain information about the area's hobbyist (consumer) and provider (prostitute) culture. Resources to check out include <http://www.bigdoggie.net> and <http://hips.org> (I am a former board member). I understand it is very common for hobbyists and providers to try to minimize arrests and convictions by using euphemisms for services sought and provided (e.g. "speaking all languages") and by leaving payment in an envelope on top of a table, rather than mentioning it. Then, an available argument to the criminal defense lawyer is that the money was paid for the escort's opportunity cost of spending time with the customer rather than being elsewhere, that sexual activity was not part of the consideration for payment, and that there was no prostitution even if there was the hope that the escort might be attracted to the customer and be interested in sexual activity. To buttress this argument, escorts do exist -- possibly the majority -- who do not provide any sexual or physical contact at all. I have seen one weekly newspaper that boldly proclaims "non-sexual" in all ads for escorts, which might become a factor in defending a prosecution for someone hired or hiring from such an ad. I take it that embarrassment contributed to the 1995 dismissal of the sting prosecution in Howard County, Maryland, against some workers at a massage parlor who some undercover cops permitted not only to masturbate them, but apparently to do it to completion, which means such police truly were mixing business with misplaced pleasure. See an article on this scandalous mis-use of police resources here. Not heeding the lessons of this Howard County embarrassment, Spotsylvania County, Virginia, detectives, nevertheless pursued a sting of massage parlors through early 2006 by paying for and accepting sexual favors. At first, county Sheriff Howard D. Smith and the county's chief of police issued a press release backing up such skin-to-skin stings, claiming, according to the Washington Post, that "detectives needed to go beyond striking verbal deals of sex for money because the 'masseuses,' whom they called 'illegal aliens,' spoke little English and Virginia's prostitution laws require more than 'mere touching' to make a case." As an aside, why would the county's chief sheriff and chief prosecutor use the demeaning term "illegal aliens" rather than "undocumented persons", and why would they not give a person the benefit of the doubt about whether they are in the United States with lawful immigration status, particularly when the immigration laws are so complex that many immigrants are not sure of their immigration status? Moreover, why did these men even address the suspects' immigration status unless they are applying unjust and unfair discrimination? Let us leave immigration law enforcement to federal authorities trained in immigration law enforcement (which is not automatically to say that they do not often bungle and trample on the Constitution, because many of them do). Four days after the Washington Post covered the Spotsylvania County prostitution sting, public heat and laughter and ridicule ran high, and the sheriff suspended having detectives accept sexual favors in their prostitution investigations. Sheriff Howard D. Smith said: "I thought I was doing the right thing." Before his White House tapes were released, so did Nixon. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00