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due process is with the fair administration of justice."[55] In so doing, the Court recognized Justice Black's reasoning in *Green*[56]—that is, that a judge in such a situation could not determine punishment without actual bias, thus denying the contemnor due process of law.

The Court in *Mayberry* did not set down any specific guidelines, stating that "[g]eneralizations are difficult."[57] However, the Court did add a new qualification to the prior tests of *Fisher*, *Offutt*, and *Ungar*, which looked to the facts of each case to determine the extent of the emotional involvement of the trial judge. In effect, the Court adopted a timing test that requires disqualification if the judge waits until the end of the trial to act on the contempt. At the same time, the new qualification allows the judge to assess punishment on the same contempt charge if he acts at the instant of the contempt.

IV. CONCLUSION

The most serious impact of *Mayberry* is that the Court limited the exercise of the summary contempt power by requiring a different judge for conviction if the presiding judge waits until the end of the trial to exercise his summary contempt power. Although the Court does not make such a prediction, it seems apparent that its holding will distinctly encourage the prompt handling of contemptuous conduct in open court. In light of *Mayberry* and the Court's prior holding in *Illinois v. Allen*,[58] the Court seems bent on avoiding delay and encouraging trial judges to use their arsenal of authority to deal instantly with disruptive persons in the courtroom. Thus, the Court effectively discourages the imposition of harsh summary sentences for contempts at the conclusion of the trial, thereby eliminating a procedure which on its face lacks the fundamental fairness inherent in due process. Nevertheless, although *Mayberry* avoids this unseemly post-trial pronouncement of large contempt sentences, the incentive it provides for trial judges to hastily cite and sentence contemnors is to be regretted.

Steven R. Jenkins

Parr v. Municipal Court: An Abortive Attempt To Keep Hippies Off the Grass

During the summer of 1968 Carmel-by-the-Sea, California, experienced an unusual influx of transients.[1] In the opinion of its city council, at least, many were susceptible of classification as "hippies." Subsequently the city council passed an ordinance for the express purpose of regulating conduct on public

[55] *Id.* at 465.
[56] *See* note 32 *supra*, and accompanying text.
[57] 400 U.S. at 463.
[58] 397 U.S. 337 (1970).

[1] Carmel is located on the scenic Monterey Peninsula. Since tourism is a principal economic resource, it appears that the major concern was not the mere fact that there was an influx of transients, but rather who or what these persons were perceived to be.

property.[2] One of the operative subsections of that ordinance made it unlawful "to lie or sit upon any [public] lawns."[3] The plaintiff, a local merchant, was arrested while attending a public gathering in one of the city's parks. Plaintiff then sought a writ of prohibition from the superior court to restrain the municipal court from proceeding with her trial. She appealed the superior court's order denying her petition. *Held, reversed*: The discriminatory purpose of a municipal ordinance, made explicit by its accompanying declaration of urgency,[4] invalidates the measure because it violates the equal protection clause of the fourteenth amendment to the United States Constitution. *Parr v. Municipal Court*, 3 Cal. 3d 861, 479 P.2d 353, 92 Cal. Rptr. 153, *cert. denied*, 92 S. Ct. 46 (1971).

I. RELEVANCY OF LEGISLATIVE PURPOSE OR MOTIVE TO THE CONSTITUTIONALITY OF A STATUTE

The equal protection clause of the fourteenth amendment has provided a basis from which to judge the constitutionality of legislative classifications.[5] The established rule is that a classification does not deny equal protection if it is rationally related to a legitimate governmental objective, so that under the law all those who are similarly situated will be similarly treated.[6] If found unreasonable, a classification may be held to invalidate a measure as violative of the equal protection guarantee.[7] One may argue, however, that the proscription of the equal protection clause reaches legislative behavior well beyond its function as a limitation upon permissible legislative classification.[8] Specifically, it has

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[2] CARMEL-BY-THE-SEA, CAL., MUNICIPAL CODE § 697.02 (1968).

[3] *Id.* § 697.02(2)(b).

[4] The urgency declaration provided:

> This is an urgency ordinance adopted to preserve the public peace and safety pursuant to [Cal.] Gov't Code § 36937, and shall take effect immediately. The City Council of the City of Carmel-by-the-Sea has observed an extraordinary influx of undesirable and unsanitary visitors to the City, sometimes known as 'hippies,' and finds that unless proper regulations are adopted immediately, the use and enjoyment of public property will be jeopardized if not entirely eliminated; the public parks and beaches are, in many cases, rendered unfit for normal public use by the unregulated and uncontrolled conduct of the new transients.

Id. § 697.02.

[5] *See generally* Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 342-56 (1949).

[6] *See* Shapiro v. Thompson, 394 U.S. 618, 658 (1969) (Harlan, J., dissenting); Tussman & tenBroek, *supra* note 5, at 344.

[7] *See* United States v. Cantrell, 307 F. Supp. 259, 264 (E.D. La. 1969).

[8] The subsequent career of the equal protection clause as a standard for the criticism of legislation has moved along several lines. First, it has operated as a limitation upon permissible legislative classification. This is its most familiar role. Second, it is used to oppose 'discriminatory' legislation. And third, it shares with due process the task of imposing 'substantive' limits upon the exercise of the police power.

Tussman & tenBroek, *supra* note 5, at 342-43. The "reach" of the equal protection clause is apparently circumscribed only by the ingenuity of counsel schooled in the now almost all-inclusive scope of the concept. The term "equal protection of the laws" has been described as an assertion of great generality "necessarily intended for permanence," and aptly suited as a standard for judicial review of legislation. *See generally* Bickel, *The Original Understanding and the Segregation Decision*, 69 HARV. L. REV. 1, 59-63 (1955). It still seems remarkable to note that but a generation after Justice Holmes' famous reference to equal protection as the "usual last resort of constitutional arguments" in Buck v. Bell, 274 U.S. 200, 208 (1927), the Supreme Court handed down its decision in Brown v. Board of Educ.,

been argued that the clause may serve as the basis for a critique of legislative purpose.[9]

The concept of legislative purpose is at least latently ambiguous. On the one hand, the purpose of a given legislative measure is to be ascertained with reference to the goals or objectives it seeks to accomplish. On the other hand, however, legislative purpose may be found in those subjective and relatively internal considerations that contributed to the measure's passage by a majority of the legislature. As an all-inclusive concept, therefore, legislative purpose must always represent a confluence of objective and subjective criteria. Purpose, broadly considered, includes motivation.[10]

The courts have been understandably reluctant to extend their scope of review beyond the objective side of the concept of legislative purpose,[11] regardless of the availability of the equal protection rationale. Motivation is such a complex psychological concept that it is highly unlikely that any legislator would be able to analyze thoroughly the relationship between those objective and subjective considerations that dictated a particular legislative decision. It is infinitely less likely that a court can make an ex post facto determination of that same relationship, particularly when that determination must be multiplied by the total number of legislators voting for a given measure. The general rule that a court will not consider the subjective side of legislative purpose—*i.e.*, legislative motivation—seems well founded.[12]

However, the assertion that "[a]cts generally lawful may become unlawful when done to accomplish an unlawful end"[13] may itself be an admission that motivation may be reviewed by a court.[14] Of course, it could be that the assertion stands "not for the proposition that legislative *motive* is a proper basis for declaring a statute unconstitutional, but that the inevitable *effect* of a statute on its face may render it unconstitutional."[15] Clearly the United States Supreme Court is not yet willing to subscribe to a "doctrine of discriminatory legislation,"[16] a doctrine grounded in the demand for purity of legislative motivation.[17]

It remains arguable that the principle articulated by the Court, that the equal protection standard applies only to a construction of the legislation on its face, is, nevertheless, flexible enough to extend the substantive dimensions of the

347 U.S. 483 (1954). Perhaps the new "all-pervasiveness" of the equal protection clause is best explained by concluding that this clause, above any other in the United States Constitution, follows the sociological development of the country more rapidly. Thus, any attempt at definition becomes dated quickly. This principle has been stated succinctly by at least one writer in the field: "Once loosed, the idea of Equality is not easily cabined." Cox, *Foreword: Constitutional Adjudication and the Promotion of Human Rights*, 80 HARV. L. REV. 91 (1966).

[9] Tussman & tenBroek, *supra* note 5, at 357.

[10] *See generally* Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205, 1207 (1970).

[11] That is to say, courts will review only the goals or objectives apparent from the face of the enactment or revealed by the pattern of enforcement. *Id.*

[12] *Id.* at 1212-17.

[13] Gomillion v. Lightfoot, 364 U.S. 339, 347 (1960), quoting United States v. Reading Co., 226 U.S. 324, 357 (1912).

[14] Ely, *supra* note 10, at 1209.

[15] United States v. O'Brien, 391 U.S. 367, 384-85 (1968) (emphasis added). This is not the traditional distinction between statutes unconstitutional on their face and statutes unconstitutionally applied. *See* discussion in text accompanying note 32 *infra*.

[16] *See* Tussman & tenBroek, *supra* note 5, at 356-61.

[17] *Id.* at 358. *See also* Palmer v. Thompson, 403 U.S. 217 (1971).

equal protection guarantee beyond a determination of the reasonableness of legislative classifications. For instance, the Court recognizes the existence of a category of "suspect criteria," the mere legislative use of which requires the demonstration of a compelling governmental interest sufficient to justify allowing the classification to stand.[18] In addition, it is possible for a court to consider the "face" of a statute or ordinance as including certain elements, such as a title or preamble, which might not otherwise come under judicial scrutiny.[19]

In an effort to shorten the elapsed time between the passage of an ordinance and the time it will take effect, some jurisdictions allow a measure to be enacted under urgency or emergency procedures.[20] The California provision requires the city council to include in the ordinance a declaration of urgency, setting forth the facts which constitute the emergency that the measure is intended to treat.[21] Clearly the urgency declaration can be resorted to in order for a reviewing court to ascertain whether an emergency did in fact exist.[22] The result of a determination that there was no emergency would not invalidate the measure, however; the effective date of the measure would simply be postponed, just as if there had been no urgency provision.[23] Should the declaration of urgency be affixed to the measure as a preamble, it could be resorted to in an effort to ascertain the objectives of the city council, but such resort cannot be had unless the operative sections of the ordinance are so vague and ambiguous as to make it otherwise practically impossible to determine the governmental objectives.[24] To the extent that the operative sections are themselves clear and unambiguous, any apparent inconsistency in the preamble would not be within the purview of the reviewing court.[25]

Thus, two principles can be derived from the foregoing: (1) the equal protection clause does not demand a critique of legislative purpose to the extent that such purpose is held to be synonymous with legislative motivation; and (2) a declaration of urgency affixed to an ordinance as a preamble cannot be held determinative of the governmental objectives of the measure unless the operative sections of the measure are so ambiguous as to leave the matter clearly in doubt.

II. PARR V. MUNICIPAL COURT

In contradistinction to the foregoing principles is the opinion of the California Supreme Court in *Parr v. Municipal Court*.[26] The court must have been aware that certain factors militated against its selection of equal protection grounds as a basis for review. The regulations of the ordinance had been uniformly imposed upon all persons who used public property. The *sole* reference

[18] *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618, 627 (1969); Korematsu v. United States, 323 U.S. 214, 216 (1944).
[19] *See* Truax v. Raich, 239 U.S. 33, 40-41 (1915).
[20] *See, e.g.*, CAL. GOV'T CODE § 36937 (West 1966).
[21] *Id.*
[22] *Ex parte* Hoffman, 155 Cal. 114, 99 P. 517, 519 (1909).
[23] 99 P. at 520.
[24] 6 E. MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 20.59 (3d ed. rev. 1969), citing United States v. Fisher, 1 U.S. (2 Cranch) 496 (1804).
[25] *Id.*, citing Crescent City v. Griffin, 31 Cal. App. 2d 133, 87 P.2d 414 (1939).
[26] 3 Cal. 3d 861, 479 P.2d 353, 92 Cal. Rptr. 153, *cert. denied*, 92 S. Ct. 46 (1971).

to hippies[27] was found in the urgency declaration. Mrs. Parr was manifestly not a hippie, and the record apparently disclosed no arrest of a hippie under the ordinance. Nevertheless, the entire measure was stricken as violative of the equal protection clause.

The court in *Parr* purported to add another dimension to the "traditional focus" of the equal protection clause. Relying essentially upon the "doctrine" first announced by Tussman and tenBroek, the court asserted that a legislative enactment must be related to a *permissible purpose.*[28] One might assume that a permissible purpose could be practically any governmental objective embodied in a measure enacted to preserve the public peace, health, or safety,[29] but it is apparent that the court intended another meaning. A permissible purpose, according to the court, is one which is demonstrably untainted by hostile and prejudiced attitudes attributable to the legislators themselves.[30] The court thus utilizes the equal protection clause as a cognitive basis for criticizing and ultimately rejecting as illicit the *motivations* of Carmel's city council.

The language of the urgency declaration accompanying the ordinance was unquestionably hostile, and it surely represented the attitudes of most of the councilmen toward those individuals they classified as "hippies." But it was also clear that the *conduct* of the "new transients," at least to the extent that that conduct bore a direct relationship to the resultant destruction of the public parks and beaches of Carmel, was an important concern. In addition, there was no suggestion that the "undesirables" were the only individuals who were using the parks and beaches in question. The court, nevertheless, concluded that the operative sections of the ordinance were intended to be applied solely to "hippies," and that the measure was, therefore, an impermissible attempt to drive the hippies not only out of the parks, but also out of the city. With respect

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[27] The term "hippie" probably connotes the personification of a thorough-going nonacceptance of contemporary customs, values, and mores. A "hippie" openly and self-consciously espouses a life style which diametrically opposes that of the status quo. *See generally* T. WOLFE, THE ELECTRIC KOOL-AID ACID TEST (1968). Some courts have already recognized that someone who might be designated a "hippie" may be subjected to genuine invidious discrimination at the hands of those who enforce the laws and are otherwise responsible for the continuation of legal processes. *See, e.g.*, Wheeler v. Goodman, 306 F. Supp. 58 (W.D.N.C. 1969), *vacated on other grounds*, 401 U.S. 987 (1971); Hughes v. Rizzo, 282 F. Supp. 881 (E.D. Pa. 1968). That is to say, a hippie may run a very real risk of being prejudged not for what he has done, but for what he is, or at least for what he appears to be. *See* Frazier v. Superior Court, 5 Cal. 3d 287, 486 P.2d 694, 95 Cal. Rptr. 798 (1971). Apparently this development has not reached the point at which it may fairly be said that "hippie" is a suspect criterion for legislative classification. Arguably, though, a better way to achieve the result this court intended would have been to take this further step. *See* discussion in text following note 42 *infra.*

[28] Tussman & tenBroek, *supra* note 5, at 357-59. The dissent pointed out that this reliance was arguably misplaced:

> [T]he consideration of motive is complicated by the fact that it is altogether possible for a law which is the expression of a forbidden motive *to be a good law.* What is to be done with a law which, passed with the most questionable of motives, still makes a positive contribution to the public good? Suppose the legislature decides to 'get' Standard Oil, or Lovett, or Petrillo, but does so through a law which hits all monopolies, all government employees, or all labor unions.

Id. at 360. In such an instance the dissent would follow the traditional line of authority and would uphold the ordinance.

[29] *See* CAL. GOV'T CODE § 36937 (West 1966).

[30] 3 Cal. 3d at 864, 479 P.2d at 355, 92 Cal. Rptr. at 155; Tussman & tenBroek, *supra* note 5, at 357-59.

to its probable impact, the ordinance was: (1) effectively a mandate to those responsible for enforcing the law to apply it discriminatorily against hippies; and (2) a less-than-subtle legislative effort designed to encourage private discrimination by local citizens against a "cultural minority."[31]

This "probable-impact" argument appears to be a form of the "unconstitutional-as-applied" branch of the equal protection doctrine. Apparently, the court, by considering the declaration of urgency as a part of the ordinance, primarily considered that the ordinance was unconstitutional on its face because the declaration of urgency made it impossible to enforce the ordinance nondiscriminatorily. This reasoning seems to be based on some "true" unconstitutional-as-applied cases, and primarily on an extension of the reasoning of the California courts in *Mulkey v. Reitman*.[32] *Mulkey* invalidated a California constitutional amendment which said that the state would not interfere when private citizens discriminated against minorities in the sale of the citizens' private homes. The California courts, and the United States Supreme Court, held that this public act effectively encouraged private discrimination, and was, thus, discrimination by state action proscribed by the fourteenth amendment to the United States Constitution. It would require but one more step to say that in *Parr* the urgency declaration effectively encouraged public discriminatory enforcement, such that the ordinance could not stand. This would be a sort of "predetermined," unconstitutional-as-applied holding.

Finally, the court failed to utilize other possible constitutional infirmities to invalidate the ordinance.[33] Primarily, the ordinance itself, apart from the declaration of urgency, would have been very vulnerable to a charge of overbreadth. Legitimate legislative goals "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly reached."[34] The ordinance of the city effectively prohibited almost all activity in the city's parks except sedately walking in the open areas. Under the ordinance it would have been almost impossible even for children to play in the parks in their customary fashion. The court could very easily have classified the ordinance as overbroad and required the city council to enact a properly narrow

[31] The reasoning that allowed this court to consider legislative motivation as a basis for invalidating the ordinance might be based on the rationale found in Ely, *supra* note 10, and MacCallum, *Legislative Intent*, 75 YALE L.J. 754 (1966). These authorities reflect an argument made in United States v. O'Brien, 391 U.S. 367 (1968), in which it was stated that judicial consideration of legislative motivation is prohibited except in those cases in which "the inevitable effect of a statute on its face may render it unconstitutional." *Id.* at 383. The California court here chose not to delineate carefully the reasoning it used to reach its conclusion in this regard. Alternatively, this reasoning might be based on a strained argument extending the doctrine enunciated by the *California* courts in Mulkey v. Reitman, 64 Cal. 2d 529, 533-34, 413 P.2d 825, 828, 50 Cal. Rptr. 881, 884 (1966), *aff'd*, 387 U.S. 369 (1967). *See* text following this note *infra*. Necessarily, this is speculative, the court not having clearly chosen either alternative.

[32] 64 Cal. 2d 529, 533-34, 413 P.2d 825, 828, 50 Cal. Rptr. 881, 884 (1966), *aff'd*, 387 U.S. 369 (1967).

[33] The court declined to reach any of the four other rationales for reversal: (1) the ordinance is unconstitutionally overbroad; (2) the ordinance is unconstitutionally vague and ambiguous; (3) the field governed by the ordinance has been preempted by state law; and (4) the ordinance was ineffectively adopted as an urgency measure. 3 Cal. 3d at 863 n.2, 479 P.2d at 355 n.2, 92 Cal. Rptr. at 155 n.2.

[34] Shelton v. Tucker, 364 U.S. 479, 488 (1960). *See also* the two opinions in Cox v. Louisiana, 379 U.S. 536 (1965) [*Cox I*], and 379 U.S. 559 (1965) [*Cox II*]. That this would appear to be the type of "blunderbuss" measure the proscription is designed to combat is borne out in Younger v. Harris, 401 U.S. 37, 58 (1971) (Douglas, J., dissenting).

ordinance proscribing only that conduct that had a demonstrable effect of destroying city property.

It is remarkable[35] that the court in *Parr* chose not to reproduce a greater portion of its own logical processes that contributed ultimately to its holding.[36] There was no indication that the record disclosed facts, apart from the presence of hostile language in the urgency declaration, that would allow the court to overcome the general presumption of constitutionality of purpose and application when laws are enacted by and for the people.[37] Yet the court found reason to suggest that the entire transaction could be viewed as an example of official bad faith.

The court did not consider whether its decision would have been altered had the ordinance been enacted without its urgency declaration. There was a strong implication, however, that the offending declaration merely made the court's task easier, and that so long as "[a] state enactment cannot be construed for purposes of constitutional analysis without concern for its immediate objective . . . and for its ultimate effect"[38] the court both could and would have struck down the ordinance.[39]

One might feel constrained to admire the strong stand taken by the Supreme Court of California in opposition to official discrimination against an ill-defined social caste like hippies. It is submitted, nevertheless, that the opinion of the court focuses too much attention upon the status of hippies and too little attention upon their conduct, *qua* individuals. It is submitted that the conclusion that the ordinance could not have been enforced indiscriminately by the officials of Carmel is unwarranted upon the facts presented.

III. CONCLUSION

It is evident that in *Parr* the Supreme Court of California was concerned with the protection of hippies.[40] It would appear that better methods were available

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[35] Particularly in view of Judge Burke's dissenting opinion. 3 Cal. 3d at 871-73, 479 P.2d at 360-62, 92 Cal. Rptr. at 160-62.

[36] For example, consider this statement:

> The council's rhetoric thus singles out hippies as a social group consisting of unsanitary transients whose presence in Carmel is deemed to be undesirable. It would *appear to follow* that the operative sections of the statute are intended to be limited to hippies in their application, since hippies are the only identified source of the danger to Carmel's public property and have been officially declared an unsanitary and undesirable group. The irrefragable implication is that the Carmel City Council sought, through Municipal Code section 697.02, to rid the city of the blight it perceived to be created by the presence of the hippies.

Id. at 865, 479 P.2d at 356, 92 Cal. Rptr. at 156 (emphasis added).

[37] *In re* Porterfield, 28 Cal. 2d 91, 168 P.2d 706, 714 (1946). *See also* Kissinger v. City of Los Angeles, 161 Cal. App. 2d 454, 327 P.2d 10, 16 (1958).

[38] Mulkey v. Reitman, 64 Cal. 2d 529, 533-34, 413 P.2d 825, 828, 50 Cal. Rptr. 881, 884 (1966), *aff'd*, 387 U.S. 369 (1967).

[39] "But we may not blind ourselves to official pronouncements of a hostile and discriminatory purpose solely because the ordinance employs facially neutral language." 3 Cal. 3d at 865, 479 P.2d at 356, 92 Cal. Rptr. at 156. "[W]e are not . . . forbidden to know as judges what we see as men . . . ." *Id.*, quoting Ho Ah Kow v. Nunan, 12 F. Cas. 252 (No. 6546) (C.C.D. Cal. 1879).

[40] Aside from references to this fact in *Parr* itself, *see* note 36 *supra*, subsequently the same judge who delivered this opinion had occasion to discuss it again in Frazier v. Superior Court, 5 Cal. 3d 287, 486 P.2d 694, 95 Cal. Rptr. 798 (1971). In *Frazier* a hippie sought

to accomplish this purpose. Instead of choosing the doubtful path of looking to legislative motive, the court could have easily, and on sound legal grounds, found the ordinance overbroad or vague. Hippies must be given equal protection of the laws; however, so must everyone else. What better way to accomplish both than to insure that legislative enactments are carefully and narrowly drawn? Protection of public parks is a valid legislative purpose, but as public forums special attention must be given them to insure that their use as public places of congregation is not unduly limited.[41] If a properly narrow ordinance is enforced discriminatorily, then redress may be had under the unconstitutional-as-applied branch of the equal protection doctrine. The court should not take away the right of the city to regulate the use of its parks altogether[42] in order to protect the hippies—especially when better means were available.[43]

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a change of venue in a criminal case because he felt his hairstyle and mode of dress would prejudice the jury. The court in *Frazier* stated:

> [T]here is another element here in his [defendant's] favor, perhaps more elusive but potentially no less significant. . . . Many residents of Santa Cruz County felt a deep-seated antagonism towards hippies, which they expressed both in person and through their local government representatives. [Citing the urgency declaration in *Parr*.] . . . We recognize that in some criminal trials there is at least the possibility, regrettably, that the defendant may be judged on his appearance and life style rather than on his proven acts. In the circumstances here shown, however, that consequence is more probable than possible.

5 Cal. 3d at 293-94, 486 P.2d at 698-99, 95 Cal. Rptr. at 802-03. In granting a change of venue, the court concluded that it would be impossible to believe that a jury could be impartial, just as the court in *Parr* stated that discriminatory enforcement of the ordinance was inevitable, though not proved.

[41] [T]he question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places.

Cox v. New Hampshire, 312 U.S. 569, 574 (1941).

[42] As the court stated: "The legislative intent is *indelibly* expressed in the urgency clause which by definition must state relevant and persuasive facts necessitating the legislative action." 3 Cal. 3d at 865, 479 P.2d at 356, 92 Cal. Rptr. at 156 (emphasis added). It is doubtful the city can ever remove the "taint" of this declaration. In effect, the city council may well have destroyed any chance it had of regulating the use of the parks except in the most innocuous ways.

[43] In Antonello v. City of San Diego, 16 Cal. App. 3d 161, 93 Cal. Rptr. 820 (1971), an intermediate California appellate court was called upon to apply the principles announced in *Parr*. That court properly recognized a distinction that *Parr* did not—*i.e.*, that purpose and motive were not the same:

> Where the purpose of a statute is relevant to a determination of its constitutional validity a court, to ascertain such purpose, may examine its immediate objective and ultimate effect as well as events leading to its passage [citing *Parr* and *Mulkey*] . . . , but not the motives influencing legislators in voting its passage . . . . A statute effecting a valid purpose is valid regardless of the motives actuating its enactment . . . .

16 Cal. App. 3d at 166, 93 Cal. Rptr. at 822. If *Parr* stands only for the proposition that legislative purpose may be considered, it does little but add some authority to that doctrine. However, since the only logical construction in *Parr* seems to be that the *purpose* of the ordinance was to preserve the parks, and the *motive* was to "get" the hippies, then *Parr* must stand for the proposition that motivation may be looked to. Hence, the above statement of the law in *Antonello* is either wrong, or the California courts are not going to follow the reasoning in *Parr*.