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**The Newsletter of the *Naturist Action Committee* and the *Naturist Education Foundation***

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# **Little Beach....Continued (Part 3)** **Pyrrhic Victories and a New Year**

**By Bill Schroer, Chair, Naturist Action Committee**

When we first heard of the closure of Little Beach, Hawaii to nudity....unprecedented after 70+ years of accepted nude use, we were shocked and wondered if this was a reaction to a specific problem, a change in administration, a new law or ???

What we learned from our contact with FoLB (Friends of Little Beach) team member Bill Watts and reported on in this newsletter (Little Beach Parts 1-2) was that this initiative was a planned, targeted effort, using the cover of Covid-19 to accomplish what the anti-nudity DLNR in Hawaii has wanted to do for some time: eliminate nudity on the most well known nude beach in Hawaii (and one of the best known around the world).

The tactics used by the DLNR are not unfamiliar to nude beach goers: Fear, intimidation and citations through police raids, signage that calls out "No Nudity" first, PR offensives citing exaggerated claims of native hostility to public nudity and parents hysterically worrying about "the children", etc. What is so suspension of disbelief

shocking in all this is the perspective of knowing this site only "yesterday" experienced 33 years of the authorities not only tolerating nudity at Little Beach...but listing Little Beach as an accepted nude beach on travel sites and in Hawaii travel literature. Did we just land on another planet?

The two part strategy behind the DLNR initiative was planned (for how long??) and when Covid-19 came, along with it some isolated bad behavior, the DLNR leaped. Step one involved immediately closing down the beach for much longer than necessary, then reopening with signs prohibiting nudity and issuing citations which gave the DLNR a foothold. The second part of the strategy is more Machiavellian. Recognizing that nudity and top freedom are not exactly illegal in Hawaii (top freedom has already been ruled legal by Hawaii's Supreme Court) and nudity on a nude beach has not been

seen as a convictable offense, the DLNR decided to enforce old rules for the first time in 33 years which prohibited top freedom on the beach for women and nudity everywhere. This "cover" gave the DLNR the permission needed to start citing women for topfreedom and beachgoers for being nude at Little Beach. That the DLNR "rules" may not stand up in court (as we will see in the update below) reflects a cynical and "the law be damned" attitude not usually seen in public officials whose job is to uphold the law.

While the update below from FoLB shows the law is on our side, the victories seem Pyrrhic. Why? Because the courage and resources required by the defendants in these cases to fight the citations are scarce and many will instead be cowed into submitting to the DLNR "rules". Being nude on a beach is a transformative feeling...but

fear of being arrested, encountering fines, having one's vacation interrupted, having to return to Hawaii to go to court, public embarrassment, etc. all trump the good feelings of being top-



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free or nude. The calculus of the DLNR is that even though they know their "rules" are on shaky legal ground, most people will not risk any or all of the consequences above just to spend an afternoon on the beach nude or topfree.

What's next? The new year shows no sign of the DLNR modifying its stance or rules to reflect the court case outcomes. Not accountable to voters or even politicians, the DLNR operates in a protective bubble. What can you do? First, join Friends of Little Beach ([www.littlebeachmaui.org](http://www.littlebeachmaui.org)) and support with your voice and dollars. Second, support the Naturist Action Committee ([www.naturistaction.org](http://www.naturistaction.org)) as we continue to work to alert the naturist community to threats of naturist venues anywhere they occur. Third, if you visit or live in Hawaii, be aware of this situation and voice your concern at every opportunity to fellow travelers, hotel or restaurant operators, anyone with a stake in Hawaii and its economy. Little Beach is in real jeopardy of being eliminated as a major tourist draw and nude beach. All of us in the naturist community must work to prevent that eventuality.



## DLNR Receiving Defeats in Court

[Editor's Note: This is being republished from the FoLB website with authorization.]

Justice, when cited for Nudity at Little Beach under the archaic State Park rules, is expensive. It can cost you close to \$10,000 in legal fees just to cover your Motion to Dismiss (unless you qualify for the public defender). You risk a permanent criminal record if you plead Not Guilty and lose. Most folks who have been cited, cannot afford justice and cut a deal. In return for a No Contest plea, they paid the Guilty fine of \$100 + \$30 fees, and have their criminal record expunged after 6 months.

Talk to Naturists at Little Beach and tell them that the DLNR is issuing citations for Nudity at this world-renowned Naturist destination, and their jaw drops. Who would be so stupid, they say. Most of the folks who have been cited were shocked to receive a citation. This is the story of 4 Naturists who were so offended that they pleaded Not Guilty regardless of the risk and the cost and the stress.

### Back in October 2020 the DLNR received its first defeat in Court:

After 33 years of no Nudity citations and no Nudity warnings, the DLNR flipped and cited Jamel Strom for Nudity. There was no offended or affronted complainant - and none are required under the State Park rule. Mr Strom pleaded Not Guilty and, through attorney David Pullman, filed a Motion to Dismiss. The Motion claimed violation of due process under Hawaii law and the US 14th Amendment on the principle of Desuetude - meaning law rendered obsolete because of disuse. The motion further asserted that the Park Nudity rule is malum prohibitum - meaning the act is unlawful only by virtue of the rule, not because it is harmful. The judge granted the Motion to Dismiss on Desuetude. Case closed.

The court procedure had 27 recorded events involving 19 named court participants, not counting the defendant and defense and prosecution witnesses. The judge held court 5 times with the defendant required to be present. If the Motion had been denied the case would have continued. All this for a petty-misdemeanor criminal offense with a \$100 fine.

What a waste of tax-payer money - but the DLNR did not care. In order to rehabilitate its Desuetude Park rule, the DLNR management erected garish red No Nudity signs around Little Beach and ordered its officers to issue another 20 Nudity citations within 5 months in 2021. This then required their witnesses to lie in court, saying that in 1987-2020 it was not policy to tolerate Nudity and in 2021 officers were not ordered to give Nudity citations.

### In January 2022, the DLNR received its second defeat in Court:

In May 2021 Dr John Musser was cited for Nudity, then in July David and Colleen Replogle were cited. Both parties pleaded Not Guilty and, through their respective attorneys Hayden Aluli and David Pullman, filed a Motion to Dismiss. Their cases continued independently until they were consolidated in September. The Motion to Dismiss listed 4 criteria:

- ▶ Desuetude - law rendered obsolete because of disuse.
- ▶ Equal Protection - sex discrimination by prohibiting only female breast exposure.
- ▶ Void for Vagueness - inadequate definition of "female" and "post-pubertal."
- ▶ De Minimis - act did not cause or threaten the harm the Nudity rule was intended to prevent.

The judge denied the Motion on the first 3 criteria. The judge granted the Motion to Dismiss on De Minimis, concluding that the defendants did cause or threaten the harm the Nudity rule sought to prevent but to an extent too trivial to warrant the condemnation of a conviction. Case closed. However, the judge made it clear that the State Park Nudity rule still stands and each case will be considered on

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its merits.

John Musser commented: "I am grateful to the court for this vindication. I was shocked to be confronted by a DLNR police officer for doing nothing, well nothing different than I have done at Little Beach since 1988. I asked for a warning as opposed to a citation, but the officer told me he could not give a warning because his orders were to give citations for Nudity. Later, under oath in court, he lied to match the DLNR management's story and stated that he never said that to me when I asked to be 'warned.' I am troubled that the Park nudity rule remains on the books where it can be arbitrarily enforced at the whims of Park management."

The court procedures had 71 recorded events involving 17 named court participants, not counting the defendant and defense and prosecution witnesses. The judges held court 9 times, with the Dr Musser present 6 times and the Replogles present 4 times (via Zoom). If the Motion had been denied the case would have continued. Again, all this for a petty-misdemeanor criminal act with a \$100 fine - no different than hundreds of people have done daily for over 33 years with the complete acquiescence of the DLNR.

Public defender David Pullman stated: "The DLNR gets to write their own laws and enforce them with virtually no oversight. This has resulted in very poorly drafted rules and the elevation of what should be minor infractions to full-blown criminal offenses, causing an enormous waste of court resources. Instead of helping people understand and protect natural resources, their enforcement culture is focused on criminalizing people who have no intent to cause any harm."

#### Impact on Little Beach Nudity:

The verdict in a District Court case does not create a precedent that must be applied to future cases. No two judges are the same. A Motion to Dismiss denied by a judge in one case can be granted by a different judge in another case - or the Appeals Court. e.g. Although this last judge denied the Desuetude Motion it remains a strong argument with the DLNR repeatedly sending its representatives to lie in court - stating that from 1987 to 2020 the Nudity rule was enforced,

when we have tens of thousands of people that know it was not.

More relevant - has this affected the DLNR policy? Arriving at Little Beach on Feb 5 2022, DOCARE Lieutenant Yamamoto confirmed to FoLB that if he sees anyone Nude, he will issue a citation.

#### DLNR Receives a Third Defeat in Court:

The State of Hawaii has no laws that prohibit the exposure of the female breast. This was finally established by the Hawaii Supreme Court in *HI v. Crenshaw* in 1979. A woman can therefore choose to be Top-Free wherever a man can be bare chested. This is also the case in all but the most backward US states. The DLNR never miss an opportunity to impose draconian rules to criminalize hard won liberty. When State Park rules were updated in 2020, they maintained the exposure of female breasts within the definition of prohibited Nudity. In 2020 the DLNR management flipped from Nudity tolerance to ordering their enforcement officers to issue citations for Nudity. This is the story of 2 Top-Free women that were incensed by the sex discrimination and plead Not Guilty.

In July 2021 Beth Quick was cited for Nudity (but actually Top-Free). Bill Watts, a witness, subsequently asked the officer why they had arrived 45 minutes earlier than the usual 4PM to issue citations, and would that be the new normal. The officer said we carry out our orders and do not know what they may be in the future. In August Stacy Moke was cited for Nudity (but actually Top-Free). Their cases were conducted in parallel without being consolidated. They both filed a Motion to Dismiss via their attorney David Pullman.

"Instead of helping people understand and protect natural resources, their enforcement culture is focused on criminalizing people who have no intent to cause any harm."

Stacy Moke commented: "Having a law specifically prohibiting only female nipples or areola from being exposed clearly violates women's constitutional rights. I would be equally satisfied, and slightly amused, if the law was changed so all gender, including men, could not expose their nipple or areola. DLNR officer, Fernandez, treated me with respect and kindness. The problem is with the discriminatory law he is duty

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bound to uphold, not him."

"Most people do not know that men were once oppressed by government administrators. In the 1920s and 1930s men could not bathe shirtless. They rebelled and were arrested in droves and fined for exposure of their nipples. Only in 1937 was the ban overruled by a New York Judge. Why have women had to wait so long!"

The Motion to Dismiss asserted that the State Park's Nudity rule violated the defendant's Equal Protection rights guaranteed by the US Constitution and Hawaii Constitution. The DLNR asserted that the States compelling interests were protecting public order and morality, and preserving the health and safety of the public, and the need to protect unwilling members of the public from unwanted exposure.

No surprise, the DLNR provided no evidence to support their assertions. The law requires that the State prove that it has a compelling public interest. In the case of Equal Protection sex discrimination, the US Supreme Court has ruled that the government must carry the burden of showing an "exceedingly persuasive justification." The judge Granted the Motion to Dismiss on Violation of Equal Protection Rights. Case Closed.

Public defender David Pullman stated: "This is bad law. It's an example of what happens when unelected bureaucrats are permitted to draft their own criminal laws. In the 21st century, no law should criminalize women for doing anything men are legally allowed to do. Thankfully, the judge saw this unlawful discrimination for what it was."

### Impact on State Park Top Free:

The verdict in a District Court case does not create a precedent that must be applied to future cases BUT this was a slam-dunk, identifying the State Park Nudity rule as unconstitutional against a woman's right to be Top-Free. It seems unlikely that any judge would differ or that any DLNR police officer will be issuing citations for Top-Free in any State Park. This could be confirmed by some Top-Free women walking circles around the DLNR police officers when they arrive at Big Beach. If there is a photograph, we will post it here.



**Further Reading:** The latest FoLB website post details the **"DLNR Plot to Slash 107 Parking Spaces in N. Lot, in the Guise of Improvements"**, making Little Beach more difficult to access.

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United we stand for justice:

- ❖ New "Clothing Optional Beach" Signs - see back
- ❖ Remove the Gate & apologize for desecration of a sacred cultural resource
- ❖ Restore Sunset Closing Time - 7:45PM, 7 Days
- ❖ Stop Extortionate Visitor Fees (e.g. \$30/day for a family of 4)
- ❖ Send Police When Help Needed, not for Harassment
- ❖ Repeal Tyrannical Park Rules that penalize harmless pleasure

Add your voice - Go to Friends of Little Beach website:

**LittleBeachMaui.ORG**



### Last Month's "Caption This!" Winner



**One little two little three little nudies.**

- Submitted by Tom.

Honorable Mention: "Forgot tushie towel...Splinter...Pain... Keep...singing."

- Submitted by dave.carlson

# Film Review: Anarchy TV

By Reb Belstner

Director: Jonathan Blank

If it weren't for certain elements, I'd almost call this a family film. Well, maybe a family film where the viewing family has quite emotionally mature teens.

"Anarchy TV" is the story of Public Access Channel 69 (see what I mean?), home of such fare as "Political Jeopardy", "Conspiracy of the Week", and "Eat Me!" - a show in which a pair of pre-teens use expletive-laden language to verbally abuse their callers.

Anarchy TV, as the channel calls itself, is run by a cast of characters including Frank - the engineer who suffers from being a conspiracy theorist, Gerry, Natalie, and three of Frank Zappa's four kids (the fourth makes an appearance as an over-the-top insane police officer later in the film).

The station's programming brings about the ire of televangelist Rev. Wright (Alan Thicke in a decidedly one-note performance). The Reverend, so offended by the public access channel, decides to purchase it and make it a member of his Christian Union Network Television - if you don't see the joke there, you are more wholesome than most. It also helps to know Wright just happens to be Natalie's father.

Before this all comes down, Gerry & Natalie mention they are going to Nudestock (a real event), foreshadowing at its finest.

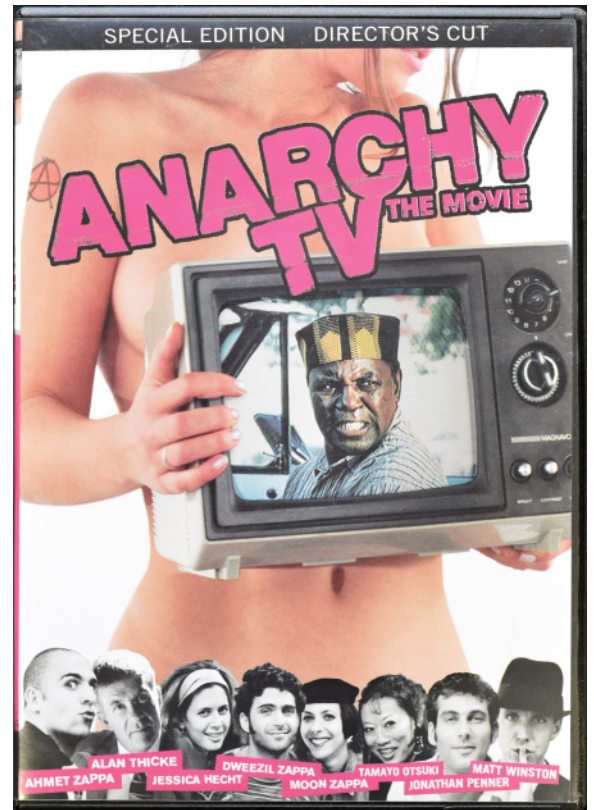
With the sale of the channel to CUN-TV our heroes try appealing to the Rev. Wright, but to no avail. They then set up a protest in front of the station which lands them in jail - during which time we meet Tiffany, who becomes a key player in the rest of the film.

Once released from prison, they decide to barricade themselves in the station and broadcast in a pirate fashion to bring awareness to the station's plight and the threat to free speech it represents (which I have to agree with - some poignant statements are made about censorship and civil rights in this segment and throughout the rest of the movie).

About an hour into the film, the protest is going poorly. No one is responding to channel 69's quandary and time is running out. How will they drum up attention? By getting naked for the camera, of course. The nudity is played primarily for laughs (of course) but there follows further commentary about censorship which, again, is treated quite seriously.

Once three of the broadcasters take to camera in their birthday suits, they get the attention they desire and more. The lengths taken do not go unnoticed, as Gerry declares to their audience: "Nobody noticed until we took our clothes off." That could be said about every early nudesploitation film ever made - and whether or not this movie falls into that genre is a matter of debate. (I side on the "it is" camp, myself.)


The concept of body acceptance is given a nod by the film. But those actors without Hollywood ideal bodies were shown only from behind or in partial/full underwear, which was disappointing. I was genuinely surprised to see two instances of male full frontal nudity, for which I applaud the director. There is also a "nude" scene involving a pre-teen girl which is artfully shot to not show the body stocking she is wearing (this information is courtesy of the director's commentary on the DVD).



In the end, this is an above-average comedy with a comparatively small naturist element. Crude/sexual humor abounds, so I wouldn't exactly call this a "family picture". (Unless you're comfortable with a segment on how to put a condom on a dildo... in which case, you may have a gateway to conversations with your older children about safe sex practices.)

## Extras:

Extras include a rambling, near-incoherent interview with the late great Timothy Leary (a snippet of which can be found in the movie), a director's commentary track, and trailers for several other films.

*[Editors note: If you're a registered library patron (which is free), you can view this film by requesting "video202" (also free). Learn more about Digital Lending at [NaturistEducation.org](http://NaturistEducation.org), under the NEF Research Library page.]* 



## Caption This!

This ongoing series highlights a time when cameras were allowed and cheesy photographs were encouraged. (See the May 2021 newsletter for more details.) All photos are from items held at the NEF Research Library.

### About this Photograph

A gem from the 60's, when all kinds of nudist magazines were being published. This photo is from *Naked Comics* #5, which shows "Captain Muscle" and "Super Orphan" (what?!) on the cover. The photo presented here is an extra shot (beyond the comic's main content) of the nudists/models goofing off with one of the props.

Now it's your turn to Caption This! ➡

Send your caption ideas to:

Doug.Hickok@NaturistEducation.org

Please include:

- ▶ Your name that we can print if yours is selected. (Full name, or first name, or nickname, or anonymous...whatever you prefer)
- ▶ The type of caption (Title above, Caption below, Speech Bubbles, or a mix of all these).
- ▶ The caption wording, or who said/thought what.

Winners get fame in the next newsletter!



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