

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 17, 2011, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Dennis Hodgins, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the Committee:

Senator Bob Marshall
Representative John Rubin
Stephanie Kaniper, Jefferson County Citizens Group
Phillip Cosby, American Families Association
Michael Schuttloffel, Kansas Catholic Conference
Judy Smith, Concerned Women for America of Kansas
Aronda Kerns
John Samples, Osage City
Philip Bradley, Equal Entrainment Group & Kansas Licensed Beverage Association

Others attending:

See attached list.

Bill Introductions:

Senator Marshall requested a bill introduction regarding the Kansas Expanded Lottery Act; relating to racetrack gaming facilities; creating the Kansas Agricultural Opportunity Act.

Senator Longbine moved that this request should be introduced as a committee bill. Senator Haley seconded the motion. The motion carried.

Senator Marshall requested a bill introduction regarding Amendments to the Kansas expanded lottery act; relating to racetrack gaming facilities.

Senator Owens moved that this request should be introduced as a committee bill. Senator Haley seconded the motion. The motion carried.

HB 2107--Community defense act; sexually oriented businesses regulations

Chairman Brungardt opened the hearing on **HB 2107**.

Representative John Rubin spoke in favor of the bill. (Attachment 1) The bill is not an attempt to legislate morality or regulate sin, nor is it an attempt to prohibit sexually oriented businesses in Kansas or regulate them out of existence. This bill is crafted for proper public policy purposes, to protect the health, safety and welfare of our citizens.

Stephanie Kaniper, Jefferson County Citizens Group, appeared in favor of the bill. (Attachment 2) The bill will change state law to strengthen each community's ordinance/regulation, to fend off the outlandish legal action that is happening in Jefferson County.

Phillip Cosby, State Director, American Family Association of Kansas and Missouri, testified in favor of the bill. (Attachment 3) The bill would regulate the operation and location of sexually oriented businesses and establish uniform regulations to prevent undesirable secondary effects of such businesses. Also provided summaries of negative secondary effect studies of 43 cities, court rulings, a CD containing 1,500

CONTINUATION SHEET

The minutes of the Federal and State Committee at 10:30 a.m. on March 17, 2011, in Room 144-S of the Capitol.

pages of detailed court upheld studies of 20 cities and 22 court cases all awarding municipalities the constitutional right to regulate sexually oriented businesses reducing negative secondary effects. (The CD and 1,500 pages reside in Kansas Legislative Research Department)

Michael Schuttloffel, Kansas Catholic Conference, spoke in favor of the bill. (Attachment 4) The Community Defense Act places sensible, constitutional regulations on the operation of sexually oriented businesses.

Judy Smith, Concerned Women for America, appeared in favor of the bill. (Attachment 5) The fundamental role of government is to protect families and the basic institutions that form the backbone of a stable society. Pornography whether virtual porn or a sexually-oriented business that headlines erotica undermines both marriage and the family and places women at risk.

Aronda Kerns presented Scott Berthold's testimony in support of the bill. (Attachment 6) Mr. Berthold's background is Co-author, *Local Regulation of Adult Businesses*, 2011 Ed. (Thomson West).

Written testimony in support of the bill was provided by Mary Anne Layden, Ph D., Director, Sexual Trauma and Psychopathology Program, Center for Cognitive Therapy, Department of Psychiatry, University of Pennsylvania. (Attachment 7) Ms. Layden's research and professional experience indicates that the sexual exploitation industry is connected to crimes such as rape and prostitution, psychiatric problems such as substance abuse, and post traumatic stress, relationship problems such as divorce and infidelity, and community problems that reduce the quality of life.

Opponents:

John Samples, Club owner, testified in opposition to the bill. (Attachment 8) General statements about the legislation:

- Owners will lose substantially all of their investments as clubs close
- The studies provided were dated, not from Kansas, and the damages were not evident in Kansas
- If the clubs are closed, the damage of lost jobs, lost tax revenue to the state, and an increase in SRS and unemployment expenses
- Far fewer police calls than normal bars
- That entertainers are demeaned is inaccurate, security personnel do not allow that to occur in the clubs

Philip Bradley, representing Equal Entertainment Group and Kansas Licensed Beverage Association, appeared in opposition to the bill. (Attachment 9) The proponents allege this bill is the "community defense act" but what it seeks to do is seize the control from the communities and overrule community actions. The justification is contentions of "secondary effects" that are supported by studies of out of state urban areas and give no evidence that any of these claimed effects have or are occurring in Kansas. This bill has been offered for years and yet there is no Kansas substantiated evidence. Recent events are just proving that local control is working and is best for Kansas. Mr. Bradley urged the committee to not advance the bill.

Written Testimony in Opposition:

Charles A. O'Hara, Attorney at Law, Wichita, Kansas, provided written testimony in opposition of the bill. (Attachment 10)

Laura Scott, Olathe, Kansas, provided written testimony in opposition of the bill. (Attachment 11) Ms. Scott believes if the bill passes it will have a negative impact on Kansas and its residents, for a problem that doesn't exist in the state.

Alaina Lamphear, St. George, Kansas, provided written testimony in opposition of the bill. (Attachment 12) With the regulations of this bill; there is potential for millions of dollars of tax revenue to be lost not only from the businesses themselves, but from supplementary taxes including liquor from places that are not generating problems or harming neighborhoods.

CONTINUATION SHEET

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Joseph Suber, Retail Business Owner, Olathe, Kansas, stated in his written testimony in opposition of the bill, that the burden of proof of harm should be on those who wish to limit the free and consensual economic activities of their fellows. ([Attachment 13](#))

Michael W. Merriam, Attorney at Law, Topeka, Kansas, provided written testimony in opposition to the bill. ([Attachment 14](#)) Mr. Merriam stated that the extensive loss of sales, liquor, income and property taxes to the State, increased unemployment and other harmful direct effects of this proposal; that some communities manage perceived secondary effects perfectly well locally. This bill invites not only First Amendment litigation, but lawsuits on Equal Protection grounds as well, with no evidence of ill effects in Kansas; adoption of this legislation is ill-advised.

Cecil and Teresa Kingsley, Lawrence, Kansas, ([Attachment 15](#)) Charlie Upton, Baldwin City, Kansas, ([Attachment 16](#)) Kevin O'Malley, Owner of O'Malley Beverage of Kansas, Inc., ([Attachment 17](#)) Al Hack, Lawrence, Kansas, ([Attachment 18](#)) Jan Sheridan, Lawrence, Kansas, ([Attachment 19](#)) provided written testimony in opposition to the bill; that there are far bigger issues facing our State, than trying to legislate morality. The bill is anti-business, and would cause businesses to close and people to become unemployed.

Lance E. Malmstrom provided written testimony in opposition to the bill. ([Attachment 20](#)) This bill would restrict freedoms, destroy jobs and lower tax revenues, which is reason enough to not pass it.

Pastor Donnie Miller, Trinity Family Church of the Nazarene, Gardner, Kansas, stated in his written testimony that even though there may be obvious differences between himself and the owner of a Gentleman's Club, he is grateful for the opportunity to discover hidden commonalities and working together for a common good i.e. on several service projects, ministry for the rural poor, and partnering to serve needy families at Christmas. ([Attachment 21](#))

Michael Scribner, Overland Park, Kansas, stated in his written testimony in opposition to the bill, that it is the job of government officials not to legislate morality. ([Attachment 22](#))

Donna Follick, Olathe, Kansas, provided written testimony in opposition to the bill. ([Attachment 23](#)) Ms. Follick stated the State of Kansas does not need a higher unemployment rate or additional burdens placed on an already staggering budget deficit, which would happen if this bill is passed.

Brad Persons, Lawrence, Kansas, stated in his written testimony in opposition to the bill, that in respect to the Bill of Rights of the United States of America, this legislation should not move forward. ([Attachment 24](#))

Larry W. Meeks, Owner and Operator, The Gentleman's Club, Great Bend, Kansas, provided written testimony in opposition to the bill. ([Attachment 25](#)) Mr. Meeks asked the committee to re think this bill and understand the negative ramifications this could bring upon the state and how many people would be put out of work.

Lindsay M. Ewing, Lawrence, Kansas, stated in her written testimony in opposition to the bill, that as a massage therapist, her client list includes many people who work in the adult entertainment industry and the bill would do sufficient damage to her income and financial obligations with a loss of those clients. ([Attachment 26](#))

Sarajane Scott Koch, Baldwin City, Kansas, provided written testimony in opposition to the bill. ([Attachment 27](#)) Ms. Koch stated that she wants her legislative voice to work towards a solution, not to waste time on judgment of those businesses that are still contributing to the sagging economy.

Nate Bunnyfield provided written testimony in opposition to the bill. ([Attachment 28](#))

Emily A. Richardson, Lawrence, Kansas, stated in her written testimony in opposition to the bill, that the Proponents of this bill seem to be focusing on the negative potential of these industries as cited from out of state. ([Attachment 29](#))

The Chairman opened the meeting to discussion and possible action on the bill.

CONTINUATION SHEET

The minutes of the Federal and State Committee at 10:30 a.m. on March 17, 2011, in Room 144-S of the Capitol.

Senator Haley made a motion to not move the bill out of committee. Senator Longbine seconded the motion. The motion carried.

Senator Abrams and Senator Ostmeyer requested to be recorded as a no vote.

The next meeting is scheduled for March 21, 2011. The meeting was adjourned at noon.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 3-17-11

NAME	REPRESENTING
Phil Briddle	EEH + VLBA
John Samples	Club Oaks / Pby AKS
Judy Smith	CWA of KS
Judi Irmagine	CWA of Ks.
Gandra Whitman	CWA of Ks.
Cheryl Ryan	CWA of Ks.
Stephanie Kaniper	Jefferson County Citizens Group
Dan Moore	" " " "
Kevin Seals	" "
Lindsay Ewing	EEG / Bonita Flats
Marcus Ewing	" " "
Brad Freeman	" " "
MAUSSA FREEMAN	" " "
Harmon Brown	" "
Jennifer Morris	" "
Salie Helm	Horn Law Firm
J. P. SMALL	KQHRA
George Wingerdt	Ruffin Co.
Donna Hippoldt	KFRC
Kerise Cochran	CWA
Bob Edhardt	PDH
Joe Maximian	PMCA of Ks
Lydia Buster	Federico Consulting

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CHILDREN & FAMILIES
ELECTIONS
FEDERAL & STATE AFFAIRS
JUDICIARY

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TOPEKA

HOUSE OF
REPRESENTATIVES

**TESTIMONY BEFORE THE SENATE FEDERAL AND STATE AFFAIRS
COMMITTEE REGARDING HB 2107,
THE COMMUNITY DEFENSE ACT**

CHAIRMAN BRUNGARDT AND MEMBERS OF THE COMMITTEE:

**THANK YOU VERY MUCH FOR THIS OPPORTUNITY TO APPEAR AND TESTIFY
BEFORE YOUR COMMITTEE REGARDING HB 2107, THE COMMUNITY DEFENSE
ACT. I SUPPORT THIS VERY IMPORTANT LEGISLATION, ARGUED IN FAVOR
OF ITS PASSAGE ON THE HOUSE FLOOR, AND VOTED FOR IT, FOR THE
FOLLOWING VERY IMPORTANT PUBLIC POLICY REASONS.**

**LET ME SAY FIRST WHAT THIS BILL IS NOT. IT IS NOT AN ATTEMPT TO
LEGISLATE MORALITY OR REGULATE SIN, AS SOME OPPONENTS HAVE
SUGGESTED. NOR IS IT AN ATTEMPT TO PROHIBIT SEXUALLY ORIENTED
BUSINESSES IN KANSAS OR REGULATE THEM OUT OF EXISTENCE.**

**RATHER, THIS BILL IS CAREFULLY CRAFTED FOR PROPER PUBLIC POLICY
PURPOSES, TO PROTECT THE HEALTH, SAFETY AND WELFARE OF OUR
CITIZENS WITHOUT UNCONSTITUTIONALLY OR UNDULY INFRINGING ANY
PERSONAL LIBERTIES OR PROPERTY RIGHTS. AS WITH MUCH OF WHAT WE
DO HERE IN THE LEGISLATURE, THIS BALANCE MUST BE CAREFULLY
STRUCK, AND THIS BILL DOES SO.**

**EXTENSIVE ORAL AND WRITTEN TESTIMONY IN THE HOUSE FEDERAL AND
STATE AFFAIRS COMMITTEE, OF WHICH I AM A MEMBER, ESTABLISHED THE**

WELL DOCUMENTED ADVERSE SECONDARY EFFECTS OF SEXUALLY ORIENTED BUSINESSES, ESPECIALLY IN CLUSTERS, BOTH INSIDE THESE BUSINESSES AND IN CLOSE PROXIMITY THERETO. THESE INCLUDE: A HIGHER INCIDENCE OF BOTH VIOLENT AND NON-VIOLENT CRIMES, INCLUDING HOMICIDE, ROBBERY, RAPE, SEXUAL AND OTHER ASSAULTS, BURGLARY, THEFT, PROSITUTION, LEWD BEHAVIOR AND DRUG CRIMES; ESTABLISHMENT OF COMBAT ZONE NEIGHBORHOODS AND URBAN BLIGHT; DECREASED PROPERTY VALUES; SPREAD OF SEXUALLY-TRANSMITTED DISEASES; AND EXPOSURE OF OUR MINOR CHILDREN TO SEXUALLY ORIENTED BUSINESS ACTIVITIES. WE IN THE LEGISLATURE HAVE NOT ONLY A CONSTITUTIONAL RIGHT BUT A DUTY TO PROTECT OUR CITIZENS FROM THESE THREATS TO THE PUBLIC HEALTH, SAFETY AND WELFARE.

THIS BILL DOES SO WITH COMMON SENSE PROVISIONS TO KEEP SEXUALLY ORIENTED BUSINESSES AT LEAST 1,000 FEET AWAY FROM CHURCHES, SCHOOLS, DAY CARE FACILITIES, PUBLIC VENUES AND EACH OTHER (THE LATTER TO PREVENT CLUSTERING OF THESE BUSINESSES); BY BANNING PUBLIC NUDITY; BY REQUIRING PERFORMERS TO MAINTAIN A DISTANCE FROM PARTRONS AND NOT TOUCH THEM, A PUBLIC HEALTH CONCERN; BY REQUIRING CLEAR SIGHT LINES FROM OPERATOR/CASHIER STATIONS TO EVERY AREA OF ADULT VIDEO ARCADES AND THEATERS, AGAIN A PUBLIC HEALTH CONCERN; BY REQUIRING THESE BUSINESSES TO CLOSE BETWEEN MIDNIGHT AND 6:00 A.M., A PERIOD OF POTENTIALLY INCREASED CRIMINAL ACTIVITY; AND BY PROHIBITING MINORS FROM ENTERING THESE BUSINESSES.

EACH OF THESE COMMON SENSE RESTRICTIONS ON SEXUALLY ORIENTED BUSINESSES HAS BEEN CAREFULLY AND THOUGHTFULLY DRAWN TO PROTECT LEGITIMATE PUBLIC HEALTH, SAFETY AND WELFARE CONCERNS. THEY EACH GO ONLY SO FAR AS IS NECESSARY TO ADDRESS THESE LEGITIMATE PUBLIC POLICY CONCERNS WITHOUT UNDULY INFRINGING OR PROHIBITING THE PERSONAL LIBERTY OR PROPERTY RIGHTS OF OWNERS

OF SEXUALLY ORIENTED BUSINESSES OR THEIR PATRONS. EACH HAS BEEN INCLUDED IN SIMILAR LEGISLATION IN OTHER STATES WHICH HAS CONSISTENTLY BEEN UPHOLD AS CONSTITUTIONAL BY THE U.S. SUPREME COURT AND LOWER COURTS.

IT IS FOR THESE REASONS THAT I URGE YOU TO VOTE OUT HB 2107, THE COMMUNITY DEFENSE ACT, FAVORABLY FOR PASSAGE, WITHOUT AMENDMENTS.

I WILL BE PLEASED TO STAND FOR QUESTIONS.

REP. JOHN RUBIN, 18TH DISTRICT

KANSAS HOUSE OF REPRESENTATIVES

(2)

TESTIMONY OF STEPHANIE KANIPER SUPPORTING **HB 2107**, (CDA)
RESIDENT OF JEFFERSON COUNTY, KANSAS
ACTING PRESIDENT, JEFFERSON COUNTY CITIZENS GROUP
KANSAS SENATE FEDERAL AND STATE AFFAIRS COMMITTEE, 2011 SESSION
March 17, 2011

Chairman Brungardt and Honorable Members of the Committee, my name is Stephanie Kaniper. I am a Kansas constituent and live in Ozawie, of Jefferson County. It is an honor to speak to you as a proponent of the "Community Defense Act," HB 2107, which regulates sexually oriented businesses (as known in the industry as "SOBs").

I'm a wife, mother and volunteer. I am also the Acting President of the Jefferson County Citizens Group. JCCG was formed as a result of a "ground-swell" among Jefferson County Citizens to combat the proposed SOB at Meriden.

My husband and I moved to Jefferson County for the family values and high community standards of the small towns located there. The adult entertainment industry often suggests that those opposed to sexually oriented businesses simply not patronize these establishments. However, the location of a proposed SOB in our County leaves me without remedy when it comes to protecting my children from its influence and the proven negative effects.

Jefferson County is located directly Northeast of Shawnee County. By now, you may be familiar with the small town of Meriden, nine miles out of Topeka. For six months, Jefferson County residents stood up against approval of the conditional use permit sought for this business. Last month, after unprecedented continued public opposition, the commissioners denied the permit due to a number of concerns (including inadequate ingress and egress at the business location, inadequate parking to support the business plan, the potential for lower property values and other adverse secondary effects, and—of particular concern to me—) the proximity of this proposed business to our schools. It is not only a mere 900 feet from the Jefferson West Middle School, but the property adjoins USD 340 property! Residential homes and a child daycare are also within the 1000-foot notification area of this business. Just the decision to deny the permit required five different public hearings involving the zoning committee and the county commission, research and document preparation time by county staff, and additional legal counsel—all at taxpayer expense. Even having followed county guidelines and regulations in denying the permit, we remain vulnerable to a lengthy, costly lawsuit from the applicant—a battle his attorney promised we would face if the application were denied.

The applicant's lawsuit intentions were outlined from the beginning when, in his opening remarks at the very first public hearing, the applicant's attorney suggested it might cost Jefferson County over \$200,000 to defend any denial of the application in court. Some opponents to this bill argue that your time, as lawmakers, should be spent on other issues, such as, discussion of potholes and road construction. This only makes our point – instead of using our local government funds to defend a \$200,000 + lawsuit, we should be able to direct that money into legitimate government services that improve the lives of Jefferson County citizens. Yes, if the budgeting choice boils down to repairing potholes versus defending the denial of a strip club permit in court, I would much rather drive around a pothole than be forced to drive past a strip club taking my children to and from school. With the state's action, such choices will not be required. All our communities would be protected and local government funds could be kept for these needed improvements.

Consistent with the SOB industry's strategies, the attorneys are claiming the county regulations are unconstitutional. Such attempts at intimidation are typical tactics used against communities in order to silence opposition. A lawsuit has not yet been officially filed, but I submit that *it has been delayed in direct prospect to the upcoming vote on HB 2107*. Opponents to this bill have been creating a movement toward keeping the regulation of SOBs at the local level. A lawsuit in Jefferson County - right now, during the deliberation of this bill - would be a tactical error on the SOB industry's part and they are well advised of that. Please know that it is premature to assume that Jefferson County has succeeded in this battle.

Since the denial decision, the applicant has not simply given up on his proposal, as construction around the building has continued. Is it possible that he will attempt to open this business without the required permit and then file an injunction on the County, after being closed down for operating without a permit? It appears he is doing everything he can to become established at that location in lieu of this bill becoming law.

Jefferson County does have zoning regulations and residents have been battling this case within county guidelines. But - I submit to you, that we would not have had to be burdened with such use of our time and attention - and financial strain to the county and individual volunteers - had this bill to regulate SOBs become law, last July 1st. We are asking that this bill be enacted this year, to protect against on-going battles for us and for other unsuspecting communities. Jefferson County regulations provide that an applicant may reapply one year from the date of original application. With this bill becoming law, it would become illegal for an SOB to operate at the current site. Our county could then rest assured that we would not have to undergo the same strain this October, on the anniversary of the permit filing.

Last year, opponents to this Bill argued that statewide regulation is not necessary because "no SOB owner would open so close to a school or church anyway"... Jefferson County is a prime, real-time example as to the typical actions this industry is taking. Please be aware that it was directly after the close of the Legislative Session last year - when this Bill failed by ONE VOTE to become law - that an SOB filed documents to open for business on property adjoining a school.

The SOB industry is standing by, not yet finished with Jefferson County, but also ready to move to the next community. What town is next? We need *state regulation* - uniform guidelines - of SOBs, or they will soon overtake our communities and threaten family values and standards of Kansans' way of life.

Jefferson County is an exception to the rule when it comes to communities taking a stand against this industry. We happened to find out early in the process, which allowed us time to organize, research, gather and take a stand. Many small, medium and even large Kansas communities are vulnerable because they do not have zoning departments, allowing them to have a voice. Those that do may be inadequate or have no SOB ordinances. Many lack legal expertise and have scarce funds to withstand lengthy lawsuits.

A common course of action to the SOB industry is to push their agenda through the local process as quietly and quickly as possible, so as not to alert the general public and thereby avoid an uprising. The applicant in Jefferson County and his intentions to become annexed into the City of Meriden evidences this. A building permit was sought in May 2010, to expand the existing structure of the business. He disguised his intentions and maintained that he only planned to operate a "sports bar,"

which is documented in Meriden City Council Meeting Minutes of September 28, 2010. It wasn't until one week prior to this meeting in September that the applicant came forth to divulge the truth regarding his plans. Many times, before the public knows the information, these applications are so far into the process that community members are unable to take a stand against them. This is part of the strategy for successfully opening an SOB. This will continue to happen if we don't impose "time, place and manner" restrictions!

Regulating SOBs is an economic development matter, but not for the reasons the critics to this bill are submitting. With a proposed strip club literally next to the "Welcome to Meriden" sign in Jefferson County, for example, we know the presence of an SOB would not improve the business environment. We also realize that the best use of local government resources would not be that of defending government action against SOBs. We are asking for State law to strengthen each community's ordinance/regulation, or lack thereof, to fend off outlandish legal action for them to battle on their own.

In closing, please know we are well aware that you may be pressured by the desensitization of individuals toward the need to involve the State in this perceived, stand-alone moral issue. Please be advised that the negative effects are real and with our neighboring State of Missouri's Law, more Kansas communities will find themselves ambushed by SOBs. As you may know, the State of Missouri passed a law last year regulating SOBs, which has been found to be constitutional on all points. This set a great precedent, but as a result, the State of Kansas has now become a target for infiltration by the SOB industry. We cannot take it for granted that SOBs won't set up shop next door to other schools, residences, day care facilities – where our children are – because there are currently no laws preventing them from doing so.

We need protection—as does every other county and community in the State of Kansas. I ask you to please vote for HB 2107. Thank you for your time, consideration and immediate action.

Respectfully Submitted,
Stephanie Kaniper
Ozawkie, Jefferson County, Kansas
www.jccg.info

TESTIMONY OF PHILLIP COSBY SUPPORTING **HB 2107**
 State Director, American Family Association of Kansas & Missouri

KANSAS SENATE FEDERAL AND STATE AFFAIRS COMMITTEE 2011 Session

Chairman Brungardt and honorable members of the Federal and State Affairs Committee, my name is Phillip Cosby. I am a native of Kansas and currently the State Director for American Family Association of Kansas & Missouri. I am honored to speak to you in support of HB 2107, "The Community Defense Act", a statewide regulation of sexually oriented businesses (SOB) through constitutionally sound Time, Place and Manner restrictions.

These past eight years I have spoken to thousands of Kansans citizens and civic officials concerning the negative effects of Sexually Oriented Businesses (SOB) in communities. Today I am providing you summaries of negative secondary effect studies of forty-three cities, court rulings and a CD containing 1,500 pages of detailed court upheld studies of twenty cites and twenty-two court cases all awarding municipalities the constitutional right to regulate SOB's thus reducing negative secondary effects. Negative effects which constitute a substantial government interest in regulating the Time, Place and Manner restrictions of SOB's.

Two famous examples of SOB regulation among scores are (1) the cleaning up of NYC's Times Square and the subsequent decrease in crime and increase of tourism, and (2) the current reputation of Atlanta Ga. as the sex trafficking capital of the US. These are not my words but the words of Atlanta's mayor, Shirley Franklin. (*Atlanta Journal-Constitution March 21st 2007*) Strip clubs promised Atlanta GA. prosperity and an "upscale cosmopolitan" appeal as they expanded to accommodate the International Olympics. What Atlanta inherited was a series of strip clubs that breed prostitution and sex trafficking or sexual slavery. Sex trafficking has now become the international #2 moneymaker for organized crime, right behind illegal drugs.

The evidence of harm is not anecdotal; the lawful regulation of the sex industry is based on real negative effects on communities and has been constitutionally upheld for nearly forty years. The deleterious effects are primarily increased crime, increased STD's, blight, property devaluation, prostitution, human and drug trafficking. In 1973 the SCOTUS stated "legislators are entitled to rely, in part on an appeal to common sense"

We all sense it. Every day the news relays the latest heartbreaking story of abductions, child molestations, human trafficking, solicitations, sexual misconduct at the highest levels of sacred and secular trust, urban blight, rising STD rates, fantasy driven rape and even murder. Our sense of safety, wholesomeness and innocence is evaporating. When you and I were in grade school we played freely with our friends on Saturdays in our neighborhoods and beyond. Our parents did not have to be unduly fraught with concerns for our personal safety. For us, the general rule was, when those street lights flicker on you better be home. Those days of experiencing such freedom and safety are long since gone for today's children. Outside of organized and supervised sports, where are those groups of playful youngsters today? What mother is willing to let her grade school aged child out of her sight today?

Communities are overwhelmed or intimidated by an industry that boasts that their annual US revenue is greater than all professional sports; football, baseball and basketball combined.

SOB attorneys always oppose any restrictions with misstatements like;

- *SOB's are a financial asset to communities.* (see attached 43 Land Use summaries and the CD with 20 detailed summaries, documenting the economic drain on communities)
- *SOB regulation is unconstitutional.* (see CD with 22 court cases ruling otherwise)
- *Litigation is a certainty and too costly.* (If CDA is passed, litigation will be a onetime showdown as opposed to the current endless gravy train of multiple community litigations fattening SOB attorney's bank accounts and intimidating communities).

Many cities and communities in Kansas have no regulatory protection in place. SOB's often ambush unprotected areas, especially along a highway system or main streets of cities. SOB's boldly declare that there is nothing the community can do and if they do enact an SOB regulation, their attorneys threaten and do file lawsuits. Such intimidation strategies more often than not, do work. If civic leaders do muster the wherewithal to enact SOB ordinance protection, lengthy litigation is a certainty. In the case of Abilene Kansas, litigation was going into its fifth year when an out of court compromise closed the case. SOB ordinance law is not a specialty of city and county attorneys who lack the resources to challenge such a lucrative industry. SOB's behave like water seeking the lowest level, if a state or community is fortunate enough to be protected by a sound constitutional ordinance, SOB's will bypass and seek out a vulnerable community.

Legislative bodies on many levels are behind the curve in recognizing and reacting to the cause and effect relationship of the sex industry and its related negative secondary effects. These brick and mortar sex businesses may be the tip of the iceberg of a larger problem of easy cyber access to pornography and obscenity but at least it is a place where case law has driven a stake where we can make a constitutional stand to address this growing public safety and health crisis.

Too often the disingenuous drum beat sounds like; this is a parental responsibility or let local communities contend with the problem on their own. How can parents and communities contend against the pervasive, aggressive and well funded sex industry? Would it be good public policy if there were a polluted water source to simply instruct a community to install their own filter?

Many states have come to the aid of outgunned communities with constitutionally upheld community defense acts. Even Denmark with its infamous anything goes approach to sex has corrected its misdirection with regulations stemming the tide of correlating negative effects.

This is a real pocketbook issue; sex crimes represent a large segment of criminal activity, at a cost of \$30,000 annually per prisoner. You can't raise enough taxes, build enough prisons and buy enough ankle bracelets for this tsunami. The Center for Disease Control reported that 26% of teenage girls are now infected with a sexually transmitted disease. The list of STD's has now grown to over twenty-nine. Ladies and gentlemen what we have is an epidemic and we must act in concert with parents and communities. Citizen polling data consistently supports like regulatory efforts in the 67 % range. HB 2107 is a compelling governmental interest.

This state statute model was crafted by one of the most successful constitutional SOB ordinance attorneys in the nation. Law Office of Scott D. Bergthold, Chattanooga, TN, 423.899.3025 web site:
www.adultbusinesslaw.com

This bill has all the same regulatory elements as the recently court tested SOB restrictions in Missouri. All restrictive measures have been found to not offend either the 1st or 14th amendments to the U.S. Constitution. The Missouri law has been upheld by three courts to date as constitutionally sound.

Phillip Cosby
State Director, AFA of KS & MO
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pcosby@afa-ksmo.net

Talking Points: HB 2107 - KANSAS COMMUNITY DEFENSE ACT

1. Many states already have court tested statewide "Time, Place & Manner" restrictions in place to regulate sexually oriented businesses (SOBs) including Missouri, Georgia, Illinois, New Jersey, Ohio, Arizona and Pennsylvania.
2. Many Kansas communities do not have the funds or legal expertise to contend with the lengthy litigation that SOBs promise will follow if they attempt to adopt a local SOB ordinance. Such intimidation by this wealthy industry (more annual revenue than ABC, NBC & CBS combined) is sufficient to dissuade most cities and counties.
3. If a Kansas community does attempt to craft and enact an SOB ordinance they can find themselves in lengthy litigation like Dickinson County, Abilene Kansas. That case went on for five years. The case could have gone longer but the insurance company that represented Dickinson County was not inclined to throw what they estimated was another \$ 1 million at it and the community was weary of the struggle.
4. A state wide Kansas statute will be challenged but the outcome will more than likely follow a well worn path the courts have taken that comes down on the side of public safety and health. That precedent will reduce the number of city by city and county by county court cases **dramatically reducing court costs.**
5. Geographically most Kansas communities do not have planning and zoning offices. This leaves them venerable and with few remedies when faced with SOB issues.
6. For over 35 years Federal and State Courts have upheld the constitutional right of lawmakers to regulate SOB's because of the "Negative Secondary Effects" these types of businesses have on communities. The leading negative secondary effects are increased crime, increased sexually transmitted diseases, general blight, decreased property values, increased drug trafficking, prostitution, etc... **These effects do not add value to communities but are costly and increasingly burdensome to taxpayers.**
7. SOB regulations put into place what is called TIME, PLACE and MANNER restrictions. Examples of the types of constitutional regulations that states can impose are; mandatory close of business at midnight till six a.m. ; a six foot standoff distance between dancers and patrons; a minimum light level inside the SOB; no private VIP rooms or booths; an employee of an SOB cannot have a criminal history, liquor restrictions, a distance of 1,000 feet from homes, churches, playgrounds, schools, day care centers, other SOB's, total nudity ban, etc...
8. "Time" and "Manner" SOB regulations can be applied retroactively to existing SOBs as well as future SOBs. To do otherwise would unwisely guarantee an unregulated monopoly by existing SOBs.
9. Statewide "Place" restrictions are applied to future SOBs. "Place" restrictions could be further strengthened by local municipalities on existing SOBs.
10. THE ROLE OF ALCOHOL AT STRIP CLUBS; Proximity to alcohol is a key component of the criminological theory of secondary effects. Alcohol aggravates an SOB's already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB's patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this expectation in all respects. Predatory criminals prefer inebriated victims, and SOBs that serve alcohol or that are located near liquor-serving businesses pose accordingly larger and qualitatively different ambient public safety hazards. Governments rely on this consistent finding of crime-related secondary effect studies as a rationale for limiting nudity in liquor serving businesses.

Rural Hotspots

The Case of Adult Businesses

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A recent U.S. Tenth Circuit decision questions whether the routine activity theory of hotspots applies to adult businesses located in sparsely populated rural areas. Although few criminologists are interested in urban-rural differences, the Tenth Circuit decision makes this topic acutely relevant to policy makers and courts. To address the threshold question, the hotspot theory is analyzed to demonstrate its generality to urban, suburban, and rural locations. The results of a corroborating case study are then presented. When an adult entertainment business opens on an interstate highway off-ramp to a small rural village, total crime rises by 60%. Alternative explanations related to uncontrolled threats to internal validity are considered and ruled out. After reporting the results of the case study, the consequences of the theory and results for policy makers and courts are discussed.

Keywords: *secondary effects; hotspots; ambient crime risk; adult businesses; rural crime*

Expressive activities that occur inside adult entertainment businesses, including cabarets that feature live nude or seminude dancing, x-rated video arcades, and bookstores, enjoy First Amendment protection. Courts have ruled that governments may regulate these businesses, so long as the regulations are aimed at mitigating the businesses' potential adverse "secondary effects" (Andrew, 2002).

To defend an ordinance, a government must produce evidence to show that the businesses are associated with secondary effects such as ambient noise, litter, and in particular, crime. The government's evidence need not satisfy arbitrary standards of methodological rigor. On the contrary, the 1986 U.S. Supreme Court decision in *City of Renton v. Playtime Theatres* holds that governments may rely on any evidence "reasonably believed to be relevant to the problem that the city addresses." Taking advantage of this evidentiary standard, few governments conduct local secondary effects studies; most rely on the large body of studies conducted in other places and times.

The U.S. Supreme Court reviewed the evidentiary standard 16 years later. Though reaffirming the modest "reasonably believed to be relevant" *Renton* standard, in *City of Los Angeles v. Alameda Books*, the Court allowed adult businesses to challenge

Author's Note: Paul Brantingham, Marcus Felson, and Alan Weinstein read early drafts. The author also benefited from conversations with the late Dennis W. ("Denn") Roncek. Correspondence concerning this article should be addressed to Richard McCleary, School of Social Ecology, Irvine, CA 62697-7080; e-mail: mccleary@uci.edu.

the relevance of secondary effects evidence. If a business could demonstrate that the government's evidence was irrelevant to the problem that its ordinance purported to address, the ordinance could be struck down.

Relevance challenges fall into two categories. The first centers on the fact that secondary effects studies have typically ignored salient differences among distinct adult business models. In *Encore Videos v. City of San Antonio*, an adult bookstore argued that its products were sold for "off-site" use only and, thus, that it could not have the same secondary effects as cabarets, video arcades, and other "on-site" adult businesses. Accepting part of this argument, the Fifth Circuit struck down a San Antonio ordinance whose evidentiary predicate failed to include secondary effects studies of "off-site" adult bookstores.

An ambiguous passage in the *Encore Videos* decision left the impression that the Fifth Circuit had endorsed an interpretation of criminological theory favoring the plaintiffs. Citing the ambiguous passage, "off-site," adult businesses argued subsequently that criminological theory precluded secondary effects for their business model. Four years later, however, in *H and A Land Corp. v. City of Kennedale*, the Fifth Circuit upheld an ordinance the evidentiary predicate of which included studies of "off-site" adult bookstores. The three-judge panel, including one member who had participated in the *Encore Videos* decision, took the unusual step of retracting the passage that seemed to endorse an interpretation of criminological theory (McCleary & Weinstein, 2007).

The second category of Constitutional challenges centers on the fact that secondary effect studies have ignored idiosyncratic local conditions. In 2004, an adult bookstore in rural Kansas used criminological theory to argue that the sparsely populated rural environment precluded the possibility of secondary effects. And because the local government had not studied this issue prior to enactment, the ordinance should be struck down. Rejecting this argument, the trial court granted the defendant's summary judgment motion. On appeal, however, in *Abilene Retail #30 v. Dickinson County*, the Tenth Circuit agreed with the plaintiff's interpretation of criminological theory:

All the studies relied on by the Board examine the secondary effects of sexually oriented businesses located in urban environments; none examines businesses situated in an entirely rural area. To hold that legislators may reasonably rely on those studies to regulate a single adult bookstore, located on a highway pullout far from any business or residential area within the County would be to abdicate "independent judgment" entirely. Such a holding would require complete deference to a local government's reliance on prepackaged secondary effects studies from other jurisdictions to regulate any single sexually oriented business of any type, located in any setting. (p. 1175)

Because the adult bookstore was located in an isolated rural area, and because the County had no evidence to suggest that rural adult businesses would have secondary effects, the Tenth Circuit reversed the summary judgment and remanded the case for trial.

Although the question of urban–rural generality is only one of many weighed in the Tenth Circuit’s decision, it is the central question of this essay. Because most criminological research has been conducted in nonrural areas, criminological theories do not necessarily generalize to rural crime. Because relatively little crime occurs in rural areas, of course, few criminologists are interested in urban–rural questions. Following the Tenth Circuit’s *Abilene Retail* decision, on the other hand, urban–rural differences are acutely relevant to policy makers and courts.

The potential cost of the decision is staggering. In the best case, local governments will be forced to rewrite ordinances to cover businesses located in more rural areas. In the worst case, litigious adult businesses will have an incentive to relocate to rural areas, forcing trial courts to judge the relative ruralness of areas, case by case. In any case, extrapolating the Tenth Circuit’s argument to other variables not explicitly addressed by criminological theory threatens the ability of local governments to mitigate public safety hazards associated with adult businesses.

This essay addresses the threshold question of whether criminological theories can be generalized to rural areas. Although the generalization may be difficult for some criminological theories, the relevant theory of “hotspots” (Sherman, Gartin, & Buerger, 1989) applies to any accessible area, rural or urban. After describing the relevant criminological theory, I report the results of a corroborating quasi-experimental case study. When an adult business is opened on an interstate highway off-ramp in a sparsely populated rural community, ambient crime risk rises precipitously, in effect making a hotspot of the community.

The Criminological Theory of Secondary Effects

Writing shortly after the advent of Uniform Crime Reports, Vold (1941) confirmed that a city’s crime rate was proportional to its population. The observed relationship had an obvious explanation: “[B]ehavior in the country in all probability comes under much greater informal control of the opinions and disapprovals of the neighbors than is the case in the relative anonymity of the city” (p. 38). The negative correlation confirmed not only grand sociological theory (e.g., Tönnies, 1887/1963; Durkheim, 1893/1964) but also the related criminological theory of social disorganization.

As proposed by Shaw and McKay (1942), the theory of social disorganization predicts that neighborhoods with low residential stability will have high rates of delinquency and vice versa. To the extent that a small town has the characteristics of a stable neighborhood, social disorganization theory would predict the low crime rates observed by Vold (1941). Moreover, when a small town is disrupted by an influx of newcomers, the same theory predicts an abrupt increase in the town’s crime rate.

This can occur in at least two ways. First, the newcomers may victimize the town’s residents. Indeed, fear of victimization by newcomers is implicated in the rapid spread of gated communities (Blandy, Lister, Atkinson, & Flint, 2003). Second, the influx of newcomers may disrupt the town’s routine activities in a way that

attracts predatory criminals, creating a local “hot spot of predatory crime” (Sherman et al., 1989).

The discovery of hotspots by Sherman et al. (1989) was anticipated by the work of Brantingham and Brantingham (1981); adult business hotspots have many of the properties associated with crime “attractors” and “generators” (see also Brantingham & Brantingham, 1993). A simpler routine activity theory (Clarke, 1983; Cohen & Felson, 1979; Felson, 1998; Felson & Cohen, 1980) is sufficient for present purposes, however. In this context, the routine activity theory of crime equates ambient crime risk, generally defined as the number of crimes within 500-1,000 feet of a site, with the product of four risk factors. This can be written as:

$$\text{Ambient Crime Risk} = \frac{N \text{ of Targets} \times \text{Expected Value}}{\text{Police Presence}} \times \text{Offenders}$$

An increase (or decrease) in the number of targets at the site or in their expected value, defined in the usual way, yields an increase (or decrease) in ambient crime risk. An increase (or decrease) in police presence, on the other hand, yields a decrease (or increase) in ambient crime risk.

Targets

Adult business sites are crime hotspots because they attract potential victims, or targets, from wide catchment areas. Adult business sites are no different in that respect than tourist attractions (Danner, 2003; Dimanche & Lepetic, 1999) and sporting events (Corcoran, Wilson, & Ware, 2003; Westcott, 2006). Compared to the targets found at these better known hotspots, however, the targets found at adult businesses are exceptionally attractive to offenders. This reflects the presumed characteristics of adult business patrons. They are disproportionately male, open to vice overtures, and carry cash. Most important of all, when victimized, they are reluctant to involve the police. From the offender’s perspective, they are “perfect” victims.

Offenders

The crime–vice connection has been a popular plot device for at least 250 years. John Gay’s *Beggar’s Opera* (1728/2006), for example, describes the relationship between MacHeath, a predatory criminal, and the vice ring composed of Peachum, Lucy, and Jenny. This popular view is reinforced by the empirical literature on criminal lifestyles and thought processes. The earliest and best-known study (Shaw, 1930/1966; Snodgrass, 1982) describes the life of “Stanley,” a delinquent who lives with a prostitute and preys on her clients.

This simple application of the routine activity theory assumes a pool of rational offenders who move freely from site to site, choosing to work the most attractive site

available. These offenders lack legitimate means of livelihood and devote substantial time to illegitimate activities; they are "professional thieves" by Sutherland's (1937) definition. Otherwise, they are a heterogeneous group—some are vice purveyors who dabble in crime, whereas others are predatory criminals who promise vice to lure and lull their victims. Despite their heterogeneity, the offenders share a rational decision-making calculus that draws them to adult business sites.

Expected Value

Criminological thinking has changed little in the 75 years since Shaw's (1930/1966) *Jack-Roller*. To document the rational choices of predatory criminals, Wright and Decker (1997) interviewed 86 active armed robbers. Asked to describe a perfect victim, all mentioned victims involved in vice, either as sellers or buyers. Three of the armed robbers worked as prostitutes:

From their perspective, the ideal robbery target was a married man in search of an illicit sexual adventure; he would be disinclined to make a police report for fear of exposing his own deviance. (p. 69)

The rational calculus described by these prostitute-robbers echoes the descriptions of other predators (see Bennett & Wright, 1984; Feeney, 1986; Fleisher, 1995; Katz, 1988, 1991; Shover, 1996).

Police Presence

With respect to the quantity and quality (or value) of the targets at a site, urban and rural adult business sites are equally attractive to the rational offender. Police presence is generally lower at rural sites, however. Some part of the urban-rural disparity is because of obvious factors. Rural police agencies protect larger areas with fewer personnel, for example, and drive longer distances in response to calls. Though less obvious, fuzzier jurisdictional lines and more complex demands for service make policing more difficult and less effective in rural areas (Thurman & McGarrell, 1997; Weisheit, Falcone, & Wells, 1999). Because police presence is relatively lower at rural sites, controlling for the quantity and quality of targets, rural sites are more attractive to the rational offender.

Montrose, Illinois: A Case Study

An unincorporated village of 250 residents, Montrose, Illinois is located on I-70 midway between St. Louis and Indianapolis. I-70 separates Montrose's residential dwellings from its businesses: a convenience store-gas station, a motel, and for a short period, a tavern. Other than gas and lodging, cross-country travelers had no reason to exit I-70 at Montrose prior to February, 2003. In that month, the Lion's

Den opened on a service road within 750 ft of the I-70 off-ramp. A large, elevated sign let I-70 travelers know that x-rated videos, books, and novelties could be purchased "24/7." The store was successful by all accounts.

The residents of Montrose did not welcome the new business. Unlike the village's other businesses, the Lion's Den was located on the residential side of I-70. Complaining that the store disrupted their idyllic lifestyle, villagers picketed the site on several occasions. Traffic was a chronic complaint. The narrow gravel access road connecting the site to I-70 could not support the weight of big-rig trucks; it soon fell into disrepair. The Lion's Den offered to build a new, larger access road from I-70 to its site. But fearing an even larger volume of traffic, the villagers declined the offer.

Like all Illinois villages, Montrose had no adult business ordinances. However, the Lion's Den was located within 1,000 feet of a public park, in violation of an Illinois statute. When the State moved to enforce its statute, the Lion's Den sued, arguing that "off-site" adult businesses could not generate the public safety hazards associated with adult cabarets, video arcades, and other on-site adult entertainment businesses. The trial in *State v. The Lion's Den et al.* lasted 4 days. The court upheld the statute and, in July, 2005, the Montrose Lion's Den closed its doors.

At the trial, the State presented evidence of the Lion's Den's adverse impact on the surrounding area: sexually explicit litter and decreased use of the nearby park. However neither party presented local crime data. Table 1 reports data bearing on the crime-related secondary effects of the adult business in Montrose. During the 1,642-day period beginning January 1, 2002, the Effingham County Sheriff's Office recorded 83 crime incidents in the village. The most common incidents involved the theft or destruction of property. Incidents of disorder and indecency, traffic-related incidents, and alcohol-drug offenses were nearly as common. Incidents involving danger or harm to persons (robbery, assault, etc.) were rare.

The columns labeled "Open" and "Closed" in Table 1 break the incidents down into an 881-day segment in which the Lion's Den was open and a 761-day segment in which it was closed. Crime rates are 22.39 and 13.92 total incidents per year for the "Open" and "Closed" segments, respectively. From these raw rates, it appears that crime in Montrose rose when the Lion's Den opened and fell when the Lion's Den closed. Of course, this assumes that plausible alternative hypotheses for the difference can be ruled out.

Null Hypothesis

The most obvious alternative explanation is that the difference is because of chance. To rule this out, the daily total crime count series was regressed on a binary variable representing "Open" and "Closed" days (Cameron & Trivedi, 1998). The log-parameter values reported in Table 1 were estimated with Stata 9.2 (Stata Corporation, 2007). Because the effect estimate $\beta = 0.475$ occurs with probability $p(t \geq 2.09) < 0.035$, by the conventional 95% confidence criterion, the chance explanation, or null hypothesis, is rejected.

Table 1
Crime-Related Secondary Effects of a Rural Adult Business

	Open		Closed		Log Effect	β	<i>t</i>
Property crimes	23	9.54	15	7.20			
Personal crimes	3	1.24	5	2.40	Constant	-3.267	-17.60
All other crimes	28	11.61	9	4.32	Open	0.475	2.06
Total crimes	54	22.39	29	13.92	$e^{0.475}$	1.61	

Although parameter estimation requires working in the natural log metric, log-parameters are not easily interpreted. However, the exponentiated effect estimate is approximately equal to the ratio of the segments. In this instance, the value ($e^{0.475}$) 1.61 is interpreted as a 61% difference. The rate of total crime in Montrose was 61% higher during the 29 months that the Lion's Den was open, that is, compared to the period prior to February 2003, before the Lion's Den opened, and the period after July 2005, when it closed. This is a large, statistically significant crime-related secondary effect.

Internal Validity

Another set of alternative explanations involve uncontrolled threats to internal validity. The switching regime (closed–open–closed) property of the quasi-experimental design controls many of the most common threats to internal validity. Nevertheless, authorities on quasi-experimental design (Campbell & Stanley, 1966; Cook & Campbell, 1979; Shadish, Cook, & Campbell, 2002) cite maturation, history, and instrumentation as the most plausible threats to the internal validity of time-series designs.

The threat of maturation refers to the possibility that the effect reported in Table 1 may be due, not to the opening of the Lion's Den but to a natural trend in the village's crime rate. However, because the daily time total crime time series satisfies the simple Poisson homogeneity assumption (Feller, 1968), the maturation hypothesis is rejected.

The threat of history refers to the possibility that the effect may be because of some event in the village that coincided with the opening of the Lion's Den. A search of local news media found only one significant event during the 1,662-day time series. Shortly after the Lion's Den opened, the village's only liquor-serving tavern closed permanently. However, if the tavern's closing had any effect on crime in Montrose, the expected effect would have been to reduce the crime rate during the 881 days that the Lion's Den was open. Accordingly, history is rejected as an alternative hypothesis.

Instrumentation refers to the possibility that the effect may be due, not to the opening of the Lion's Den but to a coincidental change in the way that crimes are recorded in the village. If the Effingham County Sheriff stepped up the frequency of

patrols in the village when the Lion's Den opened, for example, the effect reported in Table 1 might be a spurious artifact of heightened surveillance. Criminologists acknowledge that heightened surveillance can exaggerate "victimless" crime rates; proactive enforcement against prostitution and drugs invariably leads to higher vice crime rates. However, proactive enforcement against "serious" crime does not produce higher rates of homicide, assault, and robbery. On the contrary, criminologists generally agree that heightened surveillance reduces the rate of "serious" crime.

The detailed incident reports do not support an instrumentation hypothesis. During the 881 days that the Lion's Den was open, crime in the village grew more "serious." Although five "Personal Crimes" were reported during the 761 days that the Lion's Den was closed versus three when it was open, none of the five incidents involved a weapon or resulted in an injury. When the Lion's Den was open, in contrast, two of the three "Personal Crimes" reported in the Village were armed robberies, one committed by a gang of four men wearing ski masks and armed with shotguns. Moreover, both armed robberies were committed at the site of the Lion's Den and were the only robberies recorded in the village's modern history.

The timing of the crime incidents is related to their seriousness. During the 761 days that the Lion's Den was closed, Montrose's modal crime incidents were "drive-off" thefts from the village's gasoline station and vandalism at the Village's motel. Most of these incidents occurred during the day and required no immediate response from the Sheriff's Office; and because the businesses were separated from residences by I-70, the modal incidents attracted little attention. On the other hand, during the 881 days that the Lion's Den was open, a majority of incidents occurred at night and demanded immediate action; as more incidents began to occur on the residential side of I-70, crime became more noticeable to village residents.

Discussion

Following the opening of an adult business on an interstate highway off-ramp into a sparsely populated rural village, total crime in the village rose by approximately 60%. Two years later, when the business closed, total crime in the village dropped by approximately 60%. In light of the strong quasi-experimental design, artifactual explanations for this effect, including maturation, history, and instrumentation are implausible. The only plausible explanation for the effect reported in Table 1 is that, like adult businesses in urban and suburban settings, adult businesses in sparsely populated rural areas generate ambient crime-related secondary effects.

This finding was not unexpected. Although criminological theories are based largely on data collected in urban and suburban areas, the routine activity theory of hotspots (Sherman et al., 1989) generalizes to rural settings. Put simply, adult businesses attract patrons from wide catchment areas. Because these patrons are disproportionately male, open to vice overtures, and reluctant to report victimizations, their presence

attracts offenders. The spatiotemporal conjunction of targets and offenders generates ambient victimization risk—a hotspot of predatory crime. This theoretical mechanism operates identically in rural, suburban, and urban areas. Moreover, because rural areas ordinarily have lower levels of visible police presence, rural hotspots may be riskier than their suburban and urban counterparts.

The Tenth Circuit may not have found the Montrose results useful. Every case study is unique in some respect, after all; and although the U.S. Census Bureau considers both Effingham County, Illinois and Dickinson County, Kansas to be “rural,” the Tenth Circuit may have focused on idiosyncratic, legally relevant factors. Nevertheless, the case study results demonstrate that, whether urban, suburban, or rural, hotspots are hotspots. In urban, suburban, and rural areas, adult businesses attract patrons who are disproportionately male, open to vice overtures, and reluctant to report victimizations to the police. This attracts offenders to the site with predictable consequences for ambient crime risk. In theory, of course, because of the relative scarcity of police in rural areas, offenders may find rural hotspots more attractive. Otherwise, the routine activity theory of hotspots generalizes to any site that is attractive to potential victims, or targets, and accessible to offenders.

Solving the problem of rural hotspots by allocating more police resources to rural areas is politically unfeasible. Governments allocate public safety resources across regions on utilitarian grounds. Per capita allocations have the greatest impact on per capita crime rates. This poses an obstacle to rural problem-oriented policing (Weisheit et al., 1999), of course, but it is a rational policy for a government. Because the targets attracted to a rural hotspot live outside the jurisdiction, and because victimizations are underreported, ignoring the hotspot is a more realistic strategy.

The future is unclear. The relocation of adult businesses to rural areas parallels the postwar “flight” of inner-city families. From the perspective of adult business proprietors, the urban environment has become hostile. Zoning codes force adult businesses into “ghettos” where their operations are strictly regulated and where competition with other adult businesses is fierce. Rural areas have few regulations, on the other hand, and little competition; access to interstate highway traffic is a bonus. As urban environments become more hostile, more adult businesses will relocate to rural areas, forcing state and county governments into policy decisions. The case study reported here can, hopefully, inform that debate.

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Richard McCleary is a professor of criminology, law and society at the University of California, Irvine. His current interests center on the measurement of ambient public safety hazards associated with hotspot businesses.

HUnited States Court of Appeals,
 Tenth Circuit.
 DOCTOR JOHN'S, a Utah corporation; John Haltom,
 Plaintiffs-Counter-
 Defendants-Appellants,
 v.
 G. Blake WAHLEN, in his official capacity as City
 Manager; Tammy Nelson, in
 her official capacity as Development Services
 Manager, Defendants-Appellees.
 Roy City, Defendant-Counter-Claimant-Appellee.
No. 07-4131.

Sept. 16, 2008.

Background: Corporation operating stores selling a range of "adult" products brought § 1983 action against city alleging city's ordinance regulating "sexually oriented businesses" was an unconstitutional restriction on speech. After the Court of Appeals remanded decision granting city summary judgment, the United States District Court for the District Of Utah, Paul Cassell, J., 2007 WL 1302757, again granted summary judgment to the city. Corporation appealed.

Holding: The Court of Appeals, Paul J. Kelly, Jr., Circuit Judge, held that corporation failed to produce evidence sufficient to show city's ordinance was not narrowly tailored to serve a significant interest. Affirmed.

West Headnotes

[1] Constitutional Law ⚡2213
92k2213 Most Cited Cases

Ordinances targeting the secondary effects of adult businesses are analyzed as time, place, and manner regulations under the First Amendment; these ordinances will be upheld if they are justified without reference to the content of the regulated speech, narrowly tailored to serve a significant governmental interest, and leave open reasonable alternative avenues of communication. U.S.C.A. Const.Amend. 1.

[2] Federal Civil Procedure ⚡1269.1
170Ak1269.1 Most Cited Cases

Ordinarily, a litigant's failure to specifically object to specific exhibits not disclosed under Federal Rule of Civil Procedure requiring certain disclosures may well waive that objection. Fed.Rules Civ.Proc.Rule 26(a), 28 U.S.C.A.

[3] Civil Rights ⚡1422
78k1422 Most Cited Cases

Corporation operating stores selling a range of "adult" products failed to produce evidence sufficient to cast doubt on evidence supporting city's rationale that its ordinance regulating "sexually oriented businesses" was narrowly tailored to serve a significant government interest, as required to show ordinance violated the First Amendment. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983.

*787 W. Andrew McCullough of McCullough & Associates, L.L.C., Midvale, UT, for Plaintiffs-Appellants.

Robert Keller (Jody K. Burnett of Williams & Hunt, on the brief) Salt Lake City, UT, for Defendants-Appellees.

Before KELLY, McCONNELL, and TYMKOVICH, Circuit Judges.

PAUL KELLY, JR., Circuit Judge.

Plaintiff-Appellant Doctor John's, Inc. appeals the grant of summary judgment in favor of the Defendant-Appellee City of Roy ("City") on its claim that the City's ordinance regulating sexually oriented businesses violates the First Amendment. The district court previously granted summary judgment to the City on all grounds, but we remanded for the district court to *788 clarify what evidence it considered under the burden-shifting scheme of City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002) (plurality). See Doctor John's, Inc. v. City of Roy, 465 F.3d 1150, 1169 (10th Cir.2006) (Doctor John's II). On remand, the district court concluded that Doctor John's evidence was insufficient to meet its burden at Alameda Books Step 2 and granted summary

judgment again to the City. Doctor John's, Inc. v. City of Roy, No. 03-081, 2007 WL 1302757, *12 (D.Utah May 2, 2007) (Doctor John's III) (unpublished). Our jurisdiction arises under 28 U.S.C. § 1291, and we affirm.

Background

Doctor John's operates stores that sell, among other things, a range of "adult" products. Plaintiff-Appellant John Haltom is a major shareholder in Doctor John's parent company and is involved in the operation of Doctor John's Roy City store. Soon after Doctor John's came to town, the City of Roy passed an ordinance requiring all "sexually oriented businesses" and their employees to follow various regulations to prevent the deleterious effects of those businesses. The ordinance sets forth findings supporting the need for the regulations based on case law, Congressional testimony, research papers, and various studies from other cities. Aplt.App. at 21-25. The details of the ordinance are not particularly relevant to this appeal, but briefly, the ordinance requires that these businesses and their employees obtain licenses, that they pay an application and annual renewal fees, and that they limit their operating hours to 10:00 am to 11:00 pm. Once an application is filed, a temporary license is immediately issued, and a permanent license will follow except under certain circumstances including, for example, when an employee has convictions for specified crimes, the business has refused inspection of the premises within the last year, or the business has provided incomplete or false information.

Doctor John's refused to submit an application and filed a lawsuit pursuant to 42 U.S.C. § 1983 alleging the ordinance was an unconstitutional restriction on speech. The City counterclaimed seeking a court order requiring Doctor John's to comply with the ordinance. On cross-motions for summary judgment, the district court granted summary judgment to the City on all federal claims and declined to exercise jurisdiction over the state law claims. Doctor John's, Inc. v. City of Roy, 333 F.Supp.2d 1168 (D.Utah 2004) (Doctor John's I). On appeal, we affirmed summary judgment for the City on all claims except the First Amendment claim, remanding because we were uncertain whether the district court considered articles Doctor John's submitted in its district court pleadings to cast doubt on the City's rationale as required by Alameda Books Step 2.

Doctor John's II, 465 F.3d at 1169. We remanded reasoning that because the parties' evidence is essential to determining whether an ordinance is narrowly tailored to serve a municipality's interest in preventing secondary effects, it was necessary to allow the district court to thoroughly review Doctor John's evidence since the evidence was not mentioned in the district court's order. Id.

On remand, the district court first considered whether Doctor John's failure to disclose the articles as discoverable information or supplement previous disclosures was harmless under Fed.R.Civ.P. 26(a). Doctor John's III, 2007 WL 1302757, at *4. The district court concluded the untimeliness was not harmless and the materials were inadmissible as a sanction under Rule 37(c)(1). Id. Then the district court proceeded to analyze whether the articles cast doubt on the City's rationale for its ordinance, *789 assuming the articles were admissible. The district court noted that despite its briefing order requesting the parties to explain how their studies supported or cast doubt on the ordinance, Doctor John's only responded to the City's Rule 26 and hearsay arguments and argued issues foreclosed by Doctor John's II, 2007 WL 1302757, at *5. Despite this failure, the district court still reviewed arguments in Doctor John's initial summary judgment pleadings from 2004 and concluded that the materials Doctor John's submitted had failed to cast doubt on the ordinance's rationale. Id.

Discussion

[1] Ordinances targeting the secondary effects of adult businesses are analyzed as time, place, and manner regulations. City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 46, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986). These ordinances will be upheld if they are "justified without reference to the content of the regulated speech," id. at 48, 106 S.Ct. 925, narrowly tailored to serve a significant governmental interest, and leave open reasonable alternative avenues of communication. Z.J. Gifts D-2, L.L.C. v. City of Aurora, 136 F.3d 683, 688 (10th Cir.1998). In Doctor John's II, we previously determined that the ordinance is justified without reference to the content of the regulated speech and noted that Doctor John's did not argue that the ordinance fails to leave open alternative avenues of communication. 465 F.3d at 1164. Thus, the only issue left to consider is whether there is any issue of material fact precluding

summary judgment with regard to whether the ordinance is narrowly tailored to serve a significant government interest. We review this issue de novo. Rost ex rel. K.C. v. Steamboat Springs RE-2 Sch. Dist., 511 F.3d 1114, 1118 (10th Cir.2008).

The City bears the burden of providing evidence of secondary effects to justify its ordinance. Alameda Books, 535 U.S. at 437, 122 S.Ct. 1728 (plurality). A municipality may rely on any evidence that is "reasonably believed to be relevant to the problem that the city addresses." Renton, 475 U.S. at 51-52, 106 S.Ct. 925. "This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance." Alameda Books, 535 U.S. at 438, 122 S.Ct. 1728. The burden then shifts to the plaintiff to "cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings." Id. at 438-39, 122 S.Ct. 1728. If the plaintiff succeeds in casting doubt on the municipality's rationale, "the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance." Id. at 439, 122 S.Ct. 1728.

In Doctor John's II, we held that the City had satisfied its burden under Step 1 of Alameda Books, rejecting Doctor John's contention that the ordinance is not narrowly tailored because it lacks specific evidence concerning off-site adult businesses. 465 F.3d at 1166-68. We reasoned that a municipality need not initially produce specific evidence regarding the precise type of business, but a plaintiff may challenge a municipality's rationale by producing "evidence that its type of adult business (e.g., 'off-site') is relevantly different than those types of businesses analyzed in the studies supporting the ordinance (e.g., 'on-site')." Id. at 1168. Because Doctor John's had produced no evidence regarding off-site adult businesses, that argument failed to cast doubt on the City's rationale. Id. We ultimately remanded because the record was not clear whether the district court *790 considered the articles Doctor John's submitted to cast doubt on the City's rationale. Therefore, the only surviving issue on appeal is whether the evidence Doctor John's submitted to the district court casts doubt on the City's rationale for its ordinance at Alameda Books Step 2.

I. Rule 26(a) violation and Rule 37 sanctions. The district court concluded that Doctor John's failure to disclose the articles as discoverable information or supplement previous disclosures was not harmless under Fed.R.Civ.P. 26(a) warranting sanctions under Rule 37(c)(1). Doctor John's III, 2007 WL 1302757, at *4. We review a district court's determination whether a Rule 26(a) violation is justified or harmless for abuse of discretion. Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co., 170 F.3d 985, 993 (10th Cir.1999).

Fed.R.Civ.P. 26(a) requires disclosure of the names of all individuals and information that the party may use to support its claims or defenses, including expert witnesses and their opinions. In addition, Rule 26(e) requires a party to timely supplement all disclosures made under Rule 26(a). Under Fed.R.Civ.P. 37(c)(1), "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, ... unless the failure was substantially justified or is harmless."

Doctor John's attached the two articles in dispute to a reply memorandum in support of its motion for summary judgment and in response to the City's motion for summary judgment filed July 20, 2004. The district court concluded that the failure to disclose the articles prejudiced the City because it effectively had no opportunity to respond. Neither the court of appeals nor the district court mentioned that the articles were attached to a dual-purpose pleading, Doctor John's reply memorandum in support of its motion for summary judgment and its response to the City's motion for summary judgment, Aplt.App. at 171. Doctor John's argues that the City waived its objection to strike its articles by not objecting prior to remand when it had an opportunity to do so in its response to Doctor John's motion for summary judgment filed July 26, 2004.

[2] Ordinarily, a litigant's failure to specifically object to specific exhibits not disclosed under Rule 26(a) may well waive that objection. But here, we remanded specifically for the district court to conduct a thorough analysis of the evidence and clarify which evidence it relied upon. We noted that the district court may have refused to consider the evidence as untimely, Doctor John's II, 465 F.3d at 1169, so it

was proper on remand for the City to address that possibility and object to the consideration of those articles. Clearly, the district court rejected the alternative of reopening discovery (the City suggested it as an alternative to striking), and opted instead to examine the evidence already submitted by the parties. We cannot say that the district court abused its broad discretion in its management of discovery and scheduling matters. See *King v. PA Consulting Group, Inc.*, 485 F.3d 577, 591 (10th Cir.2007). Similarly, the district court's view that the articles were factual instead of legal, as Doctor John's contends, also was not an abuse of discretion given the nature of the secondary effects inquiry. Although we conclude that the district court did not abuse its discretion in striking the articles, even if the articles were considered as evidence under the *Alameda Books* framework, Doctor John's has failed to cast doubt on the City's rationale that its ordinance is narrowly tailored to prevent the secondary effects of adult businesses.

*791 [3] II. *Whether Doctor John's articles cast doubt.* Doctor John's may cast direct doubt on the City's rationale for its ordinance "either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings." *Alameda Books*, 535 U.S. at 438-39, 122 S.Ct. 1728. Doctor John's submitted six exhibits to the district court as evidence in support of its arguments: an unsworn affidavit of Bruce McLaughlin, a book chapter, [FN1] two summaries of studies concluding adult businesses produce secondary effects, [FN2] the Keetch article, [FN3] and the Linz article. [FN4] Even though Doctor John's appears to concede in its brief that only two of those exhibits are at issue on appeal, see Aplt. Br. at 13-14 ("The exhibits at issue here were attached as Exhibits" to a reply memorandum, referring to the Keetch and Linz articles.), we will briefly address the first four exhibits as well.

[FN1]. Eric D. Kelly & Connie Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Serv. Report No. 495/496, American Planning Association, ch. 9 (Dec.2000) (Aplt.App. at 115).

[FN2]. Louis F. Comus III, *Summaries of Key*

Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses (Aplt.App. at 180); *Adult Studies as Summarized by Louis Comus* (Aplt.App. at 200).

[FN3]. Von G. Keetch & Matthew K. Richards, *The Need For Legislation to Enshrine Free Exercise in the Land Use Context*, 32 U.C. Davis L.Rev. 725 (1999) (Aplt.App. at 206).

[FN4]. Bryant Paul, Daniel Linz, & Bradley J. Shafer, *Government Regulation of "Adult" Businesses through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects*, 6 Comm. L. & Pol'y 355 (2001) (Aplt.App. at 221).

First, the district court granted the City's motion to strike Mr. McLaughlin's affidavit, Aplt.App. at 535, and Doctor John's has not appealed that decision. Second, the book chapter, mentioned but not discussed in Doctor John's brief on appeal, appears to be addressed to city planning officials regulating adult businesses and states that these businesses produce negative secondary effects. *Id.* at 120. Although the chapter does distinguish between on-site and off-site sexually oriented businesses, it simply discusses broad regulatory issues associated with each type and only summarily describes the secondary effects of each type without providing any evidence supporting the distinction. *Id.* at 120-23. Third, the two summaries by Mr. Comus are not mentioned in Doctor John's brief on appeal. The summaries simply list a number of studies finding negative secondary effects from adult businesses and do not appear to support Doctor John's argument. See *id.* at 180.

Next, the Keetch article argues that "generally applicable" land use regulations approved of by *Employment Division v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), allow municipalities to impinge on the free exercise of religion by zoning out churches. See Keetch & Richards, *supra*, at 725-26. Doctor John's argues that the premise of the article is that municipalities suppress the disfavored speech of unpopular churches, like adult businesses, under the guise of regulating the secondary effects they produce. The

Keetch article fails to cast doubt on the City's rationale because it does not discuss the specific secondary effects municipalities complain churches cause, but only argues that the land use regulations are motivated by animus towards minority religions. Thus, the article is irrelevant to an analysis of secondary effects.

Doctor John's closest evidence is the Linz article. At first glance, the article *792 does appear to cast doubt on secondary effects studies generally in stating that its authors reviewed 107 relevant studies. However, the article only analyzes the 10 most frequently cited studies by municipalities, and the City of Roy only relies on 4 of those 10 studies. Consequently, it is difficult to see how the article casts doubt on the other 14 studies relied on by the City, let alone the other 7 reports and the many cases cited by the ordinance. Aplt.App. at 22.

The article's main premise is also problematic because it argues that secondary effects studies relied on by municipalities should meet the requirements of Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). However, the Supreme Court has "flatly rejected [the] idea" of requiring cities to rely on empirical analysis. City of Erie v. Pap's A.M., 529 U.S. 277, 300, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000) (citing Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 394, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000)). In fact, among the specific empirical studies that the Supreme Court rejected in City of Erie, were Dr. Linz's studies cited by an amicus curiae, Brief for The First Amendment Lawyers Association as Amicus Curiae Supporting Respondent, City of Erie v. Pap's A.M., 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000), and relied on by the dissent, Erie, 529 U.S. at 315 n. 3, 120 S.Ct. 1382 (Souter, J., concurring in part and dissenting in part). See id. at 300, 120 S.Ct. 1382. This amicus brief principally relies on, and attaches in its appendix, a paper by Dr. Linz which appears to be merely an earlier draft of the article later published in 2001 and submitted to the district court. The paper analyzes the same ten secondary effects studies, contains strikingly similar tabular data, and utilizes the same methodology, i.e., analysis under the Daubert standards, as the article later published in Communication Law and Policy in 2001. See Amicus Curiae Brief, Erie, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265, 1999 WL 805047, app. at A.1.

Even Doctor John's concedes that "courts continue to rule that studies of secondary effects ... do not have to meet the standard of Daubert." Aplt. Br. at 24. For this reason, Doctor John's cites "judicial authority in which other courts ha[ve] found these same studies" cast doubt on the studies relied on by the City. Id. However, in light of the Supreme Court's rejection of this specific analysis by Dr. Linz, we see little need to continue. Nevertheless, the cases cited by Doctor John's are distinguishable because none relied solely on the Linz article to cast doubt on a municipality's rationale for an ordinance. For example, in DiMa Corp. v. High Forest Township, No. 02-3800, 2003 WL 21909571 (D.Minn. Aug.7, 2003), a plaintiff cast doubt on a township's rationale by submitting an expert report and three studies directly addressing adult businesses offering only off-site materials in addition to submitting the Linz article. Id. at *3. The township only relied on five secondary effects studies, four of which the Linz article directly analyzed. Id.

Doctor John's also relies on Abilene Retail No. 30, Inc. v. Board of Commissioners of Dickinson County, Kansas, 492 F.3d 1164 (10th Cir.2007), where the plaintiff submitted five studies showing sexually oriented businesses do not cause negative secondary effects, called Dr. Linz as an expert who reviewed every study relied on by the municipality, and submitted an article by Dr. Linz and others challenging the validity of various studies. Id. at 1187 (Ebel, J., concurring). [FN5] It is not clear *793 from the opinion whether this article by Dr. Linz is the same one that Doctor John's submitted to the district court, but even if it was, the plaintiff in Abilene Retail relied on substantially more than just the Linz article to cast doubt on the county's rationale. Similarly, the only other courts to conclude that the Linz article was sufficient to cast doubt on a city's rationale did so when the article was submitted with other evidence, such as expert affidavits, that specifically contradicted nearly all of the evidence supporting the ordinances. See 22nd Ave. Station, Inc. v. City of Minneapolis, 429 F.Supp.2d 1144, 1150-51 (D.Minn.2006); Giovani Carandola, Ltd. v. Fox, 396 F.Supp.2d 630, 641-47 (M.D.N.C.2005), *rev'd in part*, 470 F.3d 1074 (4th Cir.2006). Other courts have rejected Dr. Linz's argument, even when submitted with additional evidence, as insufficient to cast doubt on a city's rationale for its ordinance. See G.M.

Enterprises v. Town of St. Joseph, 350 F.3d 631, 635-36, 640 (7th Cir.2003); SOB, Inc. v. County of Benton, 317 F.3d 856, 863 (8th Cir.2003); Fantasyland Video, Inc. v. County of San Diego, 373 F.Supp.2d 1094, 1108-10 (S.D.Cal.2005), *aff'd*, 505 F.3d 996 (9th Cir.2007); Nite Moves Entm't, Inc. v. City of Boise, 153 F.Supp.2d 1198, 1208-09 (D.Idaho 2001). These courts rejected Dr. Linz's approach because of its reliance on Daubert and because requiring municipalities to present empirical data to support an ordinance "would go too far in undermining our settled position that municipalities must be given a reasonable opportunity to experiment with solutions to address the secondary effects of protected speech." Alameda Books, 535 U.S. at 439, 122 S.Ct. 1728 (quotations omitted).

FN5. In Abilene, the panel produced two opinions for the court, both receiving three votes. One opinion held that the County failed to carry its burden at Alameda Books Step 1; the other held that the County failed carry its burden at Alameda Books Step 3. 465 F.3d at 1175-76, 1181.

Doctor John's also cites a number of cases relying on Encore Videos, Inc. v. City of San Antonio, 330 F.3d 288 (5th Cir.2003), arguing that its business only sells merchandise to be used off-site. See Aplt. Br. at 31. However, the Tenth Circuit has explicitly rejected the reasoning of Encore Videos that the onsite/off-site distinction is relevant at Step 1 of Alameda Books. Doctor John's II, 465 F.3d at 1167-68; see Z.J. Gifts, 136 F.3d at 687- 88. We acknowledge that the distinction between on-site and off-site adult businesses may be relevant under Step 2 of Alameda Books. Doctor John's II, 465 F.3d at 1168. But Doctor John's has produced absolutely no evidence relevant to this distinction. See *id.*; see also Abilene Retail, 492 F.3d at 1186 n. 7 (Ebel, J., concurring). Finally, the Linz article is insufficient because it does not address many of the stated objectives the ordinance is intended to accomplish, for example, the prevention of distribution of harmful materials to minors. Aplt.App. at 24, ¶ 21. Prior to the enactment of the ordinance, the City's police chief investigated a similar business in another Utah municipality. Aplt.App. at 481. This reinforced concerns about the distribution of harmful, sexually-oriented material to minors, notwithstanding a policy against admitting minors. Such evidence provides strong support for

the ordinance and stands unchallenged. [FN6] Aplt.App. at 481-83; see also *id.* at 486-87 (parental complaints about videos sold to minors).

FN6. The past criminal history of the store manager also provides strong support for the ordinance. See Doctor John's, 465 F.3d at 1170, n. 27, 1171 (discussing propensity for recidivism); State v. Haltom, No. 20070498-CA, 2008 WL 207861, at *1 (Utah Ct.App. Jan.25, 2008) (per curiam).

*794 We conclude that the district court did not abuse its discretion in striking the Keetch and Linz articles as a sanction under Rule 37(c)(1) for violation of Fed.R.Civ.P. 26(a). We also conclude that, even if considered, Doctor John's has failed to produce evidence sufficient to cast doubt on the evidence supporting the City's rationale that its ordinance is narrowly tailored to serve a significant government interest.

AFFIRMED.

542 F.3d 787

END OF DOCUMENT

1. 1,000-ft. Buffer (§ 573.531.1)

City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986)
Young v. American Mini-Theatres, Inc., 427 U.S. 50 (1976)
Independence News, Inc. v. City of Charlotte, 568 F.3d 148 (4th Cir. 2009)
Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007)
Bronco's Ent., Inc. v. Charter Twp. of Van Buren, 421 F.3d 440 (6th Cir. 2005)

2. Civil Disability Provision (§ 573.531.2)

Doctor John's, Inc. v. City of Roy, 465 F.3d 1150 (10th Cir. 2006)
Deja Vu of Nashville, Inc. v. Nashville, 274 F.3d 377 (6th Cir. 2001)
TK's Video, Inc. v. Denton County, 24 F.3d 705 (5th Cir. 1994)
Club Southern Burlesque, Inc. v. City of Carrollton, 457 S.E.2d 816 (1995)

3. Nudity Prohibition (§ 573.531.3)

City of Erie v. Pap's A.M., 529 U.S. 277 (2000)
Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991)
Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998)
Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007)

4. 6-ft. Rule (§ 573.531.4)

Jake's, Ltd., Inc. v. City of Coates, 284 F.3d 884 (8th Cir. 2002)
Sensations, Inc. v. City of Grand Rapids, 526 F.3d 291 (6th Cir. 2008)
Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546 (5th Cir. 2006)
Colacurcio v. City of Kent, 163 F.3d 545 (9th Cir. 1998)
DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997)

5. No-Touch Rule (§ 573.531.5)

Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995)
Entertainment Prods., Inc. v. Shelby County, 588 F.3d 372 (6th Cir. 2009)
Sensations, Inc. v. City of Grand Rapids, 526 F.3d 291 (6th Cir. 2008)
Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005)

6. Open-Booth Regulations (§ 573.531.6)

Scope Pictures, Inc. v. City of Kansas City, 140 F.3d 1201 (8th Cir. 1998)
Doe v. City of Minneapolis, 898 F.2d 612 (8th Cir. 1990)
Postscript Enters. v. City of Bridgeton, 905 F.2d 223 (8th Cir. 1990)
Andy's Rest. & Lounge, Inc. v. City of Gary, 466 F.3d 550 (7th Cir. 2006)
Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996)
Matney v. County of Kenosha, 86 F.3d 692 (7th Cir. 1996)

7. Hours of Operation (§ 573.531.8)

Richland Bookmart, Inc. v. Knox County, 555 F.3d 512 (6th Cir. 2009)
Andy's Rest. & Lounge, Inc. v. City of Gary, 466 F.3d 550 (7th Cir. 2006)
Center for Fair Public Policy v. Maricopa County, 336 F.3d 1153 (9th Cir. 2003)
Richland Bookmart, Inc. v. Nichols, 437 F.3d 135 (6th Cir. 1998)
Nat'l Amusements Inc. v. Town of Dedham, 43 F.3d 731 (1st Cir. 1995)
Mitchell v. Comm'n on Adult Enter. Est., 10 F.3d 123 (3d Cir. 1993)
Star Satellite, Inc. v. City of Biloxi, 779 F.2d 1074 (5th Cir. 1986)

8. Alcohol Prohibition (§ 573.531.9)

California v. LaRue, 409 U.S. 109 (1972)
Flanigan's Enterprises, Inc. v. Fulton County, 596 F.3d 1265 (11th Cir. 2010)
East Brooks Books, Inc. v. Shelby County, 588 F.3d 360 (6th Cir. 2009)
Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007)
Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003)

"The Community Defense Act" Related Case Law and Land Use Studies

Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Kansas Legislature, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and

Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998); *United States v. Evans*, 272 F.3d 1069 (8th Cir. 2002); *United States v. Mueller*, 663 F.2d 811 (8th Cir. 1981); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *United States v. Frederickson*, 846 F.2d 517 (1988); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.4d 1153 (9th Cir. 2003); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *World Wide Video of Washington, Inc. v. City of Spokane*, 386 F.3d 1186 (9th Cir. 2004); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Déjà Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 274 F. 3d 377 (6th Cir. 2001); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Negative Secondary Effects of Sexually Oriented Businesses: Summaries of Key Reports; Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; McCleary Expert Report - 2006; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

- (1) Sexually oriented businesses, as a category of commercial enterprises, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm which the State has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the State's rationale exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the State's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the State.

**CRIME-RELATED SECONDARY EFFECTS OF
SEXUALLY-ORIENTED BUSINESSES**

**REPORT TO THE JACKSON COUNTY LEGISLATURE
JACKSON COUNTY, MISSOURI**

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INTRODUCTION		
1.	THE CRIMINOLOGICAL THEORY OF SECONDARY EFFECTS	4
1.1	THE ROUTINE ACTIVITY THEORY OF "HOTSPOTS"	4
1.1.1	TARGETS	5
1.1.2	OFFENDERS	5
1.1.3	TARGET VALUE	6
1.1.4	POLICE PRESENCE	6
1.2	WHAT DOES CRIMINOLOGICAL THEORY SAY ABOUT SUBCLASSES?	6
1.3	THE THEORETICAL ROLE OF ALCOHOL	8
1.4	THE CRIMINOLOGICAL THEORY OF MITIGATION	8
1.4.1	INCREASING THE LEVEL OF POLICE PRESENCE	8
1.4.2	DISTANCING SOB SITES FROM SENSITIVE USES	9
1.4.3	LIMITING THE HOURS OF OPERATION	10
1.4.4	"HARDENING" SOB SITES	11
1.4.5	POLICE OFFICER SAFETY	12
1.4.6	TAILORING REGULATIONS TO FIT LOCAL NEEDS	13
1.5	CONCLUDING REMARKS ON CRIMINOLOGICAL THEORY	13
2.	EARLY EMPIRICAL STUDIES CORROBORATE THE THEORY	14
2.1	SOB-CONTROL CONTRASTS: PHOENIX, 1979	14
2.2	BEFORE-AFTER CONTRASTS: GARDEN GROVE, 1991	16
2.3	WHAT WE LEARNED FROM THE EARLY STUDIES	18
3.	ADULT CABARETS	19
3.1	GREENSBORO, 2003	19
3.2	DAYTONA BEACH, 2004	21
3.3	PALM BEACH COUNTY, 2007	23
3.4	CONCLUDING REMARKS ON ADULT CABARETS	26
4.	THE "COMMERCIALLY NATURAL IF NOT UNIVERSAL" SOB	27
4.1	CENTRALIA, 2003	27
4.2	LOS ANGELES, 2007	28
4.3	CONCLUDING REMARKS	29
5.	"OFF-SITE" SOBs	31
5.1	SIOUX CITY, 2006	32
5.2	MONTROSE, 2003	34
5.3	CONCLUDING REMARKS	37

6.	METHODOLOGICAL RULES	39
6.1	WEAK MEASURES OF AMBIENT CRIME RISK	39
6.1.1	HISTORICAL NOTE ON THE USE OF CFSS	42
6.1.2	ANECDOTAL EVIDENCE OF BIAS IN CFSS	44
6.2	SUBSTANTIVE VS. STATISTICAL SIZE	45
6.2.1	STATISTICAL HYPOTHESIS TESTING	46
6.2.2	SAN DIEGO PEEP SHOWS	47
6.3	CONCLUDING REMARKS	49
7.	REFERENCES	50
7.1	STATISTICAL AND METHODOLOGICAL AUTHORITIES	50
7.2	CRIMINOLOGICAL AUTHORITIES	50
7.3	ALCOHOL-EROTICA AUTHORITIES	52
7.4	SECONDARY EFFECT STUDIES RELIED UPON BY LEGISLATURES	53
7.5	OTHER MISCELLANEOUS REPORTS	56
	CURRICULUM VITAE FOR RICHARD MCCLEARY	60
	TABLES AND FIGURES	
TABLE 1	SECONDARY EFFECT STUDIES RELIED ON BY LEGISLATURES	4
FIGURE 1.3.2	ROBBERY RISK BY DISTANCE FROM AN SOB	10
TABLE 2.1	SECONDARY EFFECTS IN PHOENIX, AZ	15
TABLE 2.2	SECONDARY EFFECTS IN GARDEN GROVE, CA	17
FIGURE 3.1	RESULTS OF THE 2003 GREENSBORO STUDY	20
FIGURE 3.2	RESULTS OF THE 2004 DAYTONA BEACH STUDY	22
FIGURE 3.3	PALM BEACH COUNTY RISK-DISTANCE FUNCTIONS	24
TABLE 4.1	UCR "SERIOUS" CRIME, CENTRALIA, WA	27
FIGURE 4.2	RISK BY DISTANCE FROM THE SITE, UCR "SERIOUS" CRIME	29
TABLE 5.1	TOTAL CRIME BEFORE AND AFTER THE OPENING OF <i>DR. JOHNS</i>	33
TABLE 5.2	CRIME-RELATED SECONDARY EFFECTS OF A RURAL SOB	36
FIGURE 6.1	CRIMES AND 911 CALLS-FOR-SERVICE (CFSS)	40
TABLE 6.1A	SAN DIEGO CFSS BY FINAL DISPOSITION	41
TABLE 6.1B	SAN DIEGO BURGLARY CFSS BY INITIAL AND FINAL DISPOSITION	41
TABLE 6.1.1	CRIME STATISTICS IN CRIMINOLOGICAL JOURNALS, 2000-2004	44
FIGURE 6.2.1	JURY TRIALS AND HYPOTHESIS TESTS	45
FIGURE 6.2.2	FALSE-NEGATIVE RATES FOR THE SAN DIEGO FINDING	48

INTRODUCTION

Expressive activities that occur inside sexually-oriented businesses (SOBs), such as X-rated bookstores, video arcades, peep-shows, or erotic dance clubs, have broad First Amendment protection. Nevertheless, governments are allowed to regulate the time, manner, and place of expressive activities so long as the regulations are motivated by and aimed at ameliorating the potential secondary effects of SOBs. Governments typically attempt to regulate SOBs through zoning or planning codes, business licensing codes, and where applicable, through alcoholic beverage control codes. Regardless of the mechanism, of course, regulations must be aimed narrowly at the secondary effects of the businesses. Regulation ordinarily begins with legislative fact-finding. This report is part of the fact-finding process.

I am a Professor at the University of California, Irvine with appointments in the Departments of Criminology, Environmental Health Science, and Planning. My *curriculum vitae* is attached to this report. My degrees include a B.S. from the University of Wisconsin and an M.A. and Ph.D. from Northwestern University. I have taught graduate courses in statistics and criminology at the University of California, Irvine; the University of Minnesota; the University of Michigan; the University of New Mexico; Arizona State University; the State University of New York, Albany; and the University of Illinois, Chicago. I have supervised more than two-dozen doctoral students in statistics and/or criminology at these universities. My students hold appointments at major research universities in the U.S. and U.K.

My training and experience qualify me as an expert in criminology and statistics. I joined the American Society for Criminology and the American Statistical Association in 1977 and am currently a member of both scholarly societies. My scholarly contributions in these fields have been recognized by awards from Federal and state government agencies and scholarly societies. As an expert in these fields, I have served on Federal and state government task forces and panels and have served on the editorial boards of national peer-reviewed journals. I am the author or co-author of five books more than 70 articles in these fields.

Throughout my career, I have applied my expertise in statistics and criminology to the problem of measuring site-specific public safety hazards, especially the hazards associated with sexually-oriented businesses (SOBs). These hazards are also called "ambient crime risks" or "crime-related secondary effects." I have advised local, county, and state governments on these problems for nearly 30 years. Based on my background and research, I have three opinions that are relevant to Jackson County:

Opinion 1: The criminological theory of ambient crime risk, known as the "routine activity theory of hotspots," predicts that SOBs as a class will have large, significant crime-related secondary effects. The effect is the product of three factors. (1) SOBs draw patrons from wide catchment areas. (2) Because they are disproportionately male, open to vice overtures, reluctant to report victimizations to the police, *etc.*, SOB patrons are "soft" targets. (3) The high density of "soft" targets at the site attracts predatory criminals, including vice purveyors who dabble in crime and criminals who pose as vice purveyors in order to lure or lull

potential victims.

Opinion 2: In the last thirty years, empirical studies employing a wide range of quasi-experimental designs have found that SOBs have large, significant crime-related secondary effects. Since these studies are quasi-experiments, each can be criticized on narrow methodological grounds. Since no single methodological critique applies to all (or even most) of these studies, however, the consensus finding of the literature is scientifically robust.

Opinion 3: Given that strong criminological theory predicts the effect, and given that the prediction is corroborated consistently by the empirical literature, it is a *scientific fact* that SOBs pose ambient crime risks.

This report will expand on and explain these opinions. **Section 1** introduces the criminological theory of secondary effects. The secondary effects “debate” often misses this important point: Criminological theory *predicts* that SOBs will generate ambient public safety hazard. The same theory informs the regulation of SOBs, explaining how effective mitigation strategies can be incorporated into codes.

After developing the theoretical foundation, **Section 2** reviews the early that constitute the voluminous “secondary effects literature” that, following the *Renton* standard, governments have relied upon.¹ *Without exception*, the early studies corroborated theoretical expectations in that all found that SOBs posed large, significant ambient public safety hazards.

In the last decade, the validity of the consensus finding of the early literature has come under attack from experts retained by SOBs. To be fair, the early studies were conducted without modern computers and related resources. Although these studies could have been “done better,” the validity of the consensus finding has survived the critics’ attacks. Nevertheless, in the last decade, the secondary effects literature has grown more voluminous.

The more recent literature, reviewed in **Sections 3-5**, reinforces the consensus finding of the earlier studies. Reflecting an emerging theme, many of the more recent studies focus on SOB subclasses, including adult cabarets (**Section 3**), video arcades (**Section 4**), and “off-site” adult bookstores. As criminological theory predicts, all three SOB subclasses have large, significant secondary effects.

Secondary effects studies sponsored by the SOB industry invariably contradict the consensus finding that SOBs pose large, significant public safety hazards. In many instances, the “null findings” reported by these studies rest on bizarre interpretations of numerical results. In other instances, the reported “null findings” are an artifact of design – *i.e.*, the methods used to

¹ *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

conduct the study. It should be no surprise that a study's results can be influenced (or biased) by the study's design. Methodological rules have evolved to guard against design abuses. Two of the most important methodological rules are discussed in **Section 6**.

The first methodological rule concerns ambient crime risk measures. For purposes of a secondary effects study, criminologists prefer to measure ambient crime risk with crime incident reports, such as the Uniform Crime Reports collected by local police agencies. Experts retained by the SOB industry prefer 911 calls. The rationale for this preference, put simply, is that 911 calls generate a bias in favor a "null finding." If these biases are corrected, the null finding is rejected.

The second methodological rule concerns the criteria under which a "null finding" can be interpreted to mean that SOBs have no secondary effects. To illustrate, suppose that I search for my car keys but cannot find them. Although it is possible that I could not find them because they do not exist, it is also possible that I did not look hard enough. An analogous dilemma arises in secondary effects research when no secondary effect is found. Although it is possible that none exists, it is also possible that the search for secondary effects was too superficial.

A "quick and dirty" study is the easiest way *not* to find a secondary effect. The potential for abuse is addressed by the methodological convention of "statistical power." Put simply, any researcher who fails to find a secondary effect must demonstrate that the search was sufficiently powerful. Otherwise, the unsuccessful search is *inconclusive*.² Many of the studies sponsored by the SOB industry use inherently weak designs to produce "null findings." When widely accepted methodological conventions are applied to these findings, of course, they are *inconclusive*.

² The Latin aphorism "*Negativa non probanda*," attributed to Isaac Newton, is translated roughly as "Finding nothing proves nothing."

1. THE CRIMINOLOGICAL THEORY OF SECONDARY EFFECTS

It is a *scientific fact* that SOBs, as a class, pose large, statistically significant ambient public safety hazards. The public safety hazard is realized not only in terms of “victimless” crimes (prostitution, drugs, *etc.*) but, also, in terms of the “serious” crimes (assault, robbery, *etc.*) and “opportunistic” crimes (vandalism, trespass *etc.*) that are associated with vice.

Table 1 - Secondary Effect Studies Relied on by Legislatures

Los Angeles, CA	1977	Times Square, NY	1994
Whittier, CA	1978	Newport News, VA	1996
St. Paul, MN	1978	Dallas, TX	1997
Phoenix, AZ	1979	San Diego, CA	2002
Minneapolis, MN	1980	Greensboro, NC	2003
Indianapolis, IN	1984	Centralia, WA	2003
Austin, TX	1986	Daytona Beach, FL	2004
Garden Grove, CA	1991	Montrose, IL	2005
Manhattan, NY	1994	Sioux City, IA	2006

I call the SOB-crime relationship a “*scientific fact*” because, first, it is predicted by a strong scientific theory; and second, because the theoretical prediction has been corroborated empirically. On the second point, Table 1 lists eighteen empirical studies whose findings corroborate the claim that SOBs pose large, significant ambient public safety hazards. The remarkable range of time-frames, locations, and circumstances represented by these studies suggests that the consensus finding is general and robust.

1.1 THE ROUTINE ACTIVITY THEORY OF “HOTSPOTS”

The consensus finding of this literature becomes *scientific fact* when it is interpreted in the context of a scientific theory. In this instance, the SOB-crime relationship is predicted by the central “organizing theory” of modern scientific criminology. The so-called routine activity theory³ answers the what-when-where questions of victimization risk. As applied to “hotspots of predatory crime,” such as SOB sites, the theory holds that ambient crime risk, generally defined as the number of crimes within 500-1000 feet of a site, with the product of four risk factors. This

³ This theory is due to Cohen and Felson (1979; Felson and Cohen, 1980; Felson, 1998). The routine activity theory is one of the most validated theories in modern social science. In 2005 alone, according to the *Social Science Citation Index*, the 1979 Cohen-Felson article was cited 621 times. The “hotspot” application of the theory is due to Sherman, Gartin, and Buerger (1989) and to Brantingham and Brantingham (1981; 1993).

can be written as:

$$\text{Ambient Crime Risk} = \frac{N \text{ of Targets} \times \text{Average Value}}{\text{Police Presence}} \times \text{Offenders}$$

An increase (or decrease) in the number of targets at the site or in their average value yields an increase (or decrease) in ambient crime risk. An increase (or decrease) in police presence, on the other hand, yields a decrease (or increase) in ambient crime risk.

1.1.1 TARGETS

SOB sites are crime hotspots because they attract potential victims, or targets, from wide catchment areas. SOB sites are no different in that respect than tourist attractions (Dimanche and Lepetic, 1999; Danner, 2003) and sporting events (Corcoran, Wilson and Ware, 2003; Westcott, 2006). Compared to the targets found at these better known hotspots, however, the targets found at SOBs are exceptionally attractive to offenders. This reflects the presumed characteristics of SOB patrons. The patrons do not ordinarily live in the neighborhood but travel long distances to the site.⁴ They are disproportionately male, open to vice overtures, and carry cash. Most important of all, when victimized, they are reluctant to involve the police. From the offender's perspective, they are "perfect" victims.

1.1.2 OFFENDERS

The crime-vice connection has been a popular plot device for at least 250 years. John Gay's *Beggar's Opera* (1728), for example, describes the relationship between MacHeath, a predatory criminal, and the vice ring composed of Peachum, Lucy, and Jenny. This popular view is reinforced by the empirical literature on criminal lifestyles and thought processes. The earliest and best-known study (Shaw, 1930; Snodgrass, 1982) describes the life of "Stanley," a delinquent who lives with a prostitute and preys on her clients.

This routine activity theory of hotspots assumes a pool of rational offenders who move freely from site to site, choosing to work the most attractive site available. These offenders lack legitimate means of livelihood and devote substantial time to illegitimate activities; they are "professional thieves" by Sutherland's (1937) definition. Otherwise, they are a heterogeneous

⁴ In 1990, as part of an investigation, Garden Grove police officers ran registration checks on motor vehicles parked at SOBs. Virtually all of the vehicles were registered to addresses outside Garden Grove. The 1986 Austin, TX study arrived at the same finding. More recently, the Effingham County Sheriff's Department ran registration checks on motor vehicles parked at an SOB in the Village of Montrose. Except for employees' vehicles, all were from outside the county.

group. Some are vice purveyors who dabble in crime. Others are predatory criminals who promise vice to lure and lull their victims. Despite their heterogeneity, the offenders share a rational decision-making calculus that draws them to adult business sites.

1.1.3 TARGET VALUE

Criminological thinking has changed little in the 75 years since Shaw's (1930) *Jack-Roller*. To document the rational choices of predatory criminals, Wright and Decker (1997) interviewed 86 active armed robbers. Asked to describe a perfect victim, all mentioned victims involved in vice, either as sellers or buyers. Three of the armed robbers worked as prostitutes:

From their perspective, the ideal robbery target was a married man in search of an illicit sexual adventure; he would be disinclined to make a police report for fear of exposing his own deviance (p. 69).

The rational calculus described by these prostitute-robbers echoes the descriptions of other predators (see Bennett and Wright, 1984; Feeney, 1986; Fleisher, 1995; Katz, 1988, 1991; Shover, 1996).

1.1.4 POLICE PRESENCE

Controlling for the quantity and value of the targets at a site, rational offenders choose sites with the lowest level of visible police presence. In strictly physical terms, increasing (or decreasing) the number of police physically on or near a site reduces (or increases) ambient risk. However, police presence can also be virtual through remote camera surveillance and similar processes.

Whether physical or virtual, the *effectiveness* of police presence can be affected – for better or worse – by broadly defined environmental factors. For example, due to the reduced effectiveness of conventional patrolling after dark, crime risk rises at night, peaking around the time that taverns close. Darkness has a lesser effect on other policing strategies, which raises the general principle of *optimizing* the effectiveness of police presence. One theoretical reason why SOB subclasses might have qualitatively different ambient risks is that they have different optimal policing strategies.

1.2 WHAT DOES CRIMINOLOGICAL THEORY SAY ABOUT SUBCLASSES?

In lawsuits, SOB plaintiffs have argued that their narrowly-defined SOB subclass is exempt from criminological theory. But in fact, the relevant criminological theory applies to all subclasses. To the extent that two SOB subclasses draw similar patrons from similarly wide catchment areas, theory predicts similar ambient crime risks. Put simply, similar causes (the presence of many high-value targets and low levels of police presence) have similar effects (*i.e.*, high ambient crime risk). This theoretical expectation is consistent with the data. Although the

applies identically to all SOB subclasses, however, at the same time, it allows for qualitative differences among the subclasses.

In some instances, subclass-specific risks arise because the defining property of the subclass implies (or creates) idiosyncratic opportunities (or risks) for particular types of crime. Compared to the complementary subclass, for example, SOBs that serve alcohol present idiosyncratic opportunities for non-instrumental crimes, especially simple assault, disorderly conduct, *etc.* SOBs that provide on-premise entertainment present idiosyncratic opportunities for vice crime, customer-employee assault, *etc.* Criminologists call this etiological crime category "opportunistic." There are many obvious examples and SOB regulations often treat subclasses differently because their ambient opportunity structures are different.

Qualitative differences also arise when the defining property of the subclass compromises the effectiveness of common policing strategies. Policing SOBs that offer on-site entertainment (adult cabarets, peep shows, *etc.*) may require that police officers inspect the interior premises, for example. Because this places officers at risk of injury, policing on-site SOBs requires specially trained and equipped officers, prior intelligence, specialized backup manpower, and other resources. Because potential offenders can wait inside the premises without arousing suspicion, moreover, routine drive-by patrols to "show the flag" are less effective.

The optimal policing strategies for two subclasses are sometimes incompatible or even mutually exclusive. To illustrate, an optimal policing strategy for SOBs that do not offer on-site entertainment, such as adult video and book stores, often involves neighborhood patrols by uniformed officers in marked cars. Visibility is a key element of this strategy. For peep shows and adult cabarets, on the other hand, the optimal policing strategy often involves boots-on-the-ground deployments of plainclothes officers and unmarked cars. Invisibility is a key element of this strategy. Obviously, neighborhood patrols by plainclothes officers driving unmarked cars would defeat a major purpose of drive-by patrols; likewise, sending uniformed officers into an adult cabaret would be an inefficient method of control and might pose a physical danger to the officers, patrons, and employees. As a general rule, distinct SOB subclasses may require distinct policing strategies to mitigate ambient crime risks.

To some extent, differences among the optimal policing strategies for SOB subclasses amount to differences in cost. In many (but certainly not all) instances, the least expensive policing strategy involves drive-by patrols by uniformed officers in marked cars. Beyond the deterrent value of visible drive-by patrols, patrol officers can keep watch for known offenders and suspicious activity. When potential problems are spotted, the patrol officers can forward the information to a specialized unit or, if necessary, handle it on the spot, requesting backup

resources only as needed.⁵ It is important to realize, nevertheless, that the implementation of a policing strategy is determined in large part by local exigencies.

1.3 THE THEORETICAL ROLE OF ALCOHOL

Proximity to alcohol is a key component of the criminological theory of secondary effects. Alcohol aggravates an SOB's already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB's patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this theoretical expectation in all respects. Predatory criminals prefer inebriated victims,⁶ *e.g.*, and SOBs that serve alcohol or that are located near liquor-serving businesses pose accordingly larger and qualitatively different ambient public safety hazards.⁷ Governments rely on this consistent finding of crime-related secondary effect studies as a rationale for limiting nudity in liquor-serving businesses.

1.4 THE CRIMINOLOGICAL THEORY OF MITIGATION STRATEGIES

The routine activity theory points to strategies for mitigating the crime-related secondary effects of SOBs. In principle, the effects of a mitigation strategy can be *direct* or *indirect*. *Direct* effects are typically realized through *direct* manipulation of the risk factors to reduce ambient risk. *Indirect* effects are realized by making the risk factors more efficient. In practice, of course, some of the strategies are expensive or otherwise impractical. I begin with one of the most expensive, least practical mitigation strategies.

1.4.1 INCREASING THE LEVEL OF POLICE PRESENCE

The simplest, surest way to mitigate ambient crime risk is to assign more police to SOB neighborhoods. Although the relationship between police presence and ambient crime risk is

⁵ See, *e.g.*, National Research Council. *Fairness and Effectiveness in Policing: The Evidence*. National Academies Press, 2004.

⁶ See, *e.g.*, Wright and Decker (1997, p. 87): "[E]ach of (the armed robbers) expressed a preference for intoxicated victims, who were viewed as good targets because they were in no condition to fight back." (p. 70); "Several [armed robbers] said that they usually chose victims who appeared to be intoxicated because, as one put it, 'Drunks never know what hit them.'"

⁷ A 1991 study of Garden Grove, California by McCleary and Meeker found a large, significant increase on ambient crime risk when an alcohol-serving establishment opened within 500 feet (*ca.* one city block) of an SOB. Secondary effect studies in Greensboro (2003) and Daytona Beach (2004) found that alcohol-serving SOBs had larger secondary effects than retail alcohol outlets. These studies are reviewed in Section 2.

complicated and complex, criminologists generally accept the aphorism: “more police, less crime.”⁸ Unfortunately, this simplest, surest mitigation strategy is expensive and impractical. From the government’s perspective, increasing the number of police patrols in a neighborhood is prohibitively expensive. From the perspective of the SOB and its patrons, police presence can be highly intrusive, bordering on “harassment.”

In principle, fixed levels of police presence can be made more effective by fine-tuning *status quo* policing strategies. Police patrols can be made more visible, *e.g.*, by using uniformed officers in marked vehicles instead of plain-clothes officers in unmarked vehicles. Most police departments have already optimized their strategies, however. Police effectiveness can also be enhanced by incorporating rational enforcement policies into SOB codes. Several examples are described in subsequent sections.

1.4.2 DISTANCING SOB SITES FROM SENSITIVE USES

Reducing the density of targets in an SOB neighborhood is a more economical, practical mitigation strategy. As a rule, the most problematic secondary effects are associated with dense concentrations of SOBs (*e.g.*, Boston’s “combat zone” model). Accordingly, many governments require minimum distances between SOB sites (*e.g.*, the Detroit model). In addition to reducing per-site target density, thereby reducing aggregate risk, this model minimizes many obstacles to routine policing.

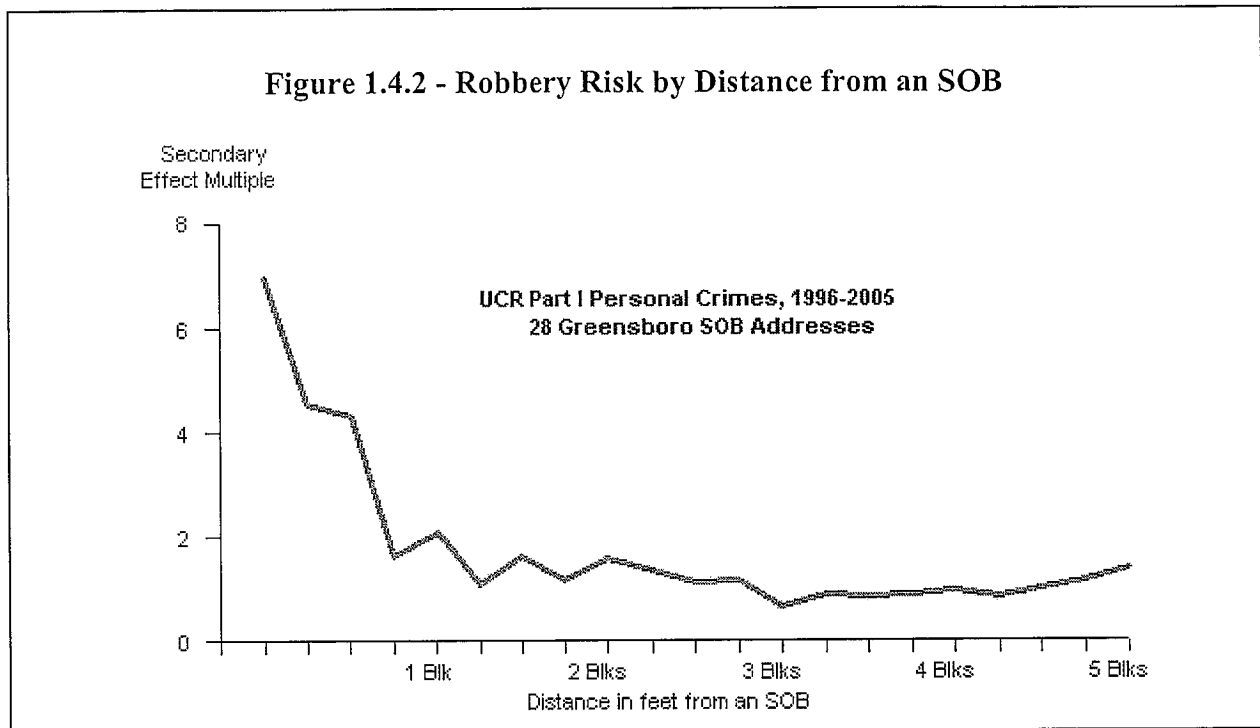
Figure 1.4.2 demonstrates the rationale for a related mitigation strategy.⁹ The vertical axis of this “risk-distance function” is calibrated in units of Part I personal crime (homicide, aggravated assault, robbery, and rape) risk, relative to the neighborhood risk, for 28 Greensboro SOBs for 1996-2005. The horizontal axis is calibrated in distance from an SOB. The unit of distance is a city block which, in the Greensboro neighborhoods from which these data are taken, is approximately 400 feet.

Suppose that a person exits a building five city blocks (*i.e.*, 2,000 feet) from an SOB. As this person walks toward the SOB, his or her victimization risk rises. For the first few blocks, the risk increments are modest; thereafter, the risk increments grow large. At two blocks from the SOB, the person’s risk is double what it was at start of the five-block walk. At one-half

⁸ See, *e.g.*, S.D. Levitt. Using electoral cycles in police hiring to estimate the effect of police on crime. *American Economic Review*, 1997, 87:270-290. “Increases in police are shown to substantially reduce violent crime but have a smaller impact on property crime. The null hypothesis that the marginal social benefit of reduced crime equals the costs of hiring additional police cannot be rejected.” (p. 270). Some “victimless” vice crimes are an exception to the rule, of course.

⁹ Risk-distance functions are revisited in Sections 3-4 below.

block. the risk is six times higher. If the person walks away from the SOB site, his or her victimization risk falls until, at a distance of three blocks from the site, the risk decrements are imperceptible.



Governments can take advantage of the risk-distance relationship plotted in Figure 1.4.2 by setting minimum distances between SOBs and other sensitive land uses. SOB patrons have no choice but to “run the gauntlet.” The victims of some ambient crime incidents are not SOB patrons, however, but rather, are neighborhood residents and by-passers. By setting minimum distances between SOBs and the land uses frequented by these people, the government mitigates the SOB’s ambient crime risk secondary effect.¹⁰

1.4.3 LIMITING THE HOURS OF OPERATION

Another economical and practical strategy for mitigating the ambient crime risk of SOBs is to limit the hours of operation. Criminological theory reduces to the aphorism, “more targets,

¹⁰ I am often asked to specify a distance sufficient to fully mitigate an SOB’s ambient crime risk. The correct answer to this question – “As far as possible” – is not helpful. Although the risk-distance function plotted in Figure 1.4.2 seems to answer this question, remember that it is the *average* of 28 SOB sites. By definition, some sites are “better,” some “worse.” Planners must assume a worst case scenario but, then, must balance this assumption with practical (and legal) considerations.

more crime.” And in the overnight hours when businesses close and people go home, the crime rate drops. While the crime *rate* drops, however, the *per-target* risk rises. When a business stays open around-the-clock, its victimization risk rises steadily after sundown, peaking in the early morning. Darkness softens a target, increasing its appeal to predatory criminals.

Several mechanisms operate here but the most salient is that routine policing is more difficult and less effective in darkness. When bars and taverns close, police resources are stretched thinner yet, making soft targets even softer. Governments typically mitigate this risk by closing high-risk public places (playgrounds, beaches, parks, *etc.*) from dawn to dusk; by imposing curfews on high-risk persons (teen-agers, parolees, *etc.*); and by limiting the operation of high-risk businesses (bars, SOBs, *etc.*) during times of acute risk. Not surprisingly, this theoretical prediction is confirmed by the empirical evidence.

1.4.4 “HARDENING” SOB SITES¹¹

In principle, ordinances can mitigate ambient crime risk requiring SOBs to “harden” their properties. Mandating outdoor lighting, parking lot surveillance cameras, and anti-“cruising” structures illustrate strategies for hardening the site’s exterior. This list of exterior hardening options is short, unfortunately; and although the effectiveness of exterior hardening strategies depends to some extent on local circumstances and conditions, there is little evidence that any of the typical options can mitigate ambient crime risk.

Regulating the interior configurations of SOBs, in contrast, has a stronger rationale in criminological theory. Interior hardening strategies are often less costly moreover, more practical, and in theory, more effective. Three widely used strategies illustrate the general principle:

- Ordinances that eliminate interior blind spots
- Ordinances that prohibit closed viewing booths
- Ordinances that restrict entertainers to raised stage areas

Each of these strategies reduces the risk of on-premise victimization of patrons and employees.¹² In some respects, the risk reduction mechanism is obvious. Removing blind spots and opening up closed booths obviously reduces the opportunity for lewd behavior, *e.g.* Though less obvious, to the extent that patron-on-patron, patron-on-employee, and employee-on-patron confrontations are precipitated by lewd behavior, these strategies also reduce the risk of assault.

¹¹ The classic statement on “hardening” is Oscar Newman’s *Defensible Space: Crime Prevention Through Urban Design*. (New York: MacMillan, 1973).

¹² The strategies also facilitate routine enforcement while minimizing the risk of injury to police officers. Those topics will be discussed separately in the next section.

The risk of patron-on-patron, patron-on-employee, and employee-on-patron crime is most acute inside SOBs that feature live entertainment; and of course, alcohol aggravates the risk. The risk can be mitigated by separating patrons and entertainers. Ideally, separation is achieved by mandated structures, such as raised stages. By creating a tangible "wall" between employees and patrons, raised stages reduce unintentional (or intentional) "touching," thereby reducing the risk of patron-on-employee and employee-on-patron crime.

1.4.5 POLICE OFFICER SAFETY

While assaults on police officers are rare, they are among the most serious crimes that occur inside SOBs. In theory, moreover, they are preventable. The risk of assault begins when officers enter the SOB and continues until they leave. Mitigation strategies aim at minimizing the number of times officers must enter SOBs and, having entered, the amount of time they must spend inside. Strategies that focus on the latter factor are more practical.

Police officers enter SOBs either in response to a reported crime incident or to inspect the premises as part of routine enforcement. By reducing the risk of the on-premise crime incidents, the interior target-hardening strategies described in the preceding section reduce the number of times that officers must enter SOBs to respond to reported incidents. Otherwise, there are few options for reducing the number of times that officers must enter SOBs. Notwithstanding the risk to officers, routine inspection can be an effective mitigation strategy. By focusing attention on SOB sites, routine inspection reduces ambient risk through a complex set of pathways referred to, collectively, as "broken windows."¹³

Regardless of how officers come to be inside an SOB, any strategy that minimizes the amount of time spent inside reduces the risk of injury. Ordinances aimed at improving interior visibility illustrate these strategies. In many instances, officers can accomplish their purpose with a quick visual inspection. If the interior of the SOB is well lit and obstacle-free, the inspection can be completed by one officer in a minute or two. If the interior is dark and/or labyrinthian, the same inspection may require two (or more) officers for a longer period of time.

In SOBs that feature live entertainment, a raised stage reduces the risk of injury to police officers through the same mechanism. If an ordinance mandates, say, a six-foot distance between patrons and entertainers, absent a raised stage, enforcing (and/or detecting willful violations of) the ordinance may require that several plainclothes officers spend an hour or more inside. With a raised stage, on the other hand, a comparable level enforcement and detection of violations can

¹³The best known statement of this effect is "Broken windows: The police and neighborhood safety." by J.Q. Wilson and G.L. Kelling, *Atlantic Monthly*, 1982, 249:29-38. Wilson and Kelling argue persuasively that police visibility in a neighborhood can have a greater impact on victimization risk than police activities that target crime *per se*. Modern police methods are based on this theory.

be accomplished with shorter, more superficial inspections. Raised stages also facilitate self-enforcement. Ensuring that patrons and entertainers comply with a distance rule, absent a raised stage, demands constant attention and keen judgement by the SOB. A raised stage facilitates self-enforcement by the SOB, thereby reducing the risk of patron-patron and employee-patron confrontations.

1.4.6 TAILORING REGULATIONS TO FIT LOCAL NEEDS

The ideal SOB ordinance marries low compliance costs for the SOB to low enforcement costs for the government. To some extent, compliance and enforcement costs depend on local circumstances and conditions and these often dictate differences in codes and/or enforcement strategies. A code or strategy that is optimal for one set of circumstances may be less than optimal for another. If a local variation is aimed at rationalizing regulation and optimizing mitigation, it should be encouraged.

By definition, local conditions are too numerous to list. Nevertheless, the principle is straightforward. Legislatures adapt and modify codes to take advantage of local idiosyncracies. In most instances, modifications are designed to facilitate compliance and minimize enforcement costs. Toward that end, legislatures often consult local enforcement officers and, to the extent possible and appropriate, incorporate the views of experts into the regulations.

1.5 CONCLUDING REMARKS: CRIMINOLOGICAL THEORY

The legal debate over crime-related secondary effects ignores the crucial role of criminological theory. *Without exception*, criminological theory predicts that SOBs will generate ambient public safety hazards. Plaintiffs' witnesses produce study after study to show that SOBs have *no* crime-related secondary effects or, sometimes, that SOBs have salutary public safety impacts on their neighborhoods. I will discuss the details of these studies at a later point. For present purposes, the criminological theory that I have described is internally consistent and compelling – it makes sense in other words. As it turns out, the theory also agrees with the data.

2 EARLY EMPIRICAL STUDIES CORROBORATE THE THEORY

Scientific theory leads us to *expect* secondary effects in SOB neighborhoods and, in fact, *that is exactly what we find*. Table 1 lists eighteen studies conducted over a 30-year period in rural, urban, and suburban settings; the studies span all regions of the U.S. and every conceivable SOB subclass. Despite this diversity, these eighteen studies have one thing in common. Each reports what I call the “consensus finding” of the literature: a substantively large, statistically significant crime-related secondary effect. Given the theoretical prediction, this consensus finding is a scientific fact.

The eighteen studies listed in Table 1 are also *methodologically* diverse. Some of the studies use a before/after difference to estimate a secondary effect. Others use SOB-control differences for that purpose.¹⁴ Some of these SOB-control studies select control zones by “matching.” Others use statistical models (regression, *e.g.*) to adjust irrelevant differences between the SOB and control zones. Methodological attacks on the literature typically focus on idiosyncratic design features of each study. Despite their methodological idiosyncracies, the studies all report remarkably similar findings. *This consensus renders any methodological challenge implausible.*

Ideally, one could read each of the eighteen studies listed in Table 1 and draw inferences from their similarities and differences. Given the broad consensus finding, however, there is little to learn from the minor details of specific studies. My review will focus on SOB subclasses and, to a lesser extent, on methodological idiosyncracies. I will return to the methodological issues in subsequent sections.

2.1 SOB-CONTROL CONTRASTS: PHOENIX, 1979

In many respects, true experiments are the strongest designs.¹⁵ But since true experiments are not possible, crime-related secondary effect studies rely on *quasi-experimental designs*. Except for random assignment, quasi-experimental and true experimental designs use similar structures to control threats to validity. The strongest quasi-experimental design compares

¹⁴ My authority on quasi-experimental design is *Experimental and Quasi-Experimental Designs for Research* by D.T. Campbell and J.C. Stanley (Rand-McNally, 1966). Campbell and Stanley call before/after designs “pretest-posttest” designs; they call SOB-control designs “static group comparison” designs. In general, before/after comparisons are prone to fewer threats to internal validity and, hence, are “stronger” than SOB-control designs.

¹⁵ An experimental design controls common threats to validity by random assignment. To estimate the crime-related secondary effects of SOBs experimentally, *e.g.*, we would compile a list of the business sites in a jurisdiction and open SOBs in a random sample of sites. Random assignment (and hence, experimenting) is not possible, of course.

ambient crime risk at a site before and after the opening of an SOB. Before-after contrasts are not always possible, unfortunately.

A somewhat weaker quasi-experimental design compares ambient crime risk at an SOB site to ambient crime risk at a control site. Though weaker in principle, SOB-control contrasts are often more practical. The validity of an SOB-control contrast is a function of similarity of the SOB and control sites. Barring out-and-out dishonesty, the differences will be small and roughly random, thereby favoring neither side.

In 1979, the City of Phoenix conducted a study of crime-related secondary effects. Although the actual work was conducted by City employees, Arizona State University faculty served as advisors and consultants. I was a Professor of Criminal Justice at Arizona State University at that time and met on a weekly basis with the City employees who conducted this research.

To estimate the crime-related secondary effects of SOBs, the researchers compared crime rates in areas with SOBs to crime rates in "matched" control zones (*i.e.*, similar areas that had no SOBs). The comparisons are summarized in my Table 2.1. The property and personal crime rates reported in Table 2.1 were estimated from Uniform Crime Report (UCR) data. The percentages reported in the right-hand column (in red) are the secondary effect estimates derived from the crime rates. Compared to crime rates in the control zones, the UCR property crime rate was 39.8 percent higher; the UCR personal crime rate was 13.7 percent higher; and the UCR sex crime rate was 480.2 percent higher in the adult business areas. By any reasonable standard, these are *large, significant* crime-related secondary effects.

Table 2.1 - Secondary Effects in Phoenix, AZ

	<i>SOB Areas</i>	<i>Control Areas</i>	<i>Secondary Effect</i>
<i>Property Crime Rate</i>	122.86	87.90	139.8 %
<i>Personal Crime Rate</i>	5.81	5.11	113.7 %
<i>Sexual Crime Rate</i>	9.40	1.62	580.2 %

Source: ADULT BUSINESS STUDY, City of Phoenix Planning Department, May 25, 1979; Table V

In the 30 years following this study, legislatures around the U.S. have accepted and relied upon its findings. Witnesses retained by SOBs and SOB plaintiffs, on the other hand, have argued that the 1979 Phoenix study is "fatally flawed" and that its findings are wholly

implausible. This position is wrong, in my opinion. Although the design of this study leaves much to be desired – especially by today’s standards – many of the study’s methodological shortcomings minimize the size of the effect. A stronger design would have produced a larger effect estimate.

2.2 BEFORE-AFTER CONTRASTS: GARDEN GROVE, 1991

Prior to 1990, virtually all crime-related secondary effect studies compared crime rates in police districts with SOBs to crime rates in districts without SOBs.¹⁶ By contemporary standards, the design of these studies was weak. Existing police districts comprised areas of several square miles, *e.g.*, and sometimes had several SOBs. Researchers handled these problems as best they could by matching and, rarely, by statistical adjustment. The wide use of weak “static group comparison” designs was dictated by economics, of course. Prior to 1990, relatively few police departments had sophisticated management information systems.

Citing these methodological flaws, witnesses hired by the SOB industry characterized these studies as exemplars of “shoddy research” whose findings are not to be trusted. Ironically, the methodological flaws in these early studies favor a *null* finding.¹⁷ Stronger designs would most likely have yielded larger, more significant effect estimates. Ignoring this point, the “static group comparison” design assumes that SOB and control neighborhoods are equivalent on relevant crime risk factors. If this assumption is unwarranted, observed secondary effects cannot be attributed to the SOBs. The surest, simplest way to control this threat to validity is to use a before-after design.

In the early 1990s, James W. Meeker and I conducted a secondary effect study in Garden Grove, CA that is considered to be the most scientifically rigorous, valid study of crime-related secondary effects in the literature.¹⁸ The design of our 1991 Garden Grove study differed from what had been done previously in many respects. We had location-coded crime incidents, *e.g.*, so we could estimate crime rates within 500 feet of an SOB; we had ten years of crime data, so we could use relatively stronger before/after contrasts; and we had several nearly ideal control businesses for our contrasts.

¹⁶ Studies in Los Angeles (1977), Amarillo (1977), Whittier (1978), St. Paul (1978), Phoenix (1979), Indianapolis (1984), and Austin (1986) used this design.

¹⁷ “Null finding” means “finding that SOBs have no secondary effects.”

¹⁸ *Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard*. October 23, 1991. Richard McCleary, Ph.D. and James W. Meeker, J.D., Ph.D.

Observing ambient crime before and after an SOB opened in a neighborhood, Meeker and I found that crime risk rose whenever an SOB *opened* its doors for business; when an SOB *closed* its doors, crime risk fell. The validity of a before/after design requires that other plausible explanations for the rise and fall of crime be ruled out. The change may be a coincidence, *e.g.*; perhaps crime rose or fell throughout the city. To control these common "threats to internal validity," Meeker and I replicated each before/after analysis for other SOBs in Garden Grove. We reasoned that, if a rise or fall in ambient crime were a coincidence, we would observe the effect at other Garden Grove SOBs. If we did not observe the same effect at these control sites, on the other hand, the effect could be attributed confidently to the newly opened SOB.

Secondary effects for three business openings are reported in Table 2.2. When a new SOB opened, total "serious" crimes in a 500-foot radius around the site rose, on average, 67 percent. To control for the confounding effects of city-wide crime trends, changes in police activity, and other common threats to internal validity, these before-after differences were compared to the analogous differences for the addresses of existing SOBs. Total "serious" crimes in a 500-foot radius around these "control" sites rose, on average, only six percent. The secondary effect observed when new SOBs open is, thus, substantively large and statistically significant.

**Table 2.2 - Secondary Effects in Garden Grove, CA: Business Openings
 Total "Serious" Crime, One Year Before/After**

	<i>Test Sites</i>			<i>Control Sites</i>		
	<i>Before</i>	<i>After</i>		<i>Before</i>	<i>After</i>	
March, 1982	71	106	1.49	76	78	1.03
March, 1986	31	68	2.19	80	92	1.15
August, 1988	32	50	1.56	41	40	0.98
Total	134	224	1.67	197	210	1.06

Source: *Final Report to the City of Garden Grove*, pp. 26-28

Social scientists (and their government clients) learned two things from the 1991 Garden Grove study. First and foremost, when relatively stronger before-after quasi-experimental designs are possible, the same ambient public safety hazards are found. The Garden Grove findings corroborate the findings in the Los Angeles (1977), Phoenix (1979), Indianapolis (1984) studies. Second, however, and more important, the 1991 Garden Grove study taught us how expensive a crime-related secondary effect study can be. I will have more to say about this shortly.

2.3 WHAT WE LEARNED FROM THE EARLY STUDIES

By contemporary standards, the early secondary effects studies – say, those conducted prior to 1995 – are relatively unsophisticated. The early studies compared ambient crime risk in existing police precincts, *e.g.*, rather than in the smaller impact areas suggested by criminological theory. The use of weak quasi-experimental designs in these early studies was dictated by fiscal reality.¹⁹ Yet despite their design weaknesses, these studies generated a consistent picture that came into sharper focus as stronger, more sophisticated studies added to the consensus finding; *i.e.*, as a business class, SOBs have large, statistically significant crime-related secondary effects.

The relatively weak designs used in the early literature open the door to charges, by SOB plaintiffs, that the strong consensus finding of the literature is an artifact; had the studies used stronger designs, according to the plaintiffs, all would have arrived at the opposite conclusion.²⁰ But in fact, the very consistency of the early literature rules out an artifactual explanation. First, virtually all design weaknesses bias the study in favor of the *null* finding. Second, more recent studies that use stronger, more sophisticated designs yield the same finding as the weaker, less sophisticated early studies.

¹⁹ In our 1991 Garden Grove study, Jim Meeker and I spent more than \$100,000 (adjusted for inflation) for a stronger, more sophisticated quasi-experimental design. The study's cost was a minor scandal.

²⁰ The best-known statement of this view is "Government regulation of 'adult' businesses through zoning and anti-nudity ordinances: de-bunking the legal myth of negative secondary effects." (B. Paul, D. Linz, and B.J. Shafer. *Communication Law and Policy*, 2001, 6:355-391).

3 RECENT EMPIRICAL STUDIES: ADULT CABARETS

Adult cabarets are the oldest and, in some respects, the most interesting SOB subclass. In principle, furthermore, estimating the secondary effect of an adult cabaret is straightforward. If we agree that live nude entertainment is the essential difference between adult cabarets and other businesses that sell alcohol by the drink (or "taverns" as I will call them), the secondary effect can be estimated by comparing the ambient crime rates for adult cabarets and taverns. Although the differences between adult cabarets and taverns are often more complicated than this simplest, straightforward design admits, several studies have used taverns as controls for adult cabarets. *All find that adult cabarets have higher ambient crime rates than taverns.*

3.1 GREENSBORO, 2003

In 2003, Dr. Daniel Linz conducted a crime-related secondary effect study in Greensboro, NC.²¹ Analyzing police calls-for-service (CFSs) Dr. Linz concluded that:

The presence of adult cabarets and adult video/bookstores in "neighborhoods" was unrelated to sex crimes in the area. We found that several of an (*sic*) adult video/bookstore were located in high person and property crime incident "neighborhoods." We examined the "neighborhoods" and local areas surrounding the adult video/bookstores (1000 foot radius) further and we found that the adult video/bookstores were not the primary source of crime incidents in these locations ... (T)here is no support for the City of Greensboro's theory that adult businesses produce adverse secondary effects. The results of our study show that adult businesses are not associated with crime events.²²

Due to the technical nature of Dr. Linz' statistical analyses, the City of Greensboro retained me to "translate" Dr. Linz' numerical results into plain words.²³

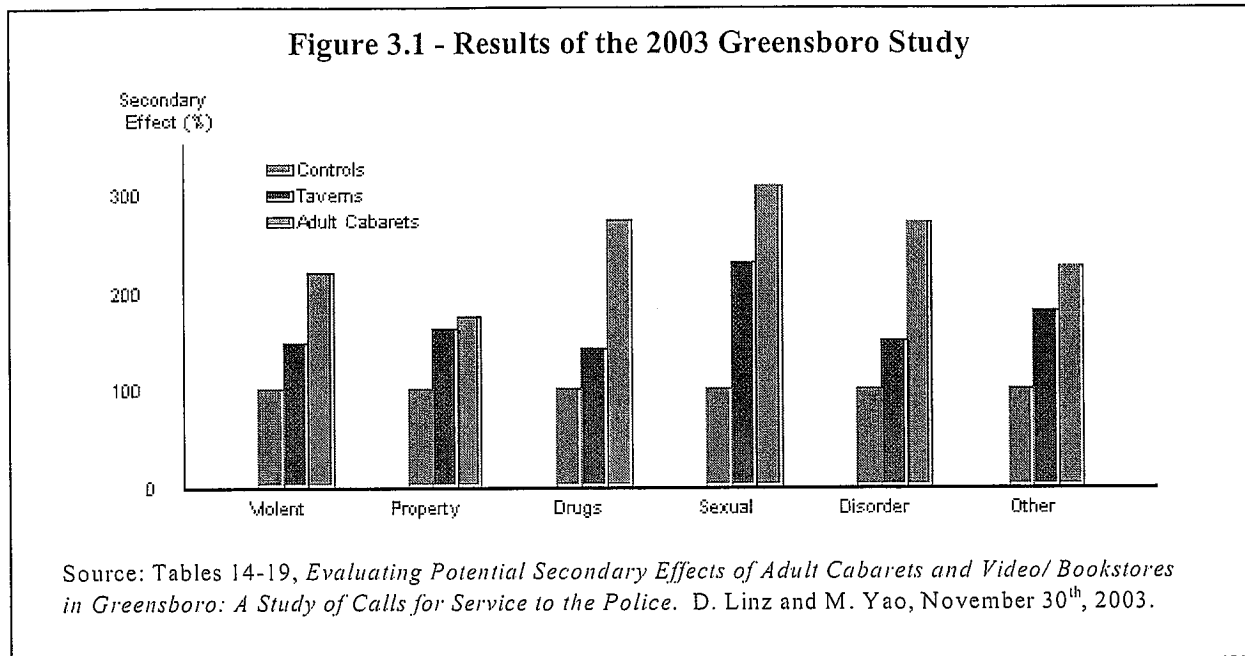
Dr. Linz' report was a difficult read, even for statisticians. The numbers on which his conclusion was based were scattered across 18 pages of computer output in an appendix. Few report readers consult appendices under any circumstances. But in this instance, a critical

²¹ *Evaluating Potential Secondary Effects of Adult Cabarets and Video/Bookstores in Greensboro: A Study of Calls for Service to the Police* by Daniel Linz, Ph.D. and Mike Yao, November 30th, 2003. A Professor of Communication at the University of California, Santa Barbara, Dr. Linz is a prolific witness for SOB plaintiffs, often in collaboration with Dr. Fisher.

²² P. 3 (counting the title sheet as p. 1) of the Linz-Yao Greensboro Study.

²³ R. McCleary. *A Methodical Critique of the Linz-Yao Report: Report to the Greensboro City Attorney*. December 15, 2003.

reading of the report's appendices required technical skills (that most of the report's readers lack) and great tolerance for numerical detail. When the actual numbers were finally examined, it became clear that Dr. Linz had overstated the basis of his strongly-worded conclusion. Put simply, Dr. Linz' numbers contradicted his words.



The results of Dr. Linz' analyses are plotted in Figure 3.1. The green bars report the ambient crime levels²⁴ for Greensboro's "control" neighborhoods that have no taverns and no SOBs. The blue and red bars report the ambient crime levels for neighborhoods with taverns and neighborhoods with adult cabarets, respectively. To facilitate interpretation, I have fixed the ambient crime levels in control neighborhoods at 100 percent; the ambient effects in tavern neighborhoods (blue bars) and adult cabaret neighborhoods (red bars) are easily interpreted, thus, as multiples of the control neighborhood effects (green bars).

Since the social, demographic, and economic variables that are presumed to "cause" crime vary across neighborhoods, unadjusted crime levels may be deceiving. To control for these confounding effects, Dr. Linz adjusted his raw numbers with a statistical model whose technical details will not be discussed here. As the adjusted effects plotted in Figure 3.1 show, Dr. Linz found that ambient crime in tavern neighborhoods (blue bars) range from 148 percent (violent crimes) to 229 percent (sexual crimes) of the ambient crime in control neighborhoods. Since tavern neighborhoods are the criminological "gold standard" of ambient crime, that result

²⁴ I use the term crime "levels" because, strictly speaking, crime "rates" are difficult to tease out of police CFSs. I will return to this issue later.

was expected.²⁵ What Dr. Linz did not expect, however, was that adult cabaret neighborhoods (red bars) would have more crime than the tavern neighborhoods (blue bars).

Crime-related secondary effects in Greensboro's adult cabaret neighborhoods ranged from 175 percent (for property crime) to 307 percent (for sexual crime) of the ambient crime levels in control neighborhoods. These effect estimates are large in every sense and, of course, they are not surprising. To me, the only surprise was that the estimates in Figure 3.1 were reported in a study commissioned by a consortium of SOB plaintiffs.

3.2 DAYTONA BEACH, 2004

In 2004, Dr. Linz collaborated with Dr. Randy D. Fisher on a Daytona Beach secondary effect study.²⁶ With minor exceptions, the design of the Daytona Beach study was identical to the Greensboro design.²⁷ Analyzing CFSs once again, Drs. Linz and Fisher concluded that adult cabarets, had no significant crime-related secondary effects:

We are able to account for crime events in Daytona Beach with a moderately high level of accuracy using variables found by other researchers to be related to crime...The social disorganization variables and especially the presence of an (*sic*) alcohol beverage retail sale establishments in the blocks (that did not feature adult entertainment) accounts largely for this explanatory power. The presence of an adult cabaret in the census block explained only to (*sic*) a trivial amount of variability in crime incidents when these other variables were considered ... From these analyses we are able to reliably conclude that once we control for variables

²⁵ Most of the research on the relationship between taverns and ambient crime risk is due to my colleague of 30 years, Dennis W. ("Denn") Roncek. See D.W. Roncek and M.A. Pravatiner. Additional evidence that taverns enhance nearby crime. *Social Science Research*, 1989, 73:185-188.

²⁶ *Evaluating Potential Secondary Effects of Adult Cabarets in Daytona Beach, Florida: A Study of Calls for Service to the Police in Reference to Ordinance 02-496* by Daniel Linz, Ph.D., Randy D. Fisher, Ph.D. and Mike Yao, April 7th, 2004. Dr. Fisher is an associate Professor of Psychology at the University of Central Florida. He is also a prolific witness for SOB plaintiffs.

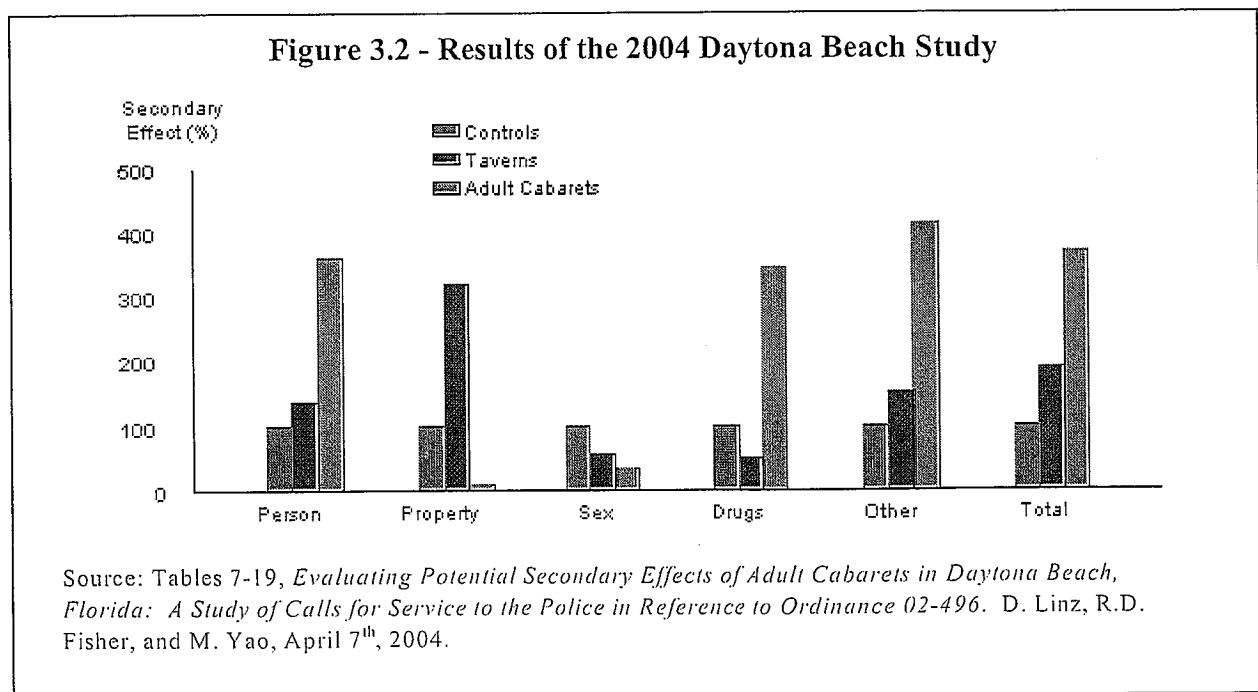
²⁷ Since the Daytona Beach SOBs were adult cabarets, Linz, Fisher, and Yao excluded bookstores and video arcades from the study. Instead of defining "neighborhoods" as Census Block Groups, in Daytona Beach, Linz, Fisher, and Yao used Census Tracts. The Greensboro and Daytona Beach designs are otherwise identical.

known to be related to crime there is not a meaningful relationship between the presence of an adult cabaret in the neighborhood and crime events.²⁸

This conclusion is worded more cautiously than the conclusion in Greensboro. Indeed, the authors go so far in the Daytona Beach report as to admit that, as in Greensboro, the Daytona Beach results amount to statistically significant crime-related secondary effects:

There are analyses reported below where there are small but statistically significant relationships due to the exceptionally large N (sample size) employed in the analyses (at times over 1,100 census blocks)...[But] we favor "strength" over a technical "significance."²⁹

This is a highly technical statistical issue, of course. In my opinion, Drs. Linz and Fisher misunderstand the assumptions of their model as well as the statistical problem of an "exceptionally large N" that, in their opinion, obviates the statistical model. Put simply, they are incorrect.



Notwithstanding the large *statistical* size of their effect estimates, the effect estimates reported by Drs. Linz and Fisher in Daytona Beach are *substantively* large. Figure 3.2 plots the

²⁸ P. 36 (counting the title sheet as p. 1) of the Linz-Fisher-Yao Daytona Beach study.

²⁹ P. 23 (counting the title sheet as p. 1) of the Linz-Fisher-Yao Daytona Beach study.

results of the Daytona Beach analyses using the same conventions used in Figure 3.1 (for Greensboro). The ambient crime levels in control neighborhoods (green) are fixed at 100 percent again so that the levels in tavern neighborhoods (blue) and adult cabaret neighborhoods (red) can be interpreted as multiples of the controls. With two exceptions, adult cabaret neighborhoods have higher ambient crime levels than tavern neighborhoods. Given the well-known relationship between taverns and ambient crime, the Daytona Beach analyses corroborate the consensus finding of the literature. Like the broader SOB class, adult cabarets, pose large, statistically significant ambient public safety hazards.

Figure 3.2 speaks for itself. Tavern neighborhoods (blue) have 90 percent more total crime than control neighborhoods (green). Adult cabaret neighborhoods (red) have 270 percent more total crime than control neighborhoods (green). In substantive terms then, taverns have *large* secondary effects and adult cabarets have even *larger* secondary effects. The fact that these effect estimates are also *statistically* large adds little to our understanding of Figure 3.2.

The estimates *are* statistically large, of course – *i.e.*, statistically *significant* – and that poses a dilemma for Drs. Linz and Fisher. If the estimates were statistically small, Drs. Linz and Fisher could argue that they were due to chance (regardless of their substantive size). Denied this solution to the dilemma, Drs. Linz and Fisher argue that statistical significance is an artifact of an “exceptionally large N.” This is a specious argument, however, on two grounds. First, samples of 1,100 are not large enough to obviate the statistical model used by Drs. Linz and Fisher. But second, if samples of 1,100 *were* large enough to obviate the statistical model, as claimed, *all* of effect estimates would be statistically significant. In fact, of the 84 parameter estimates reported by Drs. Linz and Fisher, 42 are statistically significant and 42 are not. I will return to this issue in Section 3.4 below.

3.3 PALM BEACH COUNTY, 2004

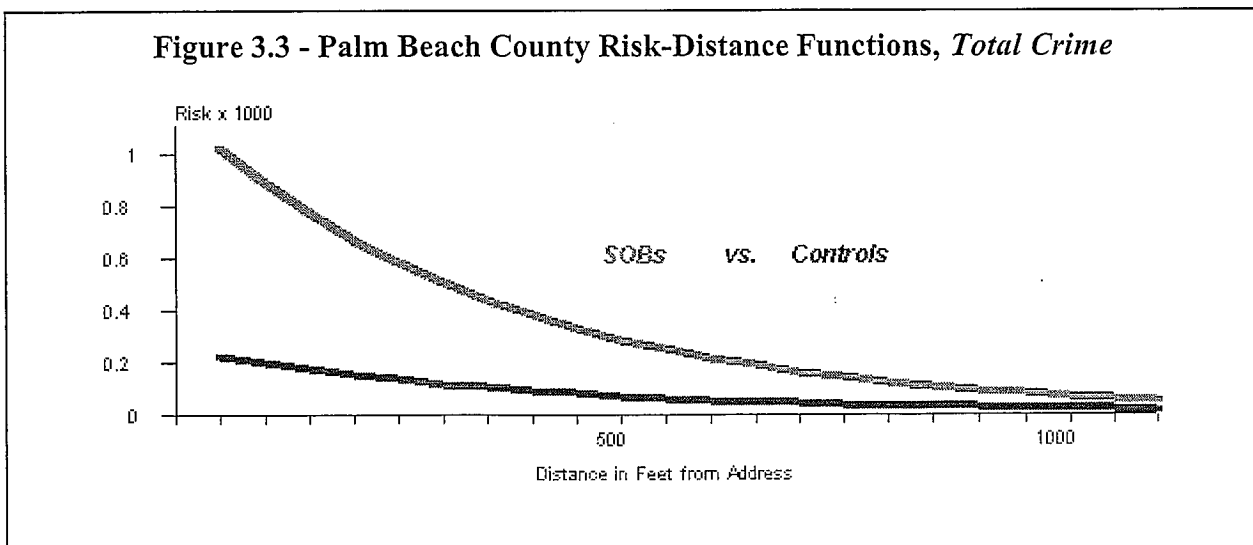
Comparing 911 calls to the addresses of nine adult and seven non-adult cabarets in Palm Beach County, FL, Dr. Terry A. Danner found that the adult cabaret addresses had fewer crime-related 911 calls (2.5 per month *vs.* 2.9 for SOB addresses) but more order-related 911 calls (3.1 per month *vs.* 2.0 for SOB addresses). Based on these comparisons, Dr. Danner concluded that the contrast “does not provide compelling evidence that the addition of various levels of nude dancing to the ‘nightclub type environment’ produces a pattern of crime and public disorder that appears to be uniquely attributable to the adult cabaret category of business.”³⁰

³⁰ P. 8, *The Crime-related Secondary Effects of Adult Cabarets in Palm Beach County* by Terry A. Danner, Ph.D. Report submitted in *Palm Beach County v. Casablanca East*, CA-02-03813 AF, Circuit Court, 15th Judicial Circuit, Palm Beach County, 2005. A professor of criminal justice at St. Leo’s University, Dr. Danner is a prolific expert for the SOB industry.

Dr. Danner's idea of comparing adult and non-adult cabarets makes good sense. The legal difference between adult and non-adult cabarets is, after all, the quantity and/or quality of clothing worn by employees. Changing the quantity and/or quality of clothing changes the non-adult cabaret into an adult cabaret and *vice versa*. It follows from this argument that ambient crime rate differences between adult and non-adult cabarets must be due to nudity.

Aside from the idea of comparing adult and non-adult cabarets, however, Dr. Danner's study is problematic in two respects. First, Dr. Danner uses 911 calls to measure ambient crime risk. Although 911 calls are *correlated* with ambient crime risk, however, the correlation is weak at best. Second, Dr. Danner considers only the subset of 911 calls to the immediate addresses of the adult and non-adult cabarets. Calls to *nearby* addresses are excluded. If ambient crime risk "seeps out" across the adult cabaret neighborhood, of course, as the theory predicts, excluding these calls biases the secondary effect estimate in an unknown way.

Irvine colleagues Valerie Jenness, James W. Meeker, and I were retained by Palm Beach County to evaluate and, if necessary, replicate Dr. Danner's study. Given the problematic use of address-specific 911 calls, we questioned Dr. Danner's conclusion.³¹ Our replication used the same adult and non-adult cabaret sites. Instead of using 911 calls, however, we used crime incident reports; and instead of restricting the analyses to the specific addresses, we included all crime incidents that occurred within 1,100 feet of the adult and non-adult cabarets.



The results of our replication are plotted in Figure 3.3. In terms of total crime, SOBs (in red, nine adult cabarets) and controls (in blue, seven non-adult cabarets) are both risky places.

³¹ *Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the County Attorney, Palm Beach County, Florida.* Valerie Jenness, Ph.D., Richard McCleary, Ph.D., and James W. Meeker, J.D., Ph.D. August 15, 2007.

Moving toward an "average" site, whether SOB or control, victimization risk rises. Moving away, risk diminishes. With that said, compared to control sites, SOB sites are much riskier on average. How much riskier? At 500 feet, approximately one long city block, ambient risk at the SOB is four times greater. At 1,000 feet, the risk is substantially lower for all sites. But even at that distance, SOB sites are 3.5 times riskier than control sites.

Although risk-distance plots have been widely used to document the ambient crime risks at "nuisance" sites, including SOBs,³² most of uses have foregone statistical significance tests of the plots. Given the quantity and quality of data that were available in Palm Beach County, we were able calculate confidence intervals for the risk-distance functions plotted in Figure 3.3. At the conventional 95 percent confidence level, both the SOB (red) and control (blue) functions are statistically significant as is their difference. Rejecting both null hypotheses then, the functions plotted in Figure 3.3 have the obvious interpretation.

Some readers may question the use of *total* crime. Why not some subcategory of crimes? Total crime is the convention in secondary effects studies – all of the studies referenced in Table 1 use total crime – and the convention rests on theoretical and practical grounds. As a practical matter, breaking total crime down into subcategories is expensive. As a theoretical matter, SOBs are expected to generate "victimless" vice crimes (prostitution, drugs, *etc.*), predatory crimes (robbery, assault, *etc.*) that are associated with vice, and opportunistic crimes (vandalism, theft, *etc.*) associated with the influx of strangers to the SOB neighborhood. In short, *total* crime.

Nevertheless, to investigate the statistical robustness of our findings, Jenness, Meeker, and I replicated the risk-distance analyses for property crime (burglary, theft, vandalism, *etc.*), personal crime (robbery, assault, *etc.*), and the residual category of all other crime (including most notably, vice crimes). This is not the only possible taxonomy, of course; but it is a reasonable taxonomy and one that is easily understood. The risk-distance functions for these three complementary crime categories lead to the same interpretation and conclusion.

3.4 CONCLUDING REMARKS ON ADULT CABARETS

The three studies of adult cabarets reviewed here illustrate a range of designs. Two use 911 calls, one uses crime incident reports. Two compare SOB and control neighborhoods, one compares adult and non-adult cabarets. Yet all three studies support the conclusion that adult cabarets have large, statistically significant secondary effects.

Nevertheless, there is a remarkable difference in how the studies interpret their findings. Whereas the Greensboro and Daytona Beach studies find large, statistically significant secondary

³² See, e.g., *An Analysis of the Relationship between Adult Entertainment Establishments, Crime, and Housing Values*. M. McPherson and G. Silloway. Minnesota Crime Prevention Center, Inc. October, 1980.

effects, the authors give their findings the opposite interpretation. The secondary effect study summarized in Figure 3.2 was commissioned by the plaintiffs in *Daytona Grand v. City of Daytona Beach*.³³ Drs. Fisher and Linz used a two-prong argument to challenge the City's secondary effects evidence. First, the studies relied on by the City were methodologically flawed. Second, local data showed that neighborhoods with adult businesses had the same number of 911 calls as other neighborhoods. To refute these arguments, the City cross-examined the experts. The trial court was unimpressed, however, and struck down those parts of Daytona Beach ordinance that regulated nudity.

The trial court's decision in *Daytona Grand* provoked a mild panic among Florida governments. Two years later, however, the U.S. Eleventh Circuit reversed the trial court.³⁴ The Eleventh Circuit decision reaffirmed the *Renton* standard in the most crucial respect: If the government's interpretation of its secondary effects evidence is "reasonable," there is no need to show that its interpretation is the *only* reasonable interpretation. The fact that plaintiffs can draw alternative conclusions from the evidence does not bar the government from "reaching other reasonable and different conclusions."

The Eleventh Circuit addressed three other relevant issues. First, the panel explicitly rejected the methodological arguments of Paul, Linz and Shafer.³⁵ Second, the panel rejected the use of 911 calls to demonstrate the absence (but *not* the presence) of a secondary effect. Third, the panel noted, as I have, that several of the secondary effect estimates reported by Drs. Linz and Fisher were statistically significant.

The experts are no doubt correct that factors other than the presence of adult theaters affect crime rates in Daytona Beach: crime is plainly caused by many factors. But that does little to undermine the City's conclusion that adult theaters *also* affect crime rates, especially when the experts' own analysis shows a statistically significant correlation between adult theaters and increased crime in half of the areas in the study.³⁶

This observation by the Eleventh Circuit panel is consistent with Figure 3.2 above.

³³ *Daytona Grand Inc. v. City of Daytona Beach, Florida* 410 F. Supp. 2d 1173 (2006).

³⁴ *Daytona Grand, Inc. v. City of Daytona Beach, Florida* No. 06-12022 (11th Cir. 2007)

³⁵ Paul, Linz, and Shafer (Government regulation of adult businesses through zoning and anti-nudity ordinances: Debunking the legal myth of negative secondary effects. *Communication Law and Policy*, 2001, 6:355-391) argue that the government's secondary effects evidence must satisfy *Daubert* admissibility criteria.

³⁶ *Id.*, at 47-48

4. THE "COMMERCIALLY NATURAL IF NOT UNIVERSAL" SOB

In the past, one of the most common SOB business models combined the sale of adult DVDs (or tapes) with coin-operated booths where the DVDs could be viewed. In principle, the viewing booths allowed customers to sample DVDs to inform their purchasing decisions. This SOB subclass was so common twenty years ago that Justice Souter called it the "commercially natural, if not universal" model.³⁷ Although the subclass continues to flourish, competition from other SOB business models appears to have made inroads. Because private (and semi-private) viewing booths create opportunities for sexual contact, this SOB subclass poses special problems for routine policing.

4.1 CENTRALIA, 2003

Centralia, Washington is a small city (*ca.* 14,000 population) on Interstate 5 between Olympia and Portland. In December, 2003, an adult bookstore opened in a building that had been a residential dwelling. In addition to selling videos for off-premise viewing, the SOB had coin-operated viewing booths. Shortly after opening its doors for business, the City moved to enforce zoning ordinances prohibiting SOBs in residential neighborhoods. When the SOB filed a lawsuit,³⁸ the City defended itself with the crime incident statistics summarized in Table 4.1.

Table 4.1 - UCR "Serious" Crime, Centralia, WA

	Before	After	Change	Odds Ratio
SOB Area	9	17	1.889	—
All Other Centralia	3358	3358	0.966	1.956
Control Areas	23	19	0.826	2.058

Source: Richard McCleary, *Crime Risk in the Vicinity of a Sexually Oriented Business: Final Report to the City Attorney's Office*. February 28th, 2004.

In the impact area, defined by a 250-foot radius around the SOB site, serious crime rose by nearly 90 percent after the SOB opening. In the rest of Centralia, during the same period, serious crime dropped by nearly four percent. The statistical significance of these before-after contrasts can be tested by comparing the value of the odds ratio reported in Table 4.1 to its standard error. By chance alone, odds ratios larger than this one occur less than eight times in

³⁷ City of Los Angeles v. Alameda Books, Inc, 535 U.S. 425 (2002) at 465.

³⁸ *Washington Retailtainment, Inc. et al. v. City of Centralia, Washington*. U.S. District Court for the Western District of Washington at Tacoma, Case No. C03-5137FDB

one thousand trials or samples.

Although it is highly unlikely that the effect reported in Table 4.1 is due to chance, it is always possible that the observed effect is due to some uncontrolled threat to internal validity. If that were the case, we would expect crime to rise when any other type of business, say, for example, a bread store, moves into a vacant residential structure. In fact, three businesses *did* open in Centralia during this time frame. But as reported in Table 4.1, ambient crime in a 250-foot radius around the sites dropped when these non-SOBs opened.

4.2 LOS ANGELES, 2008

In 1977, the City of Los Angeles conducted a comprehensive secondary effects study³⁹ that found, among other things, an association between ambient crime and SOB concentrations. Based on this finding, Los Angeles required a minimum distance between SOB sites. When SOB began to evade the minimum distance rule by merging, the City amended its ordinance to require minimum distances between distinct *activities*. The amendment forced “commercially natural if not universal” SOB to segregate DVD sales from viewing booths.

In 1995, two affected SOB challenged the amended ordinance. Because the 1977 study did not address the secondary effects of combining multiple activities under one roof, it was argued, Los Angeles had no evidence that multiple-activity businesses generated secondary effects. The trial court agreed and the Ninth Circuit Court affirmed. The U.S. Supreme Court reversed, reaffirming *Renton* and allowing that a government could infer, from the findings of the 1977 study, that concentrations of distinct *activities* – in particular, DVD sales and viewing booths on the same site – generated secondary effects. In a complicated split decision, the Court remanded the case for trial.

In 2006, the City of Los Angeles retained me to examine the secondary effects rationale for the amended ordinance. Would dividing a multiple-activity SOB into single-activity SOB, as required by the amended ordinance, yield a reduction in ambient crime risk? Ideally, this question could be addressed by finding a member of the “commercially natural if not universal” SOB subclass that had been divided into discrete units that sold DVDs (but had no booths) and that operated coin-operated viewing booths (but did not sell DVDs). If the amended ordinance had a legitimate rationale, one would expect the ambient risk for the multiple-activity SOB to be greater than the sum of the risks for its constituent single-activity SOB.

Unfortunately, there were no ideal “natural experiments” of this sort to be found in Los Angeles. Alternatively, using the same logical argument, one could compare the ambient crime

³⁹ Los Angeles Dept of City Planning, *Study of the Effects of the Concentration of Adult Entertainments in the City of Los Angeles* (City Plan Case No. 26475, City Council File No. 74-4521-S.3, June 1977) as cited in *Alameda Books* at 429.

risks for multiple-activity SOBs – which I will call “bookstore-arcades” – to the ambient risks for single-activity “bookstores” and “arcades.” Since there were no *pure* arcades⁴⁰ in Los Angeles, however, only part of this alternative design could be implemented. Though less than the ideal – which is almost always true – the partial design tells us much about the phenomenon.

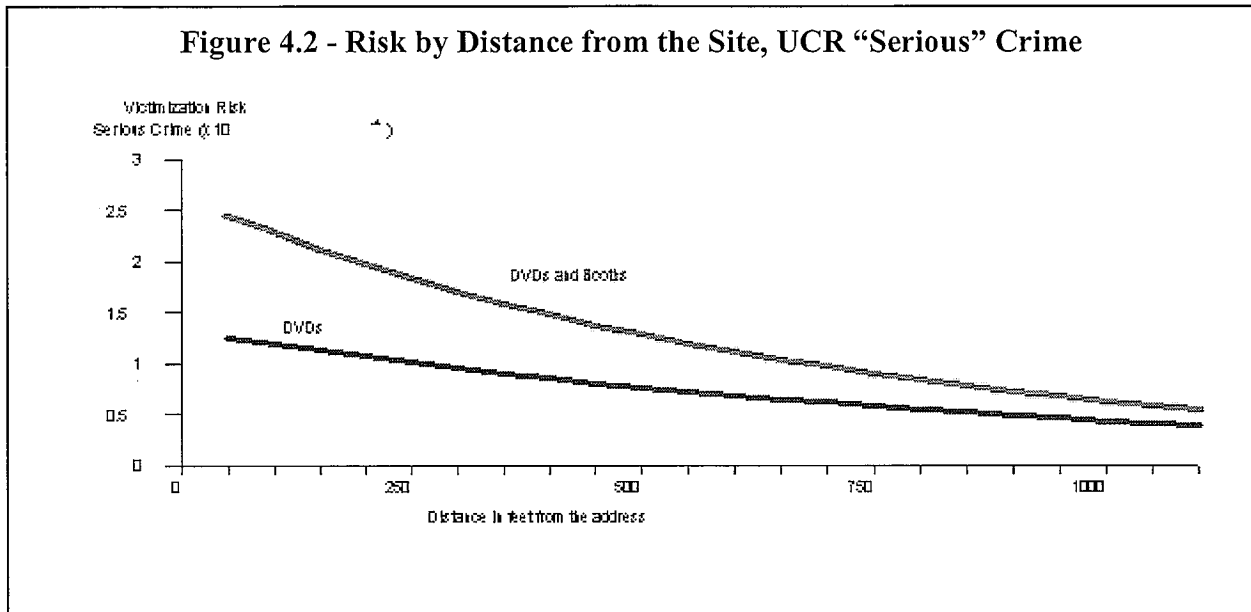


Figure 4.2 plots the risk-distance functions for twelve bookstore-arcades (in red) and seven bookstores (in blue). The vertical axis is calibrated in annual UCR Part I (“serious”) crime incidents (homicide, aggravated assault, robbery, rape, burglary, theft, auto theft, and arson) per square mile. The horizontal axis is calibrated in distance from the site. As Figure 4.2 shows, both SOB subclasses are risky places. Since both risk-distance functions are statistically significant at the conventional 95 percent confidence level, both SOB subclasses have secondary effects. Compared to bookstores, however, bookstore-arcades are riskier at all distances and the difference between the two functions is significant.

4.3 CONCLUDING REMARKS

Some subclass specific risks arise because the defining characteristic of a subclass or creates idiosyncratic opportunities for particular types of crime. Other subclass-specific risks arise when the defining characteristic of the subclass compromises the effectiveness of common policing strategies. The relatively higher ambient risks of bookstore-arcades accrues from both sources. Nevertheless, the failure of economical policing strategies is the greater problem. The optimal policing strategy for SOBs with viewing booths requires that police inspect the interior,

⁴⁰ SOB arcades that sell *no* adult merchandise whatsoever are rare. But there are many that derive very little revenue from the same of adult merchandise.

placing officers at risk of injury. Accordingly, policing this subclass requires specially training and equipment, prior intelligence, backup manpower, and other resources.

Absent viewing booths, the optimal policing strategy rests heavily on routine drive-by patrols. Since the ambient risk function for this subclass can cover a several- block area (see Figure 4.2), drive-by patrols are an efficient way to provide a visible police presence to the neighborhood. Visibility is *per se* a deterrent. Routine patrols can keep watch for known offenders and suspicious activity. When problems are spotted, the routine patrol can forward the information to a specialized unit or, if necessary, handle it on the spot, requesting backup resources only as needed. Needless to say, neighborhood patrols by plainclothes officers in unmarked cars would be inefficient. Whereas visibility is central to policing SOB bookstores, the presence of viewing booths requires invisible (plainclothes) police presence inside the SOB. The optimal policing strategies the two subclasses are incompatible.

5. "OFF-SITE" SOBs

Suppose that distinct SOB subclasses has a unique "average" secondary effects. This implies that one of the subclasses would have the lowest effect. The effect might be so minimal as to fall below the Constitutional threshold where a government could regulate that subclass. Or if the effect fell just above the threshold, the configuration and operation of the subclass might be "tweaked" to force the effect below the threshold.

What might this "bullet-proof" SOB subclass look like? Common sense suggests that it would be a store that sells adult merchandise for *off-site* use. Customers drive to the store; park; go in; make a purchase; come out; and drive away. Except for the merchandise purchased, the SOB's routine activity is indistinguishable from the activities of convenience stores, dry cleaners, and libraries. Common sense argues then, that the secondary effects of off-site SOBs are likely to be no larger than the effects of convenience stores, dry cleaners, and libraries.

Off-site SOBs – book and DVD stores – have made this common sense argument and some courts have found it persuasive. In *Encore Videos, Inc. v. City of San Antonio*,⁴¹ an ordinance classified off-site book and DVD stores as SOBs if their inventories included 20 percent adult material. When the ordinance was challenged, the Fifth Circuit found that San Antonio had relied on studies that not addressed the (presumably) unique effects of off-site SOBs. In the Court's view, moreover, the City's rationale for ignoring the differences between on-site and off-site businesses was weak.

Off-site businesses differ from on-site ones, because it is only reasonable to assume that the former are less likely to create harmful secondary effects because of the fact that consumers of pornography are not as likely to linger in the area and engage in public alcohol consumption and other undesirable activities.⁴²

Other factors influenced the decision, of course, and a more recent Fifth Circuit decision clarifies *Encore Videos* in the most crucial respect.

Nevertheless, based on common sense, the Court's theoretical rational is appealing. It ignores theoretically relevant characteristics of off-site SOBs, however. To the extent that off-site SOBs attract similar "soft-target" patrons, the routine activity theory of hotspots outlined in Section 1 above predicts that the subclass will have similar secondary effects. The findings of two recent secondary effects studies corroborates the theory.

⁴¹ 330 F.3d 288 (5th Cir. 2003), *cert. denied*, 540 U.S. 982 (2003), and opinion clarified, 352 F.3d 938 (5th Cir. 2003).

⁴² *Id.* at 294-5

5.1 SIOUX CITY, 2006⁴³

Adult businesses are nothing new to Sioux City, Iowa. Two adult businesses had operated without incident in the city's older downtown area for decades. Although both businesses sold sexually explicit DVDs for off-site use, most of their revenue came from coin-operated viewing booths. Nevertheless, strictly speaking, both belonged to the adult business model that Justice Souter characterized as the "commercially natural, if not universal" model. In terms of "look and feel," the two businesses were indistinguishable from adult businesses in larger cities.

In March, 2004, a third SOB opened in Sioux City. Unlike the two existing SOBs, *Dr. John's* had no viewing booths. It was located in a newer area of the city and lacked the garish appearance associated with adult businesses generally and, in particular, with Sioux City's two existing SOBs. During subsequent litigation, the trial judge commented on this fact:

[T]he first impression of the store is a far cry from the first image that most people would likely have of an "adult book store" or "sex shop." There is nothing seedy about the neighborhood, store building, or store front. In fact, from a quick drive-by, one would likely assume that the business was a rather upscale retail store for women's clothing and accessories. There are no "adult" signs or banners proclaiming "peep shows," "live entertainment booths," "XXX movies," "live models," "adult massage," or any of the other tasteless come-ons all too familiar from adult entertainment stores that exist in virtually every American city of any size and which one may find scattered along interstates and highways even in rural America.⁴⁴

The trial judge's drive-by impression may overstate the point. Few passers-by would mistake *Dr. John's* for anything other than what it was.

Regardless of its look and feel *Dr. John's* was located in a prohibited zone. When Sioux City attempted to enforce its zoning code, *Dr. John's* sued, arguing that off-site adult businesses lacked the typical crime-related secondary effects associated with adult businesses. To counter this argument, Sioux City produced police reports of incidents occurring within 500 feet of *Dr.*

⁴³ This case study is based on a paper written by Alan C. Weinstein and me: "Do 'off-site' adult businesses have secondary effects? Legal doctrine, social theory, and empirical evidence." The paper was presented in Atlanta at the November, 14th, 2007 meeting of the American Society for Criminology.

⁴⁴ *Doctor John's, Inc. v. City of Sioux City, IA.*, 389 F.Supp.2d 1096, 1103 (N.D. Iowa 2005), quoting from court's ruling on plaintiff's motion for preliminary injunction.

John's during the four years between January 1st, 2002 and December 31st, 2005. For purposes of quasi-experimental control, reports of incidents occurring within 500 feet of a nearby motel were also retrieved.

To control plausible threats to internal and statistical conclusion validity, the City collected analogous police incident reports for an adjacent control area, a 500 circle centered on a non-SOB. Because the two circles are tangent to each other and face the same thoroughfare, they have similar traffic flows. And because they have similar mixes of businesses and similar incident rates, their underlying ambient crime risks are similar. Because the underlying risk factors are identical in the two circles, any effect found in one of the circles should be found in the other as well. But that was not the case.

Table 5.1 - Total Crime Before and After the Opening of <i>Dr. Johns</i>						
Total Incidents	<i>Before</i>		<i>After</i>		<i>After/Before</i>	<i>Ratio</i>
	<i>N</i>	<i>Rate</i>	<i>N</i>	<i>Rate</i>		
Dr. John's	17	7.8	41	22.4	2.86	
Control	44	20.3	46	25.1	1.24	2.31
"Victimless" Excluded	<i>Before</i>		<i>After</i>		<i>After/Before</i>	<i>Ratio</i>
	<i>N</i>	<i>Rate</i>	<i>N</i>	<i>Rate</i>		
Dr. John's	12	5.5	31	16.9	3.08	
Control	26	12.0	32	17.5	1.46	2.11

The first rows of Table 5.1 breaks down total incidents for the 793 days before and 668 days after the SOB opened. In the *Dr. John's* circle, the annual crime rate rose from 7.8 to 22.4 incidents per year, an increase of approximately 190 percent. Crime in the control circle rose as well but the increase was more modest. The rise from 20.3 to 25.1 incidents per year amounts to a 25 percent increase. Based on a crude comparison of these rates, *Dr. John's* appears to pose an ambient victimization risk.

To test whether the effect might be a chance fluctuation, we take advantage of the fact that crime incidents in the two circles are not different than Poisson (Haight, 1967: 94-95). Under a Poisson hypothesis, the after/before odds for the *Dr. John's* and control circles, reported in Table 2, are distributed as unit-mean log-Normal variables. The ratio of the two odds, also distributed as unit-mean log-Normal, the a maximum-likelihood estimate of the secondary effect. In this instance,

$$\text{Odds Ratio} = 2.31$$

implies that, compared to the control circle, ambient crime rose by 131 percent after *Dr. John's* opened for business. Because an effect estimate of this magnitude or larger occur by chance with probability smaller than 0.01, the null hypothesis is rejected.

The second set of rows in Table 5.1 reports the analogous breakdown with "victimless" crime incidents excluded. If the opening of *Dr. John's* lead to heightened police surveillance, it is possible that the before-after effect is a simple "instrumentation" artifact. Indeed, in a critique of the 1977 Los Angeles secondary effects study relied upon in *Alameda Books*, Paul, Linz and Shafer cite this possibility:

Although the findings of this study suggested high levels of criminal activity within these clusters, any implication that this is connected to the presence of adult businesses is invalidated by the fact that the researchers admitted to "stepped up" surveillance within these areas. Put simply, the police most likely found greater amounts of crime in the adult establishment areas because they were trying harder to find it.⁴⁵

Whereas this explanation might be plausible for prostitution, drugs, and other "victimless" vice crimes, however, it is implausible for homicide, robbery, and the other "street" crimes reported in the 1977 Los Angeles study. On the contrary, heightened police surveillance will reduce the risk of these crimes. So if the *instrumentation* hypothesis is plausible, the secondary effect should vanish when "victimless" crimes are excluded. As reported in Table 5.1, excluding "victimless" crimes from the estimate leads to the same conclusion.

5.2 MONTROSE, 2003⁴⁶

The relevance a the government's secondary effects evidence can be challenged through either of two arguments. The first is predicated on the fact that the evidence has ignored some *relevant* difference among distinct SOB subclasses. Challenges by off-site SOBs illustrate this argument. The second is predicated on the fact that the evidence has ignored some idiosyncratic (but nevertheless *relevant*) local condition. In 2004, an SOB in rural Kansas used criminological theory to argue that the sparsely-populated rural environment precluded the possibility of secondary effects. And since the local government had not studied this issue prior to enactment, the ordinance should be struck down.

⁴⁵ P. 379, "Government regulation of 'adult' businesses through zoning and anti-nudity ordinances: de-bunking the legal myth of negative secondary effects." *Communication Law and Policy*, 2001, 6:355-391.

⁴⁶ This case study is based on "Rural hotspots: the case of adult businesses." *Criminal Justice Policy Review*, 2008, 19:1-11.

Rejecting this argument, the trial court granted the defendant's summary judgment motion. On appeal, however, in *Abilene Retail*,⁴⁷ the Tenth Circuit agreed with the plaintiff's interpretation of criminological theory:

All of the studies relied upon by the Board examine the secondary effects of sexually oriented businesses located in urban environments; none examine businesses situated in an entirely rural area. To hold that legislators may reasonably rely on those studies to regulate a single adult bookstore, located on a highway pullout far from any business or residential area within the County would be to abdicate out "independent judgment" entirely. Such a holding would require complete deference to a local government's reliance on prepackaged secondary effects studies from other jurisdictions to regulate any single sexually oriented business of any type, located in any setting.⁴⁸

Because the SOB was located in an isolated rural area, and because the County had no evidence to suggest that rural SOBs would have secondary effects, the Tenth Circuit reversed the summary judgment and remanded the case for trial.

Ignoring the question of *relevance*, the argument's predicate is correct. Because most criminological research is conducted in urban areas, criminological theories do not *necessarily* generalize to rural areas. In fact, it is entirely possible that some obscure criminological theory might not generalize to rural areas and populations. But the relevant routine activity theory of hotspots, outlined in Section 1 above, generalizes to any accessible area, urban, suburban, or rural. This is corroborated by a recent case study. When an SOB opens on an interstate highway off-ramp in a sparsely populated rural community, ambient crime risk rises precipitously, turning the community into a rural "hotspot of predatory crime."

An unincorporated village of 250 residents, Montrose, Illinois is located on I-70 midway between St. Louis and Indianapolis. I-70 separates Montrose's residential dwellings from its businesses: a convenience store-gas station, a motel, and for a short period, a tavern. Other than gas and lodging, cross-country travelers had no reason to exit I-70 at Montrose prior to February, 2003. In that month, the *Lion's Den* opened on a service road within 750 feet of the I-70 off-ramp. A large, elevated sign let I-70 travelers know that x-rated videos, books, and novelties could be purchased "24/7." The store was successful by all accounts.

The residents of Montrose did not welcome the new business. Unlike the village's other businesses, the *Lion's Den* was located on the residential side of I-70. Complaining that the store

⁴⁷ *Abilene Retail #30, Inc. v. Board of Commissions of Dickinson County, Kansas*, 492 F.3d 1164, 1175 (10th Cir. 2007)

⁴⁸ *Id.* at 1175.

disrupted their idyllic life-style, villagers picketed the site on several occasions. Traffic was a chronic complaint. The narrow gravel access road connecting the site to I-70 could not support the weight of big-rig trucks; it soon fell into disrepair. The *Lion's Den* offered to build a new, larger access road from I-70 to its site. But fearing an even larger volume of traffic, the villagers declined the offer.

Like all Illinois villages, Montrose had no SOB ordinances. The *Lion's Den* was located within 1,000 feet of a public park, however, in violation of an Illinois statute. When the State moved to enforce its statute, the *Lion's Den* sued, arguing that "off-site" SOBs could not generate the public safety hazards associated with adult cabarets, video arcades and other on-site SOBs. The trial in *State v. The Lion's Den et al.* lasted four days. The court upheld the statute and, in July, 2005, the Montrose *Lion's Den* closed its doors.

Table 5.2 - Crime-Related Secondary Effects of a Rural Adult Business

	<i>Open</i>		<i>Closed</i>		<i>Log Effect</i>	λ	<i>t</i>
<i>Property Crimes</i>	23	9.54	15	7.20			
<i>Personal Crimes</i>	3	1.24	5	2.40	Constant	-3.267	-17.60
<i>All Other Crimes</i>	28	11.61	9	4.32	Open	0.475	2.06
<i>Total Crimes</i>	54	22.39	29	13.92		$e^{0.475} \approx 1.61$	

At the trial, the State presented evidence of the *Lion's Den's* adverse impact on the surrounding area: sexually explicit litter and decreased use of the nearby park. Neither party presented local crime data, however. Table 5.2 reports data bearing on this issue. During the 1,642-day period beginning January 1, 2002, the Effingham County Sheriff's Office recorded 83 crime incidents in the Village. The most common incidents involved the theft or destruction of property. Incidents of disorder and indecency, traffic-related incidents, and alcohol-drug offenses were nearly as common. But Incidents involving danger or harm to persons (robbery, assault, etc.) were rare.

The columns labeled "Open" and "Closed" in Table 5.2 break the incidents down into an 881-day segment in which the *Lion's Den* was open and a 761-day segment in which it was closed. Crime rates are 22.39 and 13.92 total incidents per year for the "Open" and "Closed" segments. From these raw rates, it appears that crime risk in Montrose rose when the *Lion's Den* opened and fell when the *Lion's Den* closed. The magnitude of the effect is proportional to the exponentiated effect estimate reported in Table 5.2 ($e^{0.475} = 1.61$). The crime rate in Montrose was 61 percent higher while the *Lion's Den* was open.

Could the effect be due to chance? That is unlikely. The effect estimate reported in

Table 5.2 is statistically significant at the conventional 95 percent confidence level. Could the effect be due a coincidental increase in the frequency of patrols the Effingham County Sheriff? That too is unlikely. Whereas heightened surveillance can exaggerate "victimless" crime rates, heightened surveillance would not *not* produce higher rates of serious crime and, while the *Lion's Den* was open, crime in the Village grew more "serious," including two armed robberies, one committed by a gang of four men wearing ski masks and armed with shotguns. Both armed robberies were committed at site of the *Lion's Den*, moreover, and were the only robberies recorded in the Village's modern history.

The timing of the crime incidents reinforces this point. While the *Lion's Den* was closed, Montrose's modal crime incidents were "drive-off" thefts from the Village's gasoline station and vandalism at the Village's motel. Most of these incidents occurred in daylight and required no immediate response from the Sheriff's Office; and because the businesses were separated from residences by I-70, the modal incidents attracted little attention. While the *Lion's Den* was open, on the other hand, a majority of incidents occurred at night and demanded immediate response; as more incidents began to occur on the residential side of I-70, crime became more noticeable to Village residents.

5.3 CONCLUDING REMARKS

Criminological theory is clear on the threshold question of whether off-site SOBs are exempt. They are not. As it turns out, moreover, the Fifth Circuit had not intended its *Encore Videos* decision to be interpreted as a comment on applicability of criminological theory. Four years later, the Fifth Circuit upheld a Kennedale, Texas ordinance aimed at off-site SOBs.⁴⁹ Unlike the San Antonio ordinance under challenge in *Encore Videos*, the Kennedale ordinance relied on studies of off-site SOBs. The Court took the opportunity, furthermore, to clarify the short note in *Encore Videos* that had been misinterpreted as questioning the applicability of criminological theory.

On March 1st, 2007, exactly one week after the Fifth Circuit's *H and A Land Corp.* decision, a man parked his car in a dark lot near an off-site SOB in Kennedale, Texas. Returning to his car, the man was confronted by a robber and shot.⁵⁰ Though seriously injured, he survived. Governments would not want to rely on anecdotal evidence alone. Nevertheless, anecdotes of

⁴⁹ *H and A Land Corp. v. City of Kennedale, TX.*, 480 F.3d 336 No. 05-11474 (5th Cir. Feb. 22nd, 2007).

⁵⁰ Bourgeois, P. "Man shot outside video store in Kennedale." *Fort Worth Star-Telegram*, March 1st, 2007.

this sort constitute legitimate secondary effects evidence.⁵¹ In addition to its corroborative value, this particular anecdote has some legal relevance because the off-site SOB was a plaintiff in *H and A Land Corp.*

The Tenth Circuit may not have found the Montrose results relevant to *Abeline Retail*. Every case study is unique in some respect, after all; and although the U.S. Census Bureau considers both Effingham County, Illinois and Dickinson County, Kansas to be “rural,” the Tenth Circuit may have focused on idiosyncratic, legally relevant factors. Nevertheless, the case study results demonstrate that, whether urban, suburban, or rural, hotspots are hotspots. Whether the area is urban, suburban, or rural, SOBs attract patrons from wide catchment areas. Because these patrons are disproportionately male, open to vice overtures, and reluctant to report victimizations, their presence attracts offenders, generating ambient victimization risk – a hotspot of predatory crime. This theoretical mechanism operates identically in rural, suburban, and urban areas but, because rural areas ordinarily have lower levels of visible police presence, rural hotspots may be riskier than their suburban and urban counterparts.

Solving the problem by allocating more police to rural areas is politically unfeasible. Governments allocate public safety resources across regions on utilitarian grounds. Per capita allocations have the greatest impact on per capita crime rates. This poses an obstacle to rural problem-oriented policing (Weisheit, Falcone, and Wells, 1999), of course, but it is a rational policy for a government.⁵² Because the targets attracted to the rural hotspot live outside the jurisdiction, and because victimizations are under-reported, ignoring the hotspot is a more realistic strategy.

The future is unclear. The relocation of adult businesses to rural areas parallels the post-war “flight” of inner-cities families. From the perspective of adult business proprietors, the urban environment has become hostile. Zoning codes force adult businesses into “ghettos” where their operations are strictly regulated and where competition with other adult businesses is fierce. Rural areas have few regulations, on the other hand, and little competition; access to interstate highway traffic is a bonus. As urban environments become more hostile, more adult businesses will relocate to rural areas, forcing state and county governments into policy decisions.

⁵¹ See, e.g., *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186, 1195-96 (9th Cir. 2004) (“Anecdotal evidence and reported experience can be as telling as statistical data and can serve as a legitimate basis for finding negative secondary effects ...”).

⁵² For a review of the problems involved in rural policing, see *Community policing in a rural setting*. (by Q. Thurman and E.G. McGarrell; Anderson Publishing, 1997) or *Crime and policing in rural and small-town America* (by R.A. Weisheit, D.N. Falcone, and L.E. Wells; Waveland Press, 1999).

6. METHODOLOGICAL RULES

In the last five years, legislatures and courts have been bombarded with expert opinions from both sides. Plaintiffs' experts argue that *every* government-sponsored secondary effect study is "fatally flawed" while *every* study conducted by a plaintiffs' expert is "methodologically rigorous." Plaintiffs' experts are incorrect, of course, but ignoring this point for the present, the clash of experts raises this question: *How can two sets of experts look at the same data and arrive at different conclusions?* The short answer to this question is that the experts recognize and obey different methodological rules.

A more complete answer requires a discussion of the rules. Like all rules, the rules of statistical inference are unambiguous and binding. Although investigators on both sides of a debate are bound by the same set of rules, the rules can have slightly different interpretations. If investigators frame the research question differently then, or if they make different assumptions, or if they use different statistical models, even following the same rules, they can arrive at different findings. With that point in mind, if an investigator *wanted* to produce a null finding,⁵³ that goal could be achieved by using the weakest possible quasi-experimental design.

6.1 WEAK MEASURES OF AMBIENT CRIME RISK⁵⁴

The most salient difference between government-sponsored secondary effects studies, such as those listed in Table 1, and the industry-sponsored studies that began to appear after the *Alameda Books* decision, is way that *ambient crime risk* is measured. Whereas government-sponsored studies use crime incident reports (e.g., Uniform Crime Reports or UCRs), for the most part, industry-sponsored studies use 911 calls-for-service (CFSs).

Although UCRs and CFSs are roughly comparable under some (but *not* all) conditions, in statistical terms, UCRs are always the "better" measure of ambient crime risk. To explain this important point, define the *crime risk measure* (CFSs or UCRs, e.g.) as the sum of *crime risk* and *noise*:

$$\text{CRIME RISK MEASURE} = \text{CRIME RISK} + \text{NOISE}$$

Defined this way, the *signal-to-noise* ratio as the ratio of *crime risk* to the *crime risk measure*⁵⁵

⁵³ Again, "null finding" means "finding that SOBs have no secondary effects."

⁵⁴ This section and the next are based on R. McCleary and J.W. Meeker, "Do peep shows "cause" crime?" *Journal of Sex Research*, 2006, 43:194-196.

⁵⁵ The terms in the numerator and denominator of this expression are population variances. Although I call this expression the "signal-to-noise ratio," it is the *squared* correlation

$$SIGNAL-TO-NOISE = \frac{CRIME\ RISK}{CRIME\ RISK\ MEASURE} = \frac{CRIME\ RISK}{CRIME\ RISK + NOISE}$$

The higher the signal-to-noise ratio, the “better” the measure. Relative to CFSs, UCRs are a “better” measure of crime risk because they have a higher signal-to-noise ratio.

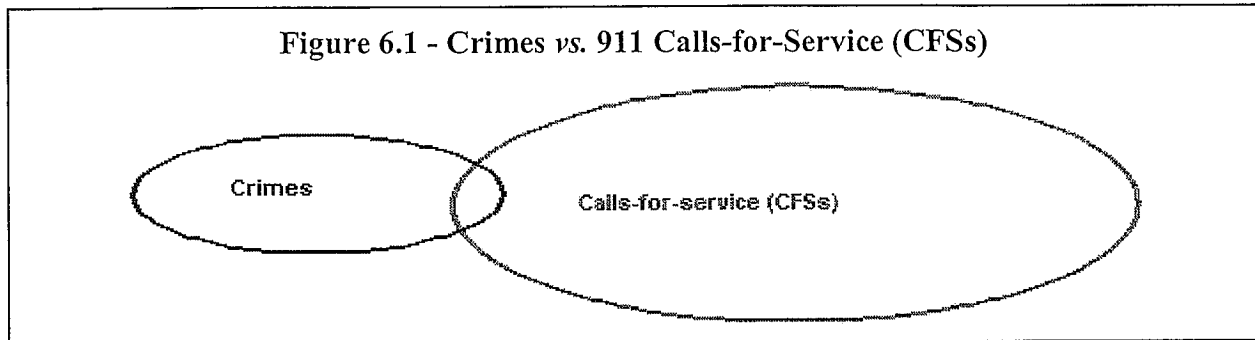


Figure 6.1 depicts the statistical relationship between CFSs and crime risk. In any jurisdiction, CFSs outnumber crimes by a large factor. The relative areas accorded to CFSs (in red) and crimes (in blue) depicts this aspect of the relationship. The signal-to-noise ratio is proportional to the overlapping area. The larger the overlapping area, relative to the total area, the higher the signal-to-noise ratio. In this case, the signal-to-noise ratio is relatively small.

The non-overlapping areas in Figure 6.1 fall into two categories. The first category consists of CFSs that have nothing to do with crime. Examples include duplicated or unfounded CFSs; CFSs that have no apparent basis; and CFSs that are precipitated by false alarms. The second category consists of crimes that circumvent the 911 system and, thus, leave no CFS records. Examples include crimes that the police discover through routine or proactive patrolling and crimes that the police discover through specialized unit activity, especially “victimless” vice crimes, particularly drugs and prostitution.⁵⁶

(or R^2) for crime risk and its measure. See McCleary, R. and J.W. Meeker. Do peep shows “cause” crime? *Journal of Sex Research*, 2006, 43:194-196.

⁵⁶ In the *Annex Books v. City of Indianapolis* decision, e.g., “Specifically, the data revealed that the police made forty one (41) arrests at Annex Books for public masturbation between December 5, 2001 and November 5, 2002. Def.’s Br. at 24. In the before/after crime analysis Dr. Linz conducted, we note that he collected police call data for 2001 and 2003, but not for 2002. We need not delve into the intricacies of Dr. Linz’s analysis in order to conclude, as we do, that the City has rebutted Plaintiffs’ evidence to the contrary on adverse secondary effects. We find the data regarding the number and type of actual arrests at Annex Books for the year period compelling.” (333 F. Supp. 2d 773; 2004 U.S. Dist. LEXIS 17341)

CFSs in the first category tend to *overstate* the crime rate; CFSs in the second category tend to *understate* the crime rate. In addition to errors that *over-* and *under-*state the crime rate, CFSs have errors that limit their use for finer inferences about *where* and *when* crimes occur.

Address-specific ("hotspot") analyses assume that the address recorded on a CFS is the address where the precipitating crime occurred. The address on a CFS instructs responding patrol units where they go to "see the man," however, and this is often not the address of the precipitating incident. If X calls 911 to report a disturbance at Y's house, *e.g.*, the responding patrol unit will be asked to "see the man" at X's address. Although the disturbance occurred at Y's address then, X's address will be recorded on the CFS record.⁵⁷

Time-specific analyses of CFSs are limited by analogous errors. The time recorded on a CFS is not necessarily the time of the crime incident. For property crimes such as burglary and theft, victims call 911 when the crime is discovered. This may be hours (or even days) after the fact. Given these errors, CFSs allow for relatively crude, approximate inferences about the times and places of crimes.

Table 6.1a - San Diego CFSs by Final Disposition

88,215	CFSs were cleared by report	14.6 %	
31,035	CFSs were cleared by arrest	5.1 %	(19.7 %)
71,686	CFSs were cancelled or duplicated	11.8 %	
32,757	CFSs were unfounded	5.4 %	
332,014	CFSs were disposed of without report	54.8 %	
52,196	CFSs had other or unknown disposition	8.3 %	(80.3%)

Table 6.1b - San Diego Burglary CFSs by Initial and Final Disposition

Total CFSs	607,903	100.0 %
CFSs initially classified as burglaries	147,127	24.2 %
Burglary CFSs initiated by an alarm	110,111	18.1 %
False alarms	109,135	18.1 %
CFSs initiated by actual burglaries	37,992	25.8 %

Source: *A Methodical Critique of the Linz-Paul Report: Report to the San Diego City Attorney's Office*. R. McCleary and J.W. Meeker, March 12, 2003.

Tables 6.1a-b illustrate the magnitude of the "noise" component in CFSs. In a 2002 San

⁵⁷ To obscure a business' public safety hazard, the proprietor can ask 911 to send a patrol unit to "5th and Main" instead of to "521 East Main."

Diego secondary effects study, Drs. Daniel Linz and Bryant Paul analyzed 607,903 CFSs. As reported in Table 6.1a, fewer than 20 percent of these CFSs began with a crime; more than 80 percent were cancelled, duplicated, unfounded, disposed of without report,⁵⁸ or had some other non-crime disposition. This 80:20 ratio of CFSs-to-crimes is typical of the overstatement found in many large cities.

Table 6.1b illustrates another aspect of the problem. Nearly 25 percent of the CFSs analyzed by Drs. Linz and Paul were initially classified as burglaries. Of these, 74.8 percent were initiated by burglar alarms, 99.1 percent of which turned out to be false; only 25.8 percent of burglary CFSs were actual burglaries. CFSs initiated by auto and robbery alarms aggravate the problem that seen for burglaries. Considering "serious" crimes, like burglary, auto theft, and robbery, in most large cities, CFSs overstate the crime rate by a substantial factor.

In light of these well known properties of CFSs, one might wonder why any researcher might prefer to use CFSs to measure of crime risk. One answer – and there are several – is that the relatively low signal-to-noise ratio of CFSs biases statistical tests in favor of a null finding. I will explain this rather technical point after a short historical digression.

6.1.1 HISTORICAL NOTE ON THE USE OF CFSs

Until recently, virtually all secondary effect studies used UCR-based measures of ambient crime risk. The millennial year, 2001, marked an historical turning point. Four years earlier, in 1997, the Fulton County, GA Police Department issued a "quick and dirty" report that compared CFSs at the addresses of adult cabarets and taverns.⁵⁹ The design of the report reflects the obvious common sense notion that, other things equal, an adult cabaret is a tavern that offers nude or semi-nude entertainment; clothe the entertainers and the adult cabaret becomes a tavern. It follows from this common sense argument that any difference in CFSs is the secondary effect of nudity.

The results of the comparison surprised the Fulton County Commission. Over a 29-month period, more CFSs were logged to tavern addresses. At a minimum, this implied that adult cabarets posed no ambient public safety hazards; and this in turn implied that Fulton County had no legitimate secondary effects rationale for regulating adult cabarets. And that,

⁵⁸ CFSs end without a report when the responding patrol unit finds no complainant, informant, victim, or evidence of a crime. Most of the CFSs disposed of as "other/unknown" do not require responses; "all units" CFSs, e.g., describe suspects or vehicles. Strictly speaking, Drs. Linz and Paul should have analyzed only those CFSs that ended in an arrest or report.

⁵⁹ *Study of Calls-for-Service to Adult Entertainment Establishments which Serve Alcoholic Beverages*. June 13th, 1997, Capt. Ron Fuller and Lt. Sue Miller.

more or less, is how the U.S. Eleventh Circuit Court interpreted the data.⁶⁰

Following the 2001 decision in *Flanigan's Enterprises*, CFSs became the preferred crime risk measure for experts retained by the SOB industry. Whereas government-sponsored studies continue to use UCR-based measures, after 2001, most SOB industry-sponsored studies use CFS-based measures of ambient crime risk. The 2002 San Diego study, to be reviewed below, and the 2003 Greensboro and 2004 Daytona Beach studies, reviewed in Section 3 above, illustrate the trend. All used CFSs; all purported to find no secondary effects.

In our critique of the 2002 San Diego study by Drs. Daniel Linz and Bryant Paul, Jim Meeker and I pointed out the problems inherent to CFSs generally and their use in secondary effects studies particularly. Drs. Linz and Paul countered by arguing, first, that there is a debate among criminologists about the statistical properties of CFSs; and second, that CFSs are widely used in government-sponsored secondary effects studies. Both arguments are incorrect.

On the first point, shortly after the advent of computerized 911 systems, criminologists experimented with CFSs, sometimes even using them as surrogate measures of crime risk. The results of this experiment led to a consensus view that CFSs are not the *best* – or even a *good* – measure of ambient crime risk. Few criminologists study CFSs for any reason; but no criminologists study CFSs to learn about ambient crime risk. The published literature review summarized in Table 6.1.1 supports both of these opinions. During a recent five-year period, four general criminology journals published 705 items. Most of the items were either non-empirical (essays, reviews, *etc.*) or else, analyzed phenomena other than crime (police behavior, sentencing decisions, *etc.*). Of the 254 articles that analyzed a crime statistic, 134 (52.8 percent) analyzed UCRs; 119 (46.8 percent) analyzed victim or offender surveys. Only five items (1.9 percent) analyzed CFSs.⁶¹ Of these five, *only one used CFSs as a crime risk measure.*

⁶⁰ *Flanigan's Enterprises, Inc. v. Fulton County*, 242 F.3d 976 (11th Cir. 2001)

⁶¹ Table 6.1.1 was compiled from the independent judgements of eight students. Inter-rater reliability among the eight was nearly .95. Because some of the 254 articles analyzed multiple statistics, the rows may sum to more than 100 percent.

Table 6.1.1 Crime Statistics in Criminological Journals, 2000-2004

	Total Items	Crime Stats	UCRs	Survey	CFSs
<i>Criminology</i>	193	52	37	16	0
<i>Justice Quarterly</i>	152	48	23	23	2
<i>J of Quantitative Criminology</i>	95	47	30	17	0
<i>J of Criminal Justice</i>	265	107	44	63	3
	(705)	(254)	(134)	(119)	(5)

On the second point, other than the 1997 Fulton County study, analyses of CFSs are rarer than hen's teeth in government-sponsored studies. Finally, however, recent case law supports the views of criminologists and governments. At least four U.S. Circuits have rejected attempts by SOB plaintiffs to use 911 calls to cast direct doubt on an ordinance.⁶² In short, analyses of CFSs: these data are not sufficient to meet the standards required under *Alameda Books* to cast doubt on the secondary effects evidence relied on by the government to support an ordinance.

6.1.2 ANECDOTAL EVIDENCE OF BIAS IN CFSs

All large police agencies record 911 calls for planning and budgeting purposes.⁶³ In a pinch, 911 databases can generate "quick and dirty" snapshots of crime problems. In the long run, however, police agencies use crime incident reports to measure crime risk. Criminologists have the same views. Nevertheless, 911 calls-for-service seem to be the preferred secondary effect measure for SOB plaintiffs.

One reason why SOB plaintiffs might prefer 911 calls is that, because relatively few "victimless" crimes (drugs, prostitution, *etc.*) come in through 911 channels, 911 calls understate the incidence of these crimes by a large factor. Another reason is that 911 calls can be used to mask an address-specific public safety hazard. This last problem merits special comment. If a

⁶² In *Daytona Grand* (at 44-46), the Eleventh Circuit outlined the limitations of 911 calls and in footnote 33, noted that three other Circuits had rejected attempts by plaintiffs to use 911 calls to cast direct doubt on an ordinance: *Gammoh v. City of La Habra*, 395 F.3d 1114, 1126-27 (9th Cir. 2005), *G.M. Enter., Inc.*, 350 F.3d 631, 639 (7th Cir. 2003), and *SOB, Inc.*, 317 F.3d 856, 863 & n.2 (8th Cir. 2003).

⁶³ These legitimate uses of 911 calls are discussed in most undergraduate policing texts. See, e.g., Roberg, R.R., J. Crank and J. Kuykendall, *Police and Society*. Wadsworth, 1999.

business is familiar with the coding conventions, 911 records can be manipulated to make the business look more or less in need of police service. To build a case for more police service, the proprietor can complain to the police about problems that might otherwise be handled informally. Or alternatively, to mask a public safety hazard, the proprietor can handle problems informally, thereby creating fewer 911 records and making the business seem safer than it actually is.

Manipulations of this sort are legal, strictly speaking. At the extreme, manipulating the 911 record-keeping system crosses the line. In a recent Manatee County case, for example, an SOB bribed at least two deputies to illegally circumvent and/or to falsify 911 records.

Another Manatee deputy, Daniel E. Martin, 35, told sheriff's investigators that one of the Cleopatra's door girls had his cell phone and would call him personally to quell customer disturbances ... Former Manatee deputy Joshua R. Fleischer, 25, who resigned this month, told a detective that whenever he was dispatched to Cleopatra's for a disturbance he listed the address as the "3900" block of U.S. 41 – deliberately misidentifying the actual address in the 3800 block. Fleischer, according to the detective, did not want his reports associated with the club.⁶⁴

The investigation into this scandal has spread to surrounding counties. The relevant point, for our purposes, is that business proprietors who are familiar the geo-coding conventions can (and in Manatee County, at least, *do*) attempt to manipulate the system.

6.2 SUBSTANTIVE VS. STATISTICAL SIZE

A relatively low signal-to-noise ratio does not disqualify CFSs as a measure of ambient crime risk. On the contrary, ignoring their inherent biases, CFSs could provide a crude measure of ambient crime risk. When CFS-based risk measures are used to test statistical hypotheses, however, their relatively low signal-to-noise ratio biases the test in favor of a null finding. In effect, the low signal-to-noise ratio of CFSs makes *substantively* large secondary effects look *statistically* small.

The distinction between the *substantive* and *statistical* size of a secondary effect requires an explanation. In their 2002 San Diego secondary effects study, Drs. Linz and Paul found that SOB areas had 15.7 percent more CFSs than control areas. Most San Diegans would consider a 15.7 percent difference in CFSs to be *substantively* large. The budgetary implications of a 15.7 percent difference in CFSs boggle the mind. Nevertheless, according to Drs. Linz and Paul, the difference is *statistically* small and, hence, should be ignored. In fact, Drs. Linz and Paul are wrong. The *substantively* large secondary effect is also *statistically* large. After a short digression, I will review the 2002 San Diego study.

⁶⁴ *StripClub News*, September 22nd, 2006, "Investigation tied to strip club leads to resignations and charges."

Figure 6.2.1 - Jury Trials and Hypothesis Tests

	But in Reality, the Defendant is ...	
	Guilty	Not Guilty
The Jury Convicts	95% Confidence	5% False Positives
The Jury Hangs	?	?
The Jury Acquits	20% False Negatives	80% Power

6.2.1 STATISTICAL HYPOTHESIS TESTING

Figure 6.2.1 summarizes the principles of statistical hypothesis testing by analogy to a jury trial. Suppose that an SOB stands accused of posing an ambient crime risk. After hearing the evidence, the jury can convict, acquit, or hang. If the jury convicts, there is a small (but non-zero) probability that the jury convicted an innocent SOB; *i.e.*, a false-positive (or “Type I” or “ α -type”) error. If the jury acquits, on the other hand, there is a small (but non-zero) probability that the jury acquitted a guilty SOB; *i.e.*, a false negative (or “Type II” or “ β -type”) error. Finally, if the jury hangs, there was no decision and, hence, no possibility of error.

In real-world courtrooms, the probabilities of false-positive and false-negative verdicts is unknown. Courts enforce strict procedural rules to minimize these probabilities but we can only guess at their values. In statistical hypothesis testing, on the other hand, the values are set by rigid conventions, to five percent for false-positives and twenty percent for false negatives.⁶⁵ Adopting these same values, to convict, the jury must be 95 percent *certain* of the SOB’s guilt.

⁶⁵ The most comprehensive authority on this issue is Chapter 22 of *The Advanced Theory of Statistics, Vol. 2, 4th Ed.* by M. Kendall and A. Stuart (Charles Griffin, 1979). This authority requires a strong background in mathematics, however. J. Cohen’s *Statistical Power Analysis for the Behavioral Sciences, 2nd Ed.* (L.E. Erlbaum Associates, 1988) and M. Lipsey’s *Design Sensitivity: Statistical Power for Experimental Research.* (Sage Publications, 1990). Both Cohen (pp. 3-4) and Lipsey (pp. 38-40) set the conventional false-positive and false-negative rates at $\alpha=.05$ and $\beta=.2$, respectively. These rates can be set lower, of course. The convention also sets the ratio of false-positives to false-negatives at 4:1, implying that false-positives are “four times worse than” false-negatives. The 4:1 convention dates back at least to 1928 (J. Neyman and E. Pearson, “On the use and interpretation of certain test criteria for purposes of statistical inference.” *Biometrika*, 1928, 20A:175-240). It reflects a view that science should be conservative. In this instance, for example, the 4:1 convention works in favor of the SOB. When actual decision error costs are known, the actual ratio is used.

To acquit, the jury must be 80 percent *certain* of the SOB's innocence. To ground the 95 and 80 percent certainty levels, we could try each case in front of a large number of independent juries. To convict, 95 percent of the juries would have to return the same guilty verdict; in the case of an acquittal, 80 percent would return the same not guilty verdict.

Correct decisions are painted blue in Figure 6.2.1. Five percent of all convictions are false-positives and 20 percent of all acquittals are false-negatives. Incorrect decisions are painted red in Figure 6.2.1. When the levels of certainty are too low to support conviction *or* acquittal, of course, the jury hangs. Non-decisions, painted yellow in Figure 6.2.1, depend on factors such as the strength of evidence, credibility of witnesses, and so forth. So as not waste a jury's time, the prosecutor doesn't bring obviously weak cases to trial. Likewise, faced with strong evidence of guilt, the defense counsel seeks a plea bargain in order to avoid trial.

The analogy to statistical hypothesis testing is nearly perfect. The researcher considers two complementary hypotheses. The SOB either has secondary effects; or alternatively, the SOB does not have secondary effects. Based on the magnitude of the expected and estimated effects, the researcher then accepts one of the two hypotheses.

- If the false-positive rate for the estimated is smaller than five percent, the hypothetical secondary effect is accepted with 95 percent *confidence*. The SOB has a large, significant secondary effect.

If the false-positive rate is larger than five percent, researcher does not automatically accept the alternative hypothesis but, rather, conducts a second test.

- If the false-negative rate for the expected effect is smaller than twenty percent, the alternative hypothesis is accepted with 80 percent *power*. The SOB does not have a secondary effect.

But lacking *both* 95 percent confidence *and* 80 percent power, neither hypothesis is accepted; *the results are inconclusive*. Since inconclusive results invariably arise from weak research designs, and since the relative strength of a design is known *a priori*, inconclusive results should be rare. But in fact, many of the secondary effects studies sponsored by SOB plaintiffs have inconclusive results. An example illustrate the plaintiffs' rationale.

6.2.2 SAN DIEGO PEEP SHOWS

Analyzing San Diego CFSs, Drs. Daniel Linz and Bryant Paul found no statistically significant difference between SOB and control areas.⁶⁶ When Jim Meeker and I re-analyzed the

⁶⁶ *A Secondary Effects Study Relating to Hours of Operation of Peep Show Establishments in San Diego, California*. September 1, 2002. Daniel Linz and Bryant Paul. Submitted in

data,⁶⁷ we discovered that the SOB areas *actually* had 15.7 percent more CFSs than the control areas. In the view of police, legislatures, and citizens, a 15.7 percent difference in any crime-related statistic is *substantively* large. In *statistical* terms, however, the effect was not so large. Drs. Linz and Paul used the *statistically* small size of the effect to argue that the “real” secondary effect was zero:

... statistically nonsignificant result and must be interpreted, as meaning that there is no significant difference between these two averages – an indication that the level of criminal activity for [peep-show areas] is equal to the level of criminal activity for [control areas].⁶⁸

The substantively large 15.7 percent increase is not “real,” in other words. If the effect estimate is not *statistically* significant, then it does not exist.

A mundane analogy reveals the fallacy in this argument. If I cannot find my car keys, I might conclude that my car keys do not exist. But although this may be true, it may also be true (and certainly more likely) that I did not look hard enough for my car keys or that I looked in the wrong place.⁶⁹ By analogy again, if a “quick and dirty” secondary effect study fails to find a statistically significant effect, one might want to conclude that no effect exists. Although this may be true, it may also be true that the study was “too quick” or “too dirty.”

As it turns out, Drs. Linz and Paul did not “look hard enough” for a secondary effect in San Diego *and*, worse, looked “in the wrong place.” The false-negative error rates plotted in Figure 6.2.2 were calculated by Jim Meeker and me from statistics reported by Drs. Linz and Paul. As shown, the reported 15.7 percent secondary effect estimate has a false-negative rate of .508. What this means, simply, is that the reported null finding is more likely (51 percent) to be *incorrect* than it is to be *correct* (49 percent).

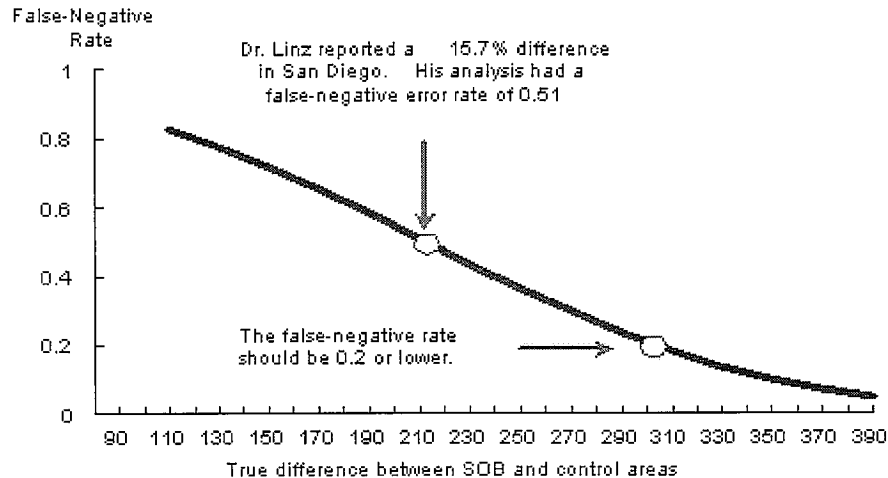
Mercury Books v. City of San Diego. U.S. District Court, Southern District of California (00-CV2461).

⁶⁷ R. McCleary and J.W. Meeker, *A Methodical Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office*. March 12, 2003.

⁶⁸ p.15, *A Secondary Effects Study Relating to Hours of Operation of Peep Show Establishments in San Diego, California*. September 1, 2002. Daniel Linz and Bryant Paul.

⁶⁹ Newton made this point with his aphorism “*Negativa non Probanda*.” “Finding nothing proves nothing.”

Figure 6.2.2 - False-negative Rates for the San Diego Finding



Whereas Drs. Linz and Paul interpret their null finding as evidence that San Diego SOBs do *not* have secondary effects, in fact, their results are inconclusive. The secondary effect would have to exceed 22.7 percent (304.5 CFSs) before the effect could be detected with 80 percent power. Although many elements of the design contribute to its inherent weakness, the use of CFSs is a major culprit. Jim Meeker and I have demonstrated that, correcting for low signal-to-noise ratio of the San Diego CFSs, the *substantively* significant secondary effect estimate is *statistically* significant as well.⁷⁰

6.3 CONCLUDING REMARKS

The mathematics of statistical hypothesis testing is so demanding that few social scientists understand the concepts or their importance to research.⁷¹ The conventional 80 percent power level was proposed and adopted in the 1920s when statistical hypothesis testing was in its infancy. The convention has survived for eighty years because it serves two useful, crucial functions.

- Anyone with a modest background in research methods can design a study in a way that favors – or even guarantees – a null finding. The convention minimizes abuses by malicious investigators.

⁷⁰ The correction is reported in R. McCleary and J.W. Meeker, “Do peep shows ‘cause’ crime?” *Journal of Sex Research*, 2006, 43:194-196.

⁷¹ E.g., “I attributed this disregard of power to the inaccessibility of a meager and mathematically difficult literature...” (p. 155, “A power primer.” J. Cohen, *Psychological Bulletin*, 1992, 112:155-159).

- Haphazardly designed “quick and dirty” studies favor the null finding. The convention minimizes the impact of spurious findings generated by naive (but benign) investigators.

Lay audiences, who must rely on common sense, cannot always distinguish between weak and strong designs or between benign and malicious investigators. Scientific conventions guard against both abuses. In this particular instance, the 80 percent power convention allows the lay audience to trust the validity of a null finding.

Recognizing the conventions, crime-related secondary effect studies can be assigned to one of three categories: studies that report secondary effects with 95 percent *confidence*; studies that report null findings with 80 percent *power*; and studies that are *inconclusive*. All of the studies listed in Table 1 above either report large, significant secondary effects or else are *inconclusive*. No studies report null findings with the conventional 80 percent power. This reinforces a statement that I made in the introduction to this report: It is a *scientific fact* that SOBs pose large, significant ambient crime risks.

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1989.

Curriculum Vitae for
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EDUCATION

Ph.D., Northwestern University, 1977
M.A., Northwestern University, 1975
B.S., University of Wisconsin, 1974

ACADEMIC APPOINTMENTS

University of California-Irvine: Professor of Social Ecology (Environmental Health Sciences and Policy; Criminology, Law and Society; Planning and Policy), 1988-Present.

University of Minnesota: Visiting Professor of Public Health (Epidemiology Division), 1998.

University of New Mexico: Associate Professor of Sociology, 1983-1988; Associate Director, New Mexico Statistical Analysis Center 1986-1988.

Human Relations Area Files, Yale University: Senior Research Scientist, 1986-1989.

University of Michigan: Instructor, ICPSR Summer Institute in Quantitative Social Science, 1983-1984.

State University of New York-Albany: Associate Professor of Criminal Justice, 1982-1983.

Arizona State University: Associate Professor of Criminal Justice, 1980-1982; Assistant Professor of Criminal Justice, 1978-1980; Director, Program in Applied Statistics, 1980-1982.

University of Illinois, Chicago: Assistant Professor of Criminal Justice and Sociology, 1977-1978; Lecturer in Criminal Justice, 1976-1977.

MEMBERSHIPS

American Society of Criminology
American Statistical Association
Justice Research and Statistics Association

EDITORIAL BOARDS

Behavioral Assessment: Associate Editor, 1980-1984
Criminology and Public Policy, Senior Editor, 2006-7
Evaluation Studies Review Annual: Associate Editor, 1986
J. of Criminal Law and Criminology: Consulting Editor, 1982-Present
J. of Quantitative Criminology: Associate Editor, 2001-Present
J. of Research in Crime and Delinquency: Consulting Editor, 1981-Present
Justice Quarterly: Associate Editor, 1991-Present
Law and Policy Quarterly: Associate Editor, 1978-Present
New Direction for Program Evaluation: Advisory Editor, 1991-Present
Research Methods in Social Relations, 4th Ed.: SPSSI Board of Advisors
Social Pathology: Associate Editor, 1994-Present

COMMUNITY SERVICE

Board of Directors, Prevent Child Abuse - Orange County, 1997-2003
Board of Directors, Orange County Youth and Family Services, 1995-2002
Technical Advisory Board (HealthLink), Robert Wood Johnson Foundation
Executive Committee, UCI Mental Retardation Research Center, 1995-2000
Executive Committee, UC Institute for Brain Aging and Dementia, 1995-2003
Faculty Chair, UC Irvine School of Social Ecology, 2002, 2003
Member, UC Irvine Institutional Review Board "C," 2003-present
Chair, UC Irvine Council on Research, 2005-present

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M.D. Maltz and R. McCleary. Recidivism and likelihood functions. *Evaluation Review*, 1979, 3:124-131.

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FUNDED RESEARCH

Grant #P30-95-S7 from the National Institute of Childhood Health and Development to the University of California Regents: "MRRC Biostatistics Core," \$580,000 (PI).

Grant #AGA24806 from the American Gaming Association to the University of California Regents: "Suicide in Casino Gaming Areas," \$35,000 (PI).

Contract #C91-37 from the City of Garden Grove to the Principal Investigator, "Public safety hazards associated with adult entertainment businesses," \$35,000 (PI).

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Grant #JS2-47 from the U.S. Bureau of Justice Statistics to the University of New Mexico: "The New Mexico Criminal Justice Statistical Analysis Center," \$50,000 (Co-PI).

Contract #14-12-001-30300 from the U.S. Department of the Interior to Human Relations Area File, Yale University: "Alaskan OCS Social Indicators System," \$1,200,000 (Co-PI).

Contract #SOJ-85019 from the Alaska Department of Corrections to the Justice Center, University of Alaska, Anchorage: "A forecast of prison population through the year 2000," \$15,000 (Co-PI).

Contract #BJS-82-007 from the Alaska Department of Public Safety to the Justice Center, University of Alaska: "Forecasting crime rates in Alaska and Oregon," \$45,000 (Co-PI).

Contract #AG-82-1 from the Arizona Auditor General to the Principal Investigator: "An evaluation of Arizona's vehicle emissions inspection program," \$17,000 (PI).

Grant #CF-80-08-0070(a) from the Arizona JPA to the Center of Criminal Justice, Arizona State University: "Technical assistance project in evaluation research," \$40,000 (Co-PI).

Contract #22820 from the City of Phoenix to the co-principals: "Telephone survey of citizen attitudes toward team policing," \$10,000 (Co-PI).

Contract #0772 et seq. from the State of Arizona to the Principal Investigator: "Evaluation of 'scared straight'/PLIP program," \$17,000 (PI).

Contract #UIACC3-47-32-25-3-51 from the Illinois Department of Corrections to the Center for Criminal Justice, University of Illinois, Chicago: "Re-evaluation of UDIS," \$8,000 (PI).

Grant #77-NI-99-0073 from the National Institute of Law Enforcement and Criminal Justice to the Center for Research in Criminal Justice, University of Illinois, Chicago: "Measurement of recidivism," \$225,000 (Co-PI).



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Testimony in Support of HB 2107 – The Community Defense Act

Michael Schuttloffel, Executive Director
Kansas Catholic Conference

Senate Federal and State Affairs Committee

March 17, 2011

10:30 AM

Mr. Chairman and Members of the Committee:

The Kansas Catholic Conference supports HB 2107, the Community Defense Act.

The Community Defense Act should be approved by the Legislature, and just as important to these proceedings, the Community Defense Act *can* be approved by the Legislature. Despite testimony you will hear to the contrary, this proposal is both prudent and constitutional. As others will explain in greater detail, the Community Defense Act is entirely in conformity with the many court decisions that have upheld regulation of sexually oriented businesses on the basis of their negative secondary effects upon communities.

It has been thoroughly documented that sexually oriented businesses generate increased crime, decreased property values, prostitution, drug trafficking – the list goes on and on. The pornography industry speaks of rights; what of the rights of communities to protect themselves against this kind of blight?

The Community Defense Act will prevent sexually oriented businesses from being established within 1,000 feet of churches, schools, homes, libraries, and parks. The Kansas Catholic Conference strongly supports this language. In case there is doubt over whether such a law is needed, look no further than 15 miles away in Jefferson County, where in recent months residents were disturbed to learn of a proposal to build a strip club less than 1,000 feet from a local school.

We believe it is important for the people's elected representatives to ensure that space remains in our society for decency to flourish. If there can be no possible regulation of the establishment of

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MOST REVEREND JOHN B. BRUNGARDT, D.D.
DIOCESE OF DODGE CITY

VERY REVEREND BARRY E. BRINKMAN, J.C.L.
DIOCESAN ADMINISTRATOR – DIOCESE OF SALINA

MICHAEL M. SCH
EXECUTIVE D

Sn Fed & State
Attachment 4
3-17-11

so-called "adult entertainment centers" next to our homes, schools, churches, and playgrounds, then what space will be left to the great majority of us that are deeply offended by their presence and wish to avoid their well-documented negative secondary effects?

It strains credulity to believe that our Founding Fathers intended the Constitution to be an instrument of protection for sexually oriented businesses that wish to operate whenever, wherever, and however they like. It would come as a great surprise to Madison, Hamilton, and Adams that the Constitution guarantees pornographers the right to build next to churches and schools, as it also would to the many judges in the present day who have consistently ruled otherwise.

When small towns do attempt to resist the reckless placement of these establishments, the pornography industry all too often uses its near-limitless resources to bully communities into submission. Hence the need for statewide regulation. According to the Catholic principle of subsidiarity, matters should be handled by the least centralized competent authority. Because smaller communities have in so many cases shown themselves to be unable to stand up to the enormous financial resources of the pornography industry, the intervention of a higher, stronger authority is necessary, in this case the state.

If we can and do prohibit prostitution, how can it be said that we cannot or should not place mild regulations on the location and operation of other forms of sexually oriented enterprise? Or does every regulation placed upon the sex industry traduce the Constitution? How long will it be before we are told that even restrictions on the age of employees at adult entertainment facilities are a violation of the fundamental rights of customer and service provider alike?

The Community Defense Act places sensible, constitutional regulations on the operation of sexually oriented businesses. We ask for your support of this legislation and thank you for your consideration.



TESTIMONY IN FAVOR OF HB 2107
The Community Defense Act

Protecting communities, healthy marriages and families in Kansas is good public policy.

Senate Federal & State Affairs Committee

Chairman Brungardt and Members of the Kansas Senate Federal & State Affairs Committee:

Concerned Women for America of Kansas is testifying in favor of HB 2107, the Community Defense Act. As the largest women's public policy organization in the U.S. we feel that it is good public policy to regulate and place boundaries around an industry that portrays women as sex objects; is often closely associated with activities that ultimately costs taxpayers; and undermines marriages. Government has the duty of protecting its citizens from threats to public health, safety and welfare, and we are asking that public policy support those things that promote and protect the family. At the turn of the century women's groups led the charge in overcoming societal ills that threatened their homes and families. Women like Frances Willard joined others in fighting both black slavery and the white slave trade, along with alcohol, prostitution, child labor and of course, championed women's right to vote. Women were then and are today on the forefront of championing those things that keep a society stable and strong. One of CWA's core concerns is the family...keeping that family strong through healthy marriages and secure supportive homes for children to be nurtured. For millennia marriage has been the building block of stable societies. President Barak Obama stated in a 2008 speech: "Of all the rocks upon which we build our lives, we are reminded today that family is the most important."

In fact the collapse of marriages is found to be the predominant cause of child poverty in the United States according to the Heritage Foundation Fact Sheet #67. Statistics show that the support of intact families and public policy that encourages marriage could eliminate much of the child poverty; as much as 84 per cent in Kansas. [U.S. Census Bureau, American Community Survey, 2006-2008 data] Any factor that undermines families should be examined carefully in order to reduce harmful effects without infringing upon individual liberties.

A significant factors in the break-up of marriages is pornography either in virtual form or in viewing erotica in a sexually-oriented business. Research shows that pornography fosters the idea that the degradation of women is acceptable. It portrays women as sexual objects; it increases a man's aggressive tendencies that can lead to physical violence against women and promotes dissatisfaction with the marriage partner. It is our premise that regulating sexually-oriented businesses is not singling certain individuals who happen to own or work in sexually-oriented businesses; in fact, government regulates businesses all the time to protect the public health and welfare.

According to Dr. Mary Anne Layden, whose written testimony you have before you, excessive exposure to pornography leads to changes in beliefs and attitudes that could put the general public in jeopardy. She reports her findings in a meta-analysis of available research:

- The use of pornography in combination with alcohol increases the odds of sexual abuse of women by a factor of 3
- Women employed by strip clubs report a 91% incidence of verbal abuse of name-calling and a 73% incidence of literal tactile abuse by both customers and management.

Sn Fed & State
Attachment 5

3-17-11

- The American Academy of Matrimonial Lawyers collected data at a meeting in Chicago in 2002 regarding the effect of viewing erotic material or behavior. They concluded that regular participation in some form of pornography played a big role in the break-up of marriages in more than 50 per cent of the cases they handled.
- A growing number of researchers are recognizing a connection between pornography use and abuse in marriage. Researcher R.K. Bergen found that 1/3 of the females in her sample reported their partner consumed pornography and also reported that pornography use and sadistic rapes were definitely related. [Bergen, R.K. (1998) "Issues in Intimate Violence" pp. 237-250]
- In addition to the detrimental effect on marriages and families, sexually-oriented businesses attract serious crime. A study of sexually-oriented businesses in Phoenix, Arizona found that the number of sex offenses was 506 percent greater in neighborhoods with a sexually-oriented business. ["Protecting Communities from Sexually Oriented Businesses," 2nd ed. (Scottsdale, AZ: ADF, November, 2002)]
- In adolescents sexually-explicit material and erotica produced increased sexual arousal in 74% of respondents in a survey conducted by the International Journal of Law and Psychiatry.
- For males, more pornography use is correlated with more sex partners, more alcohol use, more binge drinking, greater acceptance of sex outside of marriage for married individuals, greater acceptance of sex before marriage and less child-centeredness during marriage the Journal of Adolescent Research reports in 2008.
 - All of these increases result in increased costs to the state, not to mention ruined families and lives. Not regulating businesses that contribute to all these societal ills is like delivering a "poison pill" to marriages.
- Various studies in Dr. Layden's research show increased domestic violence in relation to men who either view pornography or are patrons of strip clubs.

In addition neurological research has shown that all addictions cause changes in the neuro-transmitters of the brain that are responsible for well-being and behavior as well as violence. Pornography, even though it is not physically ingested is transmitted via the eye-gate which responds by sending messages to the brain that alter the chemicals in the brain producing a "neuro-pathway" that is reinforced by more exposure. Just like chemical addictions the result after a time is a desensitization, a need for more exciting stimulation, and finally in some, a need to act out on a real person.

As a grandmother of 4 girls, I want the government to restrict activity that could potentially harm them. I don't want them exposed to a man whose desire for more and more gratification leads to a need to act out on a real victim. The fundamental role of government is to protect families and the basic institutions that form the backbone of a stable society. Pornography whether virtual porn or a sexually-oriented business that headlines erotica undermines both marriage and the family and places women at risk. We urge you to pass this bill out of committee.

Judy Smith, State Director
Concerned Women for America of Kansas

**Negative Secondary Effects of
Sexually Oriented Businesses
HB 2107**

**By Scott D. Bergthold
Presented to
Senate Federal & State Affairs
Committee
Kansas Legislature
March 17, 2011**

Speaker background:

**Co-author, *Local Regulation of Adult Businesses*,
2011 Ed. (Thomson West)**

Cases:

- **City of Littleton v. Z.J. Gifts D-4, L.L.C.,
541 U.S. 774 (2004)**
- **5634 East Hillsborough v. Hillsborough County,
294 Fed. Appx. 435 (11th Cir. 2008)**
- **Sensations, Inc. v. City of Grand Rapids,
526 R.3d 291 (6th Cir. 2008)**
- **Daytona Grand, Inc. v. City of Daytona Beach,
490 F.3d 860 (11th Cir. 2007)**
- **Heideman v. South Salt Lake City,
165 Fed. Appx. 627 (10th Cir. 2006)**
- **Enlightened Reading, Inc. v. Jackson County, MO**
- **Ocello et al. v. Koster, Attorney General of Missouri**

**Renton v. *Playtime Theatres, Inc.*, 475 U.S. 41 (1986)
(upholding 1,000-ft. rule)**

- 1. Legislatures can be proactive to prevent negative effects**
- 2. Any evidence "reasonably believed to be relevant" is sufficient**
- 3. Government is given leeway to address negative effects**

**Sources of
Secondary Effects Information**

- 1. Land Use Studies**
- 2. Crime Reports**
- 3. Judicial Opinions**
- 4. Investigator Affidavits**
- 5. Anecdotal Reports**

Types of Secondary Effects

- 1. Adverse impacts on surrounding properties**
- 2. Crime and its attendant public safety risks**
- 3. Illicit sexual conduct and potential disease**
- 4. Illicit drug use and trafficking**
- 5. Litter, aesthetic impacts, noise, blight**

Cases upholding similar regulations:

- 1. *People ex rel. Deters v. Lion's Den*, No. 5-05-0413
(Ill. Ct. App. 2007) (1,000-ft. setback)**
- 2. *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000)
(nudity prohibition)**
- 3. *Heideman v. South Salt Lake City*, 165 Fed.
Appx. 627 (10th Cir. 2006)**
- 4. *Jake's Ltd., Inc. v. City of Coates*, 284 F.3d 884
(8th Cir. 2002) (6-ft. rule)**
- 5. *Richland Bookmart, Inc. v. Nichols*,
137 F.3d 435 (6th Cir. 1998) (statewide hours)**

HB 2107 includes common-sense regulations that have been repeatedly upheld by the courts.

Federal appellate cases across the country have repeatedly upheld dancer-patron buffers, no-touch rules, hours of operation, and open-booth regulations as constitutional.

Secondary effects data relevant to regulating sexually oriented clubs and bookstores:

- 1. Summaries of Key Reports**
- 2. Phoenix, Arizona**
- 3. Indianapolis, Indiana**
- 4. Garden Grove, California**
- 5. Whittier, California**

**Secondary effects data
relevant to regulating
sexually oriented businesses:**

- 6. Austin, Texas**
- 7. Greensboro, North Carolina**
- 8. Amarillo, Texas**
- 9. Kennedale, Texas**
- 10. Spokane, Washington Evidence re:
Retail Adult Bookstores**
- 11. 2008 Jackson County, Missouri Expert Report
(describing flaws in industry reports)**

Findings of expert witnesses:

- 1. Finding of secondary effects from sexually oriented businesses is scientifically robust, being confirmed in wide variety of data sources**
- 2. The legislature has a substantial government interest in regulating adult businesses to prevent the identified negative secondary effects**
- 3. Industry “counter-studies” based on ever changing methodologies and faulty data (calls for- service (CFS) to the police)**
 - CFS are weakly correlated to actual crime**
 - Most vice crimes never result in CFS**

Industry experts' attacks insufficient:

- 1. City of Erie v. Pap's A.M.,
529 U.S. 277 (2000) (Linz)**
- 2. Daytona Grand, Inc. v. City of Daytona Beach,
490 F.3d 860 (11th Cir. 2007) (Linz, Fisher)**
- 3. Doctor John's, Inc. v. Wahlen,
542 F.3d 787 (10th Cir. 2008)**
- 4. Heideman v. South Salt Lake City,
165 Fed. Appx. 627 (10th Cir. 2006)**
- 5. SOB, Inc. v. County of Benton,
317 F.3d 856 (8th Cir. 2003) (Linz)**

Industry experts' attacks insufficient (cont'd):

- 6. Gammoh v. City of La Habra,
395 F.3d 1114 (9th Cir. 2005) (Linz)**
- 7. G.M. Enterprises, Inc. v. Town of St. Joseph,
350 F.3d 631 (7th Cir. 2003) (Linz)**
- 8. World Wide Video of Washington v. Spokane,
368 F.3d 1186 (9th Cir. 2004) (McLaughlin)**
- 9. Fantasy Ranch, Inc. v. City of Arlington,
459 F.3d 546 (5th Cir. 2006) (Morris)**
- 10. Fantasyland Video, Inc. v. County of San
Diego, 505 F.3d 996 (9th Cir. 2007) (Linz,
Goldenring)**

**Sexual Exploitation Industry
Makes Both Victims and Victimizers**

**Mary Anne Layden, Ph D, Director
Sexual Trauma and Psychopathology Program
Center for Cognitive Therapy
Department of Psychiatry
University of Pennsylvania**

Chairman Brungardt and honorable members of the Kansas Senate Federal and State Affairs Committee. I am submitting my written testimony in support of the Kansas Community Defense Act, HB 2107.

I am a psychotherapist and the director of the Sexual Trauma and Psychopathology Program at the University of Pennsylvania. For more than 25 years, everyday, all day I have treated rapists, and rape victims, pedophiles and incest survivors, prostitutes, strippers, porn models and sex addicts. These patients will often tell their therapists things they will not tell others including the police.

I would like to talk to you about what I have learned from my professional experience and what research in the area conducted by me and by others has revealed. Research and my professional experience indicate that the sexual exploitation industry is connected to crimes such as rape and prostitution, psychiatric problems such as substance abuse, and post traumatic stress, relationship problems such as divorce and infidelity, and community problems that reduce the quality of life. Let me give you an unvarnished look into the real and hidden aspects of this industry.

The sex industry makes people both victims and victimizers, all at the same time, all in the same person. The strippers and the ones who watch the strippers are both victims and victimizers. And the community pays the price for this.

Let's start with the strippers. Research indicates and my clinical experience supports that most women who work in the sex industry have been sexually abused in their childhoods. Between 60-80% have suffered this childhood devastation. These are women who when they were little girls would get into their beds each night, roll themselves into a fetal position and every night he would come in and peel her open. The physical invasion and visual invasion of their bodies becomes the norm and it damages them psychologically giving them an unhealthy view of sexuality. Often as adults, they re-enact their childhood trauma by working in the sex industry. The men, who are now customers, physically and visually invade the adult women's bodies, reenacting the role of the perpetrator. This is an industry that is sexual abuse for money. Having been raped as a child, these women work in the sex industry because it feels like home.

It is no surprise then that research indicates that 60% of strippers are depressed, 40% are substance abusers usually cocaine and alcohol, 55% have Borderline Personality Disorder, a very serious psychiatric disorder which includes harming yourself in a number of ways, and 35% have Multiple Personality Disorder, an even more serious psychiatric disorder in which you dissociate and leave your body psychologically. Strippers are usually high, drunk or dissociated while they are stripping. You can't do this job and stay in your body. It hurts too much. I have worked with strippers who were alcoholics, who told their bosses at the strip club that they were going to therapy and had joined AA to deal with their alcoholism, who were told by their bosses that they were still required to drink alcohol on the job.

Strippers will sometimes say that they go into stripping because it empowers them. Do you know how powerless and low in self-esteem you have to be in order for selling your body to make you feel better? Sometimes they say that they do it to make money. Or that they spend the money for good causes like tuition for their kids. This psychological rationalization doesn't seem to persuade us in any other areas. We don't say that if cocaine dealers are spending their money on kid's tuition then selling cocaine is ok. Strippers will

sometimes say that they are stripping so that they can get money for college. Strip clubs try to hire college students including advertising for them in college newspapers. I have treated college students who have worked as strippers and gone on to become prostitutes and become HIV +. My clinical experience and that of others indicate that strippers are more likely to go on to be prostitutes, not college students. Very, very rarely does a stripper go back to college and then on to a career.

Once they have become strippers, what they experience is horrendous. There is subtle and not so subtle pressure to act in ways that are self-harming. Women who become strippers feel the pressure to get fake breasts despite the fact that research indicates that women who get fake breasts are 3-4 times as likely to commit suicide, can't ever get a clear mammogram again, will have to have them surgically replaced, often multiple times in their life and are at risk for digestive disorders as are their babies.

Research indicates that the treatment they receive from the customers in strip clubs is toxic and assaultive. 91% of strippers have been verbally abused, 52% have been called cunt, 61% called whore, 85% called bitch, 88% have had their arm grabbed, 73% have had breast grabbed, 91% have had their buttocks grabbed, 27% have had their hair pulled, 58% have been pinched, 24% have been slapped, 36% have been bitten, 76% have had customers flick cigarettes, ice, coins at them, 70% have had customers follow them home and 42% have been stalked by customers. If men would do this to women in public, what would they do to women in private?

Least you think that only the customers are involved in this abuse, the research indicates that the management and staff also abuse the strippers. 85% of strippers have been verbally or physically abused by the management and staff. 21% have been called cunt, 18% have been called slut, 33% have been called bitch, 12% have been pinched and 12% have been slapped.

It is not surprising that strippers work with bodyguards. They work with bodyguards because this activity produces violence. The strippers send messages to men about how women are to be treated, fill the men with alcohol, and then sic these men on their sisters in this community who do not have bodyguards.

The men become carriers of these beliefs back to their homes, onto their jobs, into the streets, onto the schoolyard. Do not be fooled into thinking that these men apply these beliefs only to women who work in the sex industry or only apply these while they are in the strip club. Also do not be fooled into thinking that if you zone it into one area of town, that that will protect you. That is like making a pee and no pee section is a swimming pool. We are all in this together.

There are those that say strip clubs are a healthy sexual outlet. If pornographic sex made us healthy and improved our relationships, then those most involved would be the healthiest. In fact, women who work in the sex industry have about a 25% change of making a marriage that lasts as long as 3 years. This is terrible outcome. If pornography made us healthy, we'd be healthy by now.

What about the damage to the men who go to strippers? They are also both victims and victimizers as well. My own research indicates a correlation between going to strip clubs and engaging in non consensual sex. In addition, involvement in sex industry activity increases sexual addiction. If they become sex addicted, they are likely to suffer severe negative outcomes. Research indicates that 40% of sex addicts will lose their spouse, 58% will have severe financial losses, 27% will lose their jobs and 40% will lose their profession because they are sexually acting out on the jobs. About 6-8% of adult males in the US are sex addicted, which is millions of men.

Men who use print and live pornography are more likely to be sexually callous toward women, are less likely to approve of women's liberation, feel more dissatisfaction with the way natural women look and are less interested in being married or having children. They are at increased risk for sexual dysfunction including premature ejaculation, erectile dysfunction and retarded ejaculation.

The Catholic Church has condemned the practice of bachelor parties at strip clubs. There is hypocrisy in engaging in sex acts with strangers as a preparation for going to a church to make a vow of love and monogamy. This is a psychological bind as well as a moral one.

A woman interviewed in the book Pornified wanted to ask those women who tolerate bachelor parties or their partners going to strip clubs on other occasions, this: "If they walked into their bedroom and an almost naked woman was straddling their husband or boyfriend, would that be ok with them? Why is it ok because it happens at a business that doesn't think that's cheating?" Some of the men who go to strip clubs will produce catastrophic outcomes.

Elsewhere we see Katrina survivors spending hurricane relief money at strip clubs, men leaving babies in cars to go to strip clubs, college athletes who use strip club trips to as recruiting tools for new athletes, professional athletes involved in strip club scandals, lawsuits concerning overcharging and stock brokers who entertain clients at strip clubs. All of these situations brought scandals, new regulations to stop them, lawsuits, convictions or jail time.

These are not the only crimes we can expect to increase when strip clubs come to town. Research indicates that men who use live and print pornography are more likely to accept the rape myth which is a belief that women want to be raped, need to be raped, like to be raped and to believe that rapists deserve less punishment. They are more likely to behave on those beliefs and to be involved in non-consensual sex including rape.

With some of these studies, it is not clear whether print and live pornography **makes** rapists or just **attracts** rapists into the area. In either case, I suspect that the community doesn't want it.

In all types of sexual violence the central factor involved is what is called permission-giving beliefs. These permission-giving beliefs are beliefs that what I am doing does not hurt anyone, is normal, and that everyone is doing it. The main permission-giving belief of sexual violence perpetrators is that women's bodies are pieces of sexual meat to be consumed for male entertainment. This belief becomes a releaser of sexual boundary crossing and sexual acting out whether it is sexual harassment, rape or incest. The sex industry is a significant factor in spreading that belief.

Rape is not the only crime that is likely to increase. Research indicates that men who batter their partners, if they use live and print pornography are likely to sexually abuse their partners as well.

Another crime that will increase is prostitution. Stripping is "prostitution lite". When you increase the permission-giving beliefs for sexual entitlement to women's bodies, you will increase the demand for sexual servicing and make sex a commodity that you buy, and then you have an increased demand for prostitution. Research indicates that men who use live and print pornography are more likely to go to prostitutes and more likely to think that going to a prostitute is not cheating on your spouse.

With an increased demand for prostitution, there may not be enough women who were raped as children in the community willing to be prostitutes. This leads to sex trafficking such as what happened at the massage parlors in Johnson County Kansas where women who were sex trafficked in from China were held in sex slavery and forced to work in massage parlors. Typically in sex trafficking, you have women and children, who are kidnapped or deceived, transported across international borders, are raped and beaten, have their lives threatened or the lives of their relatives threatened and have their passports stolen so they can't run away and are then sold into sex slavery. Research indicates that sex slavery is happening in Kansas.

In one study I conducted, I polled the chiefs of police across the state of Pennsylvania. I asked them about the effect of live pornography which includes strip clubs as well as peep shows. The majority of the chiefs of

police indicated that live pornography increased crime in their communities and decreased the quality of life in the community.

This is an industry that spreads the myth that male sexuality is viciously narcissistic, predatory and out of control. It encourages behavior that is devastating to relationships and makes it harder for women to respect men. Pornography is hate speech against men.

I believe that most men know that working in the sex industry is damaging to the performers. When I ask sex addicts if they want their mother to be a stripper, their wife to be a prostitute, their sister or their daughter to be a porn model, 100% say no. They want someone else's mother, someone else's wife, someone else's sister or someone else's daughter to do those things. Not the women they love.

Finally, let me make one thing absolutely clear: these problems that I have named such as prostitution, rape, violence, depression, substance abuse, degradation of women, etc are all seamlessly interwoven with the activity of stripping itself. You cannot fix or prevent these problems by having more bodyguards, better parking, higher cover charges, better clothes for the strippers or a dress code for the customers. The damage is in the activity itself. You can try to move the prostitution that this causes to another neighborhood but that is neither prevention nor cure.

This is an industry that depends upon all of us to be silent about what we know to be true. By our silence we allow those who are psychological cannibals to prey upon the psychological vulnerabilities of others. So silence is complicity. So I say to the strip club bosses, the pornographers, and the pimps who make money by hurting people and damaging our communities, you will never have the comfort of my silence again. I hope the same is true for you as well. And if it is true, you can be the kind of hero for which this state so deeply hungers.

Thank you.

Dr. Mary Anne Layden, Ph D
Director
Sexual Trauma and Psychopathology Program
Center for Cognitive Therapy
Department of Psychiatry
University of Pennsylvania

Women in Strip Clubs Speak Out

Abuse by Customers

91% Verbally abused
52% Called cunt
61% Called whore
85% Called bitch
88% Arm grabbed
73% Breast grabbed
91% Buttocks grabbed
27% Hair pulled
58% Pinched
24% Slapped
36% Bitten
76% Customers flicked cigarettes, ice, coins
70% Customers followed them home
42% Customers stalked them

Abuse by Managers or Male Staff

85% Verbally or physically abused
21% Called cunt
18% Called slut
33% Called bitch
12% Pinched
12% Slapped
(http://www.ccv.org/View_from_Inside_Stripbars.htm)

Dissociation and abuse among multiple personality disordered patients, prostitutes and exotic dancers.

	Strippers	Prostitutes
Sexual abuse	65%	55%
Multiple personality disorder	35%	5%
Borderline Personality Disorder	55%	11%
Depression	60%	60%
Substance abuse	40%	80%

Strippers and prostitutes suffer from a number of psychiatric disorders. Childhood abuse often precedes their entry into the sexual exploitation industry.

Ross, et al (1990) Dissociation and abuse among multiple personality disordered patients, prostitutes and exotic dancers. Hospital and Community Psychiatry, 41, 3.

(8)

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
MARCH 17, 2011

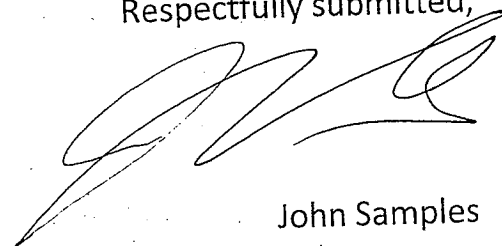
TESTIMONY OF JOHN SAMPLES REGARDING HB2107
CLUB ORLEANS AND BABY DOLLS, TOPEKA, KS

Mr. Chairman and Member of the Committee:

1. \$900,000 payroll
2. 50 employees
3. 100+ dancers-Based upon Kansas Department of Labor salary classifications \$34,000 annual salary per entertainer (I do not agree with)
4. Economic note #3,400,000
5. \$200,000+ in liquor taxes
6. Number 1 and Number 2 clubs in Topeka
7. No studies done in Kansas

Thank you for your attention.

Respectfully submitted,



John Samples

General Statements

1. Owners will lose substantially all of their investments as clubs close.
2. Kansas was founded on being a tolerant state. Everyone talks about the damage clubs cause. Damages were listed in the House, but are not evident to me in Kansas as the studies were old and not from Kansas.
3. If the clubs are closed I can show you the damage lost jobs and lost tax revenue will do to the state. There will be an increase in SRS and unemployment expenses.
4. Far fewer police calls than normal bars.
5. That entertainers are demeaned is inaccurate, our security personnel do not allow that to occur in the clubs. Our entertainers tell us they are harassed and view mis-behavior in the regular bars, that's why when going out to party, they come to our clubs.



*Equal
Entertainment
Group*

Philip Bradley

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Lawrence, KS 66046*

*785.766.7492
pbb@sunflower.com*

February 14, 2011
Testimony
on HB 2107, House
Federal & State
Affairs

Mr. Chairman, and
Members of the
Committee,

I am Philip Bradley representing the Equal Entertainment Group. I also have the permission of the Kansas Licensed Beverage Assn. and both groups support the defeat of HB 2107. Thank you for the opportunity to speak today.

We **oppose HB 2107** and ask you to not advance or support this act. This measure addresses many issues that appear simple on the surface but are very complex attempting to further expand state government regulations where local government already has taken action. While one may or may not agree with current law and the courts interpretations of that law, those elements together have attempted to find a balance; the very important and critical balance. One between the individual rights, personal responsibilities and the individual freedoms citizens are guaranteed and the duties of the government to protect its citizens. Our country is founded on the principles and beliefs that although certain practices and beliefs may not be shared by all and even be disapproved by some, they are worthy of protecting in the greater cause of our rights and freedoms. And founded in the belief that local control is preferred to state or national regulation. Seemingly helpful actions will have dangerous unintentional consequences.

These subjects are difficult to discuss objectively, and especially difficult to discuss in a forum such as this. They may be embarrassing to some. They need a thoughtful considered, deliberation before altering the status quo. This measure covers several areas including; retail establishments (aka adult book stores and/or adult video arcades) and secondly restaurants, clubs and bars that also are entertainment venues. These should be split into separate measures and considered individually. They operate significantly different with differing licensing requirements or none at all. ***We first ask that this measure covering two different subjects be divided into two separate bills and let each be debated and stand on their own merits.***

HB 2107 proposes serious issues and needs serious consideration. My testimony won't be covering the legal arguments that others have already addressed for the many years that the legislature has considered and wisely chosen not to enact this extreme measure. My members are primarily concerned with the businesses defined in HB 2107 in page 2 Line 36-39, "(c) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club or other commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear semi-nude" and we generally limit ourselves to those places serving/selling beverage alcohol. Those should be in a separate bill.

The opening paragraphs allege that this is the "community defense act", though what it seeks to do is **seize the control from** the communities and **overrule** community actions. The justification is contentions of "secondary effects" that are supported by studies of out of state urban areas and give no evidence that any of these claimed effects have or are occurring in Kansas. This bill has been offered for years and yet there is no Kansas substantiated evidence. Recent events are just proving that local control is working and is best.

Sn Fed & State
Attachment 9

3-17-11

We urge the defeat of this measure as a whole. We at the very least, object to the banning of alcohol in new section 8b and hours of operation in 8a, requiring the changing of floor plans, interior rebuilds, installation of cameras/spying devices, hiring of additional personnel, and new additional operation procedures. We object that all of these new requirements be completed within 180 days. We also feel that the word "habitual", is open to subjective and varied interpretations.

We urge you to not advance this bill. However if the committee wishes to pursue this wide reaching and comprehensive act, we ask that this bill be separated into two stand alone measures and suggest that a sub-committee be appointed and we offer to work with such a group.

Specifically we ask you to not advance and defeat this bill. If you chose to work it we ask;

- ***The bill be split between the licensed establishments and all others(bookstores, theaters, retail venues, etc) and each considered on its own merits***
- ***That the effective date be extended to Jan 1, 2013***
- ***That the excessive regulations on internal operations in entertainment clubs be removed***
- ***That the extraordinary hours restrictions be removed***

Thank you for your time.

The difficulty in life is the choice

. The Bending of the Bough, Act V

Philip Bradley, Ph.D.

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phil@klba.org

pbc consulting

representing;

Kansas Licensed Beverage Association

Kansas Viticulture & Farm Winery Association

Craft Brewers Guild of Kansas

Kansas Fireworks Association

Equal Entertainment Group

February 14, 2011

Kansas House of Representatives
Federal & State Affairs Committee

HB 2107

Mr. Chairman and Members of the Committee,

In regards to the testimony of

Charles A. O'Hara
Attorney at Law
1223 E. First Street
Wichita, Kansas 67214

The following will be addressed by my testimony in regards to Wichita area Adult Cabarets.

- The Adult Cabarets (bars) in the Wichita, Kansas area are heavily regulated.
- Dancer licenses are required for each dancer
- The dancers cannot have certain types of convictions on their record
- The business can only be in properly zoned areas. (Not around schools, churches, etc)
- Law Enforcement can enter the business at anytime
- Adult Cabarets are heavily regulated so there are less problems than normal bars
- The dancers in the adult cabarets are regulated in their conduct and dress (a violation has serious implications for the dancer and the business)
- There are very few adult cabarets in the Wichita area

Laura Scott 14321 W. 116th Terr. Apt 1910 Olathe, KS 66062 (913) 575-6347

IN OPPOSITION OF HB 2107, THE COMMUNITY DEFENSE ACT
Before the Committee on Federal and State Affairs
February 14, 2011

My name is Laura Scott and I am a resident of Olathe, KS. I oppose House Bill No. 2107. I have personal experience in several areas that I believe are pertinent to this Bill. I am a resident, voter, tax payer, Kansas registered nurse and work in clinical research, and have rarely been to, but have subsequently enjoyed, adult oriented businesses in Kansas. I have never experienced or witnessed any of the adverse secondary effects mentioned in the Bill, including, but not limited to, personal property crimes, prostitution, illicit drug use and drug trafficking, or sexual assault while in or around a Adult oriented business in Kansas.

I believe that if this Bill is passed it will have a negative impact on the state of Kansas and its residents. Adult oriented businesses support Kansas residents by providing much needed employment when the unemployment rate in Kansas, increased from December 2009 to December 2010, according to the Kansas Department of Labor. Adult oriented businesses also support the state as a whole by the revenue they generate in taxable dollars. New Section 8. (c) of the Bill would make it illegal to sell, use, or consume alcoholic beverage while on the premises of an adult oriented business. Kansas will lose tax revenue from the sale of alcoholic beverages at adult oriented businesses. New Section 8. (a) would force Adult oriented businesses to be closed from midnight to 6:00 am. This feels like the state of Kansas is placing a curfew on businesses and the adults who choose to either work there or spend time there. I don't feel that is something for the state to decide. Forcing a business to close earlier than they would choose to reduces that business's revenue, and subsequently, their employees' revenue. This seems like the last thing business owners and Kansas workers need with the economy struggling the way that it is.

As for personal property crimes, I have done some research on areas that do and do not have businesses that have nudity or a state of nudity. There is an adult oriented business in Basehor, Kansas called Whispers. I have personally never been to Whispers, but my cousin and her family live in Basehor. The property crime rate in Basehor was 9.1/1,000 in 2009 as reported by Basehor PD according to the Kansas Bureau of Investigation. The property crime rate in Parsons, KS, a city with no adult oriented businesses that I could find, was 82.9/1000 as reported by Parsons PD to the Kansas Bureau of Investigation. That's more than nine times higher. I haven't been able to find anything more than hearsay or opinion to link adult oriented businesses to property crimes.

To address the potential negative impact of adult oriented businesses on Kansas communities as it pertains to illicit drug use and drug trafficking Montgomery County had a total of 16 seizures in 2009 related to Methamphetamine. Montgomery County does not have a business with nudity or a state of nudity that I was able to find. Shawnee County had no seizures in 2009 and has several businesses that do have nudity or states of nudity. Clearly, the presence of such businesses was not a factor in illicit drug use or drug trafficking in these cases.

I want Kansas to be as safe as possible. I'm proud to call Kansas my home and I do feel safe here. I feel as safe at adult oriented businesses as I do at any other business in Kansas. I feel local control of such businesses is working and ensures my safety. I do not feel that the community defense act addresses any problems we have in the state of Kansas and it terrifies me to think of the negative impact it would have on Kansas businesses, workers, and state revenue. I ask that you look at the facts as they pertain to Kansas, not some other state, because we aren't them, and we shouldn't be assumed to make their mistakes. I ask that you have more faith in your state's businesses, employees, and residents to be citizens that would make you proud, even though we don't all enjoy the same things. I ask you to vote against House Bill 2107 because it attempts to fix a problem I don't believe we even have.

Supporting documentation

Sn Fed & State
Attachment 11

3-17-11

2009 Crime Index

2009 Seizures by County and Also

Kansas Unemployment Rate Comparison

- [Crime Index 2009.xlsx](#)

Crime Index 2009 1 Methodology The **Kansas Bureau of Investigation (KBI)** compiled the **following 2009 1 statistical crime report** based on ... **Kansas**, as it is dependent on victims **reporting** ... 17 Pages.

www.kansas.gov/kbi/stats/docs/pdf/Crime%20Index%202009.pdf · PDF file

<http://www.kansas.gov/kbi/stats/docs/pdf/Crime%20Index%202009.pdf>


[Crime Index 2009.pdf](#)


[2009 Seizures by County.pdf](#)


[Unemployment_Rate _Comparison.pdf](#)

(12)

Alaina Lamphear
5150 Rockenham Rd.
St. George, KS 66535

Dear Rep. Carlson,

I am writing to urge you not to support HB 2107 "The Community Defense Act" which will impose unjustly strong regulations upon "Adult Oriented Businesses." With these regulations, there is potential for millions of dollars of tax revenue to be lost not only from the businesses themselves, but from supplementary taxes including liquor from places that are not generating problems or harming neighborhoods.

In addition to holding a full-time job in the state of Kansas, I am an active senior at Kansas State University, involved in many feminist organizations, student judicial board, and many other activities. We are constantly left to wonder with the massive budget cuts taking place at the state level, where will the funding come from. As you are well aware, there have also been talks of salary cuts as well which has potential to directly hinder my education as taking a pay cut will directly affect morale. As a citizen of the State of Kansas, and one who will be affected directly by these cuts, I am curious as to how many additional salaries will need to be cut in direct correlation to the loss of revenue generated by "adult oriented businesses" and their subsequent liquor sales. I tried to find the fiscal note and information from this bill, including the expected loss of revenue from these businesses but it was nowhere to be found for the public to find on the Kansas Legislative website. I'd suspect it would be upwards in the millions.

In addition, one must look at the additional local, county and state police force cost to patrol these "adult oriented businesses." As a student at Kansas State, I have often gone into Aggieville on a Saturday night with no expectation to see acts of an "adult nature" and yet experience dancing and interaction though legal still quite similar to that, in venues with far less law enforcement presence/supervision or security from the establishment than adult clubs. Yet if I was to frequent an "adult oriented business" it's pretty obvious what this business is and what I could expect. My question is until we have enough resources to take care of the areas of the communities with proven current criminal activities that are occurring directly in front of our eyes in non- "adult oriented businesses" of all types, why take away a place that is a) legal and compliant with state statutes, rules and regulations, b) providing an expectation of what one would find inside the doors c) providing revenue to the state and jobs to Kansans and d) provides a controlled locally regulated venue for adult entertainment off the public streets or computers where a child or some unwilling patron might actually come into contact with this.

Again, sir, thank you for your time, and your support in keeping HB 2107 from taking any much needed revenue from the state.

Sincerely,

Alaina Lamphear

February 14, 2011
Kansas House of Representatives
Federal & State Affairs Committee

HB 2107

Mr. Chairman Brunk and Members of the Committee,

In a free society toleration is only suspended when a grave threat to public health or order is posed. The burden of proof of harm should be on those who wish to limit the free and consensual economic activities of their fellows. Hear-say and anecdotal condemnations should carry no weight. We cannot expect to share and approve of the tastes of all our fellow citizens. We can expect that toleration of our own peculiar tastes will be given in return for our own similarly forgiving attitude.

If we instead begin to legislate against and outlaw commercially viable activity only because it is distasteful to many (or a vocal minority) of our fellows, then we open ourselves to a continual winnowing of commercial activity down to those grey and austere forms that are only approved of by the state, such as continued in Soviet Russia.

The price-tag of one new mother unnecessarily on the welfare rolls is too high a price – both in money and in the degraded morale of a once-productive citizen.

There is no question that the current, freer state of economic arrangements allows more people to find the niche they are most comfortable and productive in than the proposed legislated state of affairs. As was recognized in our constitution and as we have seen time and again, government intervention in the economic lives of the citizenry has far-reaching unintended consequences. Those that feel the job of government is to protect freedom – not to impinge upon it – are also defending the most economically viable position. Freer arrangements bring to bear the knowledge of more individuals and their appraisals of value.

As Missouri has fallen to this type of legislation, Kansas has benefited. We are an example of how local control has worked. Freedom-loving people flee excessive legislation. Let our laboratory of democracy be an experiment in GREATER not lesser freedom.

The idea that women who work as dancers are somehow victims can be dispelled with an honest conversation with them. Such women are empowered, emboldened and financially aware where they otherwise would have been beholden to others or the state. The entertainment occupation may have been the first opportunity they have had to save earned income with an eye towards change and a responsible advanced living. Banning profitable and harmless employment in the presence of alcohol will ensure that only the desperate few who are willing to work for very little will continue.

Joseph Suber Retail Business Owner (11 years), Olathe, KS

Sn Fed & State
Attachment 13

3-17-11

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
FEBRUARY 14, 2011
STATEMENT OF MICHAEL W. MERRIAM
IN OPPOSITION TO HB 2107

Mr. Chairman and Members of the Committee:

I practice law in Topeka and represent three gentlemen=s clubs in the vicinity. I also have been representing the media in First Amendment issues for about 35 years. I teach First Amendment law at Washburn University. With that experience, I would like to comment in opposition to HB 2107, which, as the saying goes, is a solution in search of a problem. This is not a legal brief, so I dispense with case citations and state the law in general terms.

Numerous cases have recognized that non-verbal expression, which includes exotic dancing, is a protected activity under the First Amendment at least to some extent. Under the Forum Analysis of the First Amendment, the power of government to regulate such activity on private property is much curtailed. Well-established rules for such regulation are known as Time, Place and Manner restrictions upon speech. These four rules must be followed for a government to restrict protected First Amendment activity:

1. The restriction must be justified by a substantial government interest;
2. The restriction must be content-neutral;
3. The restriction must not constitute a complete ban on the activity;
4. The restriction must be narrowly tailored, i.e., no broader than necessary to achieve the substantial government interest.

As for gentlemen=s clubs, these constitutional rules are ignored by HB 2107 in a number of respects. The principal issues are threefold: 1) 2107 prohibits nudity, and semi-nudity under certain conditions; 2) the clubs could not remain open past midnight; 3) the clubs could not serve alcohol.

I will not argue the rather over-elaborate statement of legislative intent, which appears designed to forestall almost certain litigation (which has been the norm in every other state attempting this sort of legislation), although I do challenge the bill supporters to prove any such negative secondary effects are actually occurring in Kansas.

These restriction are certainly not content-neutral. Indeed, it is precisely because of the content of the protected activity that these clubs are singled out for such restrictions.

These restrictions would constitute a complete ban upon the clubs protected activities. It is a fact of business - well known to the crafters of 2107 - that gentlemen=s clubs offer entertainment that involves nudity or semi-nudity, alcohol, and after midnight hours, up to their licensed closing hour of 2 a.m.. The loss of any one of these factors, let alone all three, will spell the closing of such businesses. No new clubs would or could open. There would result a complete ban on the protected activity by putting the clubs out of business entirely.

Finally, HB 2107 addresses an imagined problem with a death blow to the industry and First Amendment protected activity. How can one explain, for example, how closing a gentlemen's club at midnight, but allowing all others that serve alcohol to remain open, narrowly serves the purpose of containing secondary effects? Likewise, how can one explain prohibiting serving alcohol at all at a gentlemen's club, but allowing it in every other licensed establishment?

I leave it to the industry to explain the extensive loss of sales, liquor, income and property taxes to the State, increased unemployment and other harmful direct effects of this proposal. I do know that some communities, such as Emporia, manage perceived secondary effects perfectly well locally, as could every community within the State. I fear that this bill invites not only First Amendment litigation, but lawsuits on Equal Protection grounds as well. With no evidence of ill effects in Kansas, adoption of this legislation is ill-advised.

Thank you for your attention.

Respectfully submitted,

Michael W. Merriam

cc: Mr. John Samples
Mr. Phil Bradley

RE: "Community Defense Act" HB 2107.

We've recently heard about the plight of Wes concerning his business, the Flamingo Club. We want to write this brief letter in hopes that you can pass it along to lawmakers who will appreciate and actually **consider the views of Lawrence citizens who feel our community would NOT be better off without Wes or his business and who, in fact, deeply appreciate his efforts to make our community a better place to live.**

It is our opinion that Wes' business does not harm our community and, without his business income, our community would, in fact, be damaged. My wife and I have been and are members of fund raising committees and/or charities in Lawrence. Every time we have needed and asked for Wes' support, he has never declined and always delivered. He is one of the most gracious and giving persons in our community when it comes to helping others. We've lived here since 1987 and never heard of a case where Wes' business caused harm to our community.

In addition to contributing money and his time, Wes also offers his place of business when fundraising groups need a place to meet. Many of our city leaders have taken advantage of the opportunities Wes provides when it comes to a meeting place for charitable endeavors. He provides his building and pays the utilities bills necessary to support the meetings/events.

He is always ready to donate funds to help charitable organizations. One particular story comes to mind concerning the Crown Casting Club (a kids club that teaches kids to fish). Early in the organization of the club, the club was in need of life jackets. Wes heard about that and said to send him the bill. He paid for all of the life jackets (50 nice full vest jackets of various sizes) without ever expecting anything in return and said "if I can do more, please let me know". He expressed the need to give single parent families an outlet to enjoy the outdoors.

It is our opinion that the law makers should not try to legislate morals. This would especially be the case when they really don't know the business and can't site any harm done by it. Quotes from large, inner city studies hardly seem appropriate. Our community accepts and, in fact, appreciates Wes and the way he runs his business. **The "Community Defense Act" seems to me to be misnamed. Maybe a better name would be "Community Business Destruction Act".** We don't believe anyone was elected to pass this act and we oppose the legislative committee and / or legislature continuing to advance this bill that would directly harm Wes and his place of business.

Thank you for your consideration,

Cecil and Teresa Kingsley

2020 Palmer Dr.

Lawrence, KS 66049

HB 2107

February 9, 2011

Dear Kansas State Representative:

This letter is to address H.B. 2144 (The Kansas Community Defense Act) and its potential impact on business owner and community advocate, Wes Kabler. Wes has been running The Flamingo Club in Lawrence, KS since 1969. His contributions to the Lawrence Community have been vast. Considering his financial contributions alone undercuts the true commitment of time and resources he has given to the Lawrence community. His involvement in this community has made for better lives to those in the most need. Wes has assisted charitable causes in our community like The Boys and Girls Club, Big Brothers/Big Sisters, Lawrence Humane Society, March of Dimes, Willow Domestic Violence Center just to name a few.

I urge you to consider the impact this bill will have on the livelihood of Wes and his far-reaching positive impact on the community of Lawrence.

I also urge you to oppose HB 2107.

Sincerely,

Charlie Upton

1919 N. 600 Road

Baldwin City, KS 66006

HB 2107

February 8 2011

The Honorable Steve Brunk

Chairman Committee of Federal & State Affairs

Kansas State Representatives

I'm writing to you today on HB2107. I'm the owner of O'Malley Beverage of Kansas, Inc. the local Anheuser-Busch distributor in Lawrence my territory covers six counties; Anderson, Atchison, Douglas, Franklin, Jefferson and Leavenworth. My company employee 30 people and provides generous wages and an excellent benefits package. The industry this bill is targeting are customers of mine and with the current economic condition we are faced with today, I need all the customers I can get.

Wes Kabler who owns the Flamingo Club in Lawrence is a personal friend of mine, not just a customer. I have served on committees with Wes he is generous with his time, talent and treasure. Wes is a good corporate citizen of my community.

I believe there are far bigger issues facing our State. You cannot legislate morality.

Thank You for your time and service to the great State of Kansas.

Cheers!

Kevin O'Malley

House Federal and State Affairs Committee

HB 2107

I am opposed to HB 2107 for the following reasons:

- 1- It is anti-business legislation. At this point in time we cannot do harm to any business in our state and the outcome of this bill would cause businesses to close and people to become unemployed.
- 2- It is a clear attempt to legislate morality. The legislature has a very full plate of much higher priority decisions to work on than this one. Please re-focus your efforts to more appropriate tasks.
- 3- I have a fear that this legislation might actually lead to more precarious situations for people in the industry- especially the women who believe this is their career and may try to continue it in more private, but much riskier, environments. At least there is staff and security to keep people safe in a club setting.
- 4- In my town we have a proprietor of a Gentlemen's Club who is and has been active as a fundraiser for charities in our community for the last 20 years. In fact he founded one in particular that has raised over \$500,000 for children's charities in our community. He is not the villain that this legislation would make him out to be. Quite the opposite, he is a community leader who would suffer greatly if this legislation becomes law.

Please do the sensible thing and kill this bill, as the unintended consequences will surely overpower whatever good you believe it will do.

Thank you for listening.

Al Hack

1968 Carmel Dr.

Lawrence, KS 66047

PRO'S	CON'S
<ul style="list-style-type: none">Wes is man that always gives back to the community whether it be a homeless person who needs a meal to freely support St. Patrick's Parade to everyday needs that Lawrence comes across usually needing some backing	HB 2107 would penalize the man for running a state regulated establishment an abiding by the laws.
<ul style="list-style-type: none">Wes has had an establishment for years with very little chaos unlike other bars and restaurants where police are dispatched frequently. So if you're going to change the hours of operation & take all alcohol out of the picture you better be prepared to do the same to ALL other establishments.	Take all away as is proposed in HB 2107 and ANY business would fail.
<ul style="list-style-type: none">Location: Currently on the out skirts of town and out of the way so it's not meant to be in anyone's face that would rather not patronize the facility.After 20+years I haven't seen any indication that it has had any bad effects and even has had a positive effect and been a good neighbor to the nearby residents.	According to HB2107 it supposedly it encourages crime and brings down the community. This is not true. How long has the Flamingo been there? Decades and I have neither seen nor heard of any complaints. Come On!
<ul style="list-style-type: none">Supports a lot of women who are trying to raise a family or get through college.	It may not be your choice line of work but it's honest, legal and it is paying the bills and supporting their kids
<ul style="list-style-type: none">Employs other people who count on these good jobs to live. I.E.: the cooks, bartenders, waitresses, managers etc.	My Question to you is ; How would you like your legal job yanked from under your feet.
<ul style="list-style-type: none">Wes should not be lumped into a bill with porn bookstores, as they are two very different things. At the Flamingo there is structure and rules to follow and constant enforcement; at a bookstore who don't require a license, it's totally without regular law enforcement visits.	Don't run these two matters together. You're acting like they're interchangeable and their totally different issues.
<ul style="list-style-type: none">I often wonder how much Wes's generosity has positively affected NFP's, youth groups, fundraisers, charity events and KU. I know a lot!	Please do not try to run him out when he has a legit business and plays by the rules especially based of out of state "studies" and non Kansas examples!
<ul style="list-style-type: none">Wes has a wonderful family. They give their time to help raise money for the community and kids as well. You CANNOT say enough good things about Wes and he does it with a closed mouth, shying away from gratitude. The man oozes with character, friendship, integrity and good spirit.	Whoever is behind this constant battle needs to give it up. We need more good people in this world just like Wes!!! Thank you for your time!

HB 2107

February 8 2011

House Committee of Federal & State Affairs

Dear Kansas Representatives:

Kansas citizens who do not want a lap dance, sushi or tattoos have the freedom to not patronize businesses that offer these. Kansans who do not wish to own guns have the freedom to not own guns. The above bill would restrict freedoms, destroy jobs and lower tax revenues--reasons enough that it should not pass.

Driving in Topeka past the Flexel plant, Frito Lay, the Waste Management landfill all disperse unpleasant odors that I find, as well as my out of state visitors, extremely offensive. Driving on Highway 75 past private farms with cattle pens does the same. Please shut down these nuisance businesses as well as while you are cleaning up Kansas. We do not need these jobs or revenues.

Please build more state owned casinos to hire the above displaced workers where I can be entertained by in a "proper and moral" environment endorsed and embraced by our beloved lawmakers.

This is a bad bill that helps no Kansans and harms many. Let it die. Don't look for solutions to problems that do not exist.

Respectfully,

Lance E. Malmstrom, D. C.

(21)

Thought you would be interested in this letter from Pastor Donnie Miller of the Trinity Family Church of the Nazarene in Gardner, KS regarding one of KS Adult Clubs. Thank you Phil Bradley

April 21, 2010

To whom it may concern:

My name is Donnie Miller and I'm the pastor of Trinity Family Church of the Nazarene in Gardner, KS. Over the past few years, my wife and I have become friends with Guido and some of the other employees of Bonita Flats. It started in the summer of 2007, when my wife and some other ladies in our church sensed God leading them to find a way to share His love with the employees of the two gentlemen's clubs in Johnson County. The ladies began a ministry we now call "Love Wins."

The point of Love Wins is to share God's love with a group of people often looked down upon and treated harshly by the church and individual Christians. The ladies from our church wanted those in the clubs to know that Jesus doesn't condemn and judge the way many Christians do and that God loves them right where they're at. Once a month, they would put together gift bags and pass them out among the club's employees, trying to show God's love in a tangible way.

The first two times our ladies visited the clubs, there was a lot of anxiety and uncertainty on both sides. My wife wasn't sure what to expect from the clubs and vice-versa. The security staff of Bonita's were fearful that the ladies from our church were there to make trouble. Over time however, our opinions of each other changed. A security staff member eventually told me, "We kept waiting for you to condemn and judge us, like all the other Christians we know. But you never did. It seems you really believe what you talk about. I have become interested in this God of yours." My wife's attitude when going to the clubs began to change from fear and intimidation to expectation and warmth. While she certainly didn't get to know everyone at Bonita's, she did build a friendship with Guido, the club's owner.

My wife went to the club to love on the employees, but Guido and some employees began to love Erin and myself back. When a pregnancy attempt failed, Guido hugged my wife and offered encouragement. When we adopted a son a few months later, Bonita Flats graciously threw us a baby shower. Guido told us that they threw the shower as a thank you for sharing love in a way they'd never seen before. We walked away from that shower feeling very loved.

The best part of our relationship with the clubs however, has been our opportunities to serve together. Over the past three Christmases, both clubs have partnered with us to serve needy families. We have also partnered together for several service projects at My Father's House, a ministry for the rural poor in Paola, KS. Guido always makes sure there is a good group from Bonita's working on those serve days, usually larger than the group from my church. When we first started Love Wins, we hoped to have the chance to share Jesus' love with a group often looked down upon by the church. We have been completely overwhelmed by the opportunity to live out Jesus' compassion for the poor with our friends from Bonita's.

I share all of this to publicly affirm the good that has come out of our relationship with Bonita Flats and to affirm the good that exists in Guido and his employees. I am not publically endorsing the gentlemen's club industry nor taking a side on the legislative issues being discussed. Guido and I have had honest discussions about the fact that we have different views on morality and sexuality. Even with our obvious differences, I am grateful for the opportunity to discover hidden commonalities and work together for a common good.

Sincerely,

Pastor Donnie Miller
Trinity Family Church of the Nazarene
Gardner, KS

Sn Fed & State
Attachment 21

3-17-11

House Committee of Federal & State Affairs
HB 2107

Mr. Michael Scribner
10610 w 89th Street
Overland Park, KS. 66214

Dear Federal and State Affairs Committee,

I am a local resident and voter writing to ask you to vote against HB 2107, titled the "Community Defense Act," which is scheduled for a hearing on Monday, February 14th, 2011. I am a normal, taxpaying citizen, and an industrial designer by trade. I have no ties to any adult bar or restaurant, and in fact have never worked in any such establishment in my life. I rarely visit such establishments, perhaps a few times in my life. I'm simply appalled by the lack of perspective this avenue of legislation represents on the part of the Kansas government.

The simple fact is that you have much larger concerns right now than this. We are facing millions of dollars of budget shortfall and high unemployment. In times of such economic hardship, enacting legislation such as this will do nothing but kill much needed jobs and avenues of tax revenue from legitimate businesses. The bill under consideration is extremely unfair, and places restrictions on a specific type of business that the vast majority of similar businesses are not held to.

Further, the premise that the bill will "promote the health, safety, and general welfare of the citizens of Kansas" is nebulous and vague at best. There seems to be little research indicating any correlation between such businesses and notable increases in crime or criminal activities. A few of the "deleterious secondary effects" mentioned in the proposed legislation sound more like moral concerns of personal opinion, not actual crimes. Your job as government officials is not to legislate morality. Please remember that.

My personal experience with adult entertainment venues is somewhat limited, yet the few times I have been to such locales, I have felt safe, and the experiences provided in the venue were legal and entertaining. These are businesses like any other, providing a service to the community, entertainment to consenting adults, provided by consenting adults, and a stream of tax revenue to the state. A proponent of fiscal responsibility will vote against HB 2107.

Thank you for your time and consideration.

Michael Scribner

HB 2107

February 8 2011

House Committee of Federal & State Affairs
Dear Mr. Chairman & Representatives,

It has come to my attention that this new bill concerning the liquor laws at adult establishments is up for discussion again. I would like to express my thoughts to you. I am a small business owner and parent.

First, I do think that it is a good idea to only have people handling alcohol working at these establishments that are 21 years and older. I also agree that those patrons between the ages of 18 and 21 should not be allowed in, due to alcohol being served. However, pretty much everything else in this bill I think is unnecessary.

I would hope that the state has more important matters to address instead of worrying about how some of the gentlemen in the state of Kansas spend their evening. As long as everyone is following the legal ordinances adopted by local communities and all involved are paying taxes, then what is the big deal? The girls working in these establishments are mainly single mothers trying to support their kids, because of the lack of child support that they receive from the fathers. So, instead of going on state assisted programs, they are working and paying their taxes. Not to mention the jobs that will be lost from the ripple effect of closing these establishments. And the last time I checked the news, the State of Kansas doesn't need a higher unemployment rate or additional burdens place on an already staggering budget deficit.

If you pass this bill, then these women will be forced to either live off the state or turn to "other" activity that will result in a higher crime rate and unsafe working conditions.

The other question I have is, do these rules apply to the entertainment format of Burlesque? Burlesque offers married couples the entertainment of the old Vaudeville Days. I would appreciate a response to this question, because there are several Burlesque Troupes in Kansas who are raising money for mainstream charities at well known theaters.

As to the matter of how I would like for you to vote on this bill? Please vote against it.

Thank you for your time.

Sincerely,
Donna Follick
416 E Spruce St
Olathe, KS 66061

From: **Marks Jewelers Inc** <marksinc@sunflower.com>

Date: Sun, Feb 13, 2011 at 3:57 PM

Subject: Re: house bill 2107 letters

To whom it may concern.

I would like to be on record opposing H.B. 2107.

It is my opinion that you should not single out specific industry as corrupt or whatever in that there are "good and bad" in all forms of business.

I would like to see HB # 2107 stopped in respect to the bill of rights of the United States of America.

Sincerely,

Brad Parsons

2104 Greenbrier St.

Lawrence, Ks 66047.

House Federal and State Affairs Committee

February, 2011

c/o The Honorable Steve Brunk, Chairman.

Mr. Chairman,

I would like to address the Bill HB 2107. My name is Larry W. Meeks, I am 63 years old, and I am a lifelong resident of Kansas. I have been self employed for the past 22years, with the last 10 as owner of an "adult cabaret", as so called in this bill.

Sir I ask, Is it really the place of Government to decide if I stay in business or do not based on unfounded accusations and studies done on what, inner city crime in the big cities and other States? As I understand the studies this bill was presented on were not even done here in KANSAS. ? Isn't that why we have long standing laws and ordinances already established to govern how we are to properly operate these businesses? In allowing this bill to pass, I feel my rights as a citizen will most certainly have been abused. I have NEVER been fined, written up, issued a ticket, penalized, or taken to any court because of ANYTHING to do with my club. I have random UAs, with the immediate suspension of an entertainer should she test positive for drug abuse. I strictly enforce a "no customer relationship" outside my business. Again that has an immediate suspension as the consequence. I can guarantee you that a customer wanting after hours company would be way more likely to find that at a regular bar or club than at my "adult cabaret".

This Sir is an established business (20+ years) it is not what this bill implies it to be. There is not one single residence within two city blocks of my club that is for sale or rent. This bill asserts that we "Drag the neighborhood down ". Totally unfounded. Any negative secondary effects of my club would be if this bill were to pass. Isn't Kansas embarrassingly in the red with loss of tax revenues? This would create more tax loss. Most of the entertainers are single parent mothers, with no formal education, and in today's economy looking at a pretty gloomy future for job prospects. What, do they go on welfare, become another burden on the State?

I believe this bill is based on someone's personal feelings rather than on thought out good business sense. Then it was combined with another bill with regulations on Adult Bookstores. WOW! Talk about not comparing apples with apples. They are two completely different and separate businesses.

I am respectfully asking for you Mr. Chairman and the committee to re think this Bill and understand the negative ramifications this could bring upon the state and just how many people would be put out of work at a time when the economy is already suffering.

Thank you for your time and any consideration deemed worthy of my thoughts. I am sorry it is so long. This is my life. And this bill will take that away from me and many others.

Sincerely,
Larry W. Meeks
Owner & operator
The Gentleman's Club
Great Bend, Kansas

RE: HB 2107

To Whom It May Concern:

2/10/2011

I am writing in regard to House Bill 2107. I have been a massage therapist for 7 years in Lawrence, KS. I have worked for large companies, small businesses, and for myself. I have an extensive client list including many people who work in the adult entertainment industry. If their industry were to come under the proposed legislation, it could potentially cripple my clients financially. I have already been alerted to the probable loss of those clients if this house bill were to go through. The industry this legislation is targeting includes very good clients of mine and with the economy as it is today, I need all the business I can get.

As an honest, hardworking person, I ask that this legislation not be passed. This bill will do sufficient damage to my income, which will in turn make it difficult for me to hold up to my financial obligations. I do not see any reason why this industry should be under such limitations. I believe there are far bigger issues facing our state than the restriction of the adult businesses.

I have not observed any "negative effects" and have seen that the local city and county laws are doing a good job of regulation. I fully oppose this legislation and ask that it be removed from committee.

Sincerely,

Lindsay M. Ewing

Dear Kansas State Representative-

I do not understand how so much time in our House Federal and State Affairs Committee is given to legislature that would restrict a functioning business when you have school funding shortages, unemployment funds depleted, KPERS running as a liability to the state and social services like food banks unable to provide for those in need. These are the problems that our legislators should be considering.

If you further restrict adult entertainment businesses you are doing nothing more than cutting off a source of funding that you need. Businesses fail every day and there are plenty more that owe back taxes so our revenues are declining. There is a problem with businesses that collect sales tax and don't pay the state. There is a problem with businesses that don't pay their employment taxes.

If you chose to impose more restrictions on a business, you should consider the ones that are run by individuals that do not follow the existing laws. Businesses don't need further restrictions, they need tougher penalties for violations of existing restrictions.

I would like my representative to the State of Kansas to focus on what can be done to increase state revenue, provide more jobs, manage KPERS and provide for those in the direst need. We have plenty of problems to deal with in our state because of the current economy. I want my legislative voice to work towards a solution, not to waste time on judgement of those businesses that are still contributing to our lagging economy.

Please consider stopping of the HB 2107 because it does not address a solution to our funding problems. It does not address a solution to declining revenues. It does not address a solution to violations of existing law.

HB 2107 is nothing more than a moral crusade.

Thank you.

Sarajane Scott Koch

779 E 1550 Road

Baldwin City, Kansas 66006

Dear Federal and State Affairs Committee,

I am a local resident and voter writing to ask you to vote against HB 2107, titled the "Community Defense Act," which is scheduled for a hearing on Monday, February 14th, 2011.

While I have no association with any adult oriented businesses, I believe any punitive threats and attacks – like this bill – on peoples' livelihoods and state revenue must be well-founded and in the true interest of the community. I find the bill's claims of deleterious secondary effects especially dubious and ill-researched.

The cleanliness, security and unobtrusiveness of my city's adult oriented businesses are well above that of many comparable restaurants, bars and retail stores. More the point, this bill's passing could seriously harm many adult oriented businesses' ability to continue to operate cleanly and safely.

As I have had only positive experiences and impressions of adult oriented businesses and have every confidence in them as they operate in Kansas today, I ask to vote against HB 2107.

Nate Bunnyfield

February 13, 2011

Honorable Terri Lois Gregory
Capital Office, Room DSOB
Topeka, Kansas

Dear Federal and State Affairs Committee and Ms. Gregory:

I am writing to you regarding House Bill 2107, which was referred to your committee.

I am a local resident of Lawrence and a voter writing to ask you to vote against HB 2107, titled the "Community Defense Act," which is scheduled for a hearing on Monday, February 14th, 2011.

First, I am not associated with any business incorporated in this bill. My concerns with this bill are the restrictions of these business' rights and for my fellow Kansan's jobs. Also, I am afraid a bill of this kind will perpetuate negative stereotypes of the adult oriented businesses in my state.

We are reportedly starting to come out of this recession we have been experiencing for many years. But, in the U.S., the unemployment rate, as of January 2011, is still at 9%. It is important to vote against this bill, because it will add to the unemployment rate. Because of the restrictions this bill places on adult oriented businesses in this state, I believe it will discourage business in this sector, reducing taxable income of these businesses and their employees, while also harming employees' income. I am afraid this will lead to more unemployment within our state and less taxes being paid to the state, adding to our growing deficit.

I understand there is a connotation that goes along with this industry, as well as an alleged association with criminal activity, such as "prostitution, potential spread of disease, obscenity, illicit drug use or trafficking, and/or sexual assault or exploitation". I want to reassure the Kansas legislature that I have never experienced anything of this kind associated with this industry. I have friends who are exotic dancers and their experiences in this industry are very much contrary to the above assertions, which are directly cited from Sec. 2b1 of this bill. In addition, in my **five years living in Lawrence, I have never experienced any of these crimes being associated with any adult oriented business in this city or in my time living in Derby and Wichita, Kansas. I disagree with the idea that these businesses negatively affect surrounding properties. In fact, I have had nothing but positive and affirming experiences with these businesses and their employees.**

Proponents of this bill seem to be focusing on the negative potential of these industries as cited from out of state. This is not the reality I experience in Lawrence or from my friends who are employed in these industries. From what I can tell, these establishments are clean, quiet, and unobtrusive to anyone who does not want to partake in their services. For the reasons above, I do not support this bill and I hope that you will vote against a bill that will destroy jobs in our state, in order to maintain our state's economy and a healthy job outlook for the future in Kansas.

Please consider my opinions when voting for this legislation and thank you for your service.

Sincerely,

Emily A. Richardson 1029 Connecticut Street, Apt. 1 Lawrence, Kansas 66044

Sn Fed & State
Attachment 29

3-17-11