

**Affidavit of Richard McCleary, Ph.D. for the case of
New Albany DVD LLC v. City of Albany, Indiana**

Dr. Richard McCleary is a professor at the University of California, Irvine and holds positions in three departments: Environmental Health Science, Criminology, and Planning. He also has training in statistics and has applied skills in measuring site-specific safety hazards, including public safety hazards associated with sexually oriented businesses.

Dr. Richard McCleary opines that it is a scientific fact that sexually oriented businesses pose serious ambient public safety hazards. Dr. McCleary further states that the effects that the studies relied upon by the City of New Albany show are not unexpected and that these effects are a consequence of the normal commercial activities of the business. The secondary effects of adult oriented businesses have been observed in a great number of locations, although the magnitude and nature of the observed effects varies from case to case.

Dr. Richard McCleary addresses a report offered in the case by a Dr. Linz that expresses the contrary opinion. Dr. McCleary differs in opinion from Dr. Linz on the principles of scientific method. Dr. Linz relies on four principles that he asserts are related to the *Daubert*¹ principles, but Dr. McCleary has concerns that the principles set forth by Dr. Linz are not clearly derived from *Daubert* and therefore do not have any precedent or authority. Dr. Linz's principles are "commonsense" but that runs contrary to one of the functions of the scientific method: to counteract commonsense impressions. Moreover, the Linz principles are difficult to apply in all circumstances.

Dr. McCleary notes that his analysis of Dr. Linz's critiques should not imply that scientific methods are the only means of demonstrating a secondary effect. Crime related secondary effects can be demonstrated by methods that, while empirical, do not rely on formal scientific structures such as before-after contrasts, cross sectional control comparisons, etc. Even anecdotal or other non-scientific data can be used to demonstrate secondary effects and legislatures can rely on them per *Center for Fair Public Policy v. Maricopa County*.

He then explores case studies cited and critiqued by Dr. Linz and demonstrates how those case studies are accurate and follow the scientific method. Dr. McCleary specifically works through the City of Phoenix, Arizona, study and the Garden Grove, California study. In the City of Phoenix study, Dr. McCleary worked closely with the city employees who conducted the research in this study during his time as a professor at Arizona State University. The study was based on comparing the rates of property crimes, personal crimes, and sexual crimes in areas with adult businesses to those in "control" areas without adult businesses. The researchers then calculated a "secondary effect" percentage by comparing the crime rates. The secondary effects were

¹ "*Daubert* principles" refers to *Daubert v. Merrell Dow Pharmaceuticals* 509 US 579 (1993). The four *Daubert* criteria are (1) testability, (2) known error rates, (3) peer review, and (4) general acceptance in the scientific community. These criteria are applicable to legislative fact-finding; *Daubert* does not hold that these criteria are necessary or sufficient.

Summaries of Adult Oriented Business Studies

extraordinarily high. The secondary effects on property crime were 139.8%, personal crime was 113.7%, and sexual crime was 580.2%. Dr. McCleary, in response to Dr. Linz's critique that the neighborhoods were different, explains that while the control neighborhoods and the neighborhoods with sexually oriented businesses will be at least slightly different, the question is whether the neighborhoods are significantly different and whether those differences are large enough to bias the secondary effect estimate. Here, he concludes that none of the differences between the adult business areas and control areas are statistically significant, so the differences between the neighborhoods is not significant. The differences were marked by number of households, estimated 1997 population, racial demographics, age demographics, divorce statistics, median household income, and the number of households with a female head of household.

Dr. Linz critiqued the study, again, under his "one-time fluke" test, where he states that since the study only used the crime rates for a one-year period that the study was inaccurate. Dr. McCleary retorts that this test makes no sense when it is applied, and does not have established parameters (i.e., how many years' worth of data is needed to make a study accurate?), which make the test impractical. More data is always better than less, but at some point, a researcher has to determine when they have seen enough data and calculate the statistical confidence of the study. Here, the statistical confidence is .999, which indicates that the results being a "one-time fluke" are improbable.

The Garden Grove, California study was done by Dr. McCleary and a colleague in the 1990s and is one of the most scientifically rigorous, valid studies of crime related secondary effects in the literature. This study examined the changes to the level of ambient crime before an adult business opened in a community, after that adult business opened to the public, and after the adult business closed. The study concluded that when an adult business opened its doors, ambient crime rose and when it closed its doors, ambient crime fell. The study was a before-after comparison based on the premise that if a sexually oriented business has secondary effects, one expects to see a rise in the crime rate when an adult business opens in a neighborhood and if a before-after difference is observed, there is a secondary effect attributed to the business. Other plausible explanations of crime rate rising over time were debunked by watching the crime rates in all other neighborhoods with sexually oriented businesses in Garden Grove. If the rise in crime rates was not observed elsewhere, then the rise in crime rates was due to the arrival of an adult oriented business.

Dr. Linz critiqued the Garden Grove study as failing his "compared to what" test, but, by definition, a before-after comparison passes the "compared to what" test and the other factors that could have influenced crime rates were accounted for. The study addressed the question of whether sexually oriented businesses have secondary effects, while Dr. Linz expected the study to address a completely different question that was unable to be addressed by a study with the same goal as the Garden Grove study had: whether the secondary effects of sexually oriented

Summaries of Adult Oriented Business Studies

businesses are larger than those related to the opening of any other business. The study cannot be designed to address both questions and still do so accurately. Additionally, if every other business generated the same secondary effects that the study found adult businesses to generate, then Garden Grove would have the highest crime rate in the region, and it does not.

The garden grove study found that when a tavern opened less than 500 feet from a sexually oriented business, the crime in the vicinity rose significantly, but that the use of video booths vs. renting videos for off premise viewing did not significantly raise the secondary effect crime rates.

Modern criminological theory holds that the victimization risk at a site is determined by three factors: (1) the number of potential victims at the site; (2) the “hardness” of the site’s targets; and (3) the number of potential offenders at the site. This three-factor criminological theory predicts that adult bookstores, video arcades, peepshows, nude dancing clubs, and other types of adult entertainment venues will generate large, significant crime risks driven by the “victim” factor. Adult businesses draw relatively large numbers of potential victims to a common site and this density of victims attracts predatory criminals to the site. Also, common business practices such as advertising and sales attract new customers to the site which increases the risk of crime. This is not a factor exclusive to adult businesses, however the customers attracted to adult businesses have characteristics that make them attractive targets, such as the desire for anonymity impacting the victims’ likelihood to go to the police after being victimized.

The qualities of the patrons of adult-businesses make them soft targets for predatory criminals: if alcohol is involved, targets become “softer;” many travel long distances to the site and are therefore strangers; their desire for anonymity drives them to carry cash to pay with and are less likely to go to the police when victimized. The characteristics of the properties can also be described as soft. There are relatively few security measures to deter crime, the structural features of the sites that hide or obscure actor and activities also aggravate ambient risk by either being used to obscure criminal activities or making the area more difficult to be effectively patrolled by local police. These two risk factors attract criminals to the site.

Alcohol makes targets softer, which may contribute to the higher incidence of crime when an adult establishment is coupled with a tavern or other alcohol serving establishment. Alcohol lowers inhibitions and clouds judgment, which makes drunk patrons more vulnerable to criminals. Additionally, the presence of targets softened by alcohol draws criminals.

The expected crimes that take place at an adult establishment are predicted by criminological theory. There are primarily predatory crimes (robbery, mugging, etc.), “victimless” crimes (drugs, lewd behavior, prostitution), and crimes of opportunity (vandalism, theft, and burglaries outside the victims’ presence). Additionally, the criminals who are attracted to sexually oriented businesses by the quantity and quality of victims are often “professional criminals,” who have no other means of financial gain and devote much of their time to these criminal activities.

Summaries of Adult Oriented Business Studies

By increasing regulation in these sites, the softness of the targets will cease to be as big of a draw for criminals because of the risk of getting caught by the regulatory tactics, such as increased police presence, increased security measures at the site, and regulations that change the target softness.

Non sexually oriented businesses, as predicted by criminological theory, will have “trivially small” secondary effects for many reasons. These non-sexually oriented businesses do not draw large numbers of soft target customers to their establishments, the customers only spend minutes on site, and otherwise lack characteristics that make sexually oriented business customers soft targets.

Dr. McCleary clarifies that the secondary effects of a sexually oriented business do not depend on whether the establishment sells or rents products only for off premises use or solely on premises use. The risks posed are generally the same because the sexually oriented business will still draw the same type of soft, regional targets that facilitate criminal activity. “The implicit interests of these customers make them attractive targets to prostitutes and predatory criminals.”

Dr. Linz critiqued the City of Austin study for selecting adult entertainment venues that would produce results of secondary effects and eliminated half the sites in the area because they would not produce favorable results. However, it is common in the scientific world to exclude cases from analysis on the grounds of inferential validity. In fact, if this was not done, there would be a serious threat to the validity of a study. Dr. Linz also criticizes two studies on the grounds that the researchers have repudiated their studies. Dr. Linz fails to account for the general style of these social studies; the researchers themselves are always conservative in stating their findings, and often attempt to account for other factors and note when other factors could not be eliminated. When the studies found a large secondary effect from an adult business, the researchers would often note that “not all” of the secondary effect can be attributed to a sexually oriented business, but this qualification does not imply that none of the secondary effect is due to the sexually oriented businesses.

“Dr. Linz shows some bias when he dismisses all of the studies and then criticizes the City of New Albany for not using a study prepared by him and his colleagues. There were several reasons the city might have not used the study prepared by Dr. Linz. These reasons include the relative newness of the study, obscure, the study was commissioned by the sexually oriented business industry to be used in a legal challenge, and its validity is unknown and untested. The studies the city chose are time tested and valid studies, used hundreds of times over by many municipalities. Additionally, Dr. Linz other studies improperly analyzed data, and claimed that statistically significant changes in crime rate were insignificant and resulted in a secondary effect of “zero.” Dr. Linz’s study also failed to account for the relative danger of bar and nighttime establishment closing periods that lead to a higher incidence of police calls for service that are not related to a lack of secondary effect for not having high call for service volume between the

Summaries of Adult Oriented Business Studies

hours of 2 a.m. and 6 a.m. Additionally, Dr. Linz also fails his own “one time fluke” test when his studies encounter false negatives for secondary effects.

Dr. McCleary concludes that the body of studies that the City of New Albany relied on in writing their sexually oriented business ordinance are sufficient to establish the likelihood that sexually oriented businesses generate large, significant crime related secondary effects.

Summaries of Adult Oriented Business Studies

City of Garden Grove, California Study

This study was commenced in 1990, at the request of Garden Grove, California. They had recently adopted an ordinance restricting the density and location of adult businesses in the city and, in order to withstand potential challenges, the City needed to show that the restrictions were based on the secondary effects on the business' surroundings, not on the content or moral offensiveness of the businesses themselves. This study was designed to focus on the following questions:

- (1) Does crime increase in the vicinity of an adult business? If so, is the increase statistically significant and does it constitute a public safety hazard?
- (2) Can the public safety hazard be ameliorated by requiring a minimum distance between adult businesses? What is the required minimum distance?
- (3) Are there any other practical zoning restrictions that would ameliorate the public safety hazard?
- (4) Are adult businesses associated with a decrease in property values?
- (5) Are adult businesses associated with declining quality of neighborhood?

The study used crime reports and other police data from 1981-1990 downloaded into a statistical analysis system, where the researchers then measured the absolute and relative distances between crime events. The distances were eventually able to be measured within 40 feet of the crime occurrence for a subset of 34,079 crimes. The results of the study show that:

- (1) Crime rises whenever an adult business opens or expands its operations and the change in crime is statistically significant.
 - a. Violent crimes rose most often (assault, robbery, burglary, and theft)
 - b. "Victimless crimes" (drug and alcohol use and sex offenses) was also significant, but less consistent
- (2) The relationship between density and crime cannot be determined because no new adult entertainment establishments have moved into the studied area since 1981.
- (3) The architectural devices designed to ameliorate the nuisance of adult businesses have no significant impact on crime (such as partitions, walls to shield the business from view from the street, etc.)
- (4) When an adult business opens within 1000 feet of a tavern, the impact on crime is substantially higher.

Questionnaires were developed and a sample of real estate professionals were surveyed. Only 15% of the real estate professionals surveyed responded. These results show that:

- (1) Real estate professionals agree that close proximity of adult businesses are associated with a decrease in property values for commercial, single-family, and multiple family residential properties; and

Summaries of Adult Oriented Business Studies

- (2) Real estate professionals associate the close proximity of adult businesses with increased crime and other negative impacts on the quality of the neighborhood.

A random sample of households near an adult establishment were surveyed with the following results:

- (1) Residents who live near adult businesses associate adult businesses with increased crime and other negative neighborhood impacts.
- (2) A large proportion of residents who live near adult businesses report personal negative experiences that are attributed to these businesses.
- (3) Public support for regulation of adult businesses is overwhelming, with homeowners and women being the strongest supporters.

Based on these results, the researchers recommend that:

- (1) Lacking any conclusive evidence on the relationship between spatial density and crime, there is no reason to change the minimum spacing requirement to be larger or smaller than 1000 feet.
- (2) No adult businesses should operate within 1000 feet of a residence due to the serious public safety hazards.
- (3) Conditional use permit processes should be used to ameliorate the public safety hazard and police departments should be fully involved with the process.
- (4) No tavern should be allowed to operate within 1000 feet of an adult business because of the "interaction effect."
- (5) the evidence supports a city ordinance demonstrating the presence of negative secondary effects associated with location and density of adult businesses.

Report to: American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses

This report was conducted to review the current state of knowledge about the secondary impacts of sexually oriented businesses upon the immediate neighborhood. This report deals with the secondary impacts on residential, commercial, educational, recreational, and religious facilities with a focus on smaller municipalities. Historically, the clientele (mostly young, single, transient/mobile males) and the premise of sexually oriented businesses has not changed. The same can be said for the presence of secondary effects. These effects were present as early as the 19th century, as evidenced by eyewitness accounts of criminals acting as “bouncers,” illicit gambling, prostitution, robbery of assaulted individuals, and drug use. These establishments were less regulated, historically, so the secondary effects were closely tied to the establishment itself. Now, where these establishments are closely regulated, the illicit activity moves to less regulated areas of the municipality, thus, regulation has, in its own way, made the impacts upon the public of these establishments less clear but broader in scope.

The major points of this report, as supported by several studies, are:

- (1) sex oriented businesses provide a potential center for illicit and undesirable activities by providing a place of contact for numerous potential customers for prostitution, pandering, and other activities.
- (2) Sex oriented businesses, in combination with taverns or other sex businesses, increase the quantity of undesirable activities that occur.
- (3) There are undesirable results of the facilitation effect on illicit behavior.
 - a. Adjacent uses, such as educational, religious, or residential areas, where children are exposed to inappropriate models of behavior which they are unprepared to digest or respond effectively to
 - b. Children, the elderly, and women are disproportionately impacted in opportunistic personal crimes.
- (4) Sex oriented businesses set the context for interpreting pedestrian presence in the area.
 - a. Leads to propositioning of passersby who have nothing to do with the sex business.
 - b. Unwanted attention towards women, children, or the elderly makes it intimidating for these populations to be on the street.
- (5) A strong tendency for inappropriate activities to spill over into the surrounding neighborhood.
 - a. Prostitution or other illicit activities may start occurring in little used parks, parking lots, garages, alleyways and other often empty spaces.

Summaries of Adult Oriented Business Studies

- i. The sexually oriented business does not create these activities but provides a “facilitating” setting for supporting these activities and provides a legitimizing reason for the perpetrators of crimes to be present.
- (6) Sex oriented businesses have a negative impact on residential and commercial property values within three blocks of the location of the sex oriented business.
- a. Supported by “the preponderance of research.”
 - i. Lenders and real estate appraisers consider the presence of a sexually oriented business to be evidence of neighborhood decline and decay.
 - ii. Other research provides that areas with sexually oriented businesses experience lower rates of appreciation in property values and/or higher turnover in properties in comparison to comparable areas without sexually oriented businesses.

A license plate study conducted in Washington showed that the majority of the cars present in the parking lot of a sexually oriented business were from other towns or other states. This study concluded that the regional customer base, as opposed to a neighborhood customer base, makes the owners of sexually oriented businesses less responsive to neighborhood problems.

This study also indicates that the negative secondary effects of a sexually oriented business will likely be more magnified in a small town than in a large city due to

- (1) The compact nature of the surrounding residential areas to a central downtown in small municipalities increases the reach that those harmful secondary effects would have on the municipality.
- (2) Smaller populations and shorter business hours result in lighter use of public, semi-private, uncontrolled spaces and therefore provides much greater potential for illicit activity in areas surrounding sexually oriented businesses.

Small municipalities typically experience more economic stress than larger cities and this is aggravated when sexually oriented businesses located to the downtown business district of a small town.

National Law Center Summary of the American Center for Law and Justice Land Use Study

This report reviews the current state of knowledge about the impact of sexually oriented businesses upon nearby residential and commercial uses with a focus on the effects on smaller municipalities. Although this is not a new problem, this report seeks to centralize evidence of the secondary effects of sexually oriented businesses. This report finds:

- (1) Sexually oriented businesses support a detrimental activities within the communities that are incompatible with the activities of a residential neighborhood.
- (2) Sexually oriented businesses have a negative effect on local businesses,
- (3) When a sexually oriented business is coupled with an establishment that sells alcohol for consumption on its premises, the detrimental impact on the surrounding area increases.

This study starts with a historical overview of the issues of sexually oriented businesses and their effects dating back to the late 18th century. The “tableau vivant” and “concert saloon,” grew into the “topless bars” of modern times in response to the pressures of the young, working male. The customers that frequent sexually oriented businesses has not changed much from the past and are mostly young, single, transient males. The impact of sexually oriented businesses has gotten broader over time as these establishments were better regulated and patrolled for illicit activities.

This report reiterates the findings of the Garden Grove, California study (discussed earlier in these summaries) and the City of Indianapolis study. The City of Indianapolis study found a 77% higher incidence of serious crime in an area with multiple sexually oriented businesses compared to the control area. The control area and study area were matched for demographics characteristics, building type, and other attributes. The study indicated that sexually oriented businesses helped create conditions that brought outsiders to the area and provided venues for opportunistic crimes. Additionally, sex crimes were 4 times higher in residential areas near a sexually oriented business than in commercial areas near a sexually oriented business. Similar findings were made in studies conducted in Minnesota, the City of Austin, Los Angeles, and Hollywood.

Public spaces and their questionable ownership furthers the opportunity for crime to occur there and when a sexually oriented business exists near a public place, the public places are often used for illicit activities. These illicit activities drive away legitimate users. The report states that a when a public place is devoid of women or the elderly, then it is generally a less safe space because these two groups are most likely to be victimized by criminals. It follows that when women and the elderly avoid a place, it is because they are afraid that they will become victimized by criminals. This is the “climate of fear” that the report talks about. The climate leads them to avoid the space altogether and may even contribute to declining property values in the area.

Summaries of Adult Oriented Business Studies

The City of Indianapolis study was the most detailed when it came to the secondary effects on property values in commercial and residential properties. Seventy-five percent of the real estate professionals who responded to the survey they sent out indicated that there was a significant negative impact on property values when sexually oriented businesses are located nearby. They also concluded that no other facility had such a negative impact on property values in the surrounding area; not even drug rehab centers effected property values in this way. Additionally, the City of Austin study concluded that the presence of a sexually oriented business in a neighborhood leads mortgage lenders to the conclusion that the area is in decline.

Newport News, Virginia Adult Use Study

This study summarizes court cases striking down adult business restrictions for the following reasons:

- (1) The ordinances were enacted because of a distaste for the speech itself, not the desire to eliminate adverse effects.
- (2) The ordinances were not based on factual information that proved the existence of negative impacts on surrounding areas
- (3) The ordinances severely restricted First Amendment rights
- (4) The ordinances placed arbitrary restrictions on legitimate businesses
- (5) The licensing processes were confusing, and high licensing fees were punitive and had little relation to the cost to the public for allowing the use.

Cities have been successful in defending adult regulations when they use their police powers under zoning to develop performance related standards. These standards are set forth in the Detroit, Michigan ordinance and the Boston, Massachusetts ordinance.

The Detroit, Michigan, ordinance was challenged and upheld by the Supreme Court in 1976 (*Young v. American Mini Theaters*). The Supreme Court held in this case that the First Amendment protects sexually explicit activities from total suppression, but “the State may legitimately use the content from these materials as a basis for placing them in a different classification...” The Detroit approach disperses adult establishments from one another, keeps adult establishments separate from residential areas, and limits them to commercial and industrial zones. The ordinance also provides buffers: no adult uses permitted within 500 feet of a residentially zoned area or within 1000 feet of any two other adult uses.

The Boston approach is used when there are already adult uses clustered together within a city (*City of Renton v. Playtime Theaters, Inc.*). The city created an “adult entertainment zone” and provided urban renewal funding to upgrade the area. The goal of this ordinance was to concentrate the uses to a single, small area of the city and prevent their spread to other parts of the city with a special emphasis on avoiding spread to residential areas.

The proposed Newport News ordinance disperses adult uses along major highway corridors in the city with clusters downtown. Adult uses are relegated to commercial zones only. This ordinance regulates adult uses through a conditional use permit to limit adverse impacts on surrounding areas and encourages the dispersal of adult businesses, except in downtown where concentrations are permitted. Outside of downtown, the ordinance ensures that there is adequate separation between adult uses and residential areas, churches, libraries, parks, playgrounds, schools, and other adult uses. It also features a section that grandfathers in any existing adult uses in Newport News.

This study summarizes other studies done throughout the U.S. The first study referenced in the 1984 Indianapolis study, which found that the average annual rate for major crimes in areas with adult uses was 23% higher than the corresponding rate for control areas and the

Summaries of Adult Oriented Business Studies

average annual rate for sex related crimes was 77% higher in the study area than the control area. The Los Angeles, California, study concluded that major crimes increased 7.6% in the Hollywood area following the opening of adult businesses, which was double the citywide rate. Street robberies increased by 94%, minor crimes increased 46 % in the Hollywood area but only increased 3% citywide. Prostitution arrests in Hollywood increased 372%.

The Austin, Texas study found that sex related crimes were 2-5 times the citywide average and 66% higher in study areas than control areas. The major crimes rate was also higher in the study areas than control areas and much higher than the citywide average. Other studies completed in Amarillo, Texas, Los Angeles County, California, and Phoenix; Arizona indicated that the crime rates were higher near adult businesses.

Newport News' study of their own city identified that the 31 adult uses had 425 police calls between January 1, 1994, and October 31, 1995. Adult entertainment establishments had the most police call for service, averaging 23 calls per business. This number may not seem large, but that is more than double the total number of calls that the police received from restaurants with ABC licenses over the same period. Therefore, adult uses had a higher rate of police calls for service than non-adult establishments. All of the control areas were matched with study areas with a similar population, demographic, housing unit density, poverty level and median household income.

The study then summarizes the effects on the surrounding neighborhoods that was uncovered by other studies. In the Indianapolis study, residential properties in study areas appreciated in value at ½ the rate of control areas and appraisers felt there was a negative impact on both residential and commercial properties within one block of an adult use, however, residential uses felt most of the negative impact. The further the distance from the adult use, the less the impact was felt. In the Los Angeles study, a survey was sent out to real estate professionals. 88% of the responding real estate professionals felt that a concentration of adult businesses would decrease the market value of business properties located in the vicinity. 68% of respondents felt the concentration would decrease rental values of business property and 59% felt that the concentration would decrease the rentability/salability of business property nearby. 90% felt that the concentration of adult uses nearby would decrease the market value of residential property and 90% also felt that this would decrease the rentability or salability of a residential property within 1000 feet. A St. Paul, Minnesota study indicated there was a correlation between deteriorating housing values, crime rates, and the location of adult businesses. Lastly, an Austin, Texas, survey of real estate appraisers and lender found the 88% of the respondents believed an adult bookstore would decrease property values within one block, noting that this adult use would make homes less attractive to families, which reduces demand and property values.

In Newport News' study, several groups have made their concerns about the deterioration of their neighborhoods and commercial areas known. Realtors in the area have

Summaries of Adult Oriented Business Studies

estimated that adult uses nearby can reduce the number of people interested in occupying a property by 20-30% and will hurt property values and the resale of property in adjacent residential neighborhoods. The realtor's comments and opinions were in line with the other studies discussed.

Workplace Perspectives on Erotic Dancing – Minneapolis, Minnesota Study (2017)

This study was conducted by the University of Minnesota's Urban Research and Outreach-Engagement Center in a partnership with the Minneapolis Health Department and The Women's Foundation of Minnesota. The methods used were a Community Advisory Group Confidential Interviews, and Anonymous Online Surveys. The purpose of this study is to document the workplace experiences of entertainers within strip clubs in Minneapolis from a lens of workplace health and safety. This study is relevant to our discussion of adult establishments because of the discussions about harassment and assault that are prevalent inside these establishments.

Harassment and assault are prevalent in strip clubs, especially in VIP rooms, but it is normalized as a part of the industry. The onus is placed on the performers themselves to police the boundaries and behavior of customers instead of having harassment policies that are enforced. The owners of clubs do not do much to stop harassment or assault because it is such a normal part of the business of adult entertainment. The study has a lot of quotes from entertainers that describe the conditions

Analysis of the Effects of Sex Oriented Businesses on the Surrounding Neighborhoods in Dallas, Texas as of April, 1997

This study was originally conducted in 1984, and was updated in 1994, and was updated with findings for 1997. This study uses a “study area” where an adult business is open in and a “control area” where no adult businesses are currently in operation. The control area and study area are matched for demographics, population, similar land uses, and traffic patterns. There was also a survey of real estate representatives at properties around the study area that were up for lease or sale conducted. These surveys asked about the length of time on the market, the experience the representative has with that property regarding price and offers received, and whether they could compare this property to a similar property in a different neighborhood, and whether, in their opinion, the presence of a sexually oriented business in the neighborhood had any impact on the property they were trying to sell or on the neighborhood as a whole.

This study found that sexually oriented businesses were a major source of police calls for service. Some sexually oriented businesses in this area averaged more than 1 call per day during the four-year period between 1993 and 1996. These calls lead to a number of sex crimes arrests such as for prostitution, commercial vice, and rape. There was an increase in sex crime arrests and disturbances requiring police presence around sexually oriented businesses and significantly more crime when there is a concentration of sexually oriented businesses in one area.

This study also surveyed other municipalities’ ordinances restricting sexually oriented businesses. In most cases, sexually oriented businesses are restricted from locating in all but a few zoning districts and had minimum distance requirements between other sexually oriented businesses and residential, religious, educational, or recreational uses.

This study found and corroborated the presence of the “concentration effect,” in which multiple sexually oriented businesses in one neighborhood can have a major negative impact on the neighborhood. The presence of multiple sexually oriented businesses contributes to crime, driving away family-oriented businesses, and impacts nearby residential neighborhoods. These concentrations of sexually oriented businesses compete with each other for customers by using increasingly aggressive advertising. These concentrations also appear to attract other dangerous businesses like pawn shops, gun stores, liquor stores, check cashing storefronts, and late-night restaurants which all contribute to increased crime.

The impact on surrounding properties is great. The presence of a sexually oriented business can limit the uses of nearby property as commercial and residential uses seek to distance themselves from the adult use. This can often lead to vacant buildings and storefronts, which can create other dangers to the community. The presence of a sexually oriented business can also turn residential properties into strict rentals because of how difficult it is to sell the properties once an adult business has moved into the area.

Lastly, the negative perceptions of adult uses can lead to disinvestment in residential neighborhoods and lead to economic decline from lack of commercial development in the area.

Summaries of Adult Oriented Business Studies

Other resident and non-resident opinions of sexually oriented businesses drive market factors as much if not more than the mere presence of a sexually oriented business. These attitudes reflect social ideals of the area and drive homeowners and businesses to an area or away from an area. The effects of these attitudes are difficult to measure, however the effect is included in the study.

Houston City Council: Sexually Oriented Business Ordinance Revision Committee Legislative Report (1997)

This report's purpose was to review the current ordinance for strengths and weaknesses and to supplement the prior reports issued in 1983, 1986, and 1991. The 1986 report addressed the effects of sexually oriented businesses on establishments that serve alcohol. The 1991 report addressed the addition of adult bookstores and movie theaters as regulated enterprises within the ordinance's land use controls.

The committee was re-established in the summer of 1996 to review ideas on strengthening the current ordinance and conduct public meetings where the public could voice their concerns and ideas for the revised ordinance. Many citizens also addressed written correspondence to the committee, voicing their opinions in favor of strengthening and enforcing the current ordinance. Many cited First Amendment concerns, but these letters also urged for industry cooperation and licensing procedures. The findings of the committee, based on public input and reviewing studies are as follows.

The committee found that licensing all sexually oriented businesses would establish a foundation for documenting those owners who have previous convictions for prostitution, public lewdness, and other offenses. Licensing would also eliminate the possibility of underage entertainers being hired in these establishments due to strictly enforced age requirements.

There was a serious breakdown in the enforcement of prostitution, public lewdness, indecent exposure and other criminal activities due to increased caution from performers when a non-participating customer is in the room under the suspicion that the non-participating customer is a police officer working undercover.

The committee has been made aware of the danger of "glory holes," which are special booths in which participants engage in anonymous sex with sex workers. These promote anonymous sex and can lead to the spread of sexually transmitted diseases.

Since public parks are a natural area of criminal spillover from areas like sexually oriented businesses, expert and public testimony urged the committee to find that public parks should be included in a distance requirement.

The community also desired notice to be given to anyone near an area where there is a pending sexually oriented business permit so the public is aware that the neighborhood is changing.

Sexually oriented businesses that did not have clear lines of vision encouraged lewd behavior and illicit sexual contact. For example, high back chairs are used as barricades to shield illicit behavior and private, secluded, dimly lit areas have the same effect. Testimony revealed that once a performer was comfortable with a patron and had decided that he was not an undercover officer, they would move the patron to a secluded area where illicit activities would take place. To that point, adequate lighting would facilitate managers and police officers patrolling or monitoring sexually oriented businesses.

Summaries of Adult Oriented Business Studies

Instead of grandfathering, the current ordinance uses “amortization,” under which a non-conforming adult use is given 6 months from the date of the ordinance passing to come into compliance. If that is too short of a time for the business, it can apply for an extension, to which a hearing is performed, and a balancing of interests is done. The factors considered are: (1) the amount of the owner’s investment in the existing enterprise through the date of passage and approval of the Ordinance; (2) the amount of such investment that has been or will be realized through the 180th day following the effective date of the Ordinance; (3) the life expectancy of the existing enterprise; and (4) the existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such leases. The committee determined this is a better process than the grandfathering process, which would allow the indefinite continuance of a non-conforming adult use and a continued threat to any residential or commercial use this adult use is near.

The study then reviews the entire ordinance of the City of Houston for revisions that are being proposed and changes that are being made.

Summaries of Adult Oriented Business Studies

Effects of Sexually Oriented Businesses by Louis F. Comus III

This compilation summarizes various studies done by municipalities around the country. This report summarizes the following studies:

Phoenix, Arizona (1979)
Garden Grove, California (1991)
Los Angeles, California (1977)
Whittier California (1978)
Indianapolis, Indiana (1984)
Minneapolis, Minnesota (1980)
Cleveland, Ohio (1977)
Oklahoma City, Oklahoma (1986)
Amarillo, Texas (1977)
Austin, Texas (1986)
Beaumont, Texas (1982)
Houston, Texas (1983)
Seattle, Washington (1989)
New York City, New York (specifically, Times Square) (1994)
Dallas, Texas (1997)
Environmental Research Group Report (1996)
Tucson, Arizona (1990)
Manatee County, Florida (1987)
State of Minnesota, Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (1989)
New Hanover County, North Carolina (1989)
Town and Village of Ellicottville, New York (1998)
Islip, New York (1980)
New York City, New York (1994)
Oklahoma City, Oklahoma (1992)
Houston Texas (1997)
Newport News (1996)
Des Moines, Washington (1984-1987)
St. Croix County, Wisconsin (1993)

The studies summarized had similar findings. These studies concluded that there were many negative secondary effects associated with the presence of sexually oriented businesses. Generally, crime increased in the areas immediately surrounding a sexually oriented business. Property values depreciated and selling/leasing properties within blocks of a sexually oriented

Summaries of Adult Oriented Business Studies

business became difficult and resident turnover was higher in areas with sexually oriented businesses than control areas without sexually oriented businesses, which suggests more homes becoming rental properties. These buildings were more likely to sit vacant because of the negative perception of sexually oriented businesses influencing market forces. These studies also found that the negative effects of the sexually oriented business were lessened when there was a buffer zone between the adult use and commercial, residential, educational, religious, and other neighborhood uses. Adult uses and their effects compound when there is a concentration of adult uses in one place. Additionally, those that reported not having many negative impacts were generally found in areas with isolated sex businesses. A few of the studies cited public health concerns with establishments that used VIP rooms or booths. Some studies recommended licensing procedures to curb some of the secondary effects. Some studies found that these secondary effects were aggravated by the presence of taverns or other establishments that sell alcohol. Amortization was a common solution to the grandfathering problem when municipalities contemplated an ordinance in their studies.

A few of the studies conducted research on the number of calls to police that are attributed to adult uses. The general consensus was that sexually oriented businesses account for an increase in calls to the police for service. Some studies found that the number of calls to police were nearly twice as high for adult uses than for other commercial businesses.

Many studies included surveys of real estate professionals who opined that property values decreased around sexually oriented businesses in both residential and commercial capacities. The real estate professional surveys tended to conclude that citizen fear of the secondary effects of sexually oriented businesses led to consumers avoiding areas where sex businesses operate and contributes to the deleterious effects of the presence of a sexually oriented business.

Summaries of Adult Oriented Business Studies

Police Memorandum Dated May 1, 1990

This memorandum was prepared by the Tucson, Arizona Police Department for the City Prosecutor in relation to an adult entertainment ordinance. This report details the “events and activities” that occur in adult establishments and bookstores that prompted the ordinance revision.

The police department reported that they had received numerous complaints of illegal sexual activity and unsanitary conditions in the adult uses in the city. The illicit activities were primarily taking place between prostitutes and customers, between entertainers and customers, and sometimes between customers themselves. Through investigation, the officers found that many of the entertainers were also prostitutes and were offering “private shows” where illicit sexual activities would occur. The entertainers would encourage customer participation in their sexual acts, and it was found that “nearly all” of the dancers engaged in sexually explicit conversations with customers. The amount of sexual contact allowed by the dancers depended heavily on the amount of money the customer paid to the dancer. Sometimes these acts occurred with the knowledge of management. Arrests for sexually explicit sex shows and prostitution were common among all the City’s adult establishments.

There were also a number of underage dancers that had been hired to dance nude. The underage dancers were commonly in possession of fake IDs, which older dancers and sometimes management, helped them to obtain. A number of sanitation concerns with booths that encouraged anonymous sexual activities were raised, including residual bodily fluids, anonymous sex, and solicitation of sex, which can lead to sexually transmitted diseases. The health department investigated the adult establishments in the area and concluded that many of the sanitary concerns could be rectified by removing the doors on booths. This incited an industry wide cleaning and remodeling operation to show that adult establishments were not dirty and unsanitary and to fight to keep the doors on the booths.

This ordinance revision was caused by a lawsuit brought against the City for enacting an ordinance that required the licensure of employees and established regulations regarding the operation and location of adult entertainment establishments. This lawsuit was primarily concerned with whether the doors on booths were to stay on or come off. The plaintiff adult establishments were concerned with non-paying customers congregating around a paying customer’s booth while viewing is taking place and proposed that the doors be raised to a height where the feet of the customer can be seen, and management can be sure that there is only one person in the booth at a time. The Attorney for the adult establishments agreed to raise the bottom of the door 30 inches from the floor and that the booth cannot be modified, nor can a chair be used that will circumvent the intent of raising the door. The memo concludes by confirming that the proposed ordinance will not adversely affect these business establishments and that the police department recommends the ordinance be adopted in its present form.

Rural Hotspots: The Case of Adult Businesses

Dr. Richard McCleary

Dr. Richard McCleary, well known researcher in the field, authored this article which was published in the Criminal Justice Policy Review in January 2008. The article explores the secondary effects of adult businesses on “sparsely populated rural areas” in response to a U.S. Court of Appeals for the 10th Circuit decision: *Abilene Retail #30 v. Dickinson County*. In *Abilene Retail #30*, the court held that the urban studies were not sufficient evidence of the presence of secondary effects when an adult business locates to a rural area when the County was entirely rural. The court stated that the county had “no evidence” to suggest that rural adult businesses would have secondary effects. The potential cost of the decision is “staggering,” and Dr. McCleary goes on to discuss the possibility of rural municipalities having to rewrite their ordinances to incorporate rural only decisions and that litigious adult businesses having the “incentive to relocate to rural areas, forcing trial courts to judge the relative ruralness of areas.”

Dr. McCleary then discusses the underlying criminological theory of social disorganization. Social disorganization was proposed by Shaw and McKay in 1942 and 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, the introduction of an influx of newcomers will result in an abrupt increase in the town’s crime rate, as predicted by the same theory. This can occur in two ways: (1) newcomers victimizing the town’s residents; or (2) the influx of newcomers may disrupt the town’s routine activities in a way that attracts predatory criminals, creating a local “hotspot of predatory crime.” Hotspots that are caused by adult businesses can be caused by an increased number of targets of crime, an increased number of offenders, and police presence. In this way, adult business sites are very similar to tourist attractions or sporting events. However, the victims found at adult businesses are the perfect victims: they are male, open to vice overtures, carry cash, and are not likely to report a crime to police once they have been victimized. Dr. McCleary then describes the offenders that frequent adult businesses as having engaged in a rational decision-making calculus that results in them finding the adult business as the most attractive site available. Another study that interviewed 86 active armed robbers resulted in the “perfect victim” being described as involved in vice, either as sellers or buyers, because of that victim’s reluctance to go to the police once victimized due to a fear of outing themselves.

McCleary concludes that urban and rural adult business sites are equally attractive to the rational offender. Police presence is generally lower at rural sites, which leads a rational offender to conclude that a rural site is more attractive.

McCleary then delves into a case study performed at Montrose, Illinois. Montrose, Illinois is a village of 250 residents located halfway between Indianapolis and St. Louis on I-70. The interstate separates the residential dwellings of the town from its businesses, which are namely a convenience store/gas station, a motel, and a tavern that had closed its doors. In February

Summaries of Adult Oriented Business Studies

2003, a Lion's Den, an adult business, opened its doors on a service road within 750 feet of the interstate off-ramp. There was also a large, elevated sign that let interstate travelers know that x-rated videos, books, and novelties could be purchased "24/7."

The residents of Montrose were unhappy with the new business because it was located on the residential side of the interstate and the residents complained of Lion's Den disrupting their quiet lifestyle. Some specific complaints centered around the increase in traffic and being too close to a park in violation of an Illinois statute. A court case ensued, and the Lion's Den closed its doors in July 2005. At trial, the state presented evidence of the Lion's Den's adverse impact on the surrounding area, but neither party cited crime statistics. McCleary, however, makes these statistics available for the reader. During a 1,642-day period beginning on January 1, 2002, the Effingham County Sheriff's Office recorded 83 crime incidents in the Village, with the most common being theft or destruction of property as well as disorder, indecency, traffic related incidents, and alcohol/drug offenses. Incidents involving danger or harm to persons were rare. The crime rate of 22.39, which was recorded when the Lion's Den was open, fell to 13.92 when the Lion's Den closed.

Dr. McCleary then explored and debunked other causes of the increased/decreased crime rate. He debunked the notion that the rise and subsequent fall in crime rates was not due to the opening of the Lion's den but was rather due to a natural trend in the Village's crime rate. McCleary rejects the notion that some other event that coincided with the opening of the Lion's Den caused the increase in crime by noting that the only other event reported on in the village at that time was the closing of the Village's only tavern, which would have been expected to make crime rates decrease, not increase as they did. Dr. McCleary also rejected the theory that the increase in crime rates may not have been due to the opening of the Lion's Den but to a coincidental change in the way that crimes are recorded in the Village (for example, the sheriff's department increasing the number of patrols to that area, which could skew results). The incident reports do not support that theory.

In sum, after the adult business opened in Montrose, Illinois, total crime in the village rose by approximately 60% and, when the business closed two years later, the total crime in the village dropped by 60%. McCleary finds that the only plausible explanation for the increase and crime and the subsequent decrease of around the same amount is that adult businesses in sparsely populated rural areas generate ambient crime-related secondary effects just as adult businesses in urban and suburban areas do. McCleary goes on to explain that this outcome was not unexpected because the routine activity theory of hotspots generalizes to rural settings even though most studies and data are collected in urban and suburban areas. He also states that because rural areas ordinarily have lower levels of visible police presence, rural hotspots may be riskier than their suburban and urban counterparts.

McCleary hypothesizes that as urban environments become more hostile, more adult businesses will relocate to rural areas, forcing state and county governments to consider the

Summaries of Adult Oriented Business Studies

policy, and that rural areas are attractive because of the lack of regulations, little competition, and access to interstate traffic.