

the DCP found that signage for adult businesses tended to be larger and more garish than other nearby signage—a source of concern to residents living nearby.

Based on its findings, the DCP recommended special regulation of sexually oriented businesses, advising that the city specifically consider “restrictions on the location of adult uses in proximity to residential areas, to houses of worship, to schools and to each other.”

The New York City ordinance adopted in 1994 was upheld by both the New York Court of Appeals in *Stringfellow's of N.Y., Ltd. v. City of New York*, 91 N.Y.2d 382, 694 N.E.2d 407 (N.Y. 1998) and the U.S. Court of Appeals for the Second Circuit in *Buzzetti v. City of New York*, 140 F.3d 134 (2d Cir. 1998).

OKLAHOMA CITY, OKLAHOMA
June, 1992

Jon Stephen Gustin, a retired sergeant of the Oklahoma City Police Department, authored a report on the successful abatement of adult oriented business nuisances in Oklahoma City, Oklahoma from 1984 – 1989. This report narrates the history of Oklahoma City's successful efforts to combat the negative secondary effects of sexually oriented businesses.

Active police enforcement of laws relating to sex businesses began after a strong, grass-roots campaign called for a response to the concentration of so many sex-businesses in one city. Initially, prosecution of illegal sexual activities was hampered by poor or nonexistent laws and lax police enforcement.

The police began an active anti-prostitution effort and arrest records were published by the media and TV stations carried names and faces of the people involved. Initially, police made several arrests at known houses of prostitution. Adult bookstores with peepshow booths also posed particular problems. Specimens of seminal fluid on walls and floors contributed to the forced closure of several such businesses. The district attorney's office consistently won the cases it brought against those committing illegal acts in sexually oriented businesses.

Nude dancing businesses were also the source of several criminal and illicit sexual conduct, with undercover police officers making arrests for illegal sex acts on the premises of the businesses. A police department "escort service" sting operation resulted in the arrest of many men soliciting prostitution through such businesses.

Sergeant Gustin reported that by 1992, most of the original sexually oriented businesses had shut down, with only a few remaining under the newly-enforced and stringent regulations.


HOUSTON, TEXAS
January 7, 1997

This report by Houston's Sexually Oriented Business Ordinance Revision Committee was prepared to supplement prior reports issued in 1983, 1986 and 1991, with the aim of reforming the existing sexually oriented business ordinance if necessary and assessing possible improvements to protect the interests of the public and the rights of sexually oriented businesses.


Hearing testimony and evaluating evidence from many sources, including police and parties favoring and disfavoring regulation of sexually oriented businesses, the committee concluded that criminal activity associated with sex businesses justified licensure requirements for such businesses and their entertainers and managers. It noted difficulties in obtaining convictions through sting operations. It viewed video evidence concerning "glory holes" between peepshow booths, whereby patrons of such establishments engage in anonymous sex with one another on the premises, and recommended prohibition of such holes. It found that sex businesses with inadequate lighting or without clear lines of sight to all parts of the premises encouraged lewd behavior and illegal sexual activity. It found that many sex businesses had locked rooms on their premises, serving as venues for prostitution. It entertained requests that public parks be included among the sensitive uses shielded from sexually oriented businesses by minimum distance requirements, and that increased prior public notice be given to neighborhoods in which sexually oriented businesses intend to locate.

The Committee recommended various means of streamlining the licensure and enforcement processes. It proposed increasing some of the minimum distances required between sex businesses and other land uses, and strengthening of signage regulations, and more strenuous licensure requirements for sex business managers and employees. The committee recommended prohibition of the touching of customers by sex business employees engaging in display of specified anatomical areas or other specified sexual activities. Finally, the committee reviewed and opted to retain the city's amortization scheme, as an "appropriate balancing of interests" of the sex businesses and the community. The final portion of the report consists of specific proposed changes to the language of Houston's sexually oriented business ordinance.

The ordinance (97-75) passed after consideration of the secondary effects report was upheld in large part by the U.S. Court of Appeals for the Fifth Circuit in *N.W. Enterprises, Inc. et al. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003).



Negative Secondary Effects of Sexually Oriented Businesses

**City of Pasadena
Planning Commission Meeting
November 8, 2006**


Cornerstone of this area of law:

City of Renton v. PlaytimeTheatres, Inc.,
475 U.S. 41, 51-52 (1986)

"The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses."


Record: Sources of Secondary Effects Information

1. Land Use Studies
2. Crime Reports
3. Judicial Opinions
4. Anecdotal Data
5. Citizen Testimony

See Secondary Effects of Sexually Oriented Businesses: Summaries of Key Reports

Record: Types of Secondary Effects - Both Inside and Outside Effects

1. Personal, property crime, public safety risks -
See, e.g., Garden Grove, CA, Los Angeles, CA, Houston, TX, New York, NY studies

2. Lewdness, paid sexual contact, prostitution -
See, e.g., Gamboh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Colacurcio v. City of Kent, 163 F.3d 545 (9th Cir. 1998)



Record: Types of Secondary Effects

3. Unsanitary conditions, potential disease -
See, e.g., Ellwest Stereo Theatres, Inc. v. Wenner, 681 F.2d 1243 (9th Cir. 1982)

4. Undesirable behavior & assaults, associated with alcohol consumption/lower inhibitions -
See, e.g., California v. LaRue, 409 U.S. 109, 111 (1972); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Dr. William George Studies



Record: Types of Secondary Effects

5. Negative impacts on surrounding properties -
See, e.g., Dallas, TX, September 2004 Survey of Appraisers by Duncan Associates;
World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186, 1197 (9th Cir. 2004) (upholding ordinance based in part on citizen testimony of "pornographic litter, harassment of female employees, vandalism, and decreased business, all resulting from" proximity to adult business)



Rationale: "Sexually oriented businesses, as a category of commercial uses...."



- Dealing with adult businesses as a class; thus, general nature of data is appropriate
- Not a public nuisance action
- Regulating the class, therefore evidence concerning that class of establishments is "reasonably believed to be relevant" to the problems the City intends to prevent

Rationale: "Each of the foregoing negative secondary effects ..."



- One substantial government interest is sufficient to satisfy the constitutional test
 - *World Wide Video v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004)
- Not required to prove every secondary effect from every business within the class of establishments; regulating the class as a whole

Rationale: "...City has a substantial government interest in preventing and/or abating in the future."



- Legislation is inherently prospective
- Ordinance for City's long-term approach
- Investigations to uncover illegal activity take lots of money, manpower, and time
 - South Bend, IN 2004
 - Monroe, OH 2002
 - Louisville, KY 2004

Rationale: "...government interest ... exists *Independent of any comparative analysis between adult and non-adult*"



•The substantial government interest in regulating sexually oriented businesses does not depend on whether there is *more* crime than other places

- Fulton County, GA "study" involving only police calls-for-service (CFS), not actual crimes
- Unreliable data, unreliable methodolog

**Analysis of Secondary Effects Evidence:
Richard McCleary, Ph.D.**



1. Expert in statistics, research methods, and criminology
2. Prof. of Environmental Health Sciences, Planning, and Criminology (Univ. of CA, Irvine)
3. Four books, 75 articles, 25 cases over 25 years; FBI, CDC, Bureau of Justice Statistics
4. Editorial Boards:
 - Justice Quarterly
 - Journal of Quantitative & Mathematic Criminology
 - Journal of Research of Crime & Delinquency
 - Journal of Criminal Law and Criminology
 - Law and Policy Quarterly

**Crime-Related Secondary Effects
Of Sexually-Oriented Businesses**

*Pasadena Planning Commission
November 8th, 2006*

**Richard McCleary, Ph.D.
James W. Meeker, J.D., Ph.D.**

**School of Social Ecology
University of California, Irvine**

SOB Facts

**SOBs pose large, significant ambient public
safety hazards**

"Victimless" crimes (prostitution, drugs, etc.)

Predatory crimes (robbery, auto theft, etc.)

Opportunistic crimes (vandalism, burglary, etc.)

The hazard applies to all SOB subclasses

Live entertainment

"Off-premise" bookstores

"On-premise" video Arcades

Crime risk rises after dark, peaks at "closing"

Darkness favors the criminal

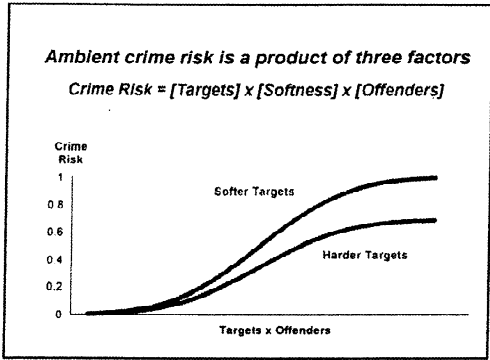
Policing is less effect in darkness

Alcohol aggravates the risk
Lowered inhibition
Clouded judgment

Crime risk can be mitigated by regulation
Distancing sensitive uses from the risk-point**
Target hardening
Removing alcohol from the high-risk zone
Limiting operation during high-risk times
"Broken windows" enforcement

The SOB-crime link is a scientific fact
Predicted by strong theory
Confirmed empirically

Criminological Theory



SOB patrons are notoriously soft targets because ...
Disproportionately male
Open to vice overtures
They travel long distances to the site
They carry cash
When victimized, they are reluctant to involve the police

SOB patrons make "perfect victims"
Low risk to the offender
High pay-off to the offender

High density of soft targets attracts ...
Vice purveyors who dabble in crime
Predators who use vice to lure/lull victims

The conjunction of offenders and soft targets generates ambient crime risk
 $Risk = [Targets] \times [Softness] \times [Offenders]$

Ambient crime risk results in ...
"Victimless" crimes (drugs, prostitution, etc.)
Predatory crime (robbery, auto theft, etc.)
Crimes of opportunity (burglary, vandalism, etc.)

Ambient crime risk can be ameliorated by
Reducing target density
Hardening targets
Reducing offender density

Empirical Corroboration

Phoenix, 1979	<i>Personal</i>	139.8 %
	<i>Property</i>	113.7 %
	<i>Sexual</i>	580.2 %
Indianapolis, 1984	<i>Major</i>	123.0 %
	<i>Sexual</i>	177.0 %
Austin, 1986	<i>Part I UCR</i>	169.0 %
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Garden Grove, 1991^a	<i>Personal</i>	214.4 %
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^a Before/After

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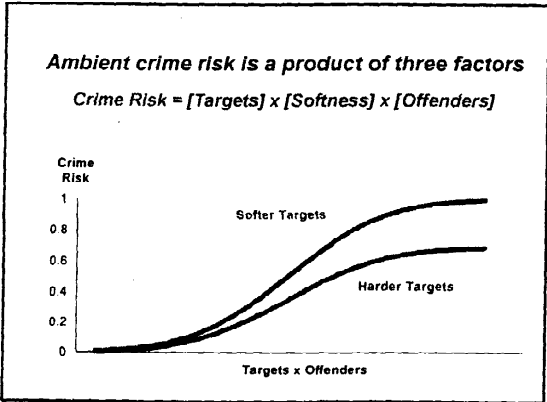
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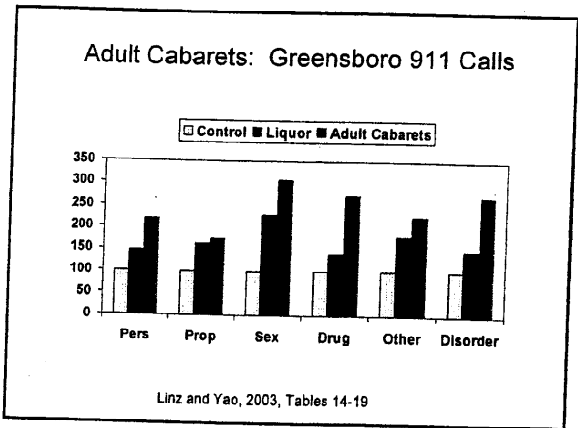
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SOB Subclasses



Peep Shows: Centralia, WA

	Peep Show	Control Areas	City-Wide
Before	10	23	3,358
After	17	19	3,243
After/Before	1.700	0.826	0.977

A bookstore with video viewing booths opens in Centralia. Total "serious" crime rises by 70 percent. Over the same period, total "serious" crime in other areas drops.

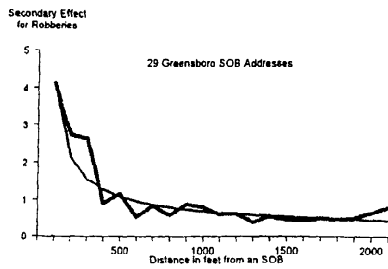
Lingerie Boutique: Sioux City, IA

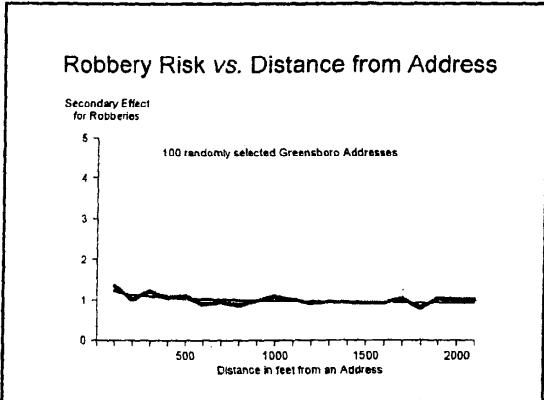
	Before	After	Effect
Theft	6.21		1.36
Burglary/Vandalism	0.69		8.34
Disorder/Indecency	0.23		5.31
Traffic	0.23		10.70
Alcohol/Drug	0.23		7.13
Assault/Battery	1.15		0.24
Robbery	--		--
Total	7.60	16.11	2.12

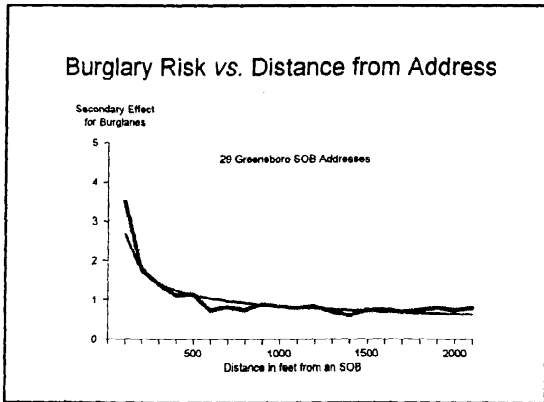
A "take-out" store opens in Sioux City. Total crime more than doubles.

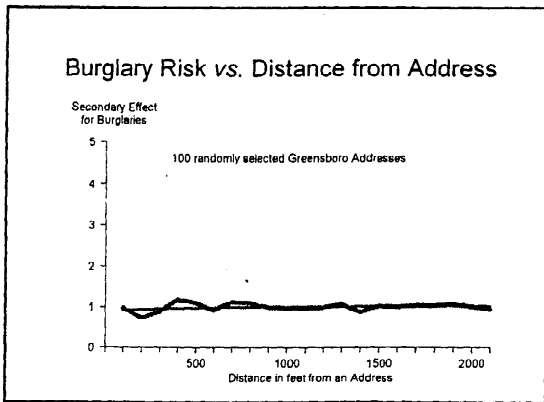
Minimum Distances

Robbery Risk vs. Distance from Address









Industry Arguments

Methodological Rigor

"Government-sponsored studies find effects only because they are methodologically flawed."

All non-experimental studies are flawed; most flaws have benign effects; no single flaw explains the broad consensus finding of this literature.

"Industry-sponsored studies satisfy the highest methodological standards; these 'better' studies find either no effect or, often, a salutary effect."

Industry-sponsored studies are designed to support industry arguments; but even then, these studies almost always find effects.

Methodological Rigor

"All 'peer-reviewed' secondary effect studies show that SOBs have either no effect or a salutary effect."

False. No "peer-reviewed" secondary effect study shows anything other than an adverse effect.

Generalizability

"Studies conducted _____ years ago in _____ are irrelevant to SOB's in Pasadena today."

The criminological theory of ambient crime risk is 200 years old and applies to every city and every time-frame.

"Criminological theory says that a _____-type of SOB shouldn't have secondary effects."

False. If the _____-type SOB draws "soft" targets to its site, it will attract predatory criminals to the neighborhood, generating a large, significant ambient crime risk

Generalizability

"But no study has ever proved that _____-type SOB's pose ambient crime risks."

False. But even if it were true, this argument is irrelevant.

"To prove that SOB's in Pasadena have secondary effects, you have to do a study in Pasadena."

False. Secondary effect studies are extremely expensive. As a matter of law, Pasadena can rely on studies conducted in similar jurisdictions.

Effect Size

"Maybe SOB's do have secondary effects; but they're no larger than the secondary effects of bread stores, gas stations, etc."

Criminological theory predicts that gas stations and bread stores will have secondary effects; but the patrons of gas stations and bread stores are not "soft" targets.

"If the secondary effect isn't statistically significant, that proves that there is no secondary effect."

False. Statistical insignificance is analogous to a "not guilty" verdict.
