

Report of Daniel Linz, PhD
Rule 52

Introduction

I am currently a professor in the Department of Communication at the University of California Santa Barbara. I am a tenured professor and have been at this position since 1988. I received bachelor degrees in psychology and sociology from Northern Kentucky University in 1978, and a master's degree in psychology and sociology and a Ph. D. in psychology from the University of Wisconsin, Madison. My research focus has been on the effects of sexually oriented and violent entertainment upon human psychology and behavior and the effects of sexually related expression on adults and communities. I have been qualified as an expert witness on the question of alleged secondary effects from adult entertainment and the effects of such entertainment on human behavior in numerous federal courts. I am also a published author in peer-reviewed journals on these subjects.

My curriculum vitae is attached as **Exhibit 1**, and accurately reflects my teaching positions, the honors and awards that I have received, the papers that I have either authored or co-authored which have been published in peer-reviewed journals, my professional activities, research grants that I have received, professional conferences where I have presented various papers, invited addresses where I have spoken, and public testimony that I have given.

I have been asked by attorney Michael Murray to prepare a report with regard to whether the predicate evidence relied upon by State of Ohio in enacting Rule 52 which imposes a range of regulations and restrictions upon sexually oriented businesses, supports the restrictions in the regulations. I am being compensated at a rate of \$350.00 per hour.

In summary, I will offer the following opinions in this case:

I. THERE IS NO RELIABLE EVIDENCE FROM STUDIES CONDUCTED IN OTHER COMMUNITIES THAT ADULT BUSINESSES CREATE SUFFICIENT ADVERSE SECONDARY EFFECTS TO JUSTIFY THE TYPE OF RESTRICTIONS INTRODUCED BY THE STATE OF OHIO.

II. ADULT BUSINESSES ARE NOT HOTSPOTS OF CRIME. SECONDARY EFFECTS EXPERTS EMPLOYED BY THE GOVERNMENT SUCH AS RICHARD MCCLEARY WHO ASSUME THAT THEY ARE, HAVE MISSAPPLIED THE HOTSPOT CRIME THEORY OF ROUTINE ACTIVITIES.

III. ABSENT FROM THE STATE OF OHIO'S JUSTIFICATION FOR RULE 52 ARE A LARGE NUMBER OF SCIENTIFICALLY SOUND STUDIES THAT SHOW NO ADVERSE EFFECTS OF ADULT BUSINESSES.

IV. OUR EMPIRICAL STUDY IN INDIANAPOLIS HAS BEEN USED TO CALL THE SECONDARY EFFECTS MOTIVATION FOR ENACTING ADULT BUSINESSES REGULATIONS INTO QUESTION.

V. EMPIRICAL RESEARCH IN INDIANAPOLIS SHOWS THAT REGULATIONS MAY HURT MORE THAN THEY HELP BY ACTUALLY INCREASING CRIME IN THE VICINITY OF ADULT BUSINESSES.

I. THERE IS NO RELIABLE EVIDENCE THAT ADULT BUSINESSES CREATE SUFFICIENT ADVERSE SECONDARY EFFECTS TO JUSTIFY THE TYPE OF RESTRICTIONS PREVIOUSLY INTRODUCED BY THE STATE OF OHIO.

A. Analyses of Secondary Effects Studies Undertaken in Other Communities.

I have examined the group of "secondary effects" studies and reports that municipalities claim to rely upon when enacting legislation directed at "adult" businesses.

I initially collected some one hundred and twenty "studies," and analyzed them both in regard to the conclusions that they reached and for what I generally refer to as "methodological rigor." As part of my research, I wanted to insure that if studies reached a certain conclusion (regardless of whether they found or did not find "secondary effects" being associated with "adult" entertainment businesses), I could have some confidence in those results as being trustworthy and reliable. I therefore undertook, along with my assistant, Ph.D. candidate Bryant Paul, a critical examination of the methodology or methodologies employed in these various "studies" in order to determine whether they met the rudimentary scientific elements of trustworthiness.

We presented our findings in a paper submitted at the Annual Meeting of the International Communication Association, 2000, with that paper receiving a "Top Three Refereed Papers in Communication Law and Policy" award following peer-review. Our analysis was then subjected to further peer-review for consideration of publication of what ultimately resulted as the article in the academic law journal. This journal article is entitled: *Governmental Regulation of "Adult" Businesses Through Zoning and Anti-Nudity Ordinances; Debunking the Legal Myth of Negative Secondary Effects*, Paul, et al., *Communication Law & Policy*, Vol. 6, No. 2, Spring, 2001, pp. 355-391, (hereinafter "*Paul*"). This published paper is presented in **Exhibit 2**.

This peer-reviewed, published, report -- of which I was one of the authors -- provides a critique of the research methods utilized, and the findings contained, in those materials. More importantly, this paper provides a discussion as to the procedures that a secondary effects "study" should utilize in order for its results to be considered to be scientifically valid and, therefore, reliable.

In the *Communication Law and Policy* published article we concluded that with few exceptions, that the scientific validity of the most frequently used studies is questionable and the methods are

seriously and often fatally flawed. These studies, relied on by communities throughout the country, do not adhere to professional standards of scientific inquiry and nearly all fail to meet the basic assumptions necessary to calculate an error rate. Those studies that are scientifically credible demonstrate either no negative secondary effects associated with adult businesses or a reversal of the presumed negative effects.

A. General Discussion of the Requirements of a Scientifically Valid Study of Secondary Effects.

In our peer reviewed, published paper we develop a list of criteria that we believed are critical in order for evidence of adverse secondary effects to be reasonably relied upon or objectively sound *See, e.g., Paul, et al.*, at 355-391. Studies of secondary effects should be examined in order to determine whether they answer the following questions which reflect important principles guaranteeing reliable information. Colloquially, these questions are: (1) "Compared to what?" (2) "Is this just a one-time fluke?" (3) "Is crime measured according to a reliable source?" and "did the government go looking for more crime to justify its legislation?" and (4) "Did the investigators talk only to people who would give them answers they wanted to hear?" These criteria are neither difficult nor cumbersome to apply, nor are they novel in nature--they are, however, essential features of any project attempting to gain reliable knowledge about secondary effects. I discuss each criterion individually below.

First, a number of studies conducted by other municipalities attempting to compare areas containing adult businesses to areas containing no such businesses failed to include comparison (control) areas that were sufficiently matched regarding important characteristics, such as age of housing stock or racial make-up. This lack of comparability between study and control areas prevents researchers from determining whether neighborhood deterioration is related to the operation of adult businesses in an area or that some other confounding variable is responsible for the outcome. In order to insure accurate and fair comparisons, a control area must be selected that is truly "equivalent" to the area containing the adult entertainment business. *See EARL BABBIE, THE PRACTICE OF SOCIAL RESEARCH 202-10 (8th ed. 1998) at 213-14; ROYCE A. SINGLETON, JR. ET AL., APPROACHES TO SOCIAL RESEARCH 136-51 (2d ed. 1993). See DONALD T. CAMPBELL & JULIAN C. STANLEY, EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH 34 (1963) at 34-71.*

Since most studies of secondary effects attempt to uncover increases in crime or neighborhood economic deterioration, professional standards dictate that the control (non-adult) site must be comparable (matched) with the study (adult) site on variables related to crime and deterioration. Of particular importance when studying crime is that the study and control areas are matched for variables such as ethnicity and socioeconomic status of individuals in both areas. Additionally, economic factors, such as median home value and total individuals employed and unemployed, should be comparable in both areas. A concerted effort should also be made to include only comparison areas with similar real estate market characteristics including property values, rental rates and proportion of unused commercial and industrial space in either area. The study and control areas in a crime study should be approximately equal in total population.

Second, a number of the studies using neighborhood crime measures have collected these statistics improperly. Although many studies gathered legitimate and consistent measures of crime statistics, such as police arrest reports over a sufficient period of time, a number of others used less scientifically acceptable measures, such as cross sectional survey results of residents' opinions of levels of crime. In addition, many studies and reports are based on substantial changes in police surveillance which renders any results at least suspect and most likely meaningless due to "stepped up" surveillance within the adult business areas. Put simply, the police were likely find greater amounts of crime in the adult establishment areas because they were trying harder to find it.

Third, the majority of studies failed to include a sufficient period of elapsed time, both prior to and following the establishment of an adult entertainment business, when measuring the relationship between the presence of adult businesses and a number of negative outcomes, such as higher crime rates and lower property values. Without a sufficient study period, it is difficult to determine whether a relationship exists between adult entertainment businesses and negative secondary effects, or whether the data are simply a reflection of an erratic pattern of local activity.

Finally, most of the studies that included survey results utilized non-random and therefore biased samples of residents and/or business owners, rendering them scientifically invalid. Even if methodologically valid, such studies offer only subjective opinions concerning the impact of adult businesses and provide little, if any, evidence of actual negative secondary effects.

B. The critique of the “pre-packaged secondary effects studies” contained in this peer-reviewed article has been cited by federal courts as “casting doubt” on the idea that adult businesses are associated with adverse secondary effects.

Recently, in concluding that a municipality may not have a sufficient basis to adopt new restrictions on adult businesses, the Tenth Circuit United States Court of Appeals rejected evidence provided by the Board of Commissioners of Dickinson County, Kansas, which consisted of the type of studies and reports we discuss in our article (all of which *claim* to establish a connection between adult entertainment establishments and adverse secondary effects) (see **Exhibit 3**).

In that case, I submitted testimony that disputed the methodologies and findings of most of the studies on which the Board relied. The Board offered the testimony of its own expert, Dr. Richard McCleary who testified that there is a relationship between crime and adult businesses, and that those studies supported the Board's stated rationale for enacting the Second Ordinance.

The court ruled that in a situation where there are conflicting opinions concerning evidence of secondary effects, thereby creating a “battle of the experts” in credibility determinations, a trial is required to sort out the facts.

The Tenth Circuit opinion then went further, and specifically cited to our published article above as a basis for *overturning* the evidence relied upon by the Board. The court took note of my opinion that the studies and reports on which the County relied are invalid or at least unreliable. In offering that opinion, I addressed each of the County's reports and studies individually, and pointed to specific problems I observed with each study or report that called its results or

conclusions into question. All of this testimony and evidence, the court concluded, had sufficiently cast direct doubt on whether the County could have reasonably relied on this set of pre-packaged "studies" as a basis for enacting further restrictions on adult businesses.

II. ADULT BUSINESSES ARE NOT HOTSPOTS OF CRIME. SECONDARY EFFECTS EXPERTS EMPLOYED BY THE GOVERNMENT SUCH AS RICHARD MCCLEARY WHO ASSUME THAT THEY ARE, HAVE MISSAPPLIED THE HOTSPOT CRIME THEORY OF ROUTINE ACTIVITIES.

A. Hotspot Theory of Routine Activities

One theory that has been used by researchers in the area of secondary effects and adult businesses has been the "hotspot theory of routine activities." Routine activities theory is derived from a rational choice perspective which maintains that committing a crime is a purposive behavior that the criminal believes will benefit him in some way (Felson & Clark, 1998). The theory states, *in part*, that for crime to occur, at the bare minimum, there must be a convergence in time and space of a likely offender, a suitable target, and the absence of a capable guardian to prevent the crime (Felson & Clark, 1998). According to this aspect of the theory, the more often that these three things converge, the more often crime will occur. Further, the more valuable the target is perceived to be, or the easier it is to victimize the target, the more likely the offender will be motivated to commit the predatory crime.

One of the major components of the routine activities perspective is that it is not just the relative frequency of the theory's three types of people (offenders, targets, guardians) that is important, but also the factors that *affect the convergence of those three types of people in space and time* (Sherman, Gartin, and Buerger, 1989). Specifically, there has been research showing how these factors are related to places known as crime "hotspots" or geographic areas that tend to attract the highest incidence of criminals and crime. For example, Sherman et al. (1989), in a typical study found that in Minneapolis, MN 50.4% of all calls to the police regarding predatory crime resulting in a patrol car being dispatched went to only 3.3% of all the addresses or intersections in the entire city. Given that the majority of crime in any given city occurs in a select few "hotspots" an indispensable component of the routine activities perspective is to first identify where these crime hotspots are located in a community.

B. Routine activities theory has been misused by Richard McCleary (2008) to postulate that sexually-oriented businesses are crime "hotspots."

According to McCleary, sexually-oriented businesses attract potential targets (customers) to the area around the businesses that are attractive to criminals based on the "presumed" characteristics of these customers. McCleary assumes that the customers do not live in the neighborhood, he assumes they are disproportionately male, he assumes they are open to vice overtures, he assumes carrying cash, and to be reluctant to report their victimization to the police. McCleary assumes that because of the presence of so many attractive targets, criminals are rationally motivated to seek out these areas and victimize these "soft" targets that are presumably drawn there by the sexually-oriented business. McCleary therefore hypothesizes that sexually-

oriented businesses serve as “hotspots” of crime, due to the high amount of easily victimized targets.

While routine activities theory can be very useful in explaining how crime can be distributed spatially or geographically in a given area, McCleary’s application of the theory to sexually-oriented businesses is unwarranted for several reasons: 1) The hotspot routine activities theory as applied to adult businesses *assumes* that the sexually-oriented businesses are, indeed, a crime hotspots without any empirical evidence that this true; 2) the theory focuses only on concentric circles in the area immediately surrounding the adult business and fails to take into account the myriad characteristics of the larger neighborhood in which the sexually-oriented business is situated that may account for crime; and, 3) the theory, as stated, cannot be falsified.

1. The Assumption That Sexually-Oriented Businesses are Crime Hotspots is not empirically sound.

The first problem with McCleary’s application of the hotspot routine activities theory to adult businesses is that it *assumes* that sexually-oriented businesses are, indeed, crime hotspots in a community.

As noted above, routine activity theory, hotspot research conducted by Sherman et al. (1989) revealed that three and a half percent of the intersections and some addresses were overwhelming responsible for most crime. These addresses included department stores, 24-hour convenient stores, liquor stores, public housing projects, apartment buildings, and homeless shelters in Minneapolis. Weisburd et al. (2004) found that between four and five percent of street segments in the city accounted for 50 percent of crime incidents for each year over 14 years. As Cancino (2008) has pointed out, these studies did *not* identify adult businesses as hotspots. Nevertheless, McCleary assumes confirmation that adult businesses are hot-spots.

While social scientists, in general, make theoretical assumptions, such assumptions are typically guided or based on existing research/empirical evidence. According to Anselin, Cohen, Cook, Gorr, and Tita (2000: 226), hotspot theory and analysis are exploratory but hotspots should be investigated systematically:

ESDA [Exploratory Spatial Data Analysis] is a collection of techniques to describe and visualize spatial distributions; identify atypical locations or spatial outliers; discover patterns of spatial association, clusters, or **hot spots**; and suggest spatial regimes or other forms of spatial heterogeneity (changing structure or changing association across space). As such, ESDA forms a subset of exploratory data analysis or EDA (Tukey, 1977), but with an explicit focus on the distinguishing characteristics of geographical data (Anselin, 1989).

Hotspot exploration, therefore, is the starting point when studying the association between place and crime. It is then used in combination with more rigorous confirmatory analytical techniques (Anselin et al., 2000: 213). Contrary to this suggested procedure, McCleary’s application of routine activity theory to secondary effects *begins and ends* with an adult address point source—

never bothering to establish whether that point source is crime hotspot in the context of the larger municipal, metropolitan or other geographical area.

McCleary's application of hotspot routine activities theory to adult businesses should be conditional upon a preliminary exploration as to whether adult business-hotspots empirically exist. Yet, this empirical exploration is never undertaken by McCleary. To assume rather than test if adult businesses addresses are crime hotspots is inherently misleading and it renders routine activities theory unconvincing as an explanation for crime occurrence. The premise of the theory is that there is a *co-occurrence* of *potential* victims, offenders, and lack of guardianship in a particular geographic area that yields criminal outcomes. Hotspot analysis should be undertaken for a well-defined space such as a municipality or other unit to detect the mathematical frequency/volume/intensity of such criminal events and present the occurrence of these events in visually descriptive manner.

2. The Misapplication of Concentric Circles to Adult Businesses as a Hotspot Source of Crime.

One problem with the assumption that adult businesses are crime hotspots in a municipality or other geographic area without an empirical verification of this assumption is that it fails to take into account the myriad characteristics of the neighborhood in which the sexually-oriented business is situated that may account for crime.

Anselin and colleagues (2000) further note:

Understanding the relationship between place and crime requires knowledge of the dynamics of hot spot development over space and time, with special attention to the ways that a location's facilities and utilization contribute to criminal behavior. This sort of knowledge can be derived from combining theory with exploratory and confirmatory empirical research (p. 224).

ESDA are exploratory by nature. They "suggest" potential associations between variables and elicit hypotheses, but the formal testing of these hypotheses is left for confirmatory analysis, typically carried out by means of multivariate regression modeling (pgs. 235-236).

More technically, we cannot necessarily assume that any crime found within the vicinity of the adult business is caused by the sexually-oriented business unless we *control* for other potential generators of crime that may be present in the area. If this type of control analysis is not undertaken, with techniques such a multivariate regression, examination of concentric zones immediately surrounding a point source alone is invalid. Crime scholars point out that use of concentric circles around a point source as units of analysis are not advantageous if the source of the phenomena of interest is not central to the area. The weakness is that use of concentric circles as the only analysis unit *does not rule out* other potential factors that may be contributing to the phenomena under study.

The method employed by McCleary, the examination of concentric zones around the adult business alone under the assumption that the adult business is a crime hotspot does not employ the proper controls to test his theory. The theoretical justification for using concentric zones is that adult businesses are the central source of crime risk (e.g., adult businesses attract victims and offenders) and that as one moves further away (i.e., distance) from an adult business, risk significantly diminishes. Without a hotspot exploratory analysis to establish that these businesses are indeed central sources using concentric zones alone misses the mark.

The epidemiology literature concerning sources of pollution and physical health is instructive in illustrating the weakness of the small area analysis (e.g., concentric zones) conducted by McCleary. According to Lawson and Waller (1996: 473), when examining risk (in this case crime) to a single source of pollution (in this case an adult business), and the assumption is that distance is a surrogate for risk, then a circular region (e.g., concentric zones) centered on the source provides the least sampling bias. However, if the source of pollution is not central to the area (Diggle, 1990) or population structure and other factors dictate the area (Lawson, 1995), then a circular zone has no advantage over more traditional square, rectangular, or polygon shapes (e.g., census tracts, block-groups, blocks). Use of polygons and tabular data are better able to account for many of the truncated factors that small area studies (e.g., concentric zones) tend to exclude (Lawson and Waller, 1996: 473).

McCleary has failed to show that adult businesses are the central source of crime. Instead, it is highly probable that a litany of demographics and structural conditions dictate the amount of crime in the area where adult businesses are located (not distance); thereby, rendering his small area concentric zone approach less advantageous when compared to a more efficient methodology that controls for various demographic, socioeconomic, and structural conditions at work.

In other words, Dr. McCleary does not rule out other influencing factors that would warrant the use of small area concentric zones. Instead, he makes the assumption that adult businesses are crime hotspots and then proceeds with a distance decay analysis and does not follow a systematic theoretical or methodological process for *exploring* the place-crime connection as outlined by Anselin et al. (2000: 224).

3. The hotspot theory as applied by McCleary cannot be falsified.

Finally, McCleary (2008) asserts that the targets drawn to sexually-oriented businesses are reluctant to report their victimization to the police for fear of embarrassment. This makes McCleary's theory impossible to falsify. That is, if one were to attempt to empirically test the theory and find that there was substantial crime risk associated with the adult business, we would conclude that we found evidence for the theory. However, even if one were to attempt to empirically test the theory and found no evidence that the adult business was associated with crime, one could explain this finding by asserting that the only reason an effect was not found was because of the propensity of the victims to not report their victimization to the police. Therefore, the theory has no way of being proven false--any contrary evidence can always be "explained away" by the "reluctance to report" corollary to the theory.

C. The Courts do not assume adult businesses are hotspots of crime.

There is final reason not to assume a relationship between crime and adult businesses. Chief Judge of the United States Court of Appeals for the Seventh Circuit Frank H. Easterbrook, a jurist who is noted for his depth of knowledge and sophistication in the area of social science and one of the most cited appellate judges in America has recently authored opinions in the cases *Annex Books, Inc. v. City of Indianapolis*, 518 F.3d 460 (7th Cir. 2009) and *New Albany DVD v. City of New Albany*, 581 F.3d 556 (7th Cir. 2009).

In the case of *New Albany DVD v. City of New Albany (2009)*, the court also specifically questioned the City of New Albany's theory propounded by Richard McCleary as a variant of the Routine Activities Theory of Crime Hotspots. The court was suspicious that McCleary's argument, adopted by the City of New Albany, is based on mere "anecdotal" information, and is indeed not supported by real evidence.

The court noted in its opinion in *New Albany*:

"New Albany offered some *anecdotal justifications* in the district court. It cited testimony in some earlier cases by people complaining about pornographic litter near adult bookstores, and it suggested that these stores may expose their customers to thefts. The former line of argument rests on the fact that some customers are bound to throw away wrappers, which may have images inappropriate for children. The "theft" line of argument starts with the premise that many customers of adult establishments pay in cash, which makes them a target for thieves."

Further, the court noted in the *New Albany* case that the city's, expert Dr. McCleary:

"*conceded that he knows of no research that shows . . . effects for various subclasses of businesses,*" The court said that "the norm under the first amendment is that government must combat harm to readers with disclosures rather than prohibitions of speech . . . *the City needs some evidence that thefts from passers by are a serious problem—and a more severe problem for outlets near churches than for outlets further away . . .*"

The Court in *New Albany* further said:

"New Albany has not supplied evidence that fairly supports" the idea that adult bookstores located near churches or residences attract thieves who then steal from the local denizens as well as the stores' customers. We don't say that the City will be unable to produce this evidence, but the lack of good evidence to this effect in the record—coupled with evidence implying that take home stores do not have adverse secondary effects—is enough to require an evidentiary hearing."

In summary, the Court in the *New Albany* case stated that the city's evidence was insufficient to prove that the theory was correct. The federal appellate court said the city did not provide any evidence that the establishment of the adult bookstore attracts any more thieves to the area. Because of this lack of evidence, the Seventh Circuit United States Court of Appeals concluded

that the City of New Albany must produce *real* evidence consistent with Judge Easterbrook's rules that the "thieves theory" is correct in order to justify its ordinance. Also, the court said that the city must satisfy Justice Kennedy's cost-benefit standard laid out in the *Alameda Books* ruling; that even if a regulation would decrease secondary effects, it cannot decrease speech by the same amount.

In a further ruling in December 2009 granting a preliminary injunction (see **Exhibit 4**), in the *Annex Books* case, Judge Sarah Evans Barker, United States District Court, Southern District of Indiana, ruled that the evidence submitted by the City of Indianapolis does not support such a conclusion.

From the order granting preliminary injunction, it is also clear that the court did not accept Dr. McCleary's research or conclusion. McCleary has offered only one published account of a study of adverse secondary effects. This study has been questioned by the court:

...the City cited an article co-authored by its expert, Dr. Richard McCleary, which discusses a link between adult book stores without live entertainment or private viewing and secondary effects crimes. Def.'s Exh. A (Richard McCleary & Alan C. Weinstein, Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, 31 LAW & POLICY 217-35 (2009) ("McCleary Article"). In the McCleary Article, the authors theorize that: "To the extent that on-site and off-site adult bookstores attract high-value targets from wide catchment areas, both business types are expected to attract predators to their neighborhoods, thereby generating ambient victimization risk."

The court notes:

Plaintiffs point to the Seventh Circuit's recent decision in an analogous case, *New Albany DVD, LLC v. City of New Albany*, 581 F.3d 556 (7th Cir. 2009), in which the court criticized the City of New Albany's justification for its adult regulation based on increased thefts as "paternalistic." *Id.* at 560. Plaintiffs also cite the Northern District of Iowa's decision in *Dr. John's, Inc. v. City of Sioux City*, 438 F. Supp. 2d 1005 (N.D. Iowa 2006), where Dr. McCleary's data was originally submitted in support of Sioux City's regulation of an adult bookstore. **The court heavily criticized Dr. McCleary's data in that case, stating the flaws identified "cast reasonable doubt not only on the validity of Dr. McCleary's report, but on whether any municipality could reasonably have believed that his report supported the regulations at issue here."** *Id.* at 1048-49.

D. Social Disorganization Theory

McCleary's nearsightedness is in part due to his inability to view the problem of secondary effects through any other theoretical lens than routine activities theory. However, there are indeed other theoretical perspectives, not incompatible with routine activities theory, that can inform the investigation of negative secondary effects. One such perspective is "social disorganization theory."

Social disorganization theory posits that the level of crime in a particular neighborhood is a function of the “social disorganization” in that neighborhood. A community is considered “disorganized” if there is a lack of social solidarity, social cohesion, and integration among the residents of that community (Kubrin, Stucky, & Krohn, 2009). The lack of these characteristics in a community leads to crime because informal social control is unable to be established without them, and it is this informal social control that helps to deter crime in a community (Kubrin et al, 2009). Perhaps most important to social disorganization’s application to the study of negative secondary effects is the insistence that the characteristics of the community in which the crime is occurring are important.

Specifically, social disorganization theory predicts that the ecological characteristics of a community can inhibit the development of social control with that community (Kubrin et al, 2009). Indeed, studies have shown that certain structural aspects of the community, such as poverty and racial heterogeneity, are strongly related to the amount of crime in that community (Sampson & Groves, 1989).

We cannot even begin to reasonably think about the unique contribution a sexually-oriented business may have on crime until we know something about the structural features of the neighborhood in which that business is situated and then attempt to control for those features.

III. ABSENT FROM THE STATE OF OHIO’S JUSTIFICATION FOR RULE 52 ARE A LARGE NUMBER OF SCIENTIFICALLY SOUND STUDIES THAT SHOW NO ADVERSE EFFECTS OF ADULT BUSINESSES.

Combining social disorganization and routine activity theories and collecting reliable empirical evidence of secondary effects.

We have conducted numerous studies in cities across the country that examine the question whether adult businesses engender such secondary effects as increased crime, decreased property values, and increased urban blight. Rather than assuming that sexually-oriented businesses are crime hotspots without any empirical evidence that this true we have tested this assumption in the studies presented below. Further, we focus not only on concentric circles in the area immediately surrounding the adult business but we also take into account the myriad characteristics of the larger neighborhood in which the sexually-oriented business is situated that may account for crime.

We have also employed methodologies in these studies that allow us to determine when an empirical link between the presence of an adult business in a community and adverse secondary crime effects has been reliably demonstrated.

As noted above, Chief Judge of the United States Court of Appeals for the Seventh Circuit, Frank H. Easterbrook, a jurist who is noted for his depth of knowledge and sophistication in the area of social science and one of the most cited appellate judges in America has recently authored opinions in the cases *Annex Books, Inc. v. City of Indianapolis*, 518 F.3d 460 (7th Cir. 2009) and *New Albany DVD v. City of New Albany*, 581 F.3d 556 (7th Cir. 2009).

Among the requirements laid out by the court in these opinions were two important methodological dictums: First, it is necessary in studies of secondary effects to engage in a comparative analysis in order to ascertain if crime is higher or lower at adult venues (e.g., bookstores and cabarets) compared to other venues such as taverns and bars; second it is necessary to employ as specific analytic technique, multivariate regression when studying secondary effects.

In *Annex Books, Inc. v. City of Indianapolis* the court said that municipalities attempting to determine if adult businesses are related to crime are on methodologically sound footing to the extent that they include comparison (control) areas. This allows the municipality to determine the magnitude of the secondary effect relative to other types of areas or businesses.

The court admonished the city of Indianapolis for not including such controls (in fact controls suggested by social disorganization theory). The panel noted in *Annex Books*:

“Nor can we tell whether 41 arrests at one business over the course of 365 days is a large or a small number. How does it compare with arrests for drunkenness or public urination in or near taverns, which in Indianapolis can be open on Sunday and well after midnight? If there is more misconduct at a bar than at an adult emporium, how would that justify greater legal restrictions on the book- store—much of whose stock in trade is constitutionally protected in a way that beer and liquor are not.”

The court also noted in *Annex Books* that multivariate or multiple regression analysis would provide a better foundation for determining secondary crime effects. Specifically, the court said: “One may doubt that Linz’s work is the last word; a multivariate regression (presumably to include control variables related to crime) would provide a better foundation than either a time series or a geographic cross-section. See Daniel L. Rubinfeld, *Reference Guide on Multiple Regression*, Reference Manual on Scientific Evidence (2d ed.) (Federal Judicial Center 2000).”

A multiple regression allows the testifying expert to choose among alternative theories or hypotheses and assists the expert in distinguishing correlations between variables that are plainly spurious from those that may reflect valid relationships.

We have heeded these methodological dictums in our studies described below. The results of these studies do not provide support for the idea that adult businesses cause some type of enhanced adverse secondary effects so as to warrant special regulations.

A. The City of Ft. Wayne, Indiana Study. This study is one that I oversaw and that was conducted by Dr. Bryant Paul, University of California at Santa Barbara (currently an assistant professor in the Department of Telecommunications at Indiana University). It is an examination of adult cabarets in the City of Ft. Wayne, Indiana, which served alcoholic beverages and provided exotic entertainment. The report of this study was awarded “Top Student Paper” at the student paper competition at the conference: Translating Spatial Research Into Practice: The Fifth Annual International Crime Mapping Research Conference, Sponsored by the Crime Mapping Research Center, National Institute of Justice, U.S. Department of Justice. A copy of the award letter is attached as **Exhibit 5**. A subsequent version of this report authored by (now)

Dr. Paul and myself was presented at the 2002 International Communication Association, where it was peer-reviewed by a group of professional researchers and recognized as one of the "Top Four Refereed Papers in Communication, Law and Policy." A copy of the final report, entitled "Using Crime Mapping to Measure the Negative Secondary Effects of Adult Businesses in Fort Wayne, Indiana: A Quasi-Experimental Methodology," is attached as **Exhibit 6**.

In this study, a 1000 feet circumference surrounding each of eight exotic dance nightclubs in Fort Wayne was established. Comparison areas were selected in the City of Fort Wayne and matched to the club areas on the basis of demographic features suggested by social disorganization theory associated with crime and commercial property composition. The number of calls to the police from 1997-2000 in the areas surrounding the exotic dance nightclubs that served alcohol was compared to the number of calls found in the matched comparison areas. Our analysis showed little difference, overall, between the total number of calls to the police reported in the areas containing the exotic dance nightclubs and the total number of offenses reported in the comparison areas. We concluded from these findings that there was no evidence of adverse secondary effects associated with this form of adult business, and as I have stated our research for this project has received more than one award for its scientific soundness.

B. A Secondary Effects Study in Charlotte, North Carolina. I conducted this study in Charlotte, North Carolina, along with my past assistant, Dr. Bryant Paul, as well as Kenneth C. Land, Jay R. Williams and Michael E. Ezell of Duke University. The final report has been published under the title: *An Examination of the Assumption that Adult Businesses are Associated with Crime in Surrounding Areas: A Secondary Effects Study in Charlotte, North Carolina*. This study sought to determine if a relationship existed between adult dance clubs in Charlotte, North Carolina, that featured topless dancing and that served alcohol, and negative secondary effects in the form of increased numbers of crimes reported in the areas surrounding the adult businesses. Specifically, the study addressed the following research question. Once variables known to be related to crime events as suggested by social disorganization theory have been taken into account, we ask: Does the presence of an adult business increase the concurrence in space and time of offenders motivated to commit crimes together with suitable targets for the crimes, in the absence of guardians capable of preventing or deterring the crimes?

For each of 20 businesses, a control site (matched on the basis of demographic characteristics related to crime risk) was compared for crime events over the period of three years (1998-2000) using data on crime incidents reported to the police. We found that the presence of an adult nightclub does not increase the number of crime incidents reported in localized areas surrounding the club (defined by circular areas with 500 and 1,000 feet radii) as compared to the number of crime incidents reported in comparable localized areas that do not contain such an adult business. Indeed, the analyses imply the opposite: Namely, that the nearby areas surrounding the adult business sites have *smaller numbers of reported crime* incidents than do corresponding areas surrounding the three control (*non*-adult) sites studied.

The report of this study has been published in the peer reviewed scientific journal *Law and Society Review*, March 2004, and a copy is attached as **Exhibit 7**.

C. A statewide study of Ohio cities also shows a lack of correlation between the presence of liquor-serving establishments featuring nude or semi-nude dancing and crime. The study report has been peer reviewed and was presented at the 2006 National Communication Association annual meeting at a research paper session entitled: "Top Four Refereed Papers in Freedom of Expression." This paper is attached as **Exhibit 8** and is published as: Linz, D., Yao, M., & Byrne, S. (2007) "Testing Supreme Court assumptions in *California v. la Rue*: Is there justification for prohibiting sexually explicit messages in establishments that sell liquor?" *Communication Law Review*. 7 (1), 23-53.

Our study in Ohio shows once variables suggested by social disorganization theory are taken into account there is a lack of correlation between the presence of liquor-serving establishments featuring nude or semi-nude dancing and crime. Our study revealed that in Toledo the presence or absence of adult cabarets in a given neighborhood did nothing to explain the presence of crime in that same neighborhood. Similarly, in Columbus, the addition of alcohol-serving adult cabarets as a factor in our analysis resulted in zero explanatory power. The work in Dayton revealed a negative correlation between adult cabarets and incidents of rape such that the presence of an alcohol-serving adult entertainment establishments is actually indicative of *fewer*, rather than more, rapes. Finally, in Cleveland, we found that the addition of alcohol-serving adult cabarets as a factor in this analysis also added no ability to explain crime incidents.

We suggest that the negative correlation between adult establishments and violent crime might be explained by the fact that in alcohol serving establishments that do *not* feature adult entertainment, people have a tendency to fight with one-another; particularly men over women. That does not tend to occur, however, in an adult entertainment venue.

D. Recently, the State of Virginia has changed their statutes regarding the regulation of sexually oriented businesses with liquor service, which now state that businesses cannot both carry a mixed beverage license and provide adult entertainment. Virginia's statute changes are ultimately based in the doctrine established by the Supreme Court that local governments can regulate the time, place, and manner in which adult entertainment is expressed in order to combat the "adverse secondary effects" caused by these businesses. Statutes such as Virginia's assume that the presence of liquor service with adult businesses causes more secondary effects than either alone. This assumption is tested in Richmond, Virginia, in which the crime at and around two Gentlemen's Clubs is examined both before and after they received a mixed beverage license.

The results of this research are summarized in a paper entitled: "Erotic Dancing, Liquor, and Crime: An Empirical Critique of Virginia Statute Changes Restricting Liquor Service and Adult Entertainment," by Christopher Seaman and Daniel Linz Department of Communication University of California, Santa Barbara." This report is attached as **Exhibit 9** it has also been peer reviewed, and was presented at the 2009 National Communication Association scientific meeting in Chicago where it received the Top Scholarship in Freedom of Expression award.

In this study, we compared crime at and around the adult businesses to crime in and around six non-adult control businesses. The study found no support for the theory that liquor service and adult entertainment interact to causes unique increases in criminal activity in the surrounding

community, or even that adult entertainment is associated with increases in crime at all. Crime was found to actually *decrease* in the period after the two Gentlemen's Clubs received their mixed beverage license.

E. Supplemental Crime Analysis: *Club Eden v. Town of Davie, Florida*, by Randy D. Fisher, Ph. D. University of Central Florida, Daniel G. Linz, Ph. D and Chris Seaman University of California, Santa Barbara March 3, 2008. This report is attached as **Exhibit 10.**

The experiences of the Town of Davie with the businesses occupying the building at 2101 South University Avenue provide a quasi-experimental study of the theory that adult businesses are related to adverse secondary effects. Examining changes in crime in the area surrounding this location we compared the amount of crime in the 500 and 1,000 feet area when there was a non-adult alcohol-serving establishment present (Coco Locos) to the amount of crime in the area when there was an adult cabaret serving alcohol present.

Since the surrounding neighborhood remained relatively unchanged during the time span, and differences in crime in the area would most likely be a result of the entertainment format featured at the 2101 University Drive location. We examined person, property and disorder "crimes known to law enforcement" (data eventually used for the Uniform Crime Reports) occurring on weekends (Thursday, Friday and Saturday) provided by the Davie Police Department.

We found that when the business venue was a non-adult alcohol serving establishment person crime in the 500 feet area surrounding the address was twice as high as when the business was an adult entertainment alcohol-serving establishment. Similar results were found for property crime- there was half as much crime in the area when an adult business occupied the location than when a non-adult business resided at the address. For disorder crimes, slightly less than half as many occurred at the adult business compared to the non-adult one. In other words, comparison of crime rates during the Coco Locos era to that of the Club Eden era reveal that the person crime rate declined by 45 percent, the property crime rate declined by 42 percent, and the disorder crime rate dropped by 34 percent.

Conversely, the crime rates in the control area (1000 to 2000 feet from 2101 South University) declined substantially less: from nine to 26 percent. This implies that the establishment of an adult business in the 2101 South University location was associated with a crime decrease which appeared not to be simply the result of generally declining rates in the Town of Davie. We conclude that changing a business to an adult format not only is not associated with crime increases, but this change may, in fact, be associated with substantial reductions in crime.

F. A Study of Secondary Crime Effects of Adult Cabarets in Seattle Washington, by Daniel Linz Ph.D. Professor, Department of Communication, Law and Society Program, University of California, Santa Barbara and Mike Yao Ph.D. University of California, Santa Barbara October 12, 2006. This report is attached as **Exhibit 11.**

In this study, we asked the following question concerning secondary crime effects of adult cabarets in Seattle: Do crime statistics show that police activity and resources are disproportionately attributed to the addresses where adult entertainment businesses are located

compared to other retail, eating and entertainment venues in the immediate neighborhood? For the analyses we rely on calls for service (CFS) to the Seattle Police Department. This included records of dispatches or calls for service that were either police-initiated or calls from the public from for March 1998 to June 2006. An analysis by specific address was undertaken to determine if the adult cabarets Déjà vu Showgirls, 1510 1st Avenue, Rick's 11332 Lake City Way NE and Sands Showgirls 7523 15th Ave NW, Seattle, have required special attention from the police compared to other addresses in their respective neighborhoods.

The results showed that there is no evidence that these businesses are disproportionately more often the source of police attention than other addresses in terms of disorder, drug related, person, property or rape crime activity. Crime does not tend to accompany, concentrate around, or be aggravated by these adult business. We therefore concluded that these adult cabarets are not associated with so-called "adverse secondary effects" in the city of Seattle. The results of this study are consistent with and completely predicable from modern criminological theory and with past empirical research.

G. Measuring the secondary effects of adult businesses in the Rancho Cordova CA area: A study of crime incidents, February 20, 2005, by Daniel Linz Professor of Law and Society, and Communication, University of California at Santa Barbara, Department of Communication, Santa Barbara, and Mike Yao M.A. PhD. Candidate, University of California at Santa Barbara, Department of Communication, Santa Barbara. This report is attached as **Exhibit 12**.

In this study we asked the following question concerning secondary crime effects in Rancho Cordova: Do crime statistics show that crime incidents occur with more frequency at the addresses and in the areas surrounding adult entertainment businesses compared to other venues in Rancho Cordova. Three methodological approaches were employed to answer this question. First, a quasi-experimental study is undertaken wherein "test" 750-foot areas surrounding adult businesses and demographically matched comparison areas located in the same vicinity are established and one compared with the other. Second, 750-foot areas surrounding additional locations in Rancho Cordova are developed for comparison with the adult business areas. Third, a more focused analysis by specific address is undertaken to determine if the adult businesses are subject to more police attention than other businesses in the community.

If the City of Rancho Cordova's theory that adult businesses are associated with adverse secondary crime effects is correct we should observe a greater number of crime incidents both at the addresses themselves and in the immediately surrounding vicinity of the adult business compared to a variety of control locations.

We found no support for the City's theory. Very few incidents of person-related crime occurred in the vicinity of the adult use businesses. On average only two such incidents occurred in the vicinity of the adult businesses over the entire five and one-half years of the study period. We also found that contrary to the City's theory matched control areas were *more* likely to exhibit crime incidents than the areas immediately surrounding the adult businesses. Also contrary to the city's theory comparison addresses in the Rancho Cordova had dramatically higher levels of crime activity than the areas surrounding the adult locations. Finally, also contrary to the city's theory we found that crime incidents at non-adult alcohol serving

establishments in Rancho Cordova were far more likely to be the focus of crime incidents than the adult businesses.

We concluded that adult-oriented businesses are not linked to increases in crime rates in those areas in which they are located and in surrounding areas. This study found no evidence for the proposition that an increase in crimes such as prostitution, pandering, violence against persons and property tends to accompany, concentrate around, and be aggravated by adult-oriented businesses in Rancho Cordova. In light of the relatively crime-free nature of the adult businesses in the Rancho Cordova area (e.g., a total of four crime incidents across the five and one half year study period and at the Gold Club zero incidents) and the significantly lower rates of crime in the adult areas compared to the control areas, we might well say that rather than exhibiting a negative effect on the community the adult businesses are associated with “positive” secondary effects.

H. “Measuring the secondary effects of adult cabarets in Greensboro NC: A study of police reports” by Daniel G. Linz, Department of Communication, Law and Society Program, University of California, Santa Barbara. This report is attached as **Exhibit 13**.

The purpose of the study was to test the City’s assertions by examining police reports to determine if adult cabarets in Greensboro are implicated by the investigating police officer in crime events.

If the theory that adult cabarets are associated with crime is correct we should observe higher-than-average rates of the “serious” crimes (e.g., robbery) and “opportunistic” crimes such as prostitution that are associated with the adult businesses in the police reports. There should also be accounts in the police reports of officer activities linking crime investigation and reporting to the adult businesses. The officers’ statements about the nature of the crime event and victim statements should, in some measure reflect circumstances in the neighborhood of the adult business leading to the criminal incident. The reports should also reflect investigation into the possible source of the crime victimization and attempts to link other crime reports in the vicinity of the adult business in order to form a pattern of predation. There should also be accounts in the police reports of officer activities linking crime investigation and reporting to the adult businesses. The officers’ statements about the nature of the crime event and victim statements should reflect circumstances in the neighborhood of the adult business leading to the criminal incident. The police reports should also reflect investigation into the possible source of the crime victimization and attempts to link other crime reports in the vicinity of the adult business in order to form a pattern of predation.

The results of this study indicated that of the 1,492 police reports within the 1000 feet areas, only 51 reports or 3.4% were directly associated with the adult cabarets over a five year period. Specifically, this study found no support for the idea that the adult cabarets in Greensboro are substantively involved in attracting offenders who are “professional” criminals and no indication from the police reports that there are vice purveyors who either dabble in crime or other criminals who promise vice to lure and lull victims into crime. There was also no support for higher-than-average rates of “victimless” crimes (e.g., prostitution) in adult cabaret neighborhoods.

Nor is there evidence in the present study of any significant number of crimes that occur inside the adult business. There was no substantial indication from the police reports of crimes against the adult cabaret *per se* such as robbery, and little indication of "Victimless" crimes committed by patrons (*e.g.*, lewd behavior). There were a negligible number of patron-on-patron crimes (assault, battery *etc.*). There were nearly zero instances of employee-on-patron crimes (*e.g.*, battery) according to police reports and nearly zero instances of patron-on-employee crimes (assault, battery, *etc.*). There were no instances of crimes against police officers charged with enforcing regulations inside the adult cabarets (*e.g.*, battery).

Given these results we concluded that adult cabarets are not reliably linked to increases in crime rates in those areas in which they are located and in surrounding areas. This study found little evidence for the proposition that an increase in crimes such as prostitution, pandering, violence against persons and property tends to accompany, concentrate around, and be aggravated by adult-oriented businesses in Greensboro.

I. A study recently conducted by Enriquez, Cancino and Varano in San Antonio shows results remarkably similar to the peer reviewed studies described above. These authors found that after controlling for socioeconomic and demographic community characteristics associated with social disorganization, weak institutional dimensions such as alcohol outlets were statistically significant predictors of crime and the magnitude trumped other predictor coefficients in their statistical models. The coefficients for adult cabaret establishments were consistently weak and insignificant in each of the models. The authors concluded that the empirical evidence was inconsistent with the San Antonio City Council's contention that the presence of adult establishments produced crime. Instead, the authors contend that the results of their study point to weak institutions, namely alcohol outlets and other community characteristics associated with social disorganization theory, as the root causes of crime (as opposed to "adult" businesses). This study has been published as: Roger Enriquez, Jeffrey M. Cancino & Sean P. Varano. "A legal and empirical perspective on crime and adult establishments: A secondary effects study in San Antonio, Texas," *American University Journal of Gender, Social Policy & the Law*, 15 (2006) and is included as **Exhibit 14**.

IV. OUR EMPIRICAL STUDY IN INDIANAPOLIS HAS BEEN USED TO CALL THE SECONDARY EFFECTS MOTIVATION FOR ENACTING ADULT BUSINESSES REGULATIONS INTO QUESTION.

Dr. Paul, a tenured professor in the Department of Telecommunications at Indiana University, Bloomington, and I conducted a study of the potential adverse secondary effects of adult video/bookstores in Indianapolis, Indiana, that has been peer reviewed and presented at the Freedom of Expression Division of the National Communication Association, "Top Freedom of Expression Scholarship," November, 2007 Annual Meeting, Chicago, IL. See **Exhibit 15**.

The methodology we used and the results we obtained were extensively discussed recently by the Seventh Circuit United States Court of Appeals in *Annex Books*, 581 F.3d at 465. The court in *Annex Books* required that pertinent secondary effects data must be gathered supporting the *specific type* of ordinance being enacted, and regarding the specific subclass of business meant to be regulated (*i.e.*, an adult cabaret, a bookstore with on-premises viewing, or a "take out only"

bookstore). Equally importantly, the court further declared that the data being used to support the enactment of a regulation of adult businesses be collected and analyzed in a *scientifically valid manner*. If this is not done, a municipal ordinance may be unconstitutional, and a court hearing or trial is necessary where the municipality and the adult businesses disagree as to whether or not the ordinance is fairly supported by “secondary effects” evidence.

Pertinent to that federal court ruling, in order to test the assumption that adult video/bookstore businesses were associated with negative secondary effects we conducted a scientifically sound study of Uniform Crime Report data in and around these businesses in Indianapolis, using crime report information provided by the Police Department. Using census block groups (neighborhoods), an address-specific “hotspot” analysis of police activity was undertaken in order to test the assumption that adult bookstores had a deleterious effect on the areas around them in terms of crime. We also compared crime events in the 250, 500 and 1000-foot areas surrounding two adult businesses before and after the opening of such establishments. This analysis allowed us to test the assumption that opening these businesses would be associated with increases in crime in the neighborhood.

The “hotspot” analyses revealed that in many cases zero-percent of the crime activity in the neighborhood is due to crimes at the adult businesses themselves. Compared to other addresses in the neighborhood, adult video/bookstores were not associated with crime. The before-after analysis also suggested that these adult businesses are not associated with increased crime incidents in the year following opening. Even a cluster of three such businesses in a relatively small area was not associated with crime incidents.

In summary, the evidence collected by Dr. Paul and myself in Indianapolis shows that adult bookstore/video businesses do not produce crime effects. Failure to find a greater occurrence of secondary effects for adult businesses is a serious challenge to a city’s theory that “adult” businesses in general engender adverse secondary effects so as to justify the enactment of new laws directed at such establishments.

With reference to this study, the federal court of appeals in *Annex Books* noted:

“There must be some pertinent data to be gathered, if not in Indianapolis then elsewhere. But if, as is possible, there is simply no sound basis for a conclusion that book or video stores (without live entertainment or private booths) open after midnight, or on Sunday, cause adverse secondary effects, then Indianapolis must revert to its pre-2003 system of regulation.” “Counsel for Indianapolis conceded at oral argument that none of the studies that the City has offered in defense of its ordinance deals with the secondary effects of stores that lack private booths. Nor do the studies assess the effects of stores that sell as little as 25% adult products. These shortcomings, **plus Linz’s work**, call the City’s justifications into question and require an evidentiary hearing at which the City must support its ordinance under the intermediate standard of *Alameda Books*. See also *Abilene Retail #30, Inc. v. Dickinson County*, 492 F.3d 1164 (10th Cir. 2007) (reaching the same conclusion on a similar record).”

V. EMPIRICAL RESEARCH IN INDIANAPOLIS SHOWS THAT REGULATIONS MAY HURT MORE THAN THEY HELP BY ACTUALLY INCREASING CRIME IN THE VICINITY OF ADULT BUSINESSES.

Data recently collected and analyzed by the City of Indianapolis which I reviewed shows that crime increased, rather than decreased (in direct contradiction to the city's theory of secondary effects), after time restrictions were placed on adult businesses.

The Seventh Circuit ruling in *Annex Books*, 581 F.3d at 465, makes clear that a city must demonstrate that its ordinance meets Justice Kennedy's cost-benefit standard, meaning that it must advance some basis to show that its regulation "is likely to cause a **significant decrease in secondary effects and a trivial decrease in the quantity of speech.**" *Annex Books*, 581 F.3d at 465 (quoting *Alameda Books*, 535 U.S. at 445 (Kennedy, J., concurring)).

In her order granting a preliminary injunction on December 1, 2009 (see **Exhibit 4**) Judge Barker ruled that the evidence submitted by the City of Indianapolis does not support such a conclusion. Judge Barker noted that: "In fact, the statistical evidence presented by the City comparing crime rates before and after enforcement of the revised ordinance actually shows that overall crime ("Overall crime" includes both violent/person crimes (aggravated assault, forcible rape, homicide, and robbery) and property crimes (arson, burglary, larceny/theft, and motor vehicle theft) **actually increased** by 19% following enforcement in the areas within 500 feet of Plaintiffs' businesses, compared to an increase of 13% in the balance of the Indianapolis Police Department ("IPD") district." (Emphasis added).

This ruling followed my declaration in which I offered the opinion that, to a reasonable degree of scientific certainty, the data actually show that the hours of operation limitations have made the crime situation worse, not better, in Indianapolis. (See **Exhibit 16**).


My conclusion is based on the following observations: The total type 1 Uniform Crime Report crimes increased by 29% in the areas surrounding the adult businesses while they were closed Midnight to 10 a.m. This finding indicates that not only did the ordinance fail to curtail secondary effects, but, rather, its implementation is associated with a substantial **increase** in crime. As a further check on this conclusion we note that the total type 1 Uniform Crime Report crime increased by a smaller percentage during the same period (21%), in the balance of the "IPD" District. The total type 1 Uniform Crime Report crimes increased by 46% in the areas surrounding the adult businesses while they were **closed** on Sundays.

In fact, this increase in crime was driven by Violent/Person crime which increased by 138% overall. The total type 1 Uniform Crime Report crime increased by a much smaller percentage on Sundays (11% total type UCR and 14% Violent/Person), in the balance of the IPD District.

Crime increased at a substantially greater percentage when businesses were closed than when they were opened. Even if one were to examine only the Violent/Person crime subcategory, after the law went into effect no conclusions can be drawn. While that subcategory of crime decreased between Midnight and 10 a.m., it increased on Sundays when the businesses were also required to be closed. In fact, the net decrease of two such crimes over the course of three years, less than

one crime per year, is so small that it cannot be reliably attributed to the law.

In summary, when considering the data presented by the city, I concluded that the law's requirement that the adult bookstores close between midnight and 10 am and all day on Sunday has caused crime to *increase* in the area surrounding these adult businesses rather than reducing it. By requiring these businesses to close, the City has removed a neighborhood "guardian" in the form of an open business that may suppress crime in the area.

Respectfully Submitted, 



11/15/10

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