

**Crime-Related Secondary Effects
Of Off-Site SOBs**

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Legal Doctrine

Evolution of the Secondary Effects Doctrine

Boston's "Combat Zone" Experiment

Keeps "vice" out of other neighborhoods
Focuses public safety resources

Detroit's Decentralization Experiment

Public Hearings, Expert Testimony
Young v. American Mini-Theatres, Inc. (1976)
Code aims at "secondary effects"

Litter
Noise
Crime

Evolution of the Secondary Effects Doctrine

Los Angeles, 1977

Compared to "control" neighborhoods, SOB
neighborhoods have

Higher crime
Lower property values
More "blight"

Methodological Critique of the Los Angeles Study

SOB and "control" neighborhoods not comparable
City employees biased
Police "looking for crime"

Evolution of the Secondary Effects Doctrine

City of Renton v. Playtime Theatres, Inc. (1986)

Renton, WA had no SOBs
 Renton, WA relied on secondary effects studies
 conducted in Seattle
 Renton, WA passed a zoning code that prohibited
 SOBs in its downtown
 Two downtown theaters converted to XXX

The Renton standard ...

Regulation must aim at secondary effects but
 Government can use any secondary effects evidence
 that it “reasonably believes” to be “reliable and
 relevant to the problem.”

Evolution of the Secondary Effects Doctrine

Garden Grove, 1991

Before/After design (time series quasi-experiment)
 Existing SOBs used as “control” sites
 Crime measured at 200, 500, and 1000 feet
 Surveys of citizens, real estate professionals

	<i>SOBs</i>			<i>Controls</i>		
	<i>Pre</i>	<i>Post</i>	<i>OR</i>	<i>Pre</i>	<i>Post</i>	<i>OR</i>
<i>March, 1982</i>	71	106	1.49	76	78	1.03
<i>March, 1986</i>	31	68	2.19	80	92	1.15
<i>August, 1988</i>	32	50	1.56	41	40	0.98
	134	224		197	210	

Criminological Theory

Criminological Theory of Secondary Effects

Primary Effects Theories

SOB activities corrupt “good” people
SOB patrons are “bad” people

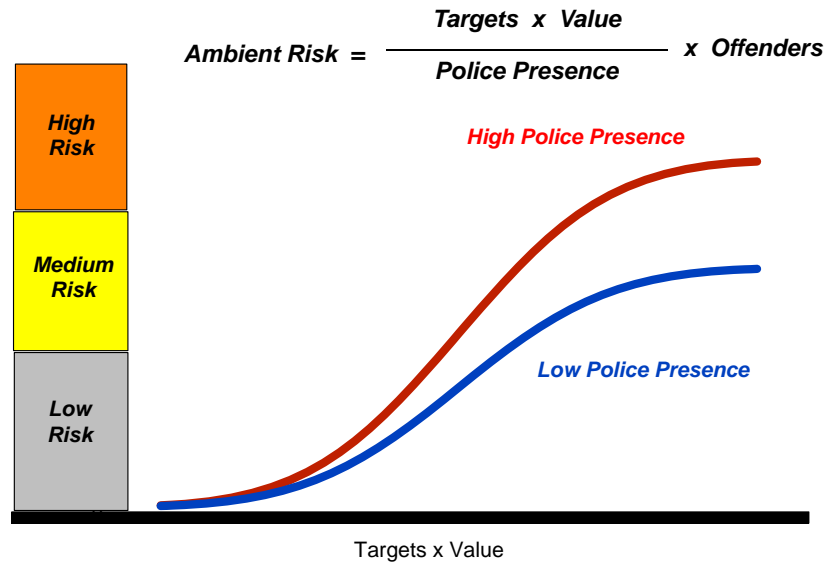
Secondary Effects Theories

SOBs attract “soft” targets (male, carry cash, open to vice overtures, reluctant to report crimes to police, etc.)

“Soft” targets attract predators (vice purveyors who dabble in crime, professional criminals who pose as vice purveyors, etc.)

Convergence of victims and predators in the absence of guardians generates ambient crime risk

Criminological Theory of Secondary Effects



Routine Activity Theory of “Hotspots”

SOB patrons are attractive, high-value targets

- Disproportionately male
- Open to vice overtures
- Travel long distances to the site
- Carry cash
- Reluctant to involve the police

SOB patrons are “perfect” victims

- Low risk to the offender
- High pay-off to the offender

High density of high-value targets attracts offenders

- Vice purveyors who dabble in crime
- Predators who use vice to lure/lull victims

Routine Activity Theory of “Hotspots”

SOB sites generate ambient victimization risk

“Victimless” crimes (prostitution, drugs, etc.)
Predatory crimes (robbery, auto theft, etc.)
Opportunistic crimes (vandalism, burglary, etc.)

Corollary 1: Alcohol aggravates ambient risk

Lowered inhibition
Clouded judgment

Corollary 2: Darkness aggravates ambient risk

Darkness favors the predator
Policing is less effectiveness in darkness
Resources are thin at “closing” time

Routine Activity Theory of “Hotspots”

Corollary 3: All SOBs are “hotspots”

Live entertainment
“Off-premise” bookstores
“On-premise” video Arcades

Corollary 4: Ambient risk can be mitigated

Distancing SOBs from sensitive uses*
Dispersing SOB sites (Detroit model)
Target hardening
 Interior design
 Exterior design
Removing alcohol from high-risk zones
Limiting operation during high-risk times
“Broken windows” enforcement

More Legal Doctrine

Evolution of the Secondary Effects Doctrine

City of Los Angeles v. Alameda Books (2002)

Reaffirms the *Renton* standard but ...

“This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in *Renton*. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance”

Evolution of the Secondary Effects Doctrine

“Casting direct doubt” on the evidence

“With few exceptions the methods used in the most frequently cited studies are seriously and often fatally flawed. These studies, relied on by other 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—a test of the reliability of findings in science. Those studies that are scientifically credible demonstrate either no negative secondary effects associated with adult businesses or a reversal of the presumed negative effect. .” (Paul, Linz, and Shafer, 2001:255)

“[T]he courts may be best served by turning to standards laid out in *Daubert* for the admissibility of scientific evidence. The application of such standards ... may force the courts to reject the studies previously relied upon as evidence of negative secondary effects, and require new, more methodologically sound, studies.” (Paul, Linz, and Shafer, 2001:391)

Evolution of the Secondary Effects Doctrine

Daubert v Merrell Dow Pharmaceuticals (1993)

Scientific evidence must be *relevant* and *reliable*
Scientific evidence must be *relevant* and *reliable*

Theory is falsifiable and testable
Peer review and publication desirable
Known error rates (of instruments) acceptable
Theory/method accepted by scientific community

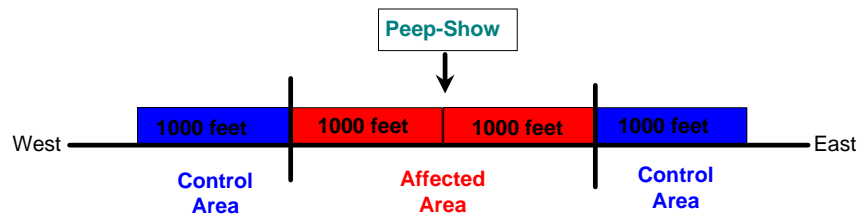
G.M. Enterprises v Town of St. Joseph (2003)

“A requirement of *Daubert*-quality evidence would impose an unreasonable burden on the legislative process, and further would be logical only if *Alameda Books* required a regulating body to prove that its regulation would – undeniably – reduce adverse secondary effects. *Alameda Books* clearly did not impose such a requirement.”

“Casting Direct Doubt”

Part I: Do your own study

San Diego, CA: Linz, Paul, and Yao (2006)*



“We made comparison (sic) of calls-for-service to the police for the inner and outer areas surrounding the peep show establishments to determine if criminal activity is high at or near San Diego peep shows compared to surrounding control locations. As shown in Table 1, the amount of crime within the inner and outer areas was nearly identical ... This result conforms to what would be expected by chance.”

**Journal of Sex Research, 2006, 43:182-193*

San Diego, CA: Linz, Paul, and Yao (2006)*

	<i>Defendant is Guilty</i>	<i>Defendant is Innocent</i>
<i>Jury Convicts</i>	95% Confidence	5% False Positives
<i>Jury Hangs</i>	Inconclusive	Inconclusive
<i>Jury Acquits</i>	20% False Negatives	80% Power

“Negativa non sunt probanda ...”

“I attributed this disregard of power to the inaccessibility of a meager and mathematically difficult literature...”

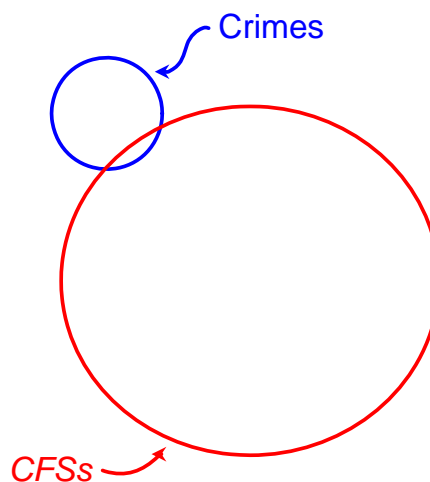
“Suppose that I can’t find my car keys. This could mean that my car keys don’t exist. But it could also mean that I didn’t look hard enough or that I was looking in the wrong place.”

**Journal of Sex Research, 2006, 43:194-196*

San Diego, CA: McCleary and Meeker (2006)*

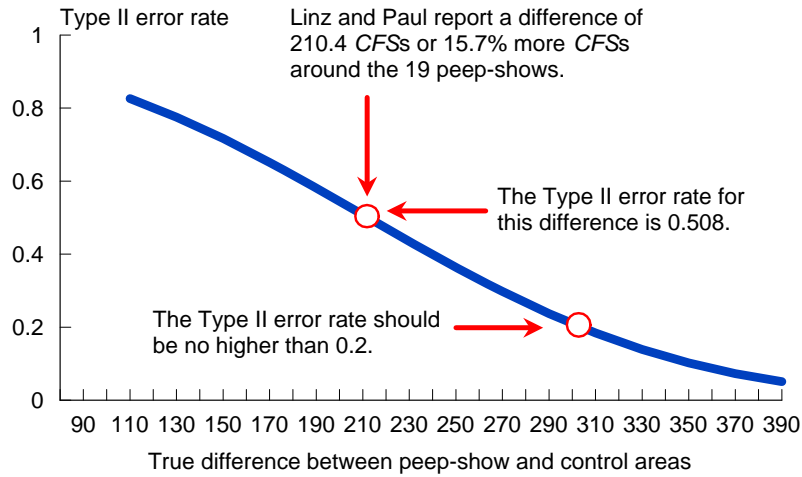
Most Crimes are discovered through routine patrolling or directed policing, not through 911 calls

Most 911 calls are not initiated by crime incidents: false alarms, duplicate calls, cancellations, etc.



**Journal of Sex Research, 2006, 43:194-196*

San Diego, CA: McCleary and Meeker (2006)*



**Journal of Sex Research, 2006, 43:194-196*

“Casting Direct Doubt”

Part II: Challenge the Relevance of the Literature

Relevance Challenges

“We run our business responsibly. We haven’t had any problems.”

“Sure, we have problems from time to time but no bigger than the problems you see at other types of businesses.”

“We have a unique business model. Our business model doesn’t fit the theory; no study has ever shown otherwise.”

**Rural vs. Urban Area
Off-site vs. On-site Business Model
Up-scale patrons
Female patrons**

Rural Hotspots*

Abilene Retail #30 v. Dickinson County, KS (2007)

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

****Criminal Justice Policy Review, 2008, 19:153-163***

Rural Hotspots*

	<i>Open</i>		<i>Closed</i>	
<i>Property Crimes</i>	23	9.54	15	7.20
<i>Personal Crimes</i>	3	1.24	5	2.40
<i>All Other Crimes</i>	28	11.61	9	4.32
<i>Total Crimes</i>	54	22.39	29	13.92

$OR = 1.61; t = 2.06; p < .03$

**Criminal Justice Policy Review, 2008, 19:153-163*

Sioux City Lingerie Boutique*

Doctor John's, Inc. v. City of Sioux City, IA. (2005)

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

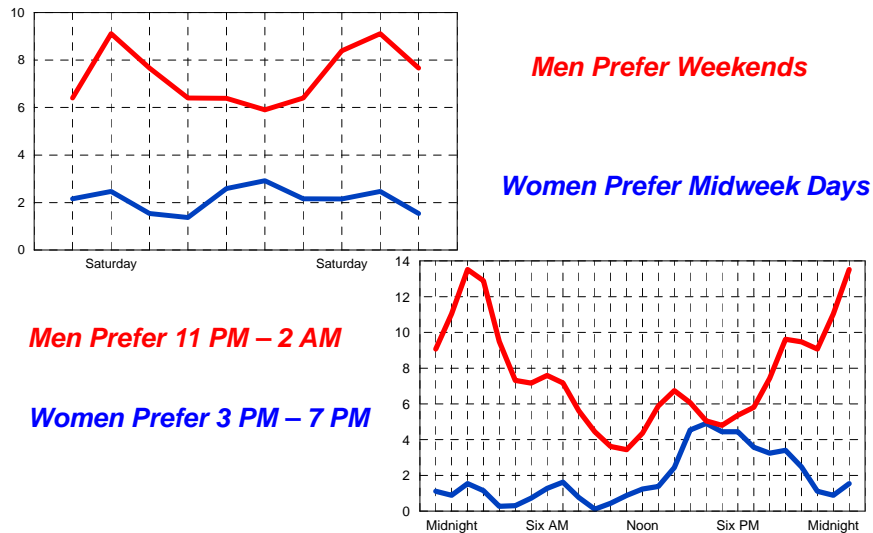
**American Society of Criminology, 2007*

Sioux City Lingerie Boutique*

		<i>Before</i>		<i>After</i>	
All Crimes	Dr. John's	17	7.8	41	22.4
	Control	44	20.3	46	25.1
911 Initiated Crimes	Dr. John's	12	5.5	31	16.9
	Control	26	12.0	32	17.5
		<i>Dr. John's</i>		<i>Control</i>	
		<i>Before</i>	<i>After</i>	<i>Before</i>	<i>After</i>
8 PM – 3:59 AM		3	21	12	32
4 AM – 7:59 PM		14	20	13	33

*American Society of Criminology, 2007

Female Patrons of Porn*



*Deviant Behavior, 2008, forthcoming

