

Chapter 1: The Problem of Sexually Oriented Businesses

Quick Guide to Chapter 1:

What is an "adult" business?

Any business that exploits interest in sex in a graphic manner; we prefer the term "sexually oriented business", or "SOB." (1.2)

What types of problems occur inside sexually oriented businesses?

A typical sexually oriented "bookstore" contains private viewing rooms, or "peepshow" booths, where patrons engage in masturbation or promiscuous and unsafe sex acts with prostitutes or other patrons; the booths are covered with bodily fluids and sometime have openings to allow anonymous acts of oral and anal intercourse. In nude dancing establishments, patrons and dancers often engage in public sexual contact; private dances are opportunities for acts of prostitution. (1.3)

What types of problems occur outside SOBs?

The neighborhood or business district surrounding sex businesses typically suffers a decline in property values and increases in crime especially sex crimes. (1.4)

Who is behind SOBs?

We know that organized crime controls the national distribution of hard-core pornography, and thus controls the products sold in sex businesses. We also know from the trial and convictions of organized crime kingpins like Rueben Sturman and John Gotti that organized crime figures control entire chains of sexually oriented businesses. (1.5)

What is the best way to get rid of SOBs?

Communities that have been the most effective in driving SOBs out of town have been those that use a combination of aggressive enforcement of criminal obscenity laws and the type of stringent time, place, and manner regulations detailed in this book. (1.6)

1.1 - Recognizing the Problem

[The city council found] that some uses of property are especially injurious to a neighborhood when they are concentrated in limited areas. The decision to add adult motion picture theaters and adult bookstores to the list of businesses which, apart from a special waiver, could not be located within 1000 feet of two other "regulated uses" was in part, a response to the significant growth in the number of such establishments. In the opinion urban planners and real estate experts who supported the ordinances, the location of several such businesses in the same neighborhood tends to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime, especially prostitution, and encourages residents and businesses to move elsewhere.

So wrote the United States Supreme Court over two decades ago in a Detroit case that put the nation's high court, for the first time ever, in the position of considering the deleterious impact of "adult" establishments on neighborhoods. *Young v American Mini Theatres, Inc.*, 427 U.S. 50, 54-55 (1976).

The Court wrote that the city's effort to "preserve the quality of urban life is one that must be accorded high respect," and that "the city must be allowed to experiment with solutions to admittedly serious problems." *Id.*, 427 U.S. at 71. The Court accepted the city's conclusion that "a concentration of 'adult' movie theaters causes the area to deteriorate and become a focus of crime, effects which are not attributable to theaters showing other types of films." *Id.*, 427 U.S. at 71, n.34.

This recognition by the Court was significant because it sent a signal to communities around America that, despite the alleged First Amendment interests of "adult" establishments, local governments were entitled to regulate them differently and more stringently than other businesses because of all the problems they created. These enterprises have proliferated because of their profitability, but legal restrictions and regulations have increased in response. *Young* gave local governments permission to "experiment with solutions to admittedly serious problems," by creating new regulatory schemes to protect their neighborhoods. These "experiments" have been the subject of much litigation. Caselaw now provides communities with a pretty good idea of which restrictions will be upheld as constitutional and which will be particularly effective in protecting against negative secondary effects.

The increase in sexually transmitted diseases, including AIDS, and the release of the *Final Report of the Attorney General's Commission on Pornography*¹ in 1986, which outlined not only

¹ A copy of the complete report is available on the Community Defense Counsel web site at: <http://www.communtdefense.org>

who profited from this illicit industry but also what was sold and what went on inside the typical sexually oriented business, led to a new wave of public regulation of sexually oriented businesses during the late 1980s.

Cities across the country adopted local ordinances to protect against negative secondary effects. State legislatures, health departments and city and county officials began to recognize the deleterious, even dangerous effects of these businesses on the public health, the accompanying decline in property values, and high crime in neighborhoods situated near such facilities. Naturally, they sought legislative solutions.

Some bolder cities, without benefit of recent caselaw, attempted to prohibit any sexually oriented businesses from locating in their community and were quickly restrained by federal and state courts.

With the new wave of regulation came a tidal wave of litigation, as the well-funded pornography industry began challenging these legislative efforts to restrict their locations and activities. One such legal battle occurred in the city of Renton, Washington, and wound up in the United States Supreme Court.

In that case, the Court once again drew attention to the concerns raised by communities threatened by sex businesses:

The ordinance by its terms is designed to prevent crime, protect the city's retail trade, maintain property values, and generally "protec[t] and preserv[e] the quality of [the city's] neighborhoods, commercial districts, and the quality of urban life." *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986).

Two Supreme Court cases, issuance of the Final Report of the Attorney General's Commission on Pornography, and the experience of many communities invaded by sex businesses led, for the first time, to widespread public exposure of the reality of problems caused by these establishments. The stage was set for a decade of turf battles, as local governments took on sex shops city by city, county by county, state by state. That turf battle has intensified with each passing year and continues to this day.

1.2 - Defining the Terms

Professor Jules Gerard, author of the leading scholarly legal treatise in this area, *Local Regulation of Adult Businesses*, admits in his book's opening paragraph that "'Adult business' is essentially a euphemism for an enterprise that purveys sex in one form or another."

["Adult business"] comprises a large variety of sexual oriented businesses that may include movie theaters, bookstores, TV rental stores, hotels and motels, houses of prostitution (sometimes masquerading as escort agencies, massage parlors, or "rap" studios), peep shows, topless/bottomless bars, and the like. "Adult entertainment" is a term that refers to the materials

or services that these businesses market. These may include movies, TV tapes, photographs, books, magazines, sexual devices, such as condoms, and similar articles, as well as performances to be witnessed, such as nude dancing, and tactile services, such as massages, and the like. One business frequently will offer more than one kind of adult entertainment; a bookstore may include a peepshow featuring a live nude dancer, for example.

Jules Gerard, *Local Regulation of Adult Businesses*, at 1 (1996).

While the terms "adult business" and "adult entertainment" appear in numerous ordinances, we have no desire to perpetuate usage of this "euphemism" except where necessary to deal with specific ordinance language. (In fact, use of the word "adult" to describe pornography and businesses that exploit sex was a creation many years ago by leaders of the pornography industry, who were seeking ways to market their product that would be more acceptable in society.) We prefer, where possible, to use the term "sexually oriented businesses", which also provides us with a useful acronym for these shady enterprises -- "SOBs."

1.3 - A Peek Inside SOBs – Health Dangers

In 1985, the Attorney General's Commission on Pornography was formed and went to work. Amid much national publicity, the Commission during 1985 and 1986 held a series of six public hearings across the United States. One of the most frequently cited concerns of witnesses before the Commission was the effect of sexually oriented businesses on their local urban environments. In particular, health concerns related to "peep show" booths contained in the typical "adult bookstore" were identified by several witnesses.

The *Commission's Final Report* described how these booths, which are sometimes referred to as "private video viewing rooms," are typically used:

Inside the booths the viewer may see approximately two minutes of the movie for 25 cents. As the number of sexually explicit scenes or diversity of sexual contact increase, the viewing time decreases. Tokens or quarters are needed to operate the peep shows and can be obtained at the outlet sales counter.

The average peep show booth has enough room for two adults to stand shoulder to shoulder. The inside of the booth is dark, when the door is closed, except for the light, which emanates from the screen or enters from the bottom of the door.

The inside walls of the peep show booth are often covered with graffiti and messages. The graffiti is generally of a very sexual nature and consists of telephone numbers, names, requests and offers for homosexual acts, anatomical descriptions and sketches. The booth may also contain a chart that is used to schedule appointments and meetings in that particular booth. In some cases, this arrangement has been used

for solicitation of prostitutes.

* * *

In addition to movie viewing, the booths also provide places for anonymous sexual relations. Many booths are equipped with a hole in the side wall between the booths to allow patrons to engage in anonymous sex. The holes are used for oral and anal sex acts. Sexual activity in the booths involves mostly males participating in sexual activity with one another. However, both heterosexual and homosexual men engage in those activities. The anonymity provided by the "glory holes" allows the participant to fantasize about gender and other characteristics of their partners.

The booth is sometimes equipped with a lock on the door. Many patrons intentionally leave the door unlocked. Some patrons look inside the booths in an attempt to find one already occupied. It is commonplace for a patron to enter an occupied booth, close the door behind him, and make advances toward the occupant. He may grab the occupant's genitals in an effort to invoke sexual activity or attempt to arrange a later sexual encounter. The sexual activities reported in peep show booths include masturbation, anal intercourse, and felatio.

Inside the booths, the floors and walls are often wet and sticky with liquid or viscous substances, including semen, urine, feces, used prophylactics, gels, saliva or alcoholic beverages. The soles of a patron's shoes may stick to certain areas of the floor. The booths are often littered with cigarette butts and tobacco. The trash and sewage and application of disinfectants or ammonia on occasion create a particularly nauseating smell in the peep booths.

Final Report of the Attorney General's Commission on Pornography ("Final Report"), at 1473-76.

One witness before the Commission called these booths "AIDS transmission centers" because of the frequency with which patrons engage in unsafe public sexual conduct in the booths. Experiences in big cities like Philadelphia and San Francisco, and small towns like Eau Claire, Wisconsin, provide ample factual support for that testimony.

A Television NewsCenter 13 account from Eau Claire described one man's experience in that small Midwest town:

Reporter: Tonight on "AIDS in a Small Town" we continue to tell you the story of a man we call Rick. Tonight the story is of a man spreading a virus.

Rick: I will never tell anyone what I have. That is kind of stupid.

Reporter: Why is that?

Rick: It kills your sex life.

Reporter: We have introduced to you a man we are calling Rick. Rick is homosexual, he lives in Eau Claire, and he carries the AIDS virus. What we haven't told you yet is that he claims to be spreading the virus by having anonymous sex with other men. Does that bother you at all that you are spreading the disease?

Rick: No, I look at it as to the point that in riding in a car. If you get into a car with somebody and there is a seatbelt available to you and you don't use it and you get killed, whose fault is it? To a point I feel a little guilty but I always have condoms and if no one wants to use them or no one suggests it then hey, whose fault is it?

* * *

Harlan Heinz, psychologist: It is not much different from the killer, the person who goes around murdering people without a conscience. I think that is a similar kind of lack of character development. I think that is an exception. Some people who feel that they are going to die in a few years would have this attitude. But I think that's few, I think that's an exception and it is a person without a conscience or without any kind of feeling for the welfare of mankind.

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Dr. Michael Finkel: Anyone who continues to behave irresponsibly in such matters should have some sort of penalty. There should be some way that we can stop these people.

* * *

Dr Ken Alder: This is really distressing. I think that a person who does these things is very definitely a risk to other people's health.

Harlan Heinz, psychologist: It is very difficult to treat a person like this and I think that basically you would not be able to cure this person. This mind would be very difficult to reach.

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Reporter: Right now, Wisconsin has no law specifically against the spreading of AIDS. But there could be a law coming very soon.

Gov. Tommy Thompson: I don't know if we want to classify it as a

felony but I am certainly looking at some sort of criminal sanctions.

Reporter: Can you get specific at all?

Gov. Tommy Thompson: We haven't really resolved or made a final decision on it. We are looking at a lot of legislation this year to protect the citizens

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Reporter: Rick says if Thompson's administration gets a law approving restricting the spread of AIDS, he will obey it. But until then he will continue his lifestyle and that includes anonymous sex with other men.

Reporter: How are you doing that, where all do you have sex?

Rick: Basically, I go to all the bookstores.

Reporter: Eau Claire's adult bookstores show adult movies inside private booths. Booths no larger than a small closet. But in many of the booths, there are small holes made in the walls. The holes are about waist high off of the floor.

Reporter: Who do you meet in these rooms?

Rick: I have seen a few married men in there.

Reporter: Do you have most of your sex in adult bookstores?

Rick: Yeah.

Reporter: Is that the easiest way for you to have sex is through these holes?

Rick: Very easy.

* * *

Reporter: You have a hole in one of your booths. Why is that hole there?

Bookstore Owner: That hole was there when the booth came down here from Chicago. And it has been there ever since I have had that booth and I have had that booth there since 1984 when they came in here with all that stuff.

Reporter: Glen Peterson runs an adult bookstore in Eau Claire. The hole in one of the booths looks as if a knot of wood was as punched out. Peterson said he has tried to block it twice but he has given up because it

has been repeatedly removed. Today we told him Rick's story of spreading the virus.

Does that make you want to get rid of the hole more?

Bookstore owner: Yeah. I think I will make sure I can patch this up good where they can't tear it down again because I don't want to get sued if somebody else catches AIDS over this. So I am going to have to take care of it today, I guess.

Reporter: And although it seems Glen Peterson knows what he is going to do, the City of Fan Claire sure doesn't seem to. City Attorney Ted Fischer says there is no ordinance on the books dealing with the issue at this time, though Milwaukee and St. Paul do. And Councilperson Wally Rogers says it may be up to the Health Board to take action but Health Board President Tom Henry says it might be up to the city to have an ordinance first. We will have more on that as our series continues.

During the early 1990s Pennsylvania officials became increasingly concerned about the transmission of AIDS and other sexually transmitted diseases. Pennsylvania Attorney General Ernie Preate closed a number of bookstores as "public health nuisances." The Philadelphia Daily News reported that Preate said the bookstores "encourage anonymous and unprotected sex practices that spread

AIDS and other sexually transmitted diseases," and that they "often have groin-level holes in walls separating two rooms to facilitate sex acts, primarily among gay males."

In 1992 Preate shut down three Philadelphia bookstores, citing their promotion of public sex acts. A Philadelphia Inquirer story quoted Preate as saying that the "primary business of these so-called bookstores is not book sales but the facilitation of disease-spreading sex. These businesses are the bathhouses of the 1990s and pose an indisputable threat to public health."

The Inquirer story gave more details about the investigation's findings:

During a six-month investigation, undercover agents found "glory holes cut into the walls of the video booths, permitting patrons to take part in sex acts with those in adjoining booths, according to court papers.

The state also alleges that agents were solicited for oral sex by patrons, who in some cases masturbated in view of the agents and grabbed the agents groins.

At Book Bin East, in an area of the store called "California Couch Dancing," female employees allegedly solicited an agent to pay them to dance naked or perform sexual acts.

The state, citing an affidavit filed by Dr. Michael R. Spence of Hahnemann University Hospital, says the unprotected sexual activity among anonymous partners at the stores endangers public health by promoting the spread of the AIDS virus, hepatitis B and other sexually transmitted diseases.

"Pa. officials shut down sections of Philadelphia adult bookstores," *The Philadelphia Inquirer*, July 30, 1992.

In testimony before the state Common Pleas Court, one witness admitted that he regularly cruised the city's adult bookstores and engaged in unprotected sexual activity, and that he carried the HIV virus. "Witnesses describe sex acts in video booths," *The Philadelphia Inquirer*, August 25, 1992.

Strong evidence suggests that when San Francisco closed its bathhouses in response to the AIDS epidemic during the mid-1980s, promiscuous homosexual activity moved from there into the city's "adult bookstores." The *San Francisco Examiner* reported on the activities in one such establishment in a way that drives home the point that "exercising free speech rights" was not a high priority for "bookstore" patrons:

At the Locker Room adult bookstore, the regulars used to laugh whenever some naïve tourist actually tried to use one of the "video preview booths" to watch an X rated movie.

The weird scenes that marked the bookstore's dirty, dimly lit peep-show arcade usually were more than enough to send out of towners fleeing down Polk Street, according to habitués of the place.

"There was every kind of sex you can think of back there -- orgies *and* stuff, hustler selling themselves, and free-lancers," [a] source said. "Almost everybody around the place was a speed freak or a junkie. You used to find discarded [hypodermic] needles all over the place, because low-life speed freaks would go in there and shoot up.

When cleaning out the stores, janitors were "glad to find [discarded] condoms" the source *said*. "At least it meant [customers] were trying to take some precautions."

"No joke," says another person familiar with the two stores. "There were lots of guys sleazing around back there, big time."

* * *

The rear portion of both stores were honeycombs of more than 20 peep-show booths, where customers in theory went to pump in tokens into vending machine style slots and view adult films.

But sources familiar with the arcades said they were sleazy places where customers engaged in prostitution, intravenous drug use and anonymous sex of the sort the City hadn't seen since bathhouses were closed in the face of the AIDS epidemic

Police, who had been stripped of their power to inspect bookstores when the board of Supervisors deregulated the sex industry here in 1985, rarely went into the stores. Neither did the Health Department.

The result at the Locker Room and Ben Her was a dangerous, anything goes atmosphere, the sources *said*.

Sources said so many syringes were found discarded in the arcades that janitors wore thick rubber gloves to avoid being accidentally jabbed and infected with AIDS.

On one Occasion, according to a source, a customer complained he had been jabbed when he sat down on a bench where a syringe had been discarded. It was unclear what became of the customer

Another source said that on three occasions arcade janitors retrieved lost wallets that contained documents indicating customers were HIV positive.

"Sleaze ruled in two City adult arcades", San Francisco Examiner, June 4, 1991, A-1.

Sexual activity is associated with all sexually oriented businesses, not just "adult bookstores." Even the so-called "safe sex" alternative, nude-dancing establishments, clearly promote unsafe public sexual contact, not just harmless viewing of dancers. As far back as the early 1970s, the Supreme Court acknowledged this element of nude dancing establishments:

Customers were found engaging in oral copulation with women entertainers; customers engaged in public masturbation; and customers placed rolled currency either directly into the vagina of a female entertainer; or on the bar in order that she might pick it up herself. Numerous other forms of contact between the mouths of male customers and the vaginal areas of female performers were reported to have occurred.

California v. LaRue, 409 U.S. 109, 111 (1972).

Every type of sexually oriented business poses public health and safety hazards for a community, because what occurs inside these establishments is never contained there. The testimony regarding married, heterosexual men engaging in unsafe homosexual acts with HIV-positive men is particularly frightening, considering that the disease may then be spread unknowingly to the

men's wives and future children.

But the negative secondary effects don't end with what happens inside the typical sex business. Many of the negative secondary effects cited by communities to justify time, place and manner regulation are external to the establishments.

1.4 - A Peek Outside SOBs - Impact on Neighborhoods

In *Young*, the Supreme Court recognized that cities could reasonably draw the conclusion that bad things happened to the parts of town where sexually oriented businesses moved. In *Renton*, the Court reiterated that point, and indicated that communities were entitled to rely on experiences in other places as a basis for enacting local legislation.

One of the most comprehensive studies of the impact of sexually oriented businesses on communities was undertaken in the state of Minnesota, under the leadership of Attorney General Hubert Humphrey III, in 1989. After reviewing evidence from around the country, the Working Group on the Regulation of Sexually Oriented Businesses concluded that "these studies, taken together, provide compelling evidence that sexually oriented businesses are associated with high crime rates and depression of property values. In addition, the Working Group heard testimony that the character of a neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property." (The Working Group's report is reproduced as Appendix F).

Their review of studies from communities including St. Paul, Minneapolis, Indianapolis, Phoenix and Los Angeles showed that when SOBs moved into areas they suffered from a statistically significant increase in crime, especially sexual crime, including rape, indecent exposure and child molestation. The studies also showed a significant decrease in the value of residential and commercial property when a sex business moved into the area. (*Working Group Report*) at 6-10.)

Specific testimony before the Working Group described circumstances that are consistent with what occurs in most neighborhoods where SOBs locate:

Pornographic materials are left in adjacent lots. One person reported to the police that he had found 50 pieces of pornographic material in a church parking lot near a SOB. Neighbors report finding used condoms on their lawn and sidewalks and that sex acts with prostitutes occur on streets and alleys in plain view of families and children. The working group heard testimony that arrest rates understate the level of crime associated with SOBs. Many robberies and thefts from "johns" and many assaults upon prostitutes are never reported to the police.

Prostitution also results in harassment of neighborhood residents. Young girls on their way to school or young women on their way to work are often propositioned by johns ... [Near a theater that caters to homosexuals] neighborhood boys and men are also accosted on the street. A police officer testified that one resident had informed him that he found used condoms in his yard all the time. Both his teen-age son and daughter had been solicited on their way to school

and to work.

Working Group Report at 12. What happens inside SOBs is seemingly never contained there, but inevitably spills out into the surrounding community.

1.5 - A Peek Behind SOBs – Organized Crime

As we discuss the problems associated with sexually oriented businesses, we must remember not only what happens inside and outside the physical establishments, but also who is behind these businesses -- who are the owners and backers of this "industry"? When we realize who is financially behind these establishments, some of the regulations -- licensing, for example -- make more sense.

The answer to this question can be found in any number of government reports, starting with the Final Report of the Attorney General's Commission on Pornography. The Commission heard corroborating testimony from a number of organized crime informants, who indicated that major organized crime families controlled the national distribution of obscene material because of its profitability. They also testified that these families were involved in other criminal activity including murder, arson, prostitution, narcotics, money laundering, tax violations, fraud and extortion related to their control of the industry. One detective told the Commission that if organized crime families "do not own the business outright, they most certainly extract street tax from independent smut peddlers." Final Report at 1048.

Reuben Sturman, who at one point was the world's largest distributor of pornography, reputedly earning in the neighborhood of \$1 million per day, was finally convicted on income tax evasion charges in 1989 in Cleveland. Subsequently, he was convicted for obscenity distribution and racketeering in Las Vegas federal court; arrested for escape and possession of a firearm after he walked away from a minimum security prison in California and was recaptured; convicted of extortion in federal court in Chicago after he paid four men to do criminal damage with pipe bombs to several sex businesses in Chicago, Phoenix and other cities; and convicted in federal court in Cleveland for witness and jury tampering. In the Chicago case, the owners of several SOBs had stopped paying Sturman while he was in jail. One man died when a bomb exploded prematurely in Chicago. *See Mahn v. United States*, 1995 WL 562139 (N.D. Ill. Sept. 20, 1995)(denial of habeas corpus relief for surviving passenger in car who was injured during the fatal explosion). Clearly, organized, violent criminal activity is associated at some level with every sexually oriented business allowed to operate. Sturman's ties to organized crime families were well documented.

John Gotti, head of the Gambino crime family, was convicted in 1992 for ordering several murders. In the course of his trial it became clear that Gotti controlled a great deal of the illegal pornography business through his La Cosa Nostra organization. "As the 'boss of bosses', Gotti oversees hundreds of 'soldiers' who reap more than \$100 million a year from gambling, loan sharking, racketeering -- and pornography." *Providence Journal Bulletin*, June 26, 1991, at A-1, A-6 ("*Pornography is Guarino's game; the mob, Central are on his team*").

One former FBI agent testified that, in his opinion based on 23 years experience in pornography and obscenity investigations, "it is practically impossible to be in the retail end of the pornography industry [today] without dealing in some fashion with organized crime, either the mafia or some other facet of non-mafia, nevertheless highly organized crime."

The Commission also heard testimony from those who were involved in "tax evasion which arose from skimming activities at ... sexually oriented bookstores." *See U.S. v. Wisotsky*, 83-741-Cr EBD (S.D.Fla. 1985). One witness told the Commission that he made \$1,200 to \$1,600 daily in quarters at each of his three stores, none of which was reported income, "[b]ecause who can tell how many customers come in today, and drop how many quarters, in how many machines?" Indictments of SOB owners for tax evasion have been common, as many of these businesses regularly skim money from the coin-operated "peep show" viewing booths.

As the Minnesota Attorney General's Working Group on the Regulation of Sexually Oriented Businesses concluded:

Evidence of the vulnerability of sexually oriented businesses to organized crime involvement underscores the importance of criminal prosecution of these businesses when they engage in illegal activities ... It may also disclose organized crime association with local pornography businesses ... Regulation to permit license revocation of subsequent crimes may also expose and increase control over criminal businesses.

Working Group Report at 20.

The typical sexually oriented business will come into town claiming to be a reputable business that simply is exercising its First Amendment rights by providing much-needed "mature" entertainment for a certain segment of society. It will claim to run a clean business, with honest and upstanding businessmen in charge, not like those bad SOB owners you may have heard of from other towns. Furthermore, the true owners of the business will rarely be listed on any license applications and their identity may be carefully guarded.

The reality with virtually all SOBs is that they are connected at some level to organized crime, and their regular business practices include skimming, tax evasion, prostitution and other illegal activities. The longer they can convince local officials of their innocence, and of how they are different than every other sleazy business, the longer they will avoid imposition of significant time, place and manner regulation by your community.

1.6 - Scope of the Problem

Sexually oriented businesses, which were virtually unknown in America only four decades ago, are proliferating across the land today. Once relegated to skid rows of large cities, they now are moving into upper-class neighborhoods, and into smaller rural communities that never expected to face this type of incursion.

It is difficult to count the number of sexually oriented businesses in the country because so many open and close so quickly, and because they strive to avoid state regulation. Some estimates indicate that the pornography industry's revenues in the United States are between \$11 and \$14 billion annually. While worldwide they are estimated to exceed \$52 billion annually. *See, e.g.,* Matthew Green, Comment, *Sex On The Internet: A Legal Click Or An Illicit Trick?*, 38 Cal. W. L. Rev. 527 (2002)(citing statistics from several sources)

While estimates vary, it is clear that the number of sexually oriented businesses has grown significantly during the last two decades and the variety of "entertainment" has increased greatly.

In part, this proliferation has occurred as a result of declining standards of moral conduct in society generally. From the acceptance of profanity in public and in the media, to acceptance of nudity in mainstream Hollywood movies and cable television, to increased levels of sexual promiscuity, moral standards are unquestionably in significant decline.

Other factors contributing to the proliferation include technological developments such as videos and the Internet which facilitate easier consumption within the privacy of the home. *See, e.g.,* Eric Damian Kelly and Connie Cooper, *Everything You Always Wanted to Know About Regulating Sex Businesses*, Ch. 1 (American Planning Association Planning Advisory Service Report No. 495/496 2000), Notwithstanding other reasons, it is clear that a significant factor in the proliferation of SOBs is the lack of enforcement of legal restrictions on the sale of pornographic material. The Supreme Court has always recognized that obscene material is outside the protection of the First Amendment, but for many years the Court was imprecise in defining obscenity. Since 1973, the Court has articulated a clear definition of obscenity, but confusion from the past has contributed to an unwillingness to expend law enforcement resources on prosecuting "dirty books."

This failure to enforce state and federal obscenity laws has created a climate in most communities where the only restrictions pornographers face before opening a business are time, place and manner regulations imposed by local governments. The fear of prosecution for selling illegal obscenity is not a factor in many parts of the country.

However, communities that have been most successful in eliminating sexually oriented businesses have used a combination of strict obscenity law enforcement and time, place and manner regulations. Most SOBs cannot survive economically when they sell only non-obscene pornography, especially when faced with stringent zoning, licensing and other restrictions. But because many communities do not enforce obscenity laws, time, place and manner regulations must be in place because they may be the only legal roadblocks to the presence of a SOB in your community.

1.7 - Conclusion

The problems associated with sexually oriented businesses, both inside and outside the

establishments, are universal to SOBs. And it is these problems -- the negative secondary effects -- that form the constitutional basis for regulating these establishments in a more stringent fashion than other types of businesses.