

Testing Supreme Court Assumptions in *California v. la Rue*: Is There Justification for Prohibiting Sexually Explicit Messages in Establishments that Sell Liquor?

Daniel Linz, Mike Z. Yao, & Sahara Byrne¹

Abstract

The United States Supreme Court has upheld the idea that a state may prohibit the communication of sexually explicit messages and adult entertainment in establishments licensed to sell liquor. State liquor control boards across the country rely on this decision and its progeny in order to regulate alcohol serving businesses that feature adult entertainment. These boards have accepted the here-to-fore untested premise that combining liquor service with adult entertainment leads to greater adverse secondary effects than merely serving liquor alone. In order to test this assumption a study of prostitution, sexual assault and other sexual offenses in Toledo, Dayton, Columbus and Cleveland, Ohio was undertaken utilizing crime event data provided by the police. The results revealed that adult businesses were not the primary source of sex crime events and in some instances sex crime was inversely correlated with the presence of these businesses in a community. Most often these businesses showed zero sex crime events. Instead, alcohol serving, non-adult establishments are a significant source of such events. The consistency of the results of the present study with past research and the implications of this study and past research for assumptions made about state regulations of sex-related communication are discussed.

**SUPREME COURT DECISION MAKING
AND NEGATIVE SECONDARY EFFECTS OF ADULT BUSINESSES**

Introduction

Across the United States there is escalating legislative activity limiting sex-related communication in adult entertainment establishments. This activity is occurring just as, or because of, the greater number of people, men and women, who are frequenting adult entertainment establishments. According to Adult Video News “Exotic Dance Clubs” accounted for 15 percent of adult entertainment retail sales or approximately two billion dollars of revenue in the United States in 2006.¹ As adult entertainment is becoming more popular, groups of citizens, and local and state legislatures are imposing more limitations on this form of communication.

The justification for these limitations is often the belief that exotic dance clubs are

¹ Daniel Linz, Ph.D., Professor of Communication and Law & Society at the University of California at Santa Barbara, Department of Communication and Law & Society Program, linz@comm.ucsb.edu; Mike Z. Yao, Ph.D., Assistant Professor of Communication, Centre for Communication Research, City University of Hong Kong, mike.yao@cityu.edu.hk; & Sahara Byrne, M.A., Doctoral Candidate, University of California at Santa Barbara, Department of Communication, saharabyrne@umail.ucsb.edu

associated with crime. For example, in March of 2007, in Columbus, Ohio a ballot issue was debated in the state legislature that would restrict behavior in exotic dance clubs across the state. The bill would require performers who are nude or seminude to stay at least six feet from a patron and prohibit performers from touching a patron, their clothing or each other. It would also prohibit sexually oriented businesses from being open between midnight and 6 a.m., and exotic dance clubs with liquor licenses could not feature adult entertainment during those hours. The ballot issue is backed by the Cincinnati-based Citizens for Community Values and could wind up on the November 2007 ballot if the Legislature gives its approval. David Miller, vice president of Citizens for Community Values, told the Ohio Senate State and Local Government Committee that *the restrictions would reduce crimes such as prostitution and sexual assault...*²

Supreme Court Decisions and the “Secondary Effects Doctrine”

Since 1976, the United States Supreme Court has decided a series of cases focusing on whether the Free Speech clause of the First Amendment allows cities and states to enact legislation controlling the location of “sexually oriented” businesses.³ “Zoning” regulations, laws or ordinances that prevent a sex-related business from operating within certain defined areas and/or within a certain number of feet of so-called “sensitive” locations (e.g., residential neighborhoods, schools, houses of worship and/or other “adult establishments”) have been predicated on the notion that municipalities have a “substantial interest” in combating so-called “negative secondary effects” on the neighborhoods surrounding exotic dance businesses. These secondary effects are generally said to include alleged increases in crime, decreases in property values, and other indicators of neighborhood deterioration in the area surrounding the adult establishment.

The rationale for the “secondary effects doctrine” was most completely laid out in *Renton v. Playtime Theatres, Inc.*, in 1986. In *Renton*, the Supreme Court considered the validity of a Renton municipal ordinance that prohibited any “X-rated” theater from locating within 1,000 feet of any residential zone, family dwelling, church, park or school. The Court stated that the ordinance would be upheld so long as the city of Renton showed that its ordinance was designed to serve a substantial government interest such as a reducing crime rates or maintaining property values.

The secondary effects doctrine laid out in *Renton* may be thought of as a method of First Amendment analysis engaged in by the courts to reduce the level of scrutiny with which they

examine a speech restriction.⁴ The courts have said that where the purpose behind a government regulation is to reduce the “negative secondary effects” associated with speech the government to engage in a content based speech regulation by invoking the relaxed intermediate scrutiny standard utilized for content-neutral regulations rather than the strict scrutiny standard to which content-based laws are subject.⁵

Using the secondary effects doctrine, the Supreme Court has upheld, against First Amendment free speech challenges, zoning ordinances that limit the locations of adult entertainment businesses in local communities across the country.⁶ In addition, public nudity laws have been put forth that require exotic dancers at strip clubs to wear minimal amounts of clothing.⁷ Regulations have also been placed on the hours that adult businesses may operate.⁸ Restrictions have also been placed on sexually oriented communication by establishing a buffer or no-touch zone between a dancer and patrons.⁹

The present study addresses a problem associated with the secondary effects doctrine rarely studied by legal scholars. We ask what types of harms occur and what types of evidence is available to justify a government's decision to limit sex related communication under the secondary effects doctrine?

Combining Alcohol Service and Adult Entertainment

More than thirty years ago, the United States Supreme Court facilitated the adoption of regulations specifically controlling exotic dance clubs that serve alcohol. The Supreme Court maintained that states could regulate sexually explicit messages and adult entertainment in liquor serving establishments.¹⁰ The Court based this holding on the Twenty-first Amendment to the U.S. Constitution.¹¹ Although this Amendment is most well known for repealing prohibition, it also gave states the power to regulate alcoholic beverages.

This opinion involved the California Department of Alcoholic Beverage Control, which had issued regulations prohibiting explicitly sexual live entertainment and films in bars and other establishments licensed to dispense liquor by the drink. A three-judge District Court held the regulations invalid under the First and Fourteenth Amendments, concluding that under standards laid down by this Court some of the proscribed entertainment could not be classified as obscene or lacking a communicative element. Among the regulations at issue were those prohibiting the performance of simulated sexual intercourse, actual or simulated “touching, caressing or fondling of the breast” or “the actual or simulated displaying of the public hair, anus, vulva or

genitals.”¹² The Supreme Court held that in the context, not of censoring dramatic performances in a theater, but of licensing bars and nightclubs to sell liquor by the drink, the States have broad latitude under the Twenty-first Amendment to control the manner and circumstances under which liquor may be dispensed, and here the conclusion that sale of liquor by the drink and lewd or naked entertainment should not take place simultaneously in licensed establishments was not irrational nor was the prophylactic solution unreasonable.

This decision set the stage for continuing litigation because the Court observed that: "at least some of the performances to which these regulations address themselves are within the limits of the constitutional protection of freedom of expression" and added that its holding "is not to say that all such conduct and performance are without the protection of the First and Fourteenth Amendments."¹³

Although *44 Liquormart, Inc. v. Rhode Island*, disavowed *La Rue*'s "reasoning insofar as it relied on the Twenty-first amendment, "the Supreme Court stressed in that case that *LaRue*'s holding remained intact.¹⁴ "[T]he Court's analysis in *LaRue* would have led to precisely the same result if it had placed no reliance on the Twenty-first Amendment. ... Without questioning the holding in *LaRue*, we now disavow its reasoning insofar as it relied on the Twenty-first Amendment."¹⁵

Since these rulings courts, including the Supreme Court, have consistently held that there are increased risks of secondary effects when combining nudity (or partial nudity) and alcohol.¹⁶

The Rationale as Relied Upon by the Liquor Control Commission of the State of Ohio

Liquor control boards have relied upon the idea that states may legally regulate sex-related communication in alcohol-serving establishments in order to combat adverse secondary effects originated in *LaRue* and its progeny across the country. In order to justify regulation of adult entertainment in alcohol serving businesses these boards have often accepted the untested premise that combining liquor service with adult entertainment leads to greater adverse secondary effects than merely serving liquor alone.

The rationale relied upon by the Liquor Control Commission of the State of Ohio is exactly this premise. At a public hearing involving the Proposed Rule No. 4301:1 -1- 52 (a measure to limit the display of simulated sex acts in liquor serving establishments throughout Ohio) on September 11, 2003 the testimony of Mr. Bruce Taylor prosecutor for the U.S.

Department of Justice was presented. Although he offered no specific evidence for his assertions Mr. Taylor opined:

“There have been studies that were done in cities across the country for the past 30-some years, most of which have involved adult bookstores, but other kinds of sexually-oriented businesses like strip joints and adult theatres and porno book stores that sell sexually-oriented materials or permit sexually-oriented entertainment like strip acts, like nude dancing.” (Pg. 15).

“So this idea that the harmful secondary effects that have existed and have been noticed by reports or by studies around the country is something that is (sic) sort of become a body of common knowledge.” (pg 17-18)

“But the studies...did conclude that the harmful secondary effects are, if anything worse when you combine -- you have some when you have just the nudity and sex shows and stripping. But, there are more effects and more greater degree of intensity (sic) and harm on the community and on the people in it when you mix the alcohol and the sex with alcohol and the nudity.” (pg. 66)

This purpose of the present study is to ask: What types of harms are associated with exotic dance clubs in Ohio that serve alcohol? Is there evidence of effects such as increases in crimes, especially sex crimes, surrounding or within these businesses as the Citizens for Community Values vice president told the Ohio Senate State? Are the harms in the form of crimes such as prostitution and sexual assault sufficient to justify restrictions on hours of exotic dance, dance patron distance regulations and other legal regulations limiting sex-related communication? Below, an empirical study is conducted to determine if a relationship exists between adult businesses that serve alcohol and harm done to the community in terms of sex crimes in four Ohio cities--Toledo, Dayton, Columbus and Cleveland.

METHODS AND DATA

The methodological approach taken here involves three procedures. First, the Computer Aided Dispatch (CAD) or National Incident Based Reporting System (NIMBRS) data involving sex crimes in the cities of Toledo, Dayton, Columbus and Cleveland Ohio were obtained and aggregated within census block groups defined by the 2000 United States Census Bureau. Second, we measured the presence or absence of community features derived from Social Disorganization theory (discussed below), including the presence of alcohol serving non-adult businesses that may be related to criminal activity. Third, these two sources of information are

combined for analyses in order to answer the following question: Once variables known to be related to crime events suggested by Social Disorganization theory have been statistically controlled, does the presence of adult entertainment in an alcohol serving establishment increase sex-related crimes above and beyond those crimes at alcohol serving establishments that do not present such entertainment?

Social Disorganization Theory and Crime

Social disorganization theory, originally conceived by Shaw and McKay, has been used by criminologists to understand the causes of crime rates within urban neighborhoods.¹⁷ Social disorganization theory specifies that impoverished local communities characterized by residential instability and made-up of ethnically diverse residents are more likely to lack social organization when compared to more affluent, homogenous neighborhoods with stable populations.¹⁸ Empirical research has demonstrated consistent support for Social Disorganization theory. Scholars have since reformulated and refined Shaw and McKay's classic model.¹⁹ The principles of social disorganization have been applied to the link between local institutions (e.g., bars) and crime.²⁰ For example, researchers have reported that family disruption (measured as divorced families), low socio-economic status, residential stability, and heterogeneity accounted for much of the effect on rates of burglary.²¹ In addition, recent studies show that burglary is influenced by other community characteristics, such as single parent households.²²

Alcohol Outlet Businesses and Crime

The principles of social disorganization theory also suggest that local businesses are associated with crime.²³ Peterson et al. argue that socially disorganized communities are less likely to attract and sustain conventional institutions such as banks, libraries, and recreational centers that help control crime.²⁴ However, businesses such as bars are likely to be more prevalent in disorganized neighborhoods and these businesses undermine crime control efforts.²⁵ This alcohol outlet-crime connection is consistent with Bursik and Gasmick's assertion that weak local institutions influence neighborhood life.²⁶ These weak institutions, operating within the broader urban context induce crime and the combination of weak institutions and social disorganization attributes are likely to foster even greater amounts of crime.²⁷ Therefore, the presence of bars in a neighborhood has been characterized as an indicator of social disorganization.²⁸ Alcohol establishments have also been conceptualized as crime "generators."²⁹ Watts and Rabow found a higher concentration of alcohol outlets in 213 socially disorganized

California cities.³⁰ Other studies have posited a stronger effect for bars on crime than most other social disorganization predictors.³¹ Overall, researchers have marshaled impressive evidence indicating that alcohol outlets influence crimes of rape, assault, homicide, robberies, auto-theft, public intoxication, and drunk driving.³² Some studies also report that alcohol availability has such a profound effect on crime, namely homicide, that it intensifies the effect of poverty.³³

Units of Analysis

These studies have used a variety of different census units of analysis (e.g., tracts, block groups, and blocks) that vary by geographic size. For example, studies have that indicated a positive correlation exists between blocks occupied with a higher number of bars and higher rates of crime.³⁴ The total outlet rate of alcohol establishments in a community also appears to have a significant effect on non-lethal violence at the census tract level.³⁵ Additionally, the number of bars has been found to predict offender rates at the census tract level.³⁶ However, using 1990 census, crime, and alcohol outlet data at the block group level, Alaniz et al. examined the connection between immigrants and violence across three California communities.³⁷ The authors reported that violence was a function of alcohol availability and family breakdown (i.e., percent divorced) at the Census block group level.

Block Group Level U.S. Census Demographic Information for Four Ohio Cities

The 2000 United States Census measures general demographic characteristics of each block group. These variables include, among others, measures of population, sex and age, race, relationships in household, household type measured at the block level. Using a Geographic Information System (GIS) program, Maptitude 4.5, we were able to link demographic characteristics of each census block group as measured by the 2000 United States Census to their geographical locations. The crime incident data were then plotted in the same map according to police records. Finally, a data file was constructed which included the demographic and crime incident frequencies for each block group.

As we noted above several variables investigated by others have been found to be important as predictors of crime activity. These include measures of population density, racial composition, and neighborhood characteristics. These social variables have been examined on the basis of the theory that a local area's population age structure (especially the presence of young adults), and its race/ethnic composition can affect both the size of the pool of motivated

crime offenders and the presence of suitable targets for predatory crimes. Variables that have been investigated and have been found to be most important as predictors of crime activity include measures of racial composition (number of African Americans and racial heterogeneity), family structure (as measured by number of single-parent households, female headed households), economic composition (as measured family income), and the presence of motivated offenders, primarily males between the ages of 18 and 25 and socioeconomic status as measured by level of education.³⁸

In addition, it is necessary to control for neighborhood business and housing characteristics that may contribute to social disorganization such as the presence of vacant houses and lots and rental housing units and measures of neighborhood integration such as number of owner occupied housing units. Specific land uses are not only important in themselves but they also operate in interaction with variables that are indicative of social disorganization. The presence of alcohol serving establishments or bars identifies areas that might be particularly attractive for potential offenders.³⁹

The list of population, general demographic characteristics, social disorganization variables and alcohol serving establishments measured at the census block group level included in the analyses appears immediately below.

Variable Group 1

POPULATION
AREA

Variable Group 2

MEDIAN AGE OF POPULATION
NUMBER OF NONWHITES
FEMALE HEAD OF HOUSEHOLD, NO HUSBAND
MARRIED HOUSEHOLD FAMILIES
MEDIAN AGE

Variable Group 3

HOUSEHOLD MEDIAN INCOME
OWNER OCCUPIED HOUSING UNIT VALUE-MEDIAN
FAMILIES BELOW POVERTY LEVEL
ADULTS (25+) WITH LESS THAN 9TH GRADE EDUCATION
PERCENT OF ADULTS (25+) WITH BACHELOR'S DEGREE OR HIGHER

Variable Group 4

HOUSE HOLD UNITS VACANT
OCCUPIED HOUSEHOLDS-OWNER OCCUPIED

Variable Group 5

NUMBER OF ALCOHOL SERVING ESTABLISHMENTS

Variable Group 6

PRESENCE OF ADULT CABARETS

Our analysis strategy entails entering these Census variables into a statistical analysis to control for the effects of these characteristics on crime incidents. After we control for demographic features, we then examine the relative contribution of the presence of an alcohol-selling establishment in the neighborhood. Finally, after we have controlled for this variable, we then examine the impact of having an adult cabaret in the block group area on crime incidents. These analyses are undertaken on a city-by-city basis.

Once the demographic and social disorganization variables are statistically controlled, the effect of the variables measuring the presence or absence of adult cabarets (variable group 6) in the block group is examined.

The analysis reported below was designed to answer the question: Once we have controlled for characteristics of the immediate “neighborhood” (census block group) known to be related to crime and community disorder, including alcohol serving establishments, what is the effect of the presence of an adult cabaret in a census block group on crime events? This comprehensive form of analysis is necessary to insure that once other sources of variability in crime incidents, known from past research, are statistically controlled the effect of the adult business as a source of crime and disorder in the area may manifest itself.

The Toledo Study

Method

Locating the Adult Cabarets and Alcohol Serving Establishments

A comprehensive list of adult cabaret businesses was obtained for the City of Toledo. Three alcohol serving adult cabarets establishments were identified and examined in the present study. We also obtained a comprehensive list of alcohol serving licenses in Toledo who were issued licenses to sell alcoholic beverages by the Ohio Department of Commerce, Division of

Liquor Control. (The list of cabaret and bar establishments may be obtained from the authors). The addresses of these businesses were located within the census block groups by using the GIS mapping program.

Measuring Crime and Disorder Incidents

For the analyses below we rely on crime incident report data collected by the City of Toledo Police Department Computer Automated Dispatch (CAD). This included records of dispatches or calls for service (CFS) that were either police-initiated or calls from the public during the five years. Each record contained the date, time, location, and the disposition of the call. In this study we employ only the calls for service for which a report or arrest is made. During the period between January 1998 and December 31, 2002, the Toledo Police Department had dispatch records for 1074 incidents of sexual assault and rape, 248 prostitution incidents, and 377 obscene activities.

Locating the Crime Incident Calls for Service by Address

The crime incident data were then plotted by address in Toledo using Maptitude 4.5. Initially, an attempt was made to plot all calls based upon the street name and address using the “very strict” location criterion option (i.e., only those addresses for which an exact street name and number match to those stored in Maptitude are plotted). This resulted in the plotting of roughly 90% of all calls for service. We then use the “normal” criterion to locate the rest of incidents by allowing for some misspelling of street names by the police. This procedure allowed the GIS program to plot an additional eight-percent of calls for services. The remaining two-percent of the calls were not plotted.

Results

A series of hierarchical ordinary least squares (OLS) regression were conducted. The population, demographic and social disorganization variables were entered into the regression equation in the first four blocks. The alcohol serving establishment predictor variable (adult business cabarets were eliminated from this stage) was then entered into the model. This was followed by a block measuring the presence or absence of adult cabarets. A summary of results of the hierarchical regression analyses for sexual assault and rape, prostitution, and obscene activity calls for service events in Toledo are displayed in Table 1.

Sexual Assault and Rape

In Toledo, the hierarchical regression model explained 54 percent of the variability in sexual assault and rape incidents across census block groups ($R^2 = .54$). The first variable cluster measuring population and geographic area accounted for five-percent of the variability. The addition of the demographic variables set added another 39 percentage points to the explanatory power of the model. The addition of the next block of variables contributed five additional percentage points to the model's explanatory power. The block measuring the housing variables was statistically significant and explained an additional four-percent of variability. The addition of the single variable measuring alcohol-serving establishments added approximately two-percent to the model's predictive power. *Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.*

Prostitution

As can be seen from Table 1, the hierarchical regression analyses for prostitution calls for service events in Toledo accounted for 30 percent of the variability in these crime incidents across census block groups. The first variable cluster measuring population and geographic area was not a significant contributor to predicting prostitution incidents in Toledo. In the second step, the addition of the demographic variables set added a statistically significant 15 percent explanatory power to the overall model. The addition of the next block of variables significantly contributed nine percentage points to the model's total explanatory power. The block measuring the housing variables was statistically significant and contributed an additional four-percent to the model. The addition of the single variable measuring alcohol-serving establishments added approximately three percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Obscene Activities

The hierarchical regression analyses for public obscene events in Toledo explained 33 percent of the variability in these crime incidents across census block groups. The first variable cluster measuring population and geographic area is significant contributor accounting for almost five percent of the total variability in the model. In the second step, the addition of the demographic variables set added a statistically significant almost 13 percent explanatory power to the overall model. The addition of the next block of variables significantly contributed about four and one half percentage points to the model's total explanatory power. The block

measuring the housing variables was statistically significant and contributed an additional seven percent to the model. The addition of the single variable measuring alcohol-serving establishments added approximately three percent to the model's predictive power. The variable measuring the presence of an adult cabaret added was significant and added approximately three-percentage point to the explanatory power of the model. Overall the result of this regression analysis suggests that although the presence of an adult cabaret may be a statistically significant factor, social economic status, demographics, and the presence of non-adult alcohol serving establishments are far better predictors of where these obscene activities occur in Toledo.

Comparison of alcohol serving and cabarets in terms of sex crimes

Although our regression analyses revealed that the presence of non-adult alcohol serving establishments is a far better predictor of sex related crime incidents than the presence of adult cabarets in Toledo, one may still argue that sex crimes may occur on the premises of these cabarets more frequently than non-adult alcohol serving businesses. In other words adult cabarets may not be located in areas where sex crimes frequently occur, but these cabarets themselves may be the "hotspots" of such crimes incidents as compared to a non-adult alcohol serving club. To test this possibility, we compared the number of sex crime related police dispatches to non-adult alcohol serving establishments and adult cabarets in Toledo. The result of this analysis suggests 13 non-adult alcohol-serving businesses in Toledo were the source of at least one sex-related incident in the period of five years. In contrast, zero sex-related crime incidents were reported at the three adult cabarets in Toledo.

The Columbus Study

Method

A comprehensive list of adult cabaret businesses was obtained from the City of Columbus. Fifteen alcohol serving adult cabarets establishments were identified and included in the present study. We also obtained a comprehensive list of alcohol serving licensees in Columbus who were issued licenses to sell alcoholic beverages by the Ohio Department of Commerce, Division of Liquor Control. These business addresses were located within each of census block groups using a Maptitude 4.5.

Measuring Crime and Disorder Incidents

For the analyses below we relied on crime incident report data collected by the City of Columbus Police Department Computer Automated Dispatch (CAD). This included records of

dispatches or calls for service that were either police-initiated or calls from the public in a period of five years from January 1, 1998 to December 31, 2002. Each record contained the date, time, and location of the call and the disposition of the call. In this study we employ only the calls for service for which a report or arrest is made. Due to the nature of radio codes used by Columbus Police Department, finer categorization of sex offenses is impossible. A general sex offenses category was used to indicate all sex crimes in progress and sex crime reports. A total of 3580 sex offense incidents were included in the police calls for service data during the five year period.

Locating the Crime Incident Calls for Service by Address

The crime incident data were plotted by address in Columbus using Maptitude 4.5. Initially, an attempt was made to plot all calls based upon the street name and address using the “very strict” location criterion option. This resulted in the plotting of roughly 92-percent of all calls for service. Next, we used the “normal” criterion that allows for some misspelling of street names by the police the remaining addresses to plot an additional seven-percent of total calls for service. The remaining one-percent of the calls were not plotted.

Results

Using the same groups of variables described in the Toledo analysis above, a hierarchical multiple regression analysis was conducted to predict sex offense incidents in Columbus, OH. The population, demographic and social disorganization variables were entered into the regression equation in the first four blocks. The alcohol serving establishment predictor variable (adult business cabarets were eliminated from this stage) was then entered into the equation. This was followed by a variable measuring the presence or absence of adult cabarets.

The result of this hierarchical regression analysis is displayed in Table 2. The table displays the variables that were entered at each of the six different stages and how much variance in sex assaults and rape events across the census block groups in Columbus is accounted for at each stage. As can be seen from the table, the overall regression model successfully accounted for 40 percent of the variability in sex offense incidents across census block groups.

The first variable cluster measuring population and geographic area accounted for 1.5-percent of the variability. The addition of the demographic variables set added another 28-percent to the explanatory power of the model. The next block of variables measuring social economic status and education contributed statistically significant six-percentage points to the

model's explanatory power. The block measuring the housing variables, although was statistically significant, only contributed an additional two-percent to the model. The addition of the single variable measuring alcohol-serving establishments added approximately three percentage points to the model's predictive power.

Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model. *In fact, the analyses revealed a negative beta coefficient for the variable measuring the presence of adult cabarets in the last step of the regression model.*

Comparison of Alcohol Serving and Cabarets

To test the possibility that sex offenses may have higher occurrences at the adult cabarets than at the non-adult alcohol serving establishments despite the fact that they are not located in areas where such incidents frequently occur, we conducted an analysis comparing the number of sex offense police dispatches to non-adult alcohol serving establishments and adult cabarets in Columbus. This analysis revealed that the 22 non-adult establishments were associated with a total of 30 sex offenses in five years of available data. However, there were only two sex incidents during the same five-year period at the 15 alcohol-serving adult cabarets.

The Dayton Study

Method

Locating the Adult Cabarets and Alcohol Serving Establishments

A comprehensive list of adult cabarets, adult video/bookstores and other adult businesses was obtained from the City of Dayton, OH. The five alcohol-serving adult cabarets establishments were examined in the Dayton study. A comprehensive list of alcohol serving establishments in Dayton with alcohol serving licenses issued by the Ohio Department of Commerce, Division of Liquor Control was also obtained. These business addresses were located and plotted within the census block groups.

Measuring Crime and Disorder Incidents

In the Dayton study, we relied on crime data reported by the Dayton Police Department to the National Incident Based Reporting System (NIBRS) in a four-year period of time from 1/1/1999 to 12/31/2002. NIBRS is an incident-based reporting system for crimes known to the police. For each crime incident coming to the attention of law enforcement, a variety of data are collected about the incident. These data include the nature and types of specific offenses in the

incident, characteristics of the victim(s) and offender(s), types and value of property stolen and recovered, and characteristics of persons arrested in connection with a crime incident.

The NIBRS improves on the Uniform Crime Reports (UCR) by examining a large number of detailed offense categories at an incident-based level, eliminating the hierarchy rule of choosing one primary crime per incident, and forming a hierarchical record structure to link victims, offenders, offenses, and arrested persons to every incident. Similar to UCR, NIBRS is a crime-reporting database; that is, only crimes reported to and recorded by law enforcement agencies are included in the database. Unlike CAD, which is a comprehensive index of police activity concerning calls for service that may not result in a crime being recorded, NIBRS data only includes crime activity verified by the police.

Based on the codebook provided by the National Archive of Criminal Justice Data, three categories of sex crimes were devised in this study: 1) Forcible Rape, which included Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, and forcible fondling. 2) Prostitution, and 3) Other Sex Crimes, which included Obscenity, Statutory Rape, Incest, and Peeping Tom. During the four years for which we had data, there were 940 forcible rape incidents, 1970 prostitution incidents, and 111 other sex crimes.

Locating the Crime Incident Calls for Service by Address

The crime incident data were plotted by address in Dayton, OH, using Maptitude GIS software. Because each crime incident included the NIBRS data was recorded with high levels of precision, we were able to plot all 100% of crime incidents using the “very strict” mapping criterion.

Results

Using the same groups of geographical, demographic, and social economic variables used in the Toledo and Columbus analyses above, a series of hierarchical multiple regression analyses were conducted to predict sex crimes in Dayton, OH (see Table 3). The population, demographic and social disorganization variables were entered into the regression equation in the first four blocks. The alcohol serving establishment predictor variable (adult business cabarets were eliminated from this stage) was then entered into the equation. This was followed by a variable measuring the presence or absence of adult cabarets.

Predicting Forcible Rape Crime Incidents

The result of this hierarchical regression analysis successfully accounted for 50 percent of the variability in forcible rape crime incidents across census block groups. The first variable cluster measuring population and geographic area accounted for four percent of the variability. The addition of the demographic variables set added another 27 percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for 14 percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed an additional four percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately three and one half percent to the model's predictive power. *Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.*

Similar to the Columbus results, the hierarchical regression analysis for forcible rape revealed a *negative* but non-significant beta coefficient for the variable measuring the presence of adult cabarets in the last step of the regression model.

Predicting Prostitution Incidents

The overall regression model successfully accounted for 33 percent of the variability in prostitution incidents crimes across census block groups. The first variable cluster measuring population and geographic area accounted for three percent of the variability. The addition of the demographic variables set added another five percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for nine percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed an additional Seven and one half percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately eight percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

In addition, we again found a *negative* beta coefficient for the variable measuring the presence of adult cabarets in the last step of the regression model.

Predicting Other Sex Crimes

The result of a third hierarchical regression analysis suggests that the overall model successfully accounts for almost 30 percent of the variability in other sex crimes across census

block groups. The first variable cluster measuring population and geographic area was not statistically significant. The addition of the demographic variables set added a significant 14 percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for six percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed close to three percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately five and one half percent to the model's predictive power. *Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.* Once again, we found a *negative* beta coefficient for the variable measuring the presence of adult cabarets in the last step of the regression model.

Comparison of Alcohol Serving Nonadult and Adult Cabarets

To test the possibility that sex crimes may occur more frequently at the adult cabarets than at the non-adult alcohol serving establishments despite the fact that they are not located in areas where sex crimes frequently occur, we conducted an analysis comparing the number of different types of sex crimes at non-adult alcohol serving establishments and adult cabarets in Dayton. We found that 14 non-adult alcohol-serving establishments had a total of 41 sex offenses during 1/1/1999 and 12/31/2002 that were officially registered by the police using the NIBRS. However, there is not a single sex crime at the five adult cabarets during the same four-year period. It is clear that adult cabarets in Dayton do not have a higher sex crime rate than non-adult alcohol serving clubs.

The Cleveland Study

Method

Locating the Adult Cabarets and Alcohol Serving Establishments

The Cleveland analysis examined 12 alcohol-serving adult establishments. We obtained a comprehensive list of alcohol serving licensees in Cleveland who were issued licenses to sell alcoholic beverages by the Ohio Department of Commerce, Division of Liquor Control. These business addresses were located and mapped within the census block groups by using Maptitude 4.5.

Measuring Crime and Disorder Incidents

The City of Cleveland Police Department's CAD records from December 31, 1997 to February 28, 2003 were examined in this study. Each record contained the date, time, type, and

location of the call. Due to limitations of the dataset provided by the Cleveland Police Department, we were not able to select only those calls for service for which a report or arrest is made. For the 5-years available CAD data, there were 953 rape incidents, 1205 prostitution incidents, and 1803 public indecency incidents.

Locating the Crime Incident Calls for Service by Address

The sex crime incident data were plotted by address using Maptitude 4.5. The initially attempt plot all calls based upon the street name and address using the “very strict” location criterion option resulted in the plotting of roughly 86% of all incidents. Next, we used the “normal” criterion to allow for an additional 8% plotting rate. The remaining 6% of the calls were not plotted.

Results

A series of hierarchical multiple regression analyses were conducted to predict three types of sex crimes in Cleveland, OH (see Table 4). The population, demographic and social disorganization variables were entered into the regression equation in the first four blocks. The alcohol serving establishment predictor variable (adult business cabarets were eliminated from this stage) was then entered into the equation.

Predicting Rape Incidents

The overall regression model successfully accounted for 44 percent of the variability in rape crimes across census block groups. The first variable cluster measuring population and geographic area accounted for almost three percent of the variability. The addition of the demographic variables set added another 30 percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for seven and one half percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed an additional one percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately two percent to the model’s predictive power. *Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.*

Predicting Prostitution Incidents

The overall regression model successfully accounts for 23 percent of the variability in prostitution incidents across census block groups. The first variable cluster measuring population and geographic area accounted for one-percent of the variability. The addition of the

demographic variables set added another 14 percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for five-percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed an additional three-percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately seven tenth of a percent to the model's predictive power. *Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.*

Predicting Public Indecency and Indecent Exposure

The overall regression model successfully accounts for almost 45 percent of the variability in public indecency incidents across census block groups. The first variable cluster measuring population and geographic area was statistically significant and contributed close to three percent of the total variability in indecent exposure and public indecency calls for service. The addition of the demographic variables set added a significant 28 percent to the explanatory power of the model. The next block of variables measuring social economic status and education accounted for nine percent of the total variability in rape crime. The block measuring the housing variables, although was statistically significant, only contributed close to two percent to the model. The addition of the variable measuring alcohol-serving establishments added approximately three percent to the model's predictive power. Finally, the variable measuring the presence of an adult cabaret added no statistically significant predictive power to the model.

Comparison of Alcohol Serving Nonadult and Adult Cabarets

To test the possibility that sex crimes may occur more frequently at the adult cabarets than at the non-adult alcohol serving establishments despite the fact that they are not located in areas where sex crimes frequently occur, we conducted a analysis comparing the number of different types of sex crimes at non-adult alcohol serving establishments and adult cabarets in Cleveland. The result of this analysis suggests that 28 non-adult alcohol-serving clubs reported a total of 36 sex related calls for service during 12/31/1997 and 2/28/2003, while there were only 2 sex related calls for service from the 12 adult cabarets during the same five-year period. Adult cabarets in Cleveland do not have a higher sex crime rate than non-adult alcohol serving clubs.

DISCUSSION

In order to test the assumption that adult cabarets that serve alcohol are associated with negative secondary effects, an empirical study of prostitution, sexual assault and other sexual

offenses in Toledo, Dayton, Columbus and Cleveland, Ohio was undertaken utilizing crime event data provided by the police (computer aided dispatch and NIBRS data). The following research question was posed: Once variables known to be related to crime events suggested by Social Disorganization and Routine Activities theories have been statistically controlled, does the presence of adult entertainment in an alcohol serving establishment increase sex related crimes above and beyond those crimes at alcohol serving establishments that do not present such entertainment? The results revealed that the adult businesses were not the primary source of sex crime events. Often these businesses actually showed zero sex crime events. Instead, alcohol serving, non-adult establishments are often a significant source of such events.

Consistency with Previous Research

Few studies have been undertaken to test the assumption made by state liquor control boards that there are more effects and the effects are of a greater degree of intensity and harm in communities with business establishments that serve alcohol and feature exotic dancing and nudity. The research that has been undertaken in other states is consistent with the results obtained in the present study of Ohio cities. Researchers have estimated the effects of social disorganization variables, alcohol sites, and adult cabarets on police calls for service at the census block level in Daytona Beach Florida.⁴⁰ The same study also matched (based on census socioeconomic and demographic characteristics) 1000-foot perimeter control-sites, with those of the adult cabaret perimeters to help isolate the sources of crime. The regression analysis showed no association between adult cabarets serving alcohol and crime at the census block level. Rather, the results indicated that social disorganization and alcohol establishments that did not feature sexually explicit communication or entertainment were better predictors of crime. Similarly, research has shown that adult businesses that served alcohol were not associated with crime in Charlotte, North Carolina.⁴¹

Researchers have also examined the link between sexual entertainment, sexual aggression and the presence of adult businesses and the prediction of statewide rape rates in Florida.⁴² This study examined whether rates of crime are associated with the rates of adult businesses in the 67 counties of Florida once other variables related to crime are controlled. Rates per 100K people in the population were computed for the numbers of nonsexual adult businesses: drinking establishments, gambling establishments, and hotels and motels in each county. These measures, along with measures of social disorganization and demographic variables, were examined for

their relative ability to predict Uniform Crime Reports. The model estimated in this research explained 34 percent of the variance in rates of rape with three variables making significant contributions to prediction of rates of rape: percentage of the population that is classified as non-White, the number of drinking establishments per 100K population and the number of nude and semi-nude businesses per 100K population. However, the correlation for the presence of adult businesses in Florida as was the case in the analyses for two of the Ohio cities examined in the present study was negative.

Finally, a study recently conducted by Enriquez, Cancino and Varano shows results remarkably similar to the present study.⁴³ These authors found that after controlling for socioeconomic and demographic community characteristics associated with social disorganization, weak institutional dimensions such as alcohol outlets was statistically significant and the magnitude trumped other predictor coefficients in the 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 produces 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 causes and correlates of crime.

Implications for Assumptions Underlying *California v. la Rue*

The United States Supreme Court has ruled that a state may prohibit “the actual or simulated touching, caressing, or fondling of the breast, buttocks, anus or genitals” in establishments licensed to sell liquor.⁴⁴ State liquor control boards across the country and specifically, in Ohio have accepted the premise that combining liquor service with adult entertainment leads to greater adverse secondary effects than merely serving liquor alone. This premise is not supported by either the current research or past studies.

What does the lack of empirical evidence of a relationship between sexually oriented businesses in the community and secondary crime effects mean, regarding the Ohio liquor control board's underlying rationale for regulating sex oriented businesses despite a lack of empirical evidence of adverse secondary effects? It may be an incidence of what Justice Souter in the *City of Los Angeles v. Alameda Books, Inc.* has referred to as a weak demonstration of facts indicating viewpoint discrimination.⁴⁵

In *Alameda* Justice Souter has said that sound empirical investigations of presumed adverse secondary effects are helpful in guarding against unconstitutional restrictions of freedom of sexual speech. Lacking empirical proof of its own the state of Ohio may be engaging in disapproval of adult speech rather than attempting to regulate sex communication out of concern for adverse secondary effects.

Explaining the Lack of Crime Surrounding Exotic Dance Clubs

Results from previous studies and the results from the present study suggest either no relationship or even a negative relationship between the presence of alcohol serving adult entertainment establishments and adverse secondary effects in the form of sex related crime activity.

One possible explanation of the lack of crime effects is that many of the victims of crime in these areas might not want to draw attention to themselves by reporting victimization to the police because of the stigma associated with visiting or working at adult dance establishments. It is possible that this may be a plausible alternative explanation for crimes such as robbery; it would not be a reasonable explanation for serious personal assault such as rape and sexual assault. Nor, is it a particularly good alternative explanation for the lack of prostitution and other vice crimes surrounding adult dance cabarets--as these incidents would be most likely to reflect police activity rather than reporting tendencies among victims.

The nature of the data employed in the study may also work against such an alternative explanation. In the Dayton study, we relied on crime data reported by the Dayton Police Department to the National Incident Based Reporting System (NIBRS). Only crimes reported to and recorded by law enforcement agencies are included in this database. Unlike CAD, which is a comprehensive index of police activity concerning calls for service that may not result in a crime being recorded, NIBRS data only includes crime activity verified by the police.

In actuality, the null findings may not be surprising given developments in the adult nightclub business over the last decade. First, the adult nightclub business in the late-1990s in many respects may be quite unlike that of the 1960s and 1970s when these establishments were relatively new forums of entertainment in American society. Adult nightclubs have been subjected to over two decades of municipal zoning restrictions across the country, and they usually must comply with many other regulations as well. These clubs do not appear to be locations where potential offenders gather to prey on desirable targets in the absence of crime

suppressors, such as employees whose role is to ensure the safety of customers and the maintenance of order within the clubs.

The establishments themselves have evolved more closely into legitimate businesses establishments with management attention to profitability and continuity of existence. To meet these objectives, it is essential that the management and/or owners of the clubs provide their customers with some assurance of safety. Accordingly, adult nightclubs, including those in the Ohio cities under investigation, often appear to have better lighting in their parking lots and better security surveillance than is standard for non-nightclub business establishments. These may be factors producing fewer crime opportunities and lower numbers of reported crime incidents in the surrounding areas of the clubs. The extensive management of the parking lots adjoining the exotic dance nightclubs, in many cases including guards in the parking lots, valet parking, and other control mechanisms, may be especially effective in reducing the possibility of violent disputes in the surrounding area. In addition, unlike other liquor-serving establishments (bars and taverns that do not offer adult entertainment) that may be present in the control areas, violent disputes in the areas surrounding exotic dance clubs *between* men over unwanted attention by other males to dates or partners are minimal due to the fact that the majority of patrons attend the clubs without female partners. Thus, the possibility of sexual aggression may be greatly reduced in the vicinity of adult dance clubs, compared to most other locations where adults congregate, such as bars or taverns that do not feature adult entertainment.

Tables

Table 1: Summary of hierarchical regression analyses for natural-logged sex crime calls for service incidents in Toledo, OH. (N = 340).

	Sexual Assault & Rape		Prostitution		Obscene	
	R ² Change	F Change	R ² Change	F Change	R ² Change	F Change
Step 1	0.052	9.27***	0.008	1.33	0.046	8.08***
Step 2	0.387	57.55***	0.146	14.44***	0.126	12.75***
Step 3	0.048	6.15***	0.086	7.4***	0.044	3.74**
Step 4	0.035	11.87***	0.041	9.33***	0.071	16.22***
Step 5	0.018	12.57***	0.027	12.66***	0.032	15.511***
Step 6	0.002	1.67	0.004	1.72	0.013	6.36*

Note. The total R² for the regression model predicting sexual assault and rape is .54; the total R² for the regression model predicting prostitution is .31; the total R² for the regression model predicting obscene activities is .33.

* p < .05, ** p < .01 *** p < .001

Table 2: Summary of hierarchical regression analyses for natural-logged sex crime calls for service incidents in Columbus, OH. ($N = 737$).

	Sex Crimes	
	R2 Change	F Change
Step 1	0.015	5.67**
Step 2	0.280	72.57***
Step 3	0.058	13.04***
Step 4	0.019	10.82***
Step 5	0.033	40.49***
Step 6	0.000 [†]	0.07

Note. The total R^2 for the regression model predicting sex crimes is .41.

[†] The Beta coefficient for Step 6, a single variable for the presence and absence of adult cabarets in a census block is -.008, $p = .792$.

** $p < .01$, *** $p < .001$

Table 3: Summary of hierarchical regression analyses for natural-logged sex crime calls for service incidents in Dayton, OH. (N = 405).

	Forcible Rape		Prostitution		Other Sex Crimes	
	R ² Change	F Change	R ² Change	F Change	R ² Change	F Change
Step 1	0.042	8.80***	0.030	6.31**	0.013	2.58
Step 2	0.266	38.13***	0.052	5.68***	0.139	16.39***
Step 3	0.135	19.13***	0.090	8.58***	0.061	6.07***
Step 4	0.040	14.97***	0.076	19.96***	0.028	7.25***
Step 5	0.035	28.34***	0.078	45.14***	0.053	29.31***
Step 6	0.003 [†]	2.66	0.003 ^{††}	1.52	0.001 ^{†††}	0.54

Note. The total R² for the regression model predicting forcible rape is .52; the total R² for the regression model predicting prostitution is .33; the total R² for the regression model predicting other sex crimes is .30.

[†] The Beta coefficient for Step 6, a single variable for the presence and absence of adult cabarets in a census block is -.06, $p = .10$.

^{††} The Beta coefficient for Step 6, a single variable for the presence and absence of adult cabarets in a census block is -.053, $p = .22$.

^{†††} The Beta coefficient for Step 6, a single variable for the presence and absence of adult cabarets in a census block is -.033, $p = .46$.

** $p < .01$, *** $p < .001$

Table 4: Summary of hierarchical regression analyses for natural-logged sex crime calls for service incidents in Cleveland, OH. (N = 1029).

	Rape		Prostitution		Indecency	
	R ² Change	F Change	R ² Change	F Change	R ² Change	F Change
Step 1	0.027	14.28***	0.012	5.99***	0.029	15.34***
Step 2	0.300	113.90***	0.138	41.40***	0.279	103.07***
Step 3	0.075	25.64***	0.050	12.69***	0.092	31.28***
Step 4	0.013	10.93***	0.034	22.62***	0.021	18.77***
Step 5	0.020	35.52***	0.007	9.76**	0.031	57.69***
Step 6	0.001	1.01	0	0.001	0	0.003

Note. The total R² for the regression model predicting rape is .44; the total R² for the regression model predicting prostitution is .24; the total R² for the regression model predicting public indecency is .45.

** $p < .01$, *** $p < .001$

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- 5 See *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813 (2000) (stating that "a content-based speech restriction" is constitutional "only if it satisfies strict scrutiny," which requires that a statute "be narrowly tailored to promote a compelling Government interest").
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- 7 See *Pap's A.M.*, 529 U.S. at 283-84 (upholding as content-neutral ordinance that banned public nudity and required dancer to wear "pasties" and "G-string" to comply); see also *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 563 (1991) (rejecting claim made by owners of nude dancing establishments that "the First Amendment's guarantee of freedom of expression prevents the State of Indiana from enforcing its public indecency law to prevent this form of dancing").
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- 9 See, e.g., Editorial, “Reaching into Clubs for a 4-Foot Rule”, *Seattle Times*, Sept. 23, 2003, at B6 (describing regulations in King County and Snohomish County, Washington, that impose four-foot buffer zones between entertainers and customers "to curb fondling and lap dancing")
- 10 *California v. la Rue*, 409 U.S. 109 (1972).
- 11 The Twenty-first Amendment provides, "[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." U.S. Const. amend. XXI, <section> 2.
- 12 *California v. la Rue*, 409 U.S. 109 (1972).
- 13 *LaRue*, 409 U.S. at 118.
- 14 *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), 515-16.
- 15 *44 Liquormart*. at 516
- 16 See, e.g., *Jott, Inc. v. Charter Township of Clinton*, 569 N.W.2d 841, 854-55 (Mich. App. 1997) (regulation banning nudity in establishments that sold alcoholic beverages was constitutional as a measure to “eradicate the

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