Exotic Dance Adult Entertainment: ethnography challenges false mythology

JUDITH LYNNE HANNA

University of Maryland

It is a myth that crime and property depreciation are the inevitable consequences of the presence in a community of exotic dance adult entertainment (also referred to as erotic, nude or topless dancing, striptease, gentlemen's clubs, juice bars and adult cabarets). Nevertheless, this myth has been perpetuated by media sensationalism, vocal minorities of the Religious Right and the feminist movement, the misinformed, "studies" commissioned by various localities, the justice system and even a professional association. As grounds for regulation of this entertainment, localities have used "studies" showing adverse effects that are scientifically flawed and now challengeable. My ethnographic work since 1995, when I was asked to be an expert court witness in First Amendment cases related to exotic dance, has been part of that challenge. This article examines a recent American Planning Association publication that perpetuates the same misconceptions under the cloak of academic professionalism. The critique serves as a springboard to discuss the role of planners in local governance, whose recommendations can affect the vitality of communities and the livelihoods of individuals, provoke costly litigation at taxpayer expense and infringe upon people's civil liberties. [Keywords: Exotic dance, cultural conflict, urban planning, myth]

Exotic dance adult entertainment (also referred to as erotic, nude or topless dancing, striptease, gentlemen's clubs, juice bars and adult cabarets) has been a lightning rod for cultural conflict in American society, as I was to learn (Hanna 1998, 1999, 2001a, 2001b, 2001c, 2002). A planner and a lawyer representing exotic dancers and club owners in Seattle discovered my anthropological research on dance as nonverbal communication in *Books in Print* (Hanna 1987, 1988). They asked me to be an expert court witness in a First Amendment case *(Ino Ino, Inc. v. City of Bellevue* 1995, Hanna 1998b) applying to exotic dance the semiotic, socio linguistic paradigm I had used since the 1960s to study dance in

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Africa, on school playgrounds and in American theaters.

My ethnographic work has contributed to the challenge of false mythology perpetuated by media sensationalism, vocal minorities of the Religious Right (Lienesch 1993) and the feminist movement, the misinformed, "studies" commissioned by various localities, the justice system and even a professional association. The mythology is used by local governments to try to drive exotic dance clubs out of business.

Following the research approach I used with other forms of dance, since 1995 I have examined the characteristics of exotic dance, how it conveys messages from the performer to the viewer, how the performer gets viewer feedback to know if the communication was successful, how the dancer exercises artistic control within the aesthetics of exotic dance, working conditions of the dancers and how the dance fits within its context of society, history and politics. I have been to exotic dance clubs (over 100 to date), courtrooms, judges' chambers and city and county council meetings. In these "classrooms," I have interviewed more than 500 dancers, patrons and community members and worked on over 66 exotic dance cases that have come before legislative, administrative or judicial bodies (see, for example, *State of Florida v. Shannon Malnick,* 2003). In addition I conducted a case study to ascertain adverse secondary effects in Charlotte, North Carolina, in October 2000, seeking to determine what first-hand knowledge residents and business operators within a 1,000 foot radius (as a measure of neighborhood) had of three exotic dance clubs (Hanna 2001c). My interviews elicited the extent and quality of knowledge of what takes place at and around the clubs (see p. 175). Research findings from my work nationwide and that of other scholars have challenged misconceptions about the adverse secondary effects of exotic dance, performers, and patrons.

Exotic dance is a form of dance, fantasy, art and theater that by definition, is supposed to be risqué, disclosing more of the body and its movements than are usually seen in public. The climax is a striptease to nudity. Exotic dance movements performed in high heels derive from popular, Broadway theater, music video, jazz and hip-hop dance, cheerleading and gymnastics.

Of course, preparatory to and during field work, I read the extensive literature on the exotic dance industry,[1] including doctoral dissertations in anthropology, psychology, social work, theater arts and women's studies and reports from the Associated Press, Reuters, *New York Times, Washington Post* and First Amendment associations; books and articles on exotic dancing across the United States, directories such as *Exotic Dancer* and *Dream Girls;* trade publications such as *Exotic Dancer Bulletin, Showgirls, Stripper*

Magazine, Danzine, Exotic Dancer Alliance; and American Planning Association reports. These works were written by scholars, planners, lawyers, journalists, former exotic dancers and photographers.

In addition, I have examined the scientific research on nonverbal communication, "a field that encompasses a wide variety of disciplines within both the social and natural sciences, from neurophysiology, psychophysiology, behavioral ecology, and ethology to social psychology, psychiatry, anthropology, sociology, and linguistics" (Segerstråle and Molnár 1997:2). I have examined the literature on the relationship of nonverbal communication to adverse secondary effects, such as nude female proximity to a patron in clubs, with and without alcohol, as a stimulus to male aggression against women or to prostitution, drugs and property depreciation.

Mythology cloaked in academe

Given my interest, I was eager to read *Everything you always wanted to know about regulating sex businesses xxx,* by Kelly and Cooper (2000), published by the American Planning Association (APA). The APA's stated goal is to provide "leadership in the development of vital communities by advocating excellence in community planning, promoting education and citizen empowerment, and providing the tools and support necessary to effect positive change" (2000:171). Through its Research Department, the APA produces eight reports annually for its Planning Advisory Service (PAS). Subscribers also receive the PAS memo monthly and have use of the Inquiry Answering Service.

The PAS makes accessible to local governments copies of "studies" purportedly showing adverse secondary effects, including property depreciation and crime, of adult businesses. Commissioned by various localities to justify regulations, these "studies," however, have been recently shown to be scientifically flawed (see, e.g., Paul et al. 2001, McLaughlin 2001 and Hudson 2002). Paul et al. (2001) evaluated over 110 studies for scientific validity. Most "studies" that localities nationwide cite as evidence that, for example, exotic dance clubs cause adverse primary or secondary effects do not follow professional standards of inquiry nor meet the basic requirements for the acceptance of scientific evidence prescribed in *Daubert v.*

Merrell Dow, 509 U.S. 579 (1993). These "studies" do not have evidentiary value. APA's continuing dissemination of the "studies" as well as the APA filing an amicus brief against an exotic dance club in a Supreme Court case *(City of Erie, v. Pap's A.M.,* 98-1161 (1999) should have been a tip-off to the merits of the report.

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Counterintuitively, the scientifically credible studies demonstrate adult businesses either cause no adverse effects or positive effects. Detailed critiques of the "studies" used to justify government regulations appear in peer-reviewed scholarly journals, court proceedings and administrative hearings. Recent studies of secondary effects relevant to time, place and circumstance of particular exotic dance clubs that challenge the "studies" have been conducted (e.g., Danner 2000, Fuller and Miller 1997, Land et al. 2004, Mellish 2001 and Thomas 2001). In *City of Erie v. Pap's A.M.* (2000) the Court held that the "studies" localities draw upon can be challenged. The appendix to this article includes major court cases related to exotic dance. I would have thought that the APA kept up with relevant literature. Its monograph *Everything you always wanted to know about regulating sex businesses xxx,* to my utter amazement, is highly problematic in its treatment of exotic dance.

This was not the first time during my work on exotic dance that I have been surprised. For example, the first time I entered an exotic dance club, I had to break through a picket line at night of adults and children carrying banners screaming, "Washington Together Against Pornography!" Newspaper reporters have asked me, "What is a person like you with 'impeccable credentials' doing studying nude dancing?" I answer, "Anthropologists study human behavior." Anonymous people have sent me religious tracts designed to save my soul. Exotic dance club neighbors have mistaken me for a member of the Religious Right. Dancers have called me "Ms. Ruth" (the sexologist). And a former academic dean of a major university refused to sign off on an exotic dance research proposal to the Law and Society Program of the National Science Foundation (NSF) because he admitted he was uncomfortable with the subject matter. So was a proposal reviewer, who worried that the study would subject NSF to publicity from a "golden fleece award" given to grants that congress ridicules. My belly dance teacher gasped, "Oh my God!" when she saw my article "Wrapping Nudity in a Cloak of Law," accompanied by a picture of a stripper, in the *New York Times* was sandwiched between a piece on Middle East dance and a picture of a burlesque dancer, both forerunners of the gentlemen's club type performance. She didn't like being associated with this offshoot of her art form.

I have seen police caught blatantly lying under oath in court *(Furfaro v. City of Seattle,* 1997). A dancer brought a case of police misconduct, including an unwarranted arrest, against the City of Seattle. On the witness stand she testified that she returned to work the day after her arrest on *November 15, 1995,* vomited, left and never returned to dance. She reported suffering from self-induced vomiting, then involuntary vomiting and severe depression that was compounded by her history of sexual child abuse, suicide attempts and alcoholism. To counter her claim that she had never returned to dance, in court the city's counsel showed her a dancer sign-in log sheet dated *December 17, 1995,* with her name on it! Leaving the stand, the dancer promptly informed her lawyer that the log-sheet signature was phony: the dancers always use the same ink on the top and bottom of the page and the ink differed on the sheet the city preferred. After the court was informed that the police officer had fabricated evidence against the exotic dancer, the officer sheepishly admitted dating the sign-in sheet because, as he duplicitously said, the sheet had "an unclear date" on it.

Another surprise was undercover detectives video recording an exotic dance or parts of it and assessing whether the performance has serious artistic merit, an exception for a ban on nudity. The detectives had no training in dance or art. In a criminal public indecency case, *State of Minnesota v. Morcomb* (2002), the Benton County District Attorney selected to show the jury only 80 seconds of overt sexual imagery (the angle of a camera can determine an image), while the 500 other seconds in the dance could not be seen. In a subsequent case, *State of Minnesota v. Amy Jo Draeger* (2002), this DA selected only 3 minutes and 59 seconds of a 10 minute performance during which the dancer on the videotape could be identified as most likely to be the accused dancer. And for this identification, some assumptions had to be made. One could see half her body on the pole and then the next image was two legs with toes extended upward in a V shape. There were zero full body shots. Nor could one see the breadth of the stage, costume worn prior to the striptease, colors, entrance, exit and interaction with the patron. The longest shot, 11 seconds, was a graphic crotch image. In my role as an expert court witness and dance critic (I review for dance publications and award-granting organizations), I could not make a determination of serious artistic merit. The National Endowment for the Arts (NEA) Dance Program Director, Douglas Sontag, on July 24, 2002, explained our national procedure for evaluating artistic merit. NEA panelists/evaluators/critics only use filmed or videotaped material as supplementary to site visits

in evaluating dances for serious artistic merit. Video recording is two-dimensional, whereas live performance is three-dimensional. NEA relies primarily on site visit reports conducted by connoisseurs of the specific kind of dance being evaluated. For NEA to evaluate filmed or videotaped dances for serious artistic merit, dancers must submit their own tape, and dancers must cue to where they want the panel to start watching. Panelists/evaluators/critics would not evaluate a videotape made and/or edited by others, because it would be the other's point of view rather than the dancer's. One individual does not determine serious artistic merit, and the panel has an expert in the particular kind of dance being evaluated.

I was truly surprised to discover that the APA monograph is a subterfuge to perpetuate false mythology under the guise of a professional association and academic credentials. At issue are the role of planners in local governance, predicates for legislation, methodology, academic window dressing for communication and "credibility," and ways that standards and values within a profession mirror or transcend the social positions of members of that profession. Kelly and Cooper correctly say, "To regulate something effectively, you really need to understand it. To really understand it, you need to study it. Too often regulations are drafted without understanding the real problem that the community wants to address . . . regulations may miss the real issues" (2000:121). However, the authors omitted the important qualification that those conducting the study must be familiar with and use appropriate valid and reliable research methods to gain an understanding of their subject.

Moreover, the authors' findings and recommendations concerning exotic dance do not follow from the "evidence" reported in the "studies" and court cases they present, although they say, "all recommendations throughout this report are governed by these cases" (2000:115). Kelly and Cooper describe court decisions in which local government regulations were overturned because "there was no evidence in the record of the problems that it [government] alleged to occur in and around the businesses" (2000:92). Much of the Kelly-Cooper report is based on their and others' speculation. In several instances the authors make contradictory statements and misinterpret the law. Such errors serve to perpetuate the myth of the adverse secondary effects of exotic dance adult businesses.

Kelly and Cooper, presumably for ideological reasons, hope that active users of their report will include "local planners, municipal counsel, code enforcement personnel, police, public health officials, licensing clerks, planning commissioners, and the public officials who enact codes and ordinances regulating sexually oriented

uses in their communities . . . the material in this report should provide useful guidance to those interested in addressing some of these regulatory issues through state legislation" (6). However, the ordinances and laws would be unconstitutional both *prima facie* and as applied. Let us look more closely.

Identifying the subject of regulation

Kelly and Cooper's attempt to define pornography (2000:2) fails to distinguish between eroticism and pornography. "Eroticism," says Octavio Paz, is a "representation" that diverts or denies sex in action. Eroticism "is sexuality transfigured, a metaphor" (1995:2). "Onstage" is a fantasy make-believe world in which exotic dancers "express erotic emotions, such as sexual excitement and longing," wrote Judge Richard A. Posner (in *Miller v. South Bend* 1990:1100).

Kelly and Cooper say definitions in zoning ordinances are "far too broad," encompassing materials presented in mainstream society (2000:3). But without offering evidence, the authors conclude that society has made distinctions between soft-core and hard-core pornography. To the authors' credit, they acknowledge that the "soft-core pornography" of full frontal and rear nudity, simulated sexual intercourse and visible contact between the hands of one person and the genitals of another have been so widely part of twentieth century mainstream channels that they do not feel that it is a land-use issue requiring government regulation (2000: 6). They further aptly note that "adult establishments play a role in a modern community and have a place in that community" (2000:11). The authors' historical chapter shows how society and its images, activities and court decisions have changed over time. Kelly and Cooper claim to have taken the reader through 500 years of history. But their effort to ferret out salient findings concerning exotic dance has neglected research in the fields of anthropology, dance, criminology, history, planning, psychology, social work, sociology, theater arts and women's studies.

Key definitions and distinctions are lacking. Thus, dance, exotic dance, theater arts and "suggestive movements" are not defined.[2] There is no distinction between phases of exotic dance, namely, stage performance, table dancing (for a fee, the dancer performs close to a patron seated at a table) and lap dancing (a paid-for patron-focused dance during which a performer dances on the patron's lap). The authors refer to "the very different sorts

of activities that occur in sexually oriented businesses under what they call the "guise of 'dancing'" (2000:34). They dismiss lap dancing, "dancing in booths" (peep shows)" and "private" VIP rooms.

One would not expect the authors to have personal expertise in these subjects. They certainly are not ethnographers. Kelly, FAICP, is a planner, lawyer, Professor of Urban Planning at Ball State University who has worked on five previous PAS reports and a past president of the APA. Cooper, FAICP, is president of her own consulting company, author of another PAS Report and former president of the APA and American Society of Consulting Planners. However, in spite of numerous books, scholarly articles and doctoral dissertations on exotic dance in the U.S. dating from 1973—there are currently about 3,000 exotic dance clubs in the U.S.—the authors cite only *one* article in a scholarly publication, and that is on *lap dancing in Canada!* Lap dancing is, they say quoting *one* dancer in this article, "Just riding on a guy's lap." That statement might describe her own behavior, but cannot by itself be used to define lap dancing in general.

Kelly and Cooper report they "watched lap dancing and, perhaps most important, watched other customers . . . We have viewed police camera tapes of 'dancers' performing in a booth type of performance that we chose not to witness live" (2000:7). But what was on the tape? Was it like the selective presentation of the Benton County tapes? Finally, the authors give no specifics on their visits to exotic dance clubs—what kind, how many, which, where, when, how long, or the types of interviews conducted, if any, with exotic dancers or other stakeholders in the industry.

Kelly and Cooper categorize exotic dance as part of the sex business but not as part of dance, adult play, theater arts and performance art, as do scholars in these fields and, indeed, as do justices of the U.S. Supreme Court. I have shown that exotic dance can be viewed on three continua: art, play and sexuality. The continuum of dance as art ranges from exotic dance, considered by some as "low brow art" (another example is popular social dance) to "high brow art" (such as ballet). The play continuum extends from child and family play to adult playful fantasy entertainment. The sexuality continuum goes from theatrical erotic fantasy (exotic dance) to illegal contractual sexual intercourse (prostitution). On these continua, exotic dance is low brow art, adult playful entertainment and erotic fantasy—all of which are constitutionally protected.

Kelly and Cooper erroneously separate touching from dancing. How do you properly waltz without embrace? Of course, in most social dancing partners touch. The authors categorize lap dancing

in the "touching business," "much closer to prostitution (sexual services for a price) than dancing" (2000:35) and go on to aver, "it should be treated accordingly under local law and policy" (2000: 158). Yet Kelly and Cooper acknowledge "touching is acceptable in our society if it is acceptable to both people involved. In most cases, it appears that the contact between the dancers and the customers consists of little more than a quick touch of a leg or a hand on a shoulder or some other body part, and the contact from the customers to the performers is usually in the form of tucking a bill in a g-string or top" (2000:35), although there is more sustained contact in lap dancing.

The authors use phrases such as "begins to look a lot like" (2000:133) or "is close to" (2000:158) prostitution, something "is likely to" or has "potential secondary effects." These are subjective phrases and would not, of course, hold up in a doctoral exam or court of law. "Almost pregnant" isn't pregnant. They speak of activity "from a values perspective." But of whose values are they speaking?

Studies justifying government regulation

the authors' "findings" and "lessons learned" overlook the very problems they and others noted that invalidate the studies in their review.

The Kelly-Cooper review of "studies" that localities have used to justify regulating exotic dance clubs does point out some of the shortcomings of these "studies." However, the authors' "findings" and "lessons learned" overlook the very problems they and others noted that invalidate the studies in their review. It is also unclear why Kelly and Cooper selected particular studies to review.

Here are some of the problems with the "studies": They usually lack control sites matched with exotic dance club sites as well as measures before and after the presence of a club in a particular location. Data are not collected over several years to distinguish a relatively unstable or a one-time blip in increases or decreases in crime. Studies of sexually-oriented businesses conducted in the 1970s are not applicable to "gentlemen's clubs" that first developed in the 1980s. There is no study that specifically examined the impact of a particular dance or type of dance or kind of expression inside an adult business. None of the studies, for example, explored nudity, stage design or dancer-patron interaction and their impact on a neighborhood's quality of life.

Adult entertainment clubs in poor neighborhoods have higher crime than establishments in other neighborhoods, but correlation

is not causation. Change in police surveillance may account for crime rates. Police calls, by a club, especially in a high crime neighborhood, may not indicate a troublesome club but, rather, club policy to maintain a safe and lawful establishment. (In fact, police often encourage such calls so potential problems are not permitted to develop.) Sometimes police reports are proven false in court.

When studies group all sorts of adult businesses together and find they cause problems, there is no evidence that exotic dance clubs are responsible for any of them. Opinion surveys of appraisers constitute speculation, not empirical evidence of a valid relationship between exotic dance clubs and their actual impact on the surrounding area. A "potential" negative impact is not a real impact.

A case of one exotic dance club, as in Kelly and Cooper's own Kansas City study, provides no grounds to generalize about other dance clubs. The Kansas City study, based on "fieldwork" and a door-to-door survey around adult businesses, included only one adult cabaret, Bazooka's Showgirls. Kelly and Cooper report, "360 respondents said there was no business in the neighborhood that was a problem or should not be there" (2000:47). Only 102 respondents indicated that there was such an issue, and 7 named an adult business or another business with adult materials. In fact, a mere *7 out of 462* identified Bazooka's! Moreover, a misleading sidebar says "Bazooka's was one of the Kansas City businesses that was deemed by nearby residents as 'a business operating in your neighborhood that should not be in your neighborhood.'" Kelly's and Cooper's "analysis" is that "the fact that 96 percent of the persons identifying a business that 'should not be in [their] neighborhood' specifically named adult businesses or businesses with adult materials is very significant." Yet their study shows this statement is inapplicable to exotic dance.

Recommended regulations

Kelly and Cooper rightly argue that "the owners of sexually oriented businesses, operators of those businesses and their legal counsel should be involved [in the development of an ordinance] because, ideally, no regulation should be conceived without the input of those being regulated . . . . Open dialogue may avoid litigation of the ordinance." They continue, "It is also true that, like other businesses, it in the best interest of these owners to support regulations that make it difficult for poorly run sex businesses to

continue to operate in their present manner, thereby continuing to create problems for well-run establishments" (2000:123).

But without meeting the requirements of understanding a subject that Kelly and Cooper say is necessary to pass ordinances, they nevertheless conclude from their review of "studies" that "sexually oriented businesses with on-premises entertainment [particularly those with direct interaction between patrons and entertainers] have more significant neighborhood impact than other sexually oriented businesses" (2000: 66). But what is this significant impact? Alas, the authors provide not a shred of evidence for their claim. Indeed, they cannot, because there are no relevant data. And their own Kansas City study counters their claim.

In my case study in Charlotte (Hanna 2001c), none of the 112 respondents proximate to Twin Peaks, VIP Showgirls and Temptations—clubs chosen to reflect three different kinds of economically developed neighborhoods—reported any negative effect of the presence of an exotic dance club in the neighborhood. Several business operators in the exotic dance club neighborhoods told me about the positive benefits of being proximate to adult entertainment enterprises. "The clubs attract customers who become my clients, and the clubs' employees themselves are clients." A car service operator said, "The clubs are an enjoyable place for customers to wait while having their cars serviced." Some businesses found a club advantageous as a landmark to find their establishments.

Kelly and Cooper assert that exotic dance clubs should be regulated through both zoning and licensing ordinances. "Zoning should be used to control land-use impacts, and licensing should be used to address operational issues . . . . There is no reason for entertainment to take place in a closed booth or private room. Like lap dancing, entertainment in an enclosed booth or private room bears

no resemblance at all to dancing and is not the type of performance protected by the First Amendment" (2000:158-159). Recall that the authors do not define their terms nor take into account court decisions that declare nude dance and lap dancing to be legitimate. Nor, as they said, have they actually seen live this kind of expression. Kelly and Cooper do not recognize that erotic fantasy dance is not prostitution; if the line between the two is ever crossed, there are laws regulating prostitution already on the books that can be invoked.

Obviously there must be a reason for entertainment to take place in a closed booth or private room or clubs in business to make money would not have them. Numerous informants told me that the secluded areas offer an enhanced fantasy of a special relationship between dancer and patron. "If I am paying for a private dance, I want it to be for me, not all the other guys in the main theater," was a common answer. Moreover, some men are shy and do not want to be part of the performance with other patrons watching the interaction. (See Liepe-Levinson 1998). VIP rooms are also more costly and luxuriously appointed; using them shows a patron's "higher status" to other patrons of the establishment.

Live entertainment and touching, Kelly and Cooper urge, should each be treated as a separate land use. They found "no Constitutional or other protection for the touching businesses . . . . None of the nude dance cases goes so far as to protect lap dancing or other contact dancing" (2000:114). This is false. For example, in *City of Anaheim v. Janini and Ly* (1999), the Court points out "the rich variety of American theater, past and present, involving audience members in stage, television, and circus performances" and referred to the "dime a dance," that is, taxi dancing, as an "established tradition in America" (9, n.9). The court held the individual patron-focused lap dancing part of exotic dance is not prostitution.

Nonetheless, without any empirical base that lap dancing causes adverse secondary effects, without recognition of the *Anaheim* case, without an awareness of such similar activities as American social

"slow dancing," "dirty dancing" or what junior high school students call "freaking" (Hanna In Press), Kelly and Cooper advocate regulation. They express concern "that any limit a community would put on the amount of allowable contact would be impossible to monitor and enforce." Therefore they "recommend the use of a raised stage and bars to keep the patrons (or the performers) back from the edge of it" (2000:35). They advocate design standards for the stage and railing to keep customers at least 36 inches away from dancers (2000:149). Yet proximity is essential to communicating many messages, including romantic, erotic ones. By using the logic for monitoring purposes that Kelly and Cooper applied to exotic dance, there should be a raised platform and bars to separate children from priests because the latter just might sexually molest the former! In fact, there is evidence of such behavior on the part of priests.[3]

Kelly and Cooper recommend that "sexually oriented cabarets should be allowed only in the zones that allow high impact live entertainment" (2000:135). But what is "high impact"? How is it identified? Measured? The authors recommend "intense commercial and some industrial districts appropriate for adult uses" as locations for exotic dance clubs. But here again they offer no reason for their recommendation. What is the evidence for the cluster or dispersal model for exotic dance clubs? What is the evidence for the relative impact of sexually oriented businesses that are 500, 1000 or 1500 feet from "protected uses" such as schools and churches (2000:138)?

Law-abiding exotic dance clubs may be woven into the mainstream of everyday life. "Mixed use" is a planning positive in this era of new urbanism and smart growth. For instance, on Wisconsin Avenue in the elite business/residential Georgetown area of Washington, D.C., two exotic dance clubs have been across the street from each other for years and have caused no adverse sec-

ondary effects; many neighbors do not know the clubs even exist. I had traveled the street for years and only recently discovered the clubs. When architect Arthur Cotton Moore (a Princeton University graduate responsible for the restoration of the Old Post Office Building and development of Harbor Place) contacted me for information on exotic dance, he was surprised to learn of these clubs several blocks from his office. He argues for concentrating exotic dance clubs in sections of city centers to enliven the downtown neighborhoods by attracting people to areas that are dead at night (see p. 183).

Licensing entertainers in exotic dance clubs, as Kelly and Cooper urge (2000:144), but not performers in other theater arts and dance, is clearly discrimination and prior restraint. Moreover, licenses are usually public record and an infringement of privacy. They deter women from dancing because a licensee's personal information could make her subject to stalking.

Kelly and Cooper say, "To the extent that a particular motel may serve as a base of operation for prostitutes or drug dealers, we believe that the issue should be addressed as a criminal one" (2000: 37). So, if a particular exotic dance club may serve as such a base, shouldn't the issue be addressed in the same way, instead of inferring that all such clubs are guilty and therefore mandating distance and other operational and architectural design regulations?

Kelly and Cooper remark that with the exception of states with "strong freedom of expression provisions in their state constitutions, communities can probably ban and can certainly limit nude dancing" (2000:117) because "the U.S. Supreme Court has made it clear that nude dancing is not a protected form of speech"' (2000: 94). To the contrary, the authors themselves on the same page quote Justice O'Connor in *City of Erie v. Pap's A.M.,* 2000, reported on U.S. Lexis, pp. 23-24: "As we explained in *Barnes [Barnes v. Glen Theatre, Inc.* 501 U.S. 560, 1991] nude dancing of the type at issue here is expressive conduct, although we think that it falls only within the outer ambit of the First Amendment's protection." The issue in *Pap's* was a ban on public nudity directed at the secondary effects of sexually oriented businesses, but evidence of such negative impact on the community of exotic dance clubs was not challenged by the club, which had ceased to exist. *Pap's* indicated that now the quality of "evidence" proffered by a government can be challenged in court. My study in Charlotte was one of a three-part research project challenge commissioned by club owners in North Carolina to show that the current local impact of exotic dance

clubs did not support the myth of their negative impact (land value and crime were the other two areas investigated) .

Kelly and Cooper recommend mandating a design requirement to ensure that a manager has visual control of the premises (2000: 148). They apparently do not know that most clubs have floor managers circulating through the premises and many now have surveillance cameras. In Philadelphia I entered one club through a metal detector, observed staff as they vigilantly observed what transpired, and watched a club employee monitor 18 surveillance camera monitors inside the club and in the parking lot.

In recommending that localities consider studies from other jurisdictions and reports from city departments, Kelly and Cooper offer no admonition about the scientific merit of these materials. Nor do they caution that since the *Pap's* decision, reaffirmed by subsequent appeals court decisions, the quality of "evidence" for adverse secondary effects of exotic dance clubs can be challenged in court, with the expectation that the evidence be site–specific.

Cultural conflict in American society

Kelly and Cooper . . . never address the fact that exotic dance is a lightning rod for cultural conflict in American society.

Some courts, planners, local governments and concerned citizens have been hampered in their deliberations by *not* having before them the results of relevant research—studies of dance, nonverbal communication, exotic dance and their effects on the community that meet Daubert requirements. It is difficult for most people without training in nonverbal communication to verbalize the nonverbal. There have been misunderstandings about exotic dance and its constituent elements and whether they are merely "conduct" or "communication" and "expression" (Tiersma 1993). These determinations affect whether exotic dance and its constituent elements are covered by—and therefore protected by—the First Amendment. Several visits to a club, or views of clubs sensationally portrayed in the media, provide insufficient bases to make rational judgments.

Clearly, ethnographic research shows that Kelly and Cooper cannot recommend a sound legislative predicate for regulating exotic dance clubs. Their ideology presumably overwhelms rational thinking. Interestingly, they never address the fact that exotic dance is a lightning rod for cultural conflict in American society. With the exception of a quotation by a former counsel for the conservative National Law Center for Children and Families that

has declared "war" on the adult industry (2000:133), there is no mention in their study of the vocal minority of the American populace that objects to exotic dance. Not only do they picket clubs, but some even engage in the kinds of tactics used by the antiabortion contingent. "Not in my backyard!" "Not at all, nowhere!" (see Mann 1989). An alleged tawdry history and current stereotypes make exotic dance a scapegoat for many indirectly related problems and an easy *first* target for a vocal segment of the "conservative" public.

Aiming to set cultural policy and impose its morality on others through government legislation, the moral minority "Religious Right" makes a concerted effort nationwide. The conservative's Community Defense Counsel, devoted solely to combat adult businesses, provides model legislation for localities and helps them litigate.

Certain feminists and others who misunderstand the contemporary "gentlemen's" club and aid the adversarial movement. Some people believe that exotic dancers are at risk in a way that ballet dancers would never be. But just what is this "risk?" Some adversaries believe exotic dancers reinforce a male-dominant social system that abases and abuses women through objectification, exploitation, oppression, commodification and control of women's sexuality through exotic dance club management and tipping. Dismissing the concept of women's free choice, some people objectify the dance and reject the exotic dancer as a subject. A woman's choice to become an exotic dancer is seen as the result of economic coercion.

Contrary to negative perceptions of the exotic dancer's situation, nearly all of the dancers in the 100 plus clubs I have visited, and others who have written about their experiences, view themselves as subjects, not objects. They speak of feeling empowered through financial independence and the self-confidence and self-esteem they gain from successfully facing strangers and winning their appreciation.

When performing nude, most exotic dancers do not feel exploited, degraded or psychologically and physically assaulted by males. They work out of economic necessity, as do most people, and they like the freedom to economically profit from controlling their own persona, choreography, sexuality and communication, as well as the power to enthrall and captivate a patron in a scopic pas de deux. Some exotic dancers say that when men tell them that they are beautiful and pay to ogle them, their work boosts their self-esteem.

The exotic dancer placing her body within a financial transaction reduces herself to a commodity no more than does a professional model, actor or athlete who earns a livelihood using his or her body. Everyday language commonly refers to the body as something to be cultivated, used and presented. Models and a few exotic dancers receive their earnings indirectly through an agent, whereas most exotic dancers commonly receive remuneration directly from admirers and sometimes also from the club. A number of clubs require dancers to pay a fee to dance, much as a visual artist pays for display space in an art show.

Patrons, mostly men, but increasingly women and couples, vary by age, income, profession, ethnicity, religion and motivation for attending exotic dance clubs. The clubs are for sexual fantasy; there are other venues for sex. Some exotic dance patrons are lonely, unhappy, shy or lacking relationship skills who need "understanding" listeners and/or attention from attractive women, perhaps as a spouse once was. Some men gain a sense of safety with exotic dancers who are perceived as "vulnerable" in their nudity and not competitors or judges. Clubs provide a refuge, a place to hang out, relax and be entertained. Some patrons just like to view and/or fantasize about a variety of women and still remain faithful to one. A man can feel manly and dominant when he pays for a dance, without having to try to relate to a woman and risk failure. Some businessmen and women bring clients to the pleasant ambience of upscale establishments to seal business deals. Bachelor parties celebrate and educate the groom. Macho males find male identity, bonding and dominance through fantasy. Many men, and increasingly women who frequent the clubs, seek aesthetic pleasure in the beauty and gracefulness of the nude female body.

The places where dancers work range from upscale to sleazy, just as other workplaces vary in quality. Physical and psychological violence against exotic dancers has come primarily from some vice-squad misbehavior and radical moralists (as is the case at abortion

clinics). Aggression against dancers comes for the same reasons as violence against women in general.

Exotic dancers have advantages over many ballet dancers. The former have flexible schedules, generally better income and no need

for constant training. About one third of the exotic dancers are putting themselves through college and graduate school with earned income and flexible schedules. Single women, single moms and married women dance to support themselves. All are doing an artistic job. Former dancers in anthropology, drama, social work and women's studies have written doctoral dissertations on "gentlemen's clubs" disproving misconceptions about exotic dance. It is the stigma that harms women, exotic dancers say, the same kind of stigma ballet dancers experienced in the past.

Media perpetuation of stereotypes, older folks' memories of the honky-tonk strip club joints of their youth allegedly associated with organized crime, and no visits to a representative modern well-run gentlemen's club mean that some people (perhaps unwittingly) join the anti-exotic dance brigade. Failure to understand a phenomenon makes it easy to demonize.

Prevented from outright banning exotic dance—since it is protected expression under the First Amendment—many localities try to regulate it out of business. They advocate restrictions on, for example, club location, alcohol use, days and hours of operation, body adornment, proximity between dancer and patron, lighting, simulated sex, touch, tipping and dancer licensing. However, local community standards may threaten speech whose value is not understood as "serious" by an audience with alternative lifestyles.

Kelly and Cooper overlook the constitutional defenders of the exotic dance industry against its adversaries. The First Amendment Lawyers Association, Association of Club Executives (a national exotic dance industry association), People for the American Way, American Civil Liberties Union, National Coalition Against Censorship, various organizations in the mainstream art world and other groups defend free expression through dance, including touch, and whatever the costume, from fully covered to nude.

Surely, in pursuit of the APA stated mission—leadership in promoting education—it is education about, not regulation of, exotic dance clubs that is called for to achieve excellence in community planning and citizen empowerment. Following many of the recommendations to regulate exotic dance clubs that Kelly and Cooper offer will only lead to infringement of people's civil liberties, economic burdens to adult business and costly litigation at taxpayer expense. The APA certifies planners who help develop policy in cities nationwide. There are graduates in planning programs. Cloaking morality in the guise of academe does a disservice to a profession and undermines its credibility. I published a short review of the Kelly-Cooper study (Hanna 2003) in hope of encouraging planners to rethink their views of exotic dance regulation needs and research methods.

Contrary to the adversaries of adult entertainment, Arthur Cotton Moore believes exotic dance clubs are an asset to cities. In his book, *Powers of Preservation: New Life for Urban Historic Places* (1998), he says that exotic dance clubs in the city contribute to the quality of life. They make the city an exciting place to go:

> There are functions of a city which rarely make it inside the covers of city planning treatises. These functions have two characteristics: They gain their appeal being sharply different from (discontinous) and more permissive than the general ethos and morality of the surrounding area and they are elemental, genetic, and as old as the first human settlement (1998:204).

Moore continues:

> Human contact is the most powerful and represents the last basic advantage of the city in an antiurban, electronically equipped fearful world. Clearly, the most common manifestation of human contact is represented by perfectly respectable theaters, nightclubs, bars, dance halls, and restaurants where the mating and dating rituals of relationships can

> take place. People want to go on dates "where it's happening" and that still is somewhere in the city. This suggests that in this population the underlying driving force for going to the city is a sexual force . . . . (1998:204).

Moore notes that tourists and conventioneers visit cities that have such excitement. The "empty nesters," mostly older and affluent population are also drawn by the excitement of the city which makes them feel young again (1998:209). "My idea is to use permissive activity as one more arrow in the badly depleted quiver of the dedicated preservationist and urbanist" (1998:207). Moreover, he observes, "The preservation of old buildings and sexually permissive activities have a scenographic affinity which can be exploited so that together they become another reliable economic rehabilitation resource for the city of the future" (1998:209).

Given that there is no scientific evidence that exotic dance causes adverse effects, imposing regulations . . . can easily open the door for the suppression of other speech on similar grounds.

I have certainly seen the positive attraction of exotic dance clubs. Some are like party scenes; other like neighborhood bars. Still others are like Las Vegas shows but with personal interaction between dancer and patron. Needing learned skill and imagination, exotic dance is an adult theatrical art of fantasy, with jazz-like movements, signature feminine high heels, and stripping to disclose more skin than is seen in public—that is, exposing the nude body, the climax of the striptease—together with performer-patron interaction. Given that there is no scientific evidence that exotic dance causes adverse effects, imposing regulations for potential or fantasized problems can easily open the door for the suppression of other speech on similar grounds.

Inadvertently I have become engaged in "public interest" anthropology. It has been gratifying to combine diverse interests—urban anthropology, the semiotics of dance and political science (I hold an MA in this field). Translating and making accessible esoteric sociolinguistic knowledge of a form of nonverbal communication and conducting new ethnography has made a difference in people's lives. This work has helped defend people who have been criminally charged, who faced possible penalties of hefty fines, jail and loss of livelihood, as well as their—and everyone else's—civil liberties.

Notes

[1]For example, Allen 1991, Angier 1976, Angioli 1982, American Planning Association 1997, Boles 1973, Burana 2001, Democic 1993,

Dodds 1996, Dragu and Harrison, 1988, Eaves 2002, Fine 1991, Frank, 1998, 1999, 2002, Futterman 1992, Halperin 1981, Jarrett 1997, Lewin 1984, Liepe-Levinson 1991, 1998, 2002, Mattson 1981, "Misty" 1973, Ronai and Ellis 1989, Scott 1981 and Sloan 1997.

[2]The stigmatized exotic dance, rooted in America's burlesque tradition of parodying social decorum and in the Middle East's "belly dance" first performed publicly in the U.S. in 1893, is an adult theatrical art of fantasy jazz-like movements, high heels, and stripping to disclose more skin than is seen public—that is, the nude body, the climax of the striptease. Using learned skill and imagination, performers communicate fantasy through jazz-like movements, high heels, and stripping. In the first part of exotic dance, the performer dances on stage for the whole audience and showcases for part two, individual patron-focused dances performed especially for a patron (for a fee) to communicate a fantasy of special interest in the patron. In some clubs, the dancer may perform adjacent to the patron's table, between the patron's legs or while sitting on the patron's lap or leaning against the patron's torso as in taxi dancing. Exotic dance has been proliferating since the 1980s in upscale "gentlemen's clubs," cabaret-style theaters often replacing the old lowerclass "strip joints." Dancers have been going upscale too; they are increasingly college, law and medical school students, white-collar professionals, single mothers, and married women, all performing an artistic job. The approximately 3,000 clubs in an industry estimated to have annual billion dollar revenues clearly demonstrate the popularity of exotic dance and its economic contribution to the community.

[3]Pam Belluck, "Jury Finds Ex-Priest Guilty of Assaulting Boy," (a priest had molested some 130 young children over three decades), *New York Times,* January 19, 2002, p. A8; Alan Cooperman, "For Dioceses, Legal Toll Quietly Rises: Tucson Settlement Typifies Catholic Church's Approach to Settling Sex Abuse Suits," *Washington Post,* January 30, 2002, p. A3; Brian Lavery, "Religious Orders Offer $110 Million to Irish Sex Abuse Victims," *New York Times,* February 1, 2002, p. A3; Pam Belluck, "New Hampshire Diocese names 14 Priests Accused of Abuse," *New York Times,* February 16, 2002, p. A10; *Washington Post,* "Ex-Teacher Gets 30 Years for Sex Crimes," January 8, 2002, p. B2.

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Appendix

Regulations and Legal Cases wih National Importancet

1. Evidence for Justifying Governmental Interest

City of Los Angeles v. Alameda Books Inc., 535 U.S. 425 (2002).

Governments must fairly support the rationale for an ordinance, show a factual basis for their regulations, and consider "how speech will fare" (not attack speech). Plaintiffs challenging an ordinance must have the opportunity to cast doubt on its rationale by demonstrating the government's evidence does not support its rationale or furnishing evidence that disputes the government's factual findings.

Flanigan's Enterprises Inc. v. Fulton County, 242 F.3d976 (11th Cir. 2001)

Nude dancing in establishments licensed to sell liquor may not be banned without a factual basis to support the claim that they are connected with negative secondary effects. The County had none.

Erie v. Pap's A.M., 529 U.S. 277 (2000).

Governments may ban secondary effects-justified (not morality-based) nude dance and time, place and manner regulations as a way to combat negative secondary effects. Although a locality may rely on secondary effects studies done by other cities or judicial opinions that discussed them, their evidence now can be challenged as to its quality and relevance to the locality's own jurisdiction.

Federal Judicial Center. 1994. Reference Manual on Scientific Evidence. Rochester, NY: Lawyers Cooperative Publishing. Provides case law on the use of surveys.

Daubert v. Merrell Dow, 509 U.S. 579 (1993).

This case against a pharmaceutical company held that the trial judge is responsible to ensure that experts' testimony both rests on a reliable foundation and is relevant to the contested issue. Criteria are specified.

United States v. O'Brien, 391 U.S. 367, 377 (1968).

A government regulation is justified if (1) it is within the constitutional power of the government, (2) it furthers an important or substantial governmental interest, (3) the governmental interest does not suppress free expression and (4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to further that interest.

2. Zoning

Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Florida, 11th Cir. (July 15, 2003).

Regulations dictating the physical layout of a club, permitting the sheriff to search the premises without a warrant, and banning nudity were overturned. The court emphasized the differences between zoning ordinances (evaluated under standards for time, place and manner) and public nudity ordinances (evaluated under the four-part test set forth in *O'Brien* and

utilized in *Barnes* and *Pap's A.M.*. A key issue in the analysis of a secondary-effects-justified "content-based zoning ordinance" is "how speech will fare" under the ordinance, a new requirement in a time, place and manner analysis. In order to meet its burden of justification imposed by *City of Renton v. Playtime Theatre, Inc.* (1986), a city must have studies or other evidence submitted pre-enactment and allow its evidence to be challenged.

Topanga Press, Inc. v. City of Los Angeles, 989 F.2d 1524 (9th Cir. 1993). The court said that the economics of site location is a valid consideration.

Woodall v. City of El Paso, 959 F.2d 1305, (5th Cir. 1992).

It is illegal for cities to attempt to ban, regulate or impose excessive locational requirements because they object to their sexually explicit messages.

City of Renton v. Playtime Theatres, 475 U.S. 41, 106 S.Ct. 925 (1986).

An ordinance must serve a substantial governmental interest. Government must rely on evidence in order to justify content-neutral restrictions on expressive conduct. A local government may rely on studies from other jurisdictions documenting "adverse secondary effects" of adult uses, if the local government reasonably believes the studies to be applicable to its own circumstances. Renton had no adult entertainment and consequently had no alternative but to look to outside studies.

Requiring a set distance of a club from the location of any residential area, school, park or church also requires that there be alternative locations.

Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981).

A zoning law cannot be overbroad in proscribing all live entertainment, including nude dancing.

Young v. American Mini Theatres Inc., 427 U.S. 50, 96 S.Ct. 2440 (1976).

Zoning to disperse entertainment and require separation from any residential area is permissible if governments can show proof of adverse secondary effects. This is the beginning of the secondary-effects doctrine. Governments must allow for reasonable alternative locations.

3. Alcohol

44 Liquormart v. Rhode Island, 517 U.S. 484 (1996).

Liquor regulation permitted by the Twenty-first Amendment does not override the First Amendment.

New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981). The State can regulate establishments serving alcohol.

Doran v. Salem Inn Inc. 422 U.S. 922 (1975).

The justices view nude dancing as expression warranting constitutional protection in establishments without alcohol.

California v. La Rue, 409 U.S. 109 (1972).

The Alcohol Board of Control can ban nude dancing at premises licensed by it. Prohibition is nothing more than a time, place or manner regulation of speech.

4. Prostitution and Obscenity

The People [City of Anaheim] v. Janini, Super. Ct. No. Ap-11129 (1999); *The People [City of Anaheim] v. Ly,* Super Ct. No. AP-11130 (1999).

Lap dancing is legal, not prostitution. Anaheim's ordinance banning lap dancing was preempted by the state penal code, which already outlaws prostitution and lewd conduct. The court referred to the 1920s taxi dancing, the sale for a body rubbing dance for a dime, that continues to this day but at a higher price.

Pope v. Illinois, 481 U.S. 497 (1987).

A determination of obscenity must assess the social value of the material from the standpoint of a "reasonable person" using national standards rather than local community judgments.

Brockett v. Spokane Arcades Inc., 472 U.S. 491 (1985).

The Court did not intend to characterize as obscene material that provided only normal, healthy sexual desires. Justice White said "lust" implied a normal, healthy interest in sex.

Miller v. California, 413 U.S. 15 (1973).

All three prongs of the definition must be satisfied for a work to be constitutionally obscene. (1) Whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (2) whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Supreme Court decisions following Miller have held that the states may provide their own geographical definition of the community, or not define it at all.

Roth v. United States, 354 U.S. 476 (1957).

"Obscene utterance" as determined by community standards was not protected by the First Amendment.

5. Time, Place, Manner, and Incidental Burden

See *Peek-A-Boo. . .* under Zoning above.

Colacurcio v. City of Kent, 163 F.3d 545 (9th Cir. 1998).

The Court upheld a 10-foot buffer zone between patron and performer, failing to recognize that stage dances (performed for everyone) and private table dances (dances performed for a specific patron) convey different messages. But *Erie v. Pap's A.M.* 529 U.S. 277 (2000) and *City of Los Angeles v. Alameda Books Inc.,* 535 U.S. 425 (2002). and may override further cases like this.

Ward v. Rock Against Racism, 491 U.S. 781, 109 S.Ct. 2746, 2753, 104 L.Ed.2d 661 (1989).

Content-neutral time, place and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication.

City of Renton v. Playtime Theatres, 475 U.S. 41, 106 S.Ct. 925 (1986).

Government must rely on evidence in order to justify its decision that there is an important governmental interest in reasonable time, place and manner restrictions on expressive conduct. A local government may rely on studies from other jurisdictions documenting "adverse secondary effects" of adult uses, if the local government reasonably believes the studies to be applicable to its own circumstances.

Kev, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir. 1986).

Government may impose reasonable restrictions on the time, place, and manner of protected activity under the First Amendment.

6. Licensing

Kentucky Restaurant Concepts, Inc. v. City of Louisville, 209 F.Supp.2d 672 (W.D.Ky. 2002).

A comprehensive licensing and regulatory ordinance is invalid in its entirety without provision for prompt judicial determination. The availability of access to a court as the standard for prompt judicial review was rejected. Subsequently, the 6th and 7th Circuit Courts also ruled that when licensing/regulatory ordinances do not contain the requisite procedural safeguards, they are unconstitutional in their entireties.

FW/PBS, Inc. V. City of Dallas 493 U.S. 215 (1990).

Licensing provisions may not constitute a prior restraint on freedom of expression.

7. Morality

See *Erie v. Pap's* in Evidence for Justifying Governmental Interest, above.

Barnes v. Glen Theatre, 111 S.Ct. 2456 (1991).

Nude dancing is a form of expression entitled to a measure of First Amendment protection, but states may ban it in the interest of "protecting order and morality" without proof of localized effects. Justice Byron R. White said that by prohibiting nude dancing, a state inevitably prohibited the communication of an idea because "the nudity itself is an expressive component of the dance.. . .It is only because nude dancing performances may generate emotions and feelings of eroticism and sensuality among the spectators that the state seeks to regulate such expressive activity." Justice David Souter said it was the "secondary effects," "prostitution," sexual assault, and associated crimes," of clubs like the Kitty Kat Lounge that justified Indiana's rule. Subsequently, *Erie v. Pap's A.M.,* 529 U.S. 277 (2000) now places the rationale on secondary effects.

See *Miller v. California,* 413 U.S. 15 (1973) in Prostitution and Obscenity, above.