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THE NOT-SO-RISKY *BUSINESS* OF HIGH-END ESCORTS
AND THE INTERNET IN THE 21ST CENTURY

By Robert Rigg

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I. INTRODUCTION

[1] Prostitution is often referred to as “the world’s oldest profession.”¹ It is defined as “[t]he act or practice of engaging in sexual activity for money or its equivalent.”² As a service industry, it fulfills specific human desires. Nevertheless, most states condemn and criminalize both the act of prostitution and those who solicit such services.³

[2] Despite its criminalization, the practice of prostitution has endured, and the advent of the Internet has changed how purveyors of this age-old trade advertise and market their business.⁴ Such advertising and

¹ *United States v. Brouillette*, 478 F.2d 1171, 1173 (5th Cir. 1973) (internal quotations omitted).

² BLACK’S LAW DICTIONARY 1259 (8th ed. 2004).

³ See e.g., FLA. STAT. ANN. §§ 796.07(2)(e), (i) (West 2007); N.Y. PENAL LAW §§ 230.00, 230.04 (McKinney 2008); TEX. PENAL CODE ANN. §§ 43.02(a), (c) (Vernon 2003 & Supp. 2009).

⁴ See Jessica Logan & William Wilson Lewis III, *Web Ads Replace Streetwalking; Prostitution: Inland Officers Say Online Lures Have Taken the Crime Out of Seedy Areas Into Communities*, PRESS-ENTER. (Riverside, Cal.), Jan. 2, 2008, at B1, available at

marketing has expanded greatly since the days of advertisements in newspaper classifieds, as seen in the movie, *Risky Business*.⁵ Today, Internet websites allow escorts much greater exposure.⁶ In response to this growing trend, criminal law has begun focusing on escorts who use the Internet for advertising and the websites that provide them a forum.⁷

[3] This Article addresses the Internet's role in the practice of prostitution, and suggests enforcement measures for the current state of the law as it pertains to the use of the Internet by escorts and escort services. To lay the foundation for these suggested enforcement measures, this Article classifies escorts into three categories: low-end,⁸ mid-range,⁹ and high-end¹⁰ providers. These categories are first used to evaluate Illinois prostitution laws. Illinois is the chosen jurisdiction because not only is Chicago the setting of the movie *Risky Business*, it is the home of recent litigation initiated by the Cook County Sheriff against Craigslist, an Internet website that escorts frequently use to traffic their services.¹¹

[4] This Article then evaluates how escort service providers use the Internet, with particular focus paid to high-end escorts, as these providers use the Internet in ways different than their low-end or mid-range counterparts. Specifically, high-end escorts have sophisticated websites, geared toward discretion—for both the provider and client.¹² Next, this

http://www.pe.com/localnews/sbcounty/stories/PE_News_Local_S_prostitution02.9893.html.

⁵ See generally *RISKY BUSINESS* (The Geffen Company 1983).

⁶ See *Dirty Money: The Business of High-End Prostitution* (CNBC television broadcast July 10, 2009).

⁷ See *infra* Part III.B.

⁸ “Low-end” refers to providers charging up to \$250 per act or session.

⁹ “Mid-range” refers to providers charging between \$250–\$500 per act or session.

¹⁰ “High-end” refers to providers charging \$500 or more per act or session.

¹¹ See *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 961 (N.D. Ill. 2009).

¹² See *Dirty Money*, *supra* note 6.

Article discusses the ineffectiveness of the current laws, drawing upon the *Craigslist* litigation for support. Finally, this Article concludes by suggesting different enforcement measures that address how to curb the practice of prostitution without violating constitutionally protected rights.

A. *Risky Business*

[5] The story line for the 1983 movie *Risky Business* is straightforward. Tom Cruise's character, Joel, desperately wants to attend Princeton University.¹³ In addition to lusting after admission to Princeton, Joel seeks a sexual encounter.¹⁴ When Joel's parents depart for vacation, leaving Joel home alone in the Chicago suburbs, he decides to solicit a prostitute.¹⁵

[6] Joel responds to an ad in the newspaper and, after an unexpected encounter with a transvestite, he is given the fateful number of Lana, played by Rebecca De Mornay.¹⁶ A night of passion with Lana ensues, and, unfortunately for Joel, a final bill follows shortly thereafter.¹⁷ But before Joel can pay, Lana absconds with his mother's expensive glass egg, prompting Joel to confront Lana, and, consequently, Guido, her pimp.¹⁸ Nevertheless, Joel and Lana continue to spend time together.¹⁹

[7] Unfortunately, Joel's predicament worsens when his father's Porsche crashes into Lake Michigan during a night on the town.²⁰

¹³ See RISKY BUSINESS, *supra* note 5.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See RISKY BUSINESS, *supra* note 5.

¹⁹ See *id.*

²⁰ See *id.*

Confronted with the cost of having to repair his father's car, Joel and Lana decide that for one night they will use Joel's parents' home to operate a brothel.²¹ Following a long, and very profitable night, and in what arguably is one of the film's more memorable scenes, Lana and Joel ride the Chicago L train, where they engage in a steamy romantic encounter.²² The movie culminates with Joel's matriculation to Princeton and his evolution into an "enterpriser."²³

B. State Laws and Prostitution

[8] Just how many state laws did Joel and Lana violate during their rendezvous? The movie takes place in the Chicago suburbs,²⁴ therefore Illinois law applies. Illinois defines prostitution as:

Any person who performs, offers or agrees to perform any act of sexual penetration . . . for any money, property, token, object, or article or anything of value, or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article or anything of value, for the purpose of sexual arousal or gratification commits an act of prostitution.²⁵

²¹ *See id.*

²² *See id.*

²³ *See RISKY BUSINESS, supra* note 5.

²⁴ *See id.*

²⁵ 720 ILL. COMP. STAT. ANN. 5/11-14(a) (West, Westlaw through 2010 P.A. 96-1464). Sexual penetration is defined as:

[A]ny contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

§ 5/12-12(f) (Westlaw).

If caught, Lana would likely be subject to prosecution for violating the Illinois prostitution statute.²⁶

[9] Furthermore, the statute defines a solicitor as:

Any person who offers a person not his or her spouse any money, property, token, object, or article or anything of value . . . to perform any act of sexual penetration . . . or any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification, commits the offense of solicitation of a sexual act.²⁷

[10] Illinois could therefore prosecute both Joel and Lana for solicitation: Joel for soliciting Lana's services and Lana for later recruiting her friends.²⁸ The prosecution would likely also include a charge for Joel and Lana's conspiring to entertain tricks for quick cash,²⁹ which under Illinois law occurs when a person with the intent to actually commit a crime, agrees with another person to commit that crime.³⁰ Additionally, the characters could face multiple counts of pandering, which occurs when a "person who . . . for any money, property, token, object or article or anything of value . . . [a]rranges or offers to arrange a situation in which a person may practice prostitution."³¹

²⁶ See RISKY BUSINESS, *supra* note 5.

²⁷ 720 ILCS § 5/11-14.1(a) (Westlaw).

²⁸ See RISKY BUSINESS, *supra* note 5.

²⁹ See *id.*

³⁰ 720 ILCS § 5/8-2(a) (Westlaw).

³¹ § 5/11-16(a)(2) (Westlaw); see RISKY BUSINESS, *supra* note 5.

C. The Internet

[11] The advent of the Internet has triggered a worldwide communications revolution.³² The Internet is “a network connecting many computer networks and based on a common addressing system and communications protocol called TCP/IP (Transmission Control Protocol/Internet Protocol).”³³ Over time, it has grown beyond its academic origin, and by the 1990s it connected millions of computers worldwide.³⁴ Today most people interact with the Internet on a daily basis through the Internet’s “most important component” known as the World Wide Web, which facilitates easy navigation of Internet sites.³⁵

[12] The Internet originated in the 1960s in a United States Department of Defense program designed to provide “a secure . . . communications network . . . for defense-related research.”³⁶ But researchers in other fields began to use the network, which eventually led to the National Science Foundation assuming a large part of the government’s TCP/IP technology followed by the creation of a “network of networks capable of handling far greater traffic.”³⁷ The government system offered a suitable framework for production of civilian networks.³⁸ Today, “[t]he Internet is an

³² See *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998) (“‘The Internet is a unique and wholly new medium of worldwide human communication.’ It enables people to communicate with one another with unprecedented speed and efficiency and is rapidly revolutionizing how people share and receive information.”) (quoting *Reno v. ACLU*, 521 U.S. 844, 850 (1997)).

³³ 6 ENCYCLOPAEDIA BRITANNICA, INC., THE NEW ENCYCLOPAEDIA BRITANNICA 354 (15th ed. 2002).

³⁴ *See id.*

³⁵ *Id.* These sites provide services such as electronic mail, file transfer, bulletin board and newsgroup access, and remote computer access. *Id.*

³⁶ *Id.* at 354-55.

³⁷ *Id.* at 355.

³⁸ *Reno v. ACLU*, 521 U.S. 844, 850 (1997).

international network of interconnected computers”³⁹ that tens of millions of individuals use “to communicate with one another and to access vast amounts of information from around the world.”⁴⁰ Individuals can access this expansive network from many different locations, including offices, schools, and local libraries.⁴¹

[13] Of the various tools available on the Internet, the World Wide Web is the most well known way to communicate and access information online.⁴² Users search for and retrieve information by typing in “the address of a known webpage or enter[ing] one or more keywords into a commercial ‘search engine’ . . . to locate sites on the subject of interest.”⁴³ Users may access most Internet sites for free, but some websites require users to purchase rights from a commercial supplier before they are granted access to the site.⁴⁴

[14] One of the impacts of the Internet is its effect on the marketing and advertizing⁴⁵ of various goods and services.⁴⁶ The web “constitutes a vast platform from which to address and hear from a worldwide audience of

³⁹ *Id.* at 849.

⁴⁰ *Id.* at 850.

⁴¹ *See id.*

⁴² *See id.* at 852.

⁴³ *Reno*, 521 U.S. at 852.

⁴⁴ *Id.*

⁴⁵ For example, websites such as eBay and Craigslist grant a seller almost complete control in the sale of his or her good or service. *See generally* *FAQ*, CRAIGSLIST, <http://www.craigslist.org/about/help/faq#freePosting> (last visited Oct. 15, 2010); *Sell on eBay*, EBAY, <http://cgi5.ebay.com/ws/eBayISAPI.dll?SellHub3Visitor> (last visited Oct. 15, 2010).

⁴⁶ *See Reno*, 521 U.S. at 853 (“The Web is . . . a sprawling mall offering goods and services.”). *See generally* Amazon, <http://www.amazon.com> (last visited Oct. 15, 2010) (showing a variety of listings, including kindles, DVDs, digital cameras, guitars, amplifiers, recording equipment, and video games).

millions of readers, viewers, researchers, and buyers.”⁴⁷ This broad access creates a democratizing effect that allows the unsophisticated to compete with the very savvy.⁴⁸ But, since there is very little regulation, the Internet is used not only for legitimate purposes, but also not-so-legitimate purposes.⁴⁹ Because the Internet has a myriad of uses,⁵⁰ it should come as no surprise that the sex industry has adopted such a powerful tool as an advertising and marketing mechanism, especially in light of its availability to the public and the overall lack of regulation.

II. THE NOT-SO-RISKY BUSINESS IN THE 21ST CENTURY

[15] Fast forward the clock to 2009 and the storyline in *Risky Business* becomes not only improbable, but laughable, because of technological advancements made with the Internet. Today, Joel would simply get online and surf any number of websites featuring a list of escorts.⁵¹ Many of these websites provide a link for each escort, guiding the user to the

⁴⁷ *Reno*, 521 U.S. at 853.

⁴⁸ *See id.* (“Any person or organization with a computer connected to the Internet can ‘publish’ information.”).

⁴⁹ *See id.* (quoting *ACLU v. Reno*, 929 F. Supp. 824, 838 (E.D. Pa. 1996)) (“No single organization controls any membership in the Web, nor is there any single centralized point from which individual Web sites or services can be blocked from the Web.”); Amy Schatz, *New U.S. Push to Regulate Internet*, WALL ST. J., May 6, 2010, at A1 (“For the past decade or so, the FCC has maintained a mostly hands-off approach to Internet regulation.”).

⁵⁰ For example, law schools use the Internet to attract potential students. *See Admissions*, YALE LAW SCH., <http://www.law.yale.edu/admissions/> (last visited Oct. 15, 2010); *Prospective Students*, HARVARD LAW SCH., <http://www.law.harvard.edu/prospective/index.html> (last visited Oct. 15, 2010); *Prospective Students*, STANFORD LAW SCH., <http://www.law.stanford.edu/prospective/> (last visited Oct. 15, 2010). For Drake University Law School, over ninety-eight percent of prospective students submit their application via the Internet. Interview with Andrew English, Assoc. Dir. of Admission and Fin. Aid, Drake Univ. Law Sch., in Des Moines, Iowa (Aug. 16, 2010).

⁵¹ *See, e.g.*, *Escorts.com*, <http://www.escorts.com> (last visited Oct. 15, 2010).

escort's personal webpage on the site,⁵² which typically supply a link to the escort's own website.⁵³

[16] An escort's website may include a photo gallery,⁵⁴ a list of rates,⁵⁵ an interview or frequently asked questions,⁵⁶ and, of course, an upcoming schedule.⁵⁷ With a few keystrokes and mouse clicks, a potential client can complete a reservation form and arrange a rendezvous.⁵⁸ In order to avoid Guido the pimp and the fate of Elliot Spitzer,⁵⁹ Joel would be wise to use

⁵² See, e.g., *id.*

⁵³ See e.g., *Couture*, ESCORTS.COM, <http://www.escorts.com/member/2354967/couture> (last visited Oct. 15, 2010).

⁵⁴ See, e.g., *Gallery*, SENSUAL CLEO, <http://www.sensualcleo.com/gallery.html> (last visited Oct. 15, 2010).

⁵⁵ See, e.g., *Packages*, SENSUAL CLEO, <http://www.sensualcleo.com/packages.html> (last visited Oct. 15, 2010). Rates for October 2010 included varied pricing based on three currencies—Canadian dollars, United States dollars, and Euros—and included instructions regarding payment. The rates in the United States ranged from \$600 for one hour to \$4,000 for forty-eight hours.

⁵⁶ See, e.g., *Interview*, SENSUAL CLEO, <http://www.sensualcleo.com/interview.html> (last visited Oct. 15, 2010). Questions include: “Do you provide incalls or outcalls?”; “How do I know you are discreet and that my privacy will be protected?”; “What [gifts] do you like?”; “What do you enjoy most about what you do?”; “Are the pictures on your site real?”; “Do you prefer I first contact you by phone or by e-mail?”; and “Are your packages negotiable?” *Id.*

⁵⁷ See, e.g., *Contact*, SENSUAL CLEO, <http://www.sensualcleo.com/contact.html> (last visited Oct. 15, 2010). The following is a sample monthly schedule: “NYC Oct 18-22; Boston Oct 23-25; DC Oct 31 – Nov 2.” *See id.*

⁵⁸ See, e.g., *id.* To set an appointment, a client needs to provide the following information: full name, age, height, weight, e-mail address, city of residence, appointment date, appointment length, and desired appointment time. *See id.* For an appointment in the United States, the provider requires full screening, which includes two references, the name of the client's employer, and the employer's main switchboard number. *See id.*

⁵⁹ See generally Joseph Curl, *Call-Girl Ring Trips Up Spitzer; FBI Probe Threatens Future of Governor*, WASH. TIMES, Mar. 11, 2008, at A1, available at <http://www.washingtontimes.com/news/2008/mar/11/call-girl-ring-trips-up-spitzer>

an independent escort as opposed to an agency. Assuming Joel passes the escort's screening process, an overnight encounter might cost two thousand dollars or more.⁶⁰

A. Internet Protection for Both Joel and the Escort

[17] From the escort's viewpoint, there are several advantages to using the Internet. First, the ability to advertise a high price tends to exclude less desirable clients, thus reducing the risk to the escorts.⁶¹ Second, although the screening mechanism used does not necessarily exclude law enforcement, its thoroughness significantly reduces the likelihood of an encounter with law enforcement.⁶² In fact, the application process not only requires verifiable information such as a business address and general phone numbers, it also frequently asks for reference information, employment information, and corroboration through other Internet sites to confirm the potential client is not law enforcement personnel or a threat to the escort's business.⁶³

[18] For example, Escorts.com uses the screening services of Date-Check,⁶⁴ Preferred411,⁶⁵ and RoomService2000 ("RS2K").⁶⁶ All three

(reporting that the former Governor of New York was caught using an escort through a New York City-based agency); RISKY BUSINESS, *supra* note 5.

⁶⁰ See, e.g., *Packages*, *supra* note 55 (noting an overnight escapade costs \$2500).

⁶¹ See generally *id.*

⁶² See generally *Contact*, *supra* note 57 (discussing the requirements of full screening and provision of two references for appointments taking place in the United States).

⁶³ See *id.*

⁶⁴ Date-Check, <http://www.date-check.com> (last visited Oct. 15, 2010). "Date-Check is [a] well known and respected adult entertainment verification reference system used by thousands of discrete and verified members through out [sic] the US and Canada. Date-Check offers adult entertainers and gentlemen clients an efficient and discrete means of screening." *Date Check*, SOUTHERNGFE, <http://www.southernngfe.com/escorts/escort-resources/screening-services/date-check> (last visited Oct. 15, 2010).

allow individuals to register with the website for a fee,⁶⁷ verify information about potential clients, and approve the clients based on a background check.⁶⁸ The escort then checks the verification report from the screening service and can elect to approve an appointment.⁶⁹ This collateral industry has grown out of the concerns escorts have with law enforcement and personal concerns about their safety and welfare.⁷⁰

B. A Rational Choice

[19] At the rate of \$600 per hour-long session, an escort who works ten hours each week for fifty weeks a year would gross \$300,000 per year.⁷¹ While a certain percentage of escorts pay taxes, it is reasonable to assume a majority of escorts do not declare their income or pay taxes, giving additional heft to their net income.⁷² If an escort enters into the profession at the age of twenty-five and leaves after fifteen years at the age of forty, gross earnings would total \$4.5 million.⁷³ This may be the extreme case,

⁶⁵ *Welcome to Preferred411.com*, PREFERRED411, <http://www.preferred411.com> (last visited Oct. 15, 2010). “Preferred411 is a screening service for those who seek only the most discreet [sic] experiences in upscale adult companionship.” *Id.*

⁶⁶ RoomService2000, <http://www.roomservice2000.com> (last visited Oct. 15, 2010).

⁶⁷ *See, e.g., Preferred411 Client Sign Up Forms*, PREFERRED411, http://www.secure.preferred411.com//index.cfm?fx=Client_Add&ref=0 (last visited Oct. 15, 2010) (requiring “an annual membership fee of \$89.00.”).

⁶⁸ *See, e.g., id.* (noting that personal and employment information is checked, and that “[a]ll applicants must be verified to our satisfaction.”).

⁶⁹ *See id.*

⁷⁰ *See, e.g.,* Shay-Ann M. Heiser Singh, Comment, *The Predator Accountability Act: Empowering Women in Prostitution to Pursue Their Own Justice*, 56 DEPAUL L. REV. 1035, 1037 (2007) (addressing the dangers providers face from customers and law enforcement).

⁷¹ *See generally Packages, supra* note 55 (noting that a one-hour session costs \$600).

⁷² *See Dirty Money, supra* note 6.

⁷³ *See generally Packages, supra* note 55.

but it points out the huge economic incentive for some to become an escort.

[20] By comparison, the average first-year salary of a social worker with a master's degree is approximately \$32,500, increasing to approximately \$52,500 after twenty-five years of experience.⁷⁴ Assuming an escort commands a pay level that allows her to charge \$25,000 per weekend,⁷⁵ in five weekends she would quadruple the salary she would receive as an entry-level social worker. Even in the modern *Risky Business* scenario posed above, at \$2,500 per overnight session, a provider would take in an extra \$15,000 after working six such sessions. So why not do both—take the social work job and become a part-time escort?

[21] The Internet has opened markets for escorts and at a level never before seen.⁷⁶ This seems especially true for a group of women who made a conscious and rational choice to become involved in “the world’s oldest profession.”⁷⁷ Professor Elizabeth Bernstein, who chronicled the sex industry in her work, describes this high-end escort scene:

In the back room of a discreetly furnished apartment in a quiet San Francisco neighborhood, I am sitting on a brown leather sofa talking with Amanda, who has just said goodbye to the day’s first customer. We drink tea as the early afternoon sunshine streams into the room, illuminating many overstuffed bookcases, an exercise bicycle, and Amanda herself—a slender woman in her late thirties with dark hair and serious eyes. Amanda is a former copy editor and a graduate of a prestigious East

⁷⁴ See *Social Worker Salary*, JOB-EMP’T-GUIDE, <http://www.job-employment-guide.com/social-worker-salary.html> (last visited Oct. 15, 2010).

⁷⁵ See *The Business of High-End Prostitution*, CNBC, http://www.cnbc.com/id/27459849/The_Business_of_High_End_Prostitution (last visited Oct. 15, 2010) (noting that high-end escorts can charge rates “as high as \$25,000 for a two-day engagement.”).

⁷⁶ See *Dirty Money supra*, note 6; *supra* Part II.A;

⁷⁷ *United States v. Brouillette*, 478 F.2d 1171, 1173 (5th Cir. 1973).

Coast university who has been working in the sex industry for six years. . . . Amanda goes on to explain that today's client was a marketing executive for a prominent Silicon Valley software company.⁷⁸

[22] Amanda's character may be representative of a class of escorts few would like to admit exist. CNBC interviewed a number of these high-end escorts who often charge thousands of dollars at an hourly rate.⁷⁹ These women were all well-educated, and at least one had a graduate degree.⁸⁰ While very high-end female escorts offer their services on the Internet, they are able to maintain privacy and prevent the disclosure of their personal information by advising their clients to refrain from rating them at various websites.⁸¹ This tends to work because, at this level, clients and providers agree that their encounters are more about companionship than sex.⁸² One interviewee indicated that an escort reaches the high-end "when [she] move[s] away from the idea of thinking that [she is] working by the hour."⁸³ In fact, a former escort described one weekend encounter consisting of twelve hours of contact and a bill for \$25,000 for just two hours of actual sex.⁸⁴ In addition, one woman stated that 90% of her business is comprised of repeat clients.⁸⁵ However, with rates as high as \$25,000 per weekend, money is still the catalyst for most of the encounters.⁸⁶

⁷⁸ ELIZABETH BERNSTEIN, *TEMPORARILY YOURS: INTIMACY, AUTHENTICITY, AND THE COMMERCE OF SEX 1* (2007).

⁷⁹ *See generally Dirty Money*, *supra* note 6.

⁸⁰ *See id.*

⁸¹ *See id.*

⁸² *See id.*

⁸³ *See Dirty Money*, *supra* note 6.

⁸⁴ *See generally id.*

⁸⁵ *See id.*

⁸⁶ *See id.*

[23] Professors Scott Cunningham and Todd D. Kendall's research in *Prostitution, Technology, and the Law: New Data and Directions*,⁸⁷ contains the most recent survey of escorts.⁸⁸ The paper provides a look into the world of escorts by implementing the Survey of Adult Service Providers ("SASP"), which represents the most comprehensive sampling of online workers to date.⁸⁹ SASP's survey procedure sends requests to all valid e-mail addresses among TheEroticReview.com ("TER") workers, supplemented with all sex workers who advertise on Eros.com, a popular national site for escort ads.⁹⁰ In the e-mail, respondents are asked to click on a link that connects to an anonymous survey, hosted by Baylor University servers.⁹¹

[24] Cunningham and Kendall's research corroborates much of what the CNBC documentary revealed about high-class escorts:

[S]ex work is highly compensated, with the average worker receiving \$1,711 in weekly compensation. Around 25% of online prostitutes saw no customers during the last week, whether by choice or not. However, the average prostitute saw 4.1 different clients during the last week, of which 2.2 were "regulars," that is, repeat customers. New clients

⁸⁷ Scott Cunningham & Todd D. Kendall, *Prostitution, Technology, and the Law: New Data and Directions*, HANDBOOK ON FAMILY LAW AND ECONOMICS (forthcoming 2010), available at <http://www.toddkendall.net/ProsTechLaw.pdf>.

⁸⁸ See *id.* (manuscript at 4) ("We illustrate the value of surveys by estimating family and marital status characteristics and key business practices among technology-facilitated sex workers, using a new survey we implemented in 2008-2009.").

⁸⁹ See *id.* (manuscript at 34).

⁹⁰ See *id.* (manuscript at 37).

⁹¹ See *id.* (manuscript at 35) (explaining how each e-mail sent was associated with a randomly generated string of characters to prevent multiple responses from the same e-mail and to preserve the important function of maintaining survey anonymity). "In total, [researchers] attempted to contact 26,189 individuals to participate in the survey." *Id.* (manuscript at 37).

represent potential risks for prostitutes, and so are considered less desirable as customers.⁹²

[25] Cunningham and Kendall's research further indicates that escorts soliciting via the Internet have been in the industry for over five years.⁹³ And, aside from their work in the sex industry, many of the women who responded to the survey are "relatively normal members of society."⁹⁴ In fact, many of the women polled have a second job outside of the sex industry, and nearly two thirds of them demand references from other escorts before taking on a new client.⁹⁵ "Overall, data from TER and SASP indicate that prostitutes who solicit online are quite different from those who operate on the street and come into contact frequently with law enforcement. They are younger, more likely to be white, and appear to break the mold of typical prostitute stereotypes."⁹⁶

III. THE LAW AND THE INTERNET

A. The Ineffectiveness of Current Legislation and the Constitutional Bar

[26] Existing state laws are inadequate and outdated when dealing with high-end escorts as described above.⁹⁷ Due to the extensive screening process that most high-end escorts use, a sting operation is next to

⁹² Scott Cunningham & Todd Kendall, *Sex for Sale: Online Commerce in the World's Oldest Profession* (unpublished manuscript), *available at* http://www.toddkendall.net/SFS_1207c.pdf (footnote omitted).

⁹³ *Id.*

⁹⁴ *Id.* (stating that these women are "relatively likely to hold private health insurance (53%), be college graduates (41%), be married (13%), and have children (38%).").

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Moira Heiges, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 437-38 (2009).

impossible.⁹⁸ Most law enforcement agencies are already cash strapped,⁹⁹ thus the cost of enforcement, even in our modern-day *Risky Business* scenario, would be prohibitive.

[27] What, then, is the Achilles heel of high-end escorts? A client who was quoted on the CNBC documentary provided the answer: “There is no way this works without the Internet.”¹⁰⁰ Thus, the question becomes: how do you regulate Internet content? State and local governments are woefully unprepared to deal with the Internet solicitation,¹⁰¹ which leaves the federal government as the only possibility to provide the necessary regulation to target escort websites. This could be problematic given the fact the target is the content of a website. Congress has already been unsuccessful in several of its attempts to control Internet content regarding the display of virtual child pornography.¹⁰² Furthermore, Congress has had little success in enacting legislation to limit content concerning obscene materials to minors.¹⁰³

⁹⁸ See generally *Date Check FAQs – How This Works*, DATE-CHECK, <http://www.date-check.com/faq.asp> (last visited Oct. 14, 2010) (noting that the screening process includes verification with a driver’s license, social security number, a safe word, and a personal meeting with an entertainer).

⁹⁹ See AMY FARRELL ET AL., UNDERSTANDING AND IMPROVING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING 20 (2008), available at http://www.humantrafficking.neu.edu/news_reports/reports/documents/Understanding%20and%20Responding_Full%20Report.pdf.

¹⁰⁰ *Dirty Money*, *supra* note 6.

¹⁰¹ See FARRELL ET AL., *supra* note 99, at 21.

¹⁰² See Shahid M. Shahidullah, *Federal Laws and Judicial Trends in the Prosecution of Cyber Crime Cases in the United States: First and Fourth Amendment Issues*, 45 CRIM. L. BULL. 929, 958 (2009) (discussing the enactment of four laws—the Communications Decency Act in 1996, Child Pornography Protection Act in 1996 (CPPA), Child Online Protection Act in 1998 (COPA), and Child Internet Protection Act in 2000 (CIPA)—two of which, the CPPA and COPA, violated the First Amendment).

¹⁰³ See *id.*

[28] A statute enacted by the government, whether at the state, local, or federal level, must be able to pass the constitutional test articulated in *Miller v. California*, which concerned a California statute that prohibited unsolicited sexually explicit material.¹⁰⁴ The Court expressed a three-prong test to measure whether statutes violated the First Amendment:

The basic guidelines for the trier of fact must be: (a) whether ‘the average person, applying contemporary community standards’ would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.¹⁰⁵

[29] The analysis employed in *Miller* makes it nearly impossible to draft a statute prohibiting escort websites without violating the First Amendment protections now afforded to the Internet.¹⁰⁶ This is especially true given the website design of high-end escorts who carefully choose the language and graphics used. For instance, the websites generally use professional photographs to keep website images tasteful.¹⁰⁷ The website designers also carefully choose language to describe the services while

¹⁰⁴ See *Miller v. California*, 413 U.S. 15, 16, 18 n.1, 23, 24 n.5 (1973).

¹⁰⁵ *Id.* at 24 (citations omitted).

¹⁰⁶ See generally U.S. CONST. amend. I; *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

¹⁰⁷ See, e.g., Sensual Cleo, <http://www.sensualcleo.com/index2.html> (last visited Oct. 15, 2010).

still complying with existing statutes.¹⁰⁸ In fact, websites for lingerie are sometimes as provocative as the websites for escort services.¹⁰⁹

[30] Over the past two decades, the federal government has attempted to limit Internet content.¹¹⁰ In *Reno v. ACLU*, the United States Supreme Court found provisions of the Communications Decency Act (“CDA”), which prohibited the transmission of indecent or obscene materials to persons under eighteen, facially overbroad.¹¹¹ The Court found that the CDA posed “a greater threat of censoring speech that, in fact, falls outside the statute’s scope. . . . [T]he statute . . . unquestionably silences some speakers whose messages would be entitled to constitutional protection . . . [and t]he CDA’s burden on protected speech cannot be justified if it could be avoided by a more carefully drafted statute.”¹¹²

[31] In 2002 the Court addressed a new statute: the Child Online Protection Act (“COPA”).¹¹³ Addressing the statute’s constitutionality in *Ashcroft v. ACLU* (“*Ashcroft I*”), Justice Thomas held the community standards provision of the statute did not render the statute overly broad.¹¹⁴ Justice Thomas further noted that COPA was less broad than the CDA:

¹⁰⁸ Compare *What is a Courtesan?*, SENSUAL CLEO, <http://www.sensualcleo.com/courtesan.html> (last visited Oct. 13, 2010), with 10 U.S.C.A. § 920(t)(13) (“[A]ct of prostitution’ means a sexual act, sexual contact, or lewd act for the purpose of receiving money or other compensation.”); FLA. STAT. ANN. §§ 796.07(2)(e), (i) (West 2007), and N.Y. PENAL LAW §§ 230.00, 230.04 (McKinney 2008), and TEX. PENAL CODE ANN. §§ 43.02(a), (c) (Vernon 2003 & Supp. 2009).

¹⁰⁹ Compare *Sexy Lingerie Sets*, LINGERIE DIVA, <http://www.lingeriediva.com/sexy-lingerie-sets> (last visited Oct. 13, 2010), with *Gallery*, *supra* note 54.

¹¹⁰ See Shahidullah, *supra* note 102, at 938, 940, 943.

¹¹¹ See *Reno v. ACLU*, 521 U.S. 844, 858-59, 874 (1997) (citations omitted).

¹¹² *Id.* at 874.

¹¹³ 47 U.S.C. § 231 (2006).

¹¹⁴ See *Ashcroft v. ACLU*, 535 U.S. 564, 578-79 (2002).

COPA, by contrast, does not appear to suffer from the same flaw because it applies to significantly less material than did the CDA and defines the harmful-to-minors material restricted by the statute in a manner parallel to the *Miller* definition of obscenity. To fall within the scope of COPA, works must not only “depic[t], describ[e], or represen[t], in a manner patently offensive with respect to minors,” particular sexual acts or parts of the anatomy, they must also be designed to appeal to the prurient interest of minors and, “taken as a whole, lac[k] serious literary, artistic, political, or scientific value for minors.”¹¹⁵

[32] Indeed, these additional restrictions set COPA apart from the CDA. It is the “serious value” requirement that creates a First Amendment safeguard, which is entirely missing from the CDA.¹¹⁶ Importantly, the Court confined its holding to the community standards language without addressing further concerns regarding the statute,¹¹⁷ and remanded the matter for further proceedings.¹¹⁸ Upon remand, the Court issued a preliminary injunction, reasoning the ACLU would probably prevail on the merits.¹¹⁹ The Government appealed to the court of appeals, who affirmed the district court, and the Supreme Court again granted certiorari, leading to the decision in *Ashcroft v. ACLU* (“*Ashcroft II*”).¹²⁰

[33] In *Ashcroft II*, the Court enunciated the test to be used in evaluating COPA. The Court stated that courts “should ask whether the

¹¹⁵ *Id.* (alterations in original) (footnotes and citations omitted).

¹¹⁶ *Ashcroft v. ACLU*, 535 U.S. 564, 578-79 (2002).

¹¹⁷ *See id.* at 566, 585.

¹¹⁸ *See id.* at 586.

¹¹⁹ *See ACLU v. Ashcroft*, 322 F.3d 240, 271 (3d Cir. 2003).

¹²⁰ *Ashcroft v. ACLU*, 542 U.S. 656, 660 (2004).

challenged regulation is the least restrictive means among available, effective alternatives.”¹²¹ The Court further stated that:

The purpose of the test is not to consider whether the challenged restriction has some effect in achieving Congress’ goal, regardless of the restriction it imposes. The purpose of the test is to ensure that speech is restricted no further than necessary to achieve the goal, for it is important to ensure that legitimate speech is not chilled or punished.¹²²

[34] The Court concluded by clarifying that its “opinion does not hold that Congress is incapable of enacting any regulation of the Internet designed to prevent minors from gaining access to harmful materials.”¹²³ In light of the Court’s ruling in *Ashcroft II*, it might be impossible to draft a statute that governs the content of websites operated by escorts resembling modeling or lingerie websites. But what about attacking web locations, such as Craigslist, that allow escorts to advertise?

B. Craigslist Litigation

[35] Although most high-end escorts do not use Craigslist as a platform for advertising, it is worth noting the litigation. Jeff McDonald documented the pervasive nature of Craigslist in his article, *The Oldest Profession Finds a New Medium: Craigslist and the Sex Industry*.¹²⁴

[36] In his article, McDonald notes that Craigslist contains bulletin boards for 450 cities worldwide, receives nearly 50 million new classified posts each month, and has the eighth highest web-traffic ranking of any

¹²¹ *Id.* at 666.

¹²² *Id.*

¹²³ *Id.* at 672-73.

¹²⁴ Jeff McDonald, *The Oldest Profession Finds a New Medium: Craigslist and the Sex Industry*, 15 PUB. INT. L. REP. 42, 43 (2009) (footnotes omitted).

website in the United States.¹²⁵ In addition to the more mundane postings, users had access to more controversial ads through Craigslist's "Adult Services" section.¹²⁶ But before entering the "Adult Services" section, all "users [had to] agree to the site's Terms of Use,"¹²⁷ which mandates that users "agree not to post, email, or otherwise make available Content . . . that advertises any illegal service . . ." ¹²⁸ and verify that they were eighteen years or older.¹²⁹

[37] To ensure these ads did not violate the Terms of Use, Craigslist utilized computerized keyword searches to find ads likely to be in violation; unfortunately, law enforcement found that these searches were not very effective.¹³⁰ Because of the vast number of new posts each day, Craigslist did not "manually screen ads before they [were] posted;" rather, the company "depend[ed] heavily on user moderation to spot ads for illegal services."¹³¹ To this end, "most ad pages have a button to flag the ad as inappropriate;" however, the ads in the "Adult Services" section did not have this button because "they [were] pre-screened by Craigslist's computers."¹³² McDonald's research revealed that "the 'Adult Services' category was originally created because users had complained about

¹²⁵ *Id.*

¹²⁶ *Id.* On September 3, 2010, amidst the litigation brought by the Cook County Sheriff, Craigslist officially shut down its "Adult Services" section in the United States. See Claire Cain Miller, *Craigslist Says It Has Shut Its Section for Sex Ads*, N.Y. TIMES, Sept. 16, 2010, at B1, available at <http://www.nytimes.com/2010/09/16/business/16craigslist.html>.

¹²⁷ *Id.*

¹²⁸ *Craigslist Terms of Use*, 7(n), CRAIGSLIST.COM, available at <http://www.craigslist.org/about/terms.of.use> (last visited Nov. 17, 2010); see McDonald, *supra* note 124.

¹²⁹ McDonald, *supra* note 124.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

suggestive ads for sensual massage and escort services being interspersed with more benign content.”¹³³

[38] As previously noted, these ads prompted the Cook County Sheriff to file suit against Craigslist.¹³⁴ Most ads attached to the pleading filed in *Dart v. Craigslist, Inc.* leave little to the imagination and can be deciphered with little effort:

Sheriff Dart alleges that, notwithstanding Craigslist’s warnings, users routinely post advertisements in the erotic-services category “openly promis[ing] sex for money.” Based on the samples that he cites in his complaint most of the ads are veiled (sometimes very thinly) using code words. He alleges, for example, that “roses” means dollars and “greek” refers to anal sex. One advertisement states: “15 Min \$50 Roses . . . 1 hour \$150 Roses” – so much for the code – and “How About A G-R-E-E-K Lesson I’m A Great Student!!” Other sample advertisements are more ambiguous Many of the ads include nude or nearly-nude pictures, ostensibly of the person posting the ad or offering his or her services. Sheriff Dart cites the advocacy group “The Polaris Project” for the proposition that “Craigslist is now the single largest source for prostitution, including child exploitation, in the country.” Law enforcement officials (including plaintiff) regularly conduct prostitution stings using information culled from advertisements in Craigslist’s erotic-services category. By his own count plaintiff has arrested over 200 people through Craigslist since January of 2007. Some of those arrested were charged with pimping minors. He estimates that between January and November 2008 his

¹³³ McDonald, *supra* note 124, at 44.

¹³⁴ See generally *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 961-62 (N.D. Ill. 2009) (citations omitted). The ads were previously classified under the “Erotic Services” category, but Craigslist changed the name of this category to “Adult Services” in April 2009. See McDonald, *supra* note 124, at 45.

department devoted 3,120 man-hours and approximately \$105,081.00 to make 156 arrests.¹³⁵

[39] The district court granted Craigslist's motion for judgment on the pleadings citing to section 230 of the CDA.¹³⁶ Essentially, the CDA protects platforms such as Craigslist from civil and criminal liability regarding content posted by third-party users.¹³⁷ But the district court did allow law enforcement officers to continue targeting individuals who posted offensive or illegal materials for arrest.¹³⁸

[40] As a result of intense political pressure, Craigslist terminated its "Adult Services" category on September 3, 2010.¹³⁹ Originally, Craigslist replaced the link with a "censored" bar, but eventually eliminated the link and the bar entirely.¹⁴⁰ This elimination likely came as a result of a letter seventeen attorneys general sent to Craigslist in August 2010, in which they insisted the company close the section.¹⁴¹

[41] During a hearing before the House Judiciary Committee's subcommittee on Domestic Minor Sex Trafficking, representatives of Craigslist advised the committee on the company's decision to eliminate

¹³⁵ *Dart*, 665 F. Supp. 2d at 962-63 (citations omitted).

¹³⁶ *See id.* at 965, 969-70.

¹³⁷ *See* 47 U.S.C.A. § 230(c)(1) (West 2010) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.").

¹³⁸ *See Dart*, 665 F. Supp. 2d at 969 (citing *Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 672 (7th Cir. 2008)) ("Sheriff Dart may continue to use Craigslist's [sic] website to identify and pursue individuals who post allegedly unlawful content.").

¹³⁹ *Miller*, *supra*, note 126.

¹⁴⁰ *Id.*

¹⁴¹ *See id.*

the “Adult Services” category.¹⁴² Testimony indicated that Craigslist created the “Adult Services” category in 2001 as a result of user complaints about the ads appearing in other categories.¹⁴³ The Craigslist representatives also testified regarding Craigslist’s actions designed to curb and control the website’s use for exploitation and trafficking, including educational programs featuring law enforcement contacts to promote the reporting of trafficking; regularly meeting with non-profit and law enforcement experts; participating in the National Center for Missing and Exploited Children (“NCMEC”) and National Trafficking Hotline; providing victim-search interfaces for law enforcement; conducting a manual review of all adult-service ads before posting; employing technical screening and filtering; verifying all adult-service ads by phone; and adopting PICS content labeling.¹⁴⁴

[42] Although arguably self-serving, the testimony offered evidence that Craigslist did attempt to adopt practices that other sites do not offer and did cooperate with law enforcement when the site was improperly used to conduct illegal activity.¹⁴⁵ The testimony also noted that those who had advertised adult services on Craigslist had migrated to “countless other venues.”¹⁴⁶

[43] Evidence detailing the increased traffic to another classifieds site, Backpage.com, easily verifies the testimony offered at the hearing regarding migration of adult service providers away from Craigslist.¹⁴⁷

¹⁴² See *Domestic Minor Sex Trafficking: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Judiciary Comm.*, 111th Cong. 22-25 (2010) (statement of William Clinton Powell, Director, Customer Service and Law Enforcement Relations, Craigslist, Inc.) [hereinafter *Domestic Minor Sex Trafficking*].

¹⁴³ *Id.*

¹⁴⁴ *See id.*

¹⁴⁵ *See id.*

¹⁴⁶ *See id.*

¹⁴⁷ *See Miller, supra* note 126.

With potential revenue in the millions,¹⁴⁸ the closure of the “Adult Services” category likely will only have the effect of dispersing the ads to other sites. This leaves the same problems apparent with Craigslist’s “Adult Services” section. Instead of eliminating the problem (if that is possible), shutting down the category on Craigslist will more likely exacerbate the problem and make it harder for law enforcement to curtail because it will be more difficult to find perpetrators than before.

[44] Law enforcement and prosecutors must continue to monitor the content of ads posted at various websites and identify those using the classifieds websites for illicit means. Because it lacked sufficient screening, Craigslist was the easiest website for law enforcement officers to monitor.¹⁴⁹ But despite the set-back to law enforcement sting operations, removing the “Adult Services” section was a positive step, not only because of the reasons identified above, but because some individuals took advantage of site’s lack of screening to commit other crimes. One such person is the “Craigslist Killer,” who used Craigslist to victimize escorts, and in some cases, to commit murder.¹⁵⁰

[45] As such, removing sections lacking the proper screening methods could be the first of many steps to reduce the use of the Internet as a vehicle to advertise and peddle adult services, a step that is even more important when legislation and litigation prove ineffective.¹⁵¹ This will not likely solve the problem though, since more sophisticated platforms provide additional layers of security and high-end escorts will certainly continue using such platforms, making law enforcement’s job much more difficult.

¹⁴⁸ *See id.*

¹⁴⁹ *Cf.* Adrienne Jefferies, *Craigslist Under Fire for Kids on “Adult Services,”* READWRITEWEB (Aug. 11, 2010, 11:00 PM), http://www.readwriteweb.com/archives/craigslist_says_no_increase_in_reported_violations.php.

¹⁵⁰ *See generally* *The Craigslist Killer: Seven Days of Rage, “48 Hours” Examines the Shocking Final Chapter in the Case Against Accused “Craigslist Killer” Philip Markoff*, CBSNEWS (Aug. 20, 2010), http://www.cbsnews.com/stories/2010/08/20/48hours/main6791591_page2.shtml.

¹⁵¹ *See supra* Part III.

C. Current Law

[46] Current law governing prostitution likely is sufficient to curb street prostitution and unsophisticated Internet solicitation. The challenge before Congress is to develop legislation that will pass constitutional challenges and curtail the use of the Internet as a medium to advertise and solicit high-end escort services. But, as earlier discussion of the Supreme Court's rulings in *Miller* and the *Ashcroft* decisions indicated, such legislation may be impossible to achieve.

[47] Is Congress able to draft regulation that can carry out its intended goal without restricting free speech further than is necessary?¹⁵² Recently, in *United States v. Stevens*, the Supreme Court found a statute criminalizing the sale, creation or possession of depictions of animal cruelty overbroad because it restricted expression through subject matter.¹⁵³ The Court identified several First Amendment restrictions, such as obscenity, incitement, fraud, and "speech integral to criminal conduct,"¹⁵⁴ but held that "as a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."¹⁵⁵ It is natural to draw toward the "speech integral to criminal conduct" exception because high-end escort websites are clearly designed to advertise and solicit the illegal activity of prostitution.¹⁵⁶ But because websites for high-end escorts are so carefully designed and worded,¹⁵⁷ it is likely that courts would perceive legislation barring these websites as posing "a greater threat of censoring speech that . . . falls outside the statute's scope" than is

¹⁵² See *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004).

¹⁵³ See *United States v. Stevens*, 130 S. Ct. 1577, 1592 (2010).

¹⁵⁴ *Id.* at 1584 (citing *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949)).

¹⁵⁵ *Id.* (changes in original) (quoting *Ashcroft I*, 535 U.S. at 573).

¹⁵⁶ *Id.* (citing *Giboney*, 336 U.S. at 498).

¹⁵⁷ See *supra* notes 108 and accompanying text.

necessary to bar speech that is not “entitled to constitutional protection.”¹⁵⁸ As such, the ruling in *Stevens*, considered alongside the statutes deemed overbroad in Section III.A., demonstrates that enacting legislation barring Internet advertising for escort services, high-end or otherwise, will be next to impossible.

IV. CONCLUSION

[48] Questions arise regarding the utility of developing laws to regulate high-end escorts, as it appears these escorts are not forced into the sex industry, but rather make a rational, economic decision.¹⁵⁹ Furthermore, the nature of the high-end escort service – one of high prices and an intense and revealing screening process – subdues concerns regarding coercion and safety.¹⁶⁰

[49] Instead, focus should center on the several ways to enforce prostitution and solicitation laws in the Internet age. Law enforcement’s primary focus should be on finding individuals under the age of eighteen involved in the sex industry. The search for minors would necessarily include the monitoring of websites, and would strive to expose those who force or tempt minors to enter the sex industry. Secondly, law enforcement should increase its presence to stop street prostitution, especially in high crime and drug areas, as the two are commonly linked. Local governments should provide programs for substance abuse treatment and other services that would assist escorts who wish to abandon the trade but need help doing so. Finally, prosecutors should provide a safe harbor for escorts who are willing to cooperate with investigations and provide the insight that allows them to investigate deeper into the sex industry.

[50] As for high-end escorts, there is not much law enforcement agencies presently can do unless they are willing to reallocate resources

¹⁵⁸ *Reno v. ACLU*, 521 U.S. 844, 874 (1997).

¹⁵⁹ *See generally supra* Section II.B.

¹⁶⁰ *See supra* Section II.A.

from street enforcement to focus on the high end of the escort spectrum. But this is not the best use of limited resources and certainly not sustainable. Thus, until Congress develops legislation that adequately addresses high-end escorts' use of the Internet as tool to market and solicit their service without violating the boundaries of constitutionally protected speech, the Internet will remain a vehicle from which "the world's oldest profession"¹⁶¹ remains relatively risk free.

¹⁶¹ United States v. Brouillette, 478 F.2d 1171, 1173 (5th Cir. 1973) (internal quotations omitted).