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Women’s Work: Attitudes, Regulation, and Lack of Power within the Sex Industry

Heidi Machen

I. Introduction

Throughout the country, female erotic dancers are fighting for the right to be treated as employees rather than exploited as independent contractors. It is no surprise that employers, including those who employ erotic dancers, classify their workers as independent contractors: this arrangement allows them to pay little or no salary, provide few benefits, avoid messy paperwork, and avoid layoffs if the economy declines. Although the independent contractor classification harms erotic dancers by depriving them of job benefits and a minimum wage, most dancers have been reticent to challenge this employment status because of fear of losing their jobs and of the social stigma which will attach once they publicly identify themselves as erotic dancers.

Job classification is a divisive issue among erotic dancers. Many dancers are inclined to acquiesce to club owners, who choose the independent contractor employment classification, because the dancers fear that any action taken for self-protection will lead to retaliation by the employer. These fears are not unfounded; some women have been fired.

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within mere weeks of joining a lawsuit against the theatre in which they
worked. An intolerant and unsupportive society, combined with economic
necessity, discourages most women in the profession from taking a position
contrary to that of their employer.

As independent contractors, erotic dancers receive their incomes solely
from tips, receive no benefits, and must pay booking or stage-use fees to
the clubs in which they work. The only reason customers pay the often
exorbitant entrance fee which many strip clubs charge is to see the
dancers, yet the typical strip theatre does not share this revenue with the
performers. Instead, the dancers must pay the theatres for the privilege
of performing. Thus, the theatres profit twice—once from the clients and
once from the dancers. This means that the theatres indirectly receive a
portion of the dancers’ tips, a violation of the law in some states.

This Note will examine current legal issues regarding the independent
contractor status of erotic dancers and seek to provide insight into the
social climate in which these dancers fight for employee status. Section II
details some of the history of women in the workforce generally and of the
sex industry specifically. Section III analyzes the economic and social
barriers that inhibit erotic dancers from challenging unfair working
conditions, including misclassification as independent contractors. Section
IV summarizes the current litigation challenging the classification of erotic
dancers as independent contractors rather than as employees, and Section
V articulates the policy reasons supporting a guaranteed minimum wage for
erotic dancers. Finally, Section VI offers a proposed solution to the social
and legal problems which many sex workers face, a solution supported by
stated public policy.

6. See, e.g., Declaration of Catherine Sanders at para. 13, Vickery v. Cinema Seven,
2, Vickery (No. 959610).
8. Id.; see also Brazil, supra note 2. Booking fees, as the name indicates, are
purportedly used to pay the salaries of the persons who make out the dancers’ schedules for
the convenience of both the theatres and the workers. Strip Clubs ostensibly charge a
stage-use fee for the short-term lease of a stage upon which a performer dances several
times per work shift for the pleasure of customers who pay door charges to the theatres.
My familiarity with booking fees and stage-use fees results from many conversations with
dancers from the O’Farrell Theatre and other theatres in my capacity as a summer associate
for the Vickery plaintiffs’ counsel during the summer of 1994.
10. Id.
11. See, e.g., CAL. LAB. CODE § 351 (West 1989); N.Y. LAB. LAW § 196-d (Consol.
1995).
II. Women In The Workforce

After the American Revolution, married women were encouraged to work by “pleas to patriotism and by injunctions to render useful service . . . . Women knew they were essential workers, yet wage work was not to be essential in their lives,” since their lives were largely focused on marriage and homemaking.12 Men, regardless of their marital status, were the only ones who were offered economic incentives for productive work.13

Throughout Western Europe and the United States, many single, working-class women of the 19th century worked as domestics, sweated laborers, and household workers;14 however, low market values, dangerous working conditions, and dehumanizing treatment in service jobs led many of these women to choose a life of prostitution.15

Additionally, many women became prostitutes as a rebellion against the classist society that had denied them any hope of social mobility.16 With an income generated from prostitution, working-class women could dress in fine clothing, which society usually recognized as a symbol of the upper class.17 This subterfuge could help a woman attain identification with and respect from the upper class. “Dress was a particularly potent way to display and play with notions of respectability, allure, independence, and status and to assert a distinctive identity and presence.”18

In 1920, several significant events took place which may have legitimized women’s place in the workforce in modern America. In this year, suffrage was ratified, the League of Women Voters was established, and, most significant to the representation of women in the workforce, Congress created the Women’s Bureau in the Department of Labor and commissioned it to promote the welfare of working women.19

By 1970, forty-three percent of women sixteen years and older made up thirty-eight percent of the workforce.20 The choices of occupation for women, however, remained narrow. The majority of employed women still

12. ALICE KESSLER-HARRIS, OUT TO WORK: A HISTORY OF WAGE-EARNING WOMEN IN THE UNITED STATES 22 (1982).
13. Id. at 21.
15. ROBERTS, supra note 14 at 232-33.
16. Id. at 233-34; see also PEISS, supra note 14, at 63-65.
17. ROBERTS, supra note 14 at 234.
18. PEISS, supra note 14, at 63.
20. Id.
occupied gender-stratified and dead-end positions such as clerical workers, factory workers, and service workers. The few women who managed to reach the professional world were most likely teachers or nurses—caretaker roles which traditionally fell to women, even in a non-professional capacity. Further, wage disparity was readily apparent, with women making only 60.5% of the amount earned by men.

Even now, in the 1990s, women average only eighty cents to every dollar that men earn. This figure would seem to indicate an improvement in wages for women. However, according to Susan Faludi, men's salaries decreased during this period, which accounts for the lessening of difference between male and female earnings. The persistence of unequal pay makes clear that the working world does not place equal value on work performed by women.

Perhaps the first place that women entered the paid workforce, was as sex workers. Prostitution, after all, is commonly referred to as 'the oldest profession.' The allure of sex work is multifaceted. Significantly, while few qualifications are required to enter the sex industry, the financial rewards are usually great. This is one field of employment in which women generally do not compete with men but may still earn a salary which rivals that of a typical man. Considering that approximately eighty percent of women are working in the ten lowest paying job categories, and that the average woman can make more money as a stripper, lap dancer, or prostitute than she can as a child care worker, it is no wonder that a woman might choose an occupation within the sex industry.

Further, sex work can offer a woman a chance to set the rules—to be the one in charge—at least with her customers. For the most part, in an erotic theatre or in the field of prostitution, the woman may choose her client from among the available customers and may refuse to perform for or to remain with a customer at her will. The degree of unwanted sexual attention that a woman may have been subjected to for years in

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21. Id.; see also, KESSLER-HARRIS, supra note 12, at 303.
22. East, supra note 19, at 9.
23. Id.
26. Sex work is an all-encompassing term used to refer to a population of prostitutes, phone-sex workers, nude dancers, pornographic actors and models, and even artists' models. See generally SEX WORK (Priscilla Alexander & Frederique Delacourte eds., 1987).
28. Id.
29. It is my understanding, based on conversations with both erotic dancers and other sex workers, that female erotic performers and most prostitutes may decline to sell services to, or spend time with, customers whom they find objectionable.
more mainstream occupations may be the same or less in the sex industry, but more often than not, the sex worker is at least in a position to financially profit from it. Women have historically experienced difficulty attaining autonomy. Women may or may not enter the sex industry for the degree of autonomy its jobs offer, but this added benefit may become a major factor which keeps them in the profession.

However, once established in the profession, a woman is inhibited from improving her working conditions because of the social stigma of sex work. A sex worker has little or no credibility with those who determine public policy and who wield authority over conditions of employment. These figures of authority often share and may even help to shape the typical public sentiment about sex workers: sex workers lack intelligence and control over their lives.

III. Social Barriers to Challenging the Independent Contractor Status Within the Field of Erotic Dance

Independent contractors are part of a larger category known as contingent employees, a rapidly growing part of the labor force. Contingent employment also includes temporary and part-time workers. Contingency workers may be found in all parts of the labor market, from heavy industry to service work. These workers deviate from a full-time work arrangement, in that they work fewer hours and receive less benefits.

There is some debate over who benefits most from this arrangement. While there would be nothing intrinsically wrong with the fact that an employer benefits from a mutually satisfying arrangement, very little research has been done to gauge whether workers consider the independent contractor employment classification to their benefit. Although employers claim that it is to the benefit of an employee to be classed as an independent contractor because such classification offers the worker greater flexibility, employees are rarely, if ever, allowed to decide for themselves.

30. ROBERTS, supra note 14, at 307-08.
31. I feel confident in making this generalization because I have witnessed a sufficient number of people in professional capacities vociferously stereotyping sex workers. Memorably, I viewed a documentary on the life of Cicciolina, the Italian porn star turned parliament member with a group of museum professionals whose comments revealed that they did not take Cicciolina's political work seriously because of her past profession.
32. See, e.g., Christopher Cook, Stripped of Benefits, CAL. LAW., June 1994, at 25.
33. Id.
35. Id.
36. Id.
37. Id.
whether the classification suits their needs. Many workers who once had benefits as employees have been unilaterally reclassified as independent contractors, temporary workers, or part-time workers, without benefits, while performing the very same job.

As mentioned above, many strip clubs are attempting to classify their dancers as independent contractors. The economic reality for an erotic dancer is that she is often a student, a single mother, or unskilled in other work and lacks bargaining power to assure that her rights will be protected. As government funding is cut for college students and government funds for single mothers is hotly debated and sparingly doled out, more and more women are turning to erotic dance or other types of sex work to meet living expenses. In terms of monetary reward for minimal time expenditure, the sex industry has a lot to offer women who lack other kinds of work experience. Consequently, when business practices are unfair or pure “sexploitation,” an erotic dancer is most often not in a position to complain for fear of losing her job. Management makes it clear that an erotic dancer is highly expendable and this assures them of a compliant group of performers.

Workers often band together in the hopes that, through the use of a collective voice, they will be able to wield some power. This collective voice sometimes takes the form of unionization. Erotic dancers have tried to organize in several cities. In San Francisco, California, a Market Street Cinema dancer, Laddawan Passar, has attempted to form the Exotic Dancer’s Alliance, assisted by the Service Employees International Union, Local 790. Ms. Passar has made it her personal crusade to improve working conditions for dancers. She has filed complaints with several San Francisco city agencies, has engaged in various forms of activism, and has attempted to unify the dancers. Ms. Passar formed the Exotic

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38. Brazil, supra note 2, at A18.
39. John M. True III, Contingency Workers’ Frayed Safety Net, LEGAL TIMES, Dec. 13, 1993, at 7; see also Cook, supra note 32; see also Brazil, supra note 2.
40. See supra notes 1-3 and accompanying text.
41. See, e.g., Leonard, supra note 5, at 23.
42. See, e.g., Lillian Peterson, The Choices She Had to Make When Funds For College Were Cut, SACRAMENTO BEE, Aug. 2, 1993, at B15.
44. See Simon, supra note 27.
45. See Leonard, supra note 5, at 22.
46. Martin, supra note 3.
47. Leonard, supra note 5, at 21.
48. Id.
49. Id. Ms. Passar’s non-union activities include filing a lawsuit against her former employer, the Market Street Cinema. Susan Sward, Lap Dancers Want More Than Tips;
Dancer’s Alliance to address the issue of employment status, the issues of worker’s rights and harassment, and the issue of working conditions. However, the stigma of the occupation prevents many women from making their participation in the industry publicly known. Ms. Passar has encountered much resistance from sex industry workers who fear losing their jobs or making their identities public. It may be difficult, for example, to engage in picketing and to be taken seriously when such an activity would have to be performed in disguise, a ploy that has been resorted to by some erotic performers who are fearful of disclosing their identities in public.

Many women are simply uninformed or misinformed about their legal rights and worry that any attempt to challenge the status quo will worsen their working conditions. Naturally, this belief is fostered by club management who have much to lose if women discover that not only are they entitled to continue working under the same basic terms to which they are accustomed, but they are entitled to receive pay for it, rather than be required to pay the club management for the privilege. For example, in *Vickery v. Cinema Seven*, management instituted a misinformation campaign geared to persuade dancers at its theatre to oppose a lawsuit which contested the independent contractor status of the dancers. This misinformation campaign included statements such as: “The theater will close if the lawsuit is successful. You will all lose your jobs or be forced into fixed schedules with no flexibility.” The theatre management engaged in intimidation tactics, threatening to fire anyone who showed support for the lawsuit. Management enlisted the help of a few select...

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50. Exotic Dancer’s Alliance Agenda (on file with the author) (organization’s statement of purpose).
52. Conversation with Elliot Beckelman, attorney for the Hotel and Restaurant Employees Union, after a staged protest outside the O’Farrell Theatre in San Francisco, Cal. (July 6, 1994).
53. See Hamlin, supra note 4.
55. Declaration of Catherine Sanders at paras. 3-14, Vickery v. Cinema Seven, Inc., No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994); Declaration of Deanna Diaz at para. 3, Vickery (No. 959610); Declaration of Stephanie Friedland at paras. 1, 3-11, Vickery (No. 959610).
dancers\textsuperscript{58} to galvanize opposition to the lawsuit among the other dancers.\textsuperscript{59}

The idea of being an independent contractor versus being an employee may hold some semantic appeal for those women, and especially for young women, who are inclined to place high value on their independence.\textsuperscript{60} The image carries with it a hint of professionalism because it is mostly specialized skilled workers who are classed as independent contractors.\textsuperscript{61} Management of the O’Farrell Theatre in San Francisco advanced the idea that dancers who are independent contractors are women who have attained their “independence,” characterizing employees as “wage slaves, receiving a meager minimum wage.”\textsuperscript{62}

Women have been led to believe that they would be much worse off as employees. For example, one dancer from the O’Farrell Theatre of San Francisco commented on her independent contractor arrangement: “Now we can make an unlimited amount of cash—from tips alone—and work when we want to.”\textsuperscript{63} Prior to 1988, dancers at this particular theatre not only made unlimited tips and enjoyed complete work schedule flexibility, but also received a salary of $3.35 an hour, the minimum wage at that time, plus the standard benefits of employment, such as disability and unemployment insurance and whatever perquisites an employee is able to negotiate.\textsuperscript{64} These facts refute the belief that many dancers have: that they will be worse off as employees than as independent contractors.

Media greatly influences social attitudes and has traditionally characterized sex workers as a moral pestilence.\textsuperscript{65} The media may be instrumental in reducing the potential number of supporters of a fight against exploitation within the sex industry. Society’s moral code says that “bad girls” get what they deserve, even when they are a part of the legitimate work force and would otherwise deserve to have the benefits of

\textsuperscript{58} These pro-management dancers are analogous to “scabs” in a union strike in their pursuit of self-interest to the detriment of the long-term interest of the group.

\textsuperscript{59} Declaration of Catherine Sanders at paras. 9-12, Vickery v. Cinema Seven, Inc., No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994); Declaration of Deanne Diaz at para. 3, Vickery (No. 959610).

\textsuperscript{60} Declaration of Stephanie Friedland at para. 4, Vickery v. Cinema Seven, Inc., No. 959610 (Cal Super. Ct. filed Mar. 24, 1994).


\textsuperscript{63} Hamlin, \textit{supra} note 4.

\textsuperscript{64} Brazil, \textit{supra} note 2; \textit{see also} Declaration of Catherine Sanders at para. 4, Vickery v. Cinema Seven, Inc., No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994).

\textsuperscript{65} \textit{See}, e.g., Mark Richardson, \textit{Residents Cringe as Crimes Sully Community}, \textit{Ottawa Citizen}, Oct. 1, 1994, at C1.
any other service industry worker. This lack of support hits close to home for many dancers who are unable to tell family and often even friends about their source of income for fear of ostracism. An erotic dancer may find little community support from women and men who express animosity towards the profession or are at least confused about the issue. Without the emotional support of family and friends, many who might otherwise entertain the idea of filing lawsuits or otherwise advocating for their rights may be far less inclined to do so.

Finally, an additional hurdle for a woman who might otherwise fight for her rights in the sex industry is her own internal debate over whether sex work or pornography serves a positive or negative purpose and whether such work is deserving of respect. "There's a lot of internalized self-loathing [among dancers who] really don't believe they deserve to be paid something as basic as minimum wage . . . ." To add confusion to this internal debate, some sex-positive feminists view pornography as a necessary part of our free speech dialogue while other feminists view sex work as an evil which perpetuates negative sexual stereotypes. A woman who has a negative image of her own occupation may be less inclined to take action to better her position within that occupation.

IV. Legal Challenges to the Independent Contractor Status of Erotic Dancers

Many erotic theatres use the classification of independent contractor as a legal shield to defend decisions not to pay or provide benefits for their workers. However, a dancer is not an independent contractor simply because her employer has chosen this classification for her. This section will examine the evolution of independent contractor law, will articulate the factors considered by courts when determining whether a worker fits the legal definition of an independent contractor, and will examine these factors in relationship to the circumstances of employment for many erotic dancers.

Independent contractors are part of a larger category known as contingent workers. Contingent workers make up an estimated one-fourth to one-third of the national work force; this dramatic increase has taken place within the last ten years. Despite the prevalence of

66. Brazil, supra note 2; Martin, supra note 3, at 55.
68. See, e.g., Leonard, supra note 5, at 23.
71. See, e.g., THE RECORD, supra note 34.
independent contractors in the workforce, a 1984 study by the Internal Revenue Service determined that one in seven workers are wrongly classified as independent contractors.\textsuperscript{73}

The Internal Revenue Service has enumerated twenty factors which may be used in determining a worker's rightful classification for the purposes of paying taxes.\textsuperscript{74} They include such factors as whether working instructions are given by the employer, whether an employee is trained to perform services in a particular manner, whether the employer sets the hours of work, and whether work is done on the employer's premises.\textsuperscript{75} An affirmative response to these listed factors, along with others which show control by the employer, indicates employee status.\textsuperscript{76}

What distinguishes an employee from an independent contractor in the eyes of the courts? Courts apply various tests depending on the particular statutory law to be applied. As one court suggested:

When Gertrude Stein penned her oft-quoted 'A rose is a rose is a rose is a rose,' she was implying some universal qualities that defined and identified the 100 to 200 species of the flowering shrubs of Rosa. In contrast to the rose, when one examines the plethora of federal cases construing the varied and disparate federal statutes (ranging from the Internal Revenue Code, The Social Security Act, the Federal Labor Standards Act, Title VII of the 1964 Civil Rights Act to the Longshoreman's and Harbor Workers Compensation Act, etc.), one discovers the notable absence of comparable universal qualities that define and identify the status of employee so as to fit its meaning within all common and statutory definitions.\textsuperscript{77}

Strip clubs classifying their dancers as independent contractors generally violate the Fair Labor Standards Act.\textsuperscript{78} At common law employee status under the Act was measured by the degree of control which the alleged employer exercised or was entitled to exercise over the individual.\textsuperscript{79} In 1947, this test was replaced by the broader "economic realities" test.\textsuperscript{80} The economic realities test measures not only the degree

\begin{thebibliography}{9}
\bibitem{73} 137 CONG. REC. E3944-01 (1991) (statement of Tom Lantos).
\bibitem{74} See, e.g., Terence B. Stanaland, \textit{Contractor vs. Employee: Companies Have Reasons to Switch to Independents}, NEWS AND REC., Feb. 28, 1994, at 11.
\bibitem{75} Id.
\bibitem{76} Id.
\bibitem{79} Zippo, 713 F.2d at 36.
\end{thebibliography}
of control by the employer but also the degree of dependence of the individual upon the business to which they render services.\textsuperscript{81} This test looks at the total situation, taking into account the permanency of the relationship, the skill required, the investment in the work facilities, and the opportunities for profit or loss from the activities.\textsuperscript{82} \textit{Jeffcoat v. Alaska Department of Labor}\textsuperscript{83} and \textit{Reich v. Circle C Investments}\textsuperscript{84} added another factor to the economic realities test: the degree to which the alleged employer controls work performance. None of these factors are determinative, but are to be viewed in totality.\textsuperscript{85} The courts look to both the control an employer has over the alleged employee and to the economic dependence of the worker upon the specific company.\textsuperscript{86}

In 1989, \textit{S. G. Borello and Sons v. Department of Industrial Relations}\textsuperscript{87} added yet another factor to the economic realities test. This factor asks whether the service rendered is an integral part of the alleged employer’s business.\textsuperscript{88} The \textit{Borello} court determined that the statutory test of control may be satisfied even where complete control is lacking, so long as the owner retains pervasive control over the business as a whole, the worker’s duties are an integral part of the business, the nature of the work negates the need for detailed control, and adherence to statutory purpose favors finding employee status.\textsuperscript{89} The court determined this five factor test to be more appropriate than the narrow common law test for the purposes of far-reaching social legislation, such as the Labor and Social Security Acts and the Fair Labor Standards Act.\textsuperscript{90}

Sometimes workers are unilaterally and involuntarily reclassified by the employer as independent contractors without any fundamental changes in the working conditions. This can even occur among previously unionized labor, as seen in \textit{Yellow Cab Cooperative v. Workers’ Compensation Appeals Board}.\textsuperscript{91} Before 1976, Yellow Cab drivers in San Francisco were unionized employees.\textsuperscript{92} The company then switched to a system whereby

\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{84} Reich v. Circle C Investments, Inc., 998 F.2d 324, 327 (5th Cir. 1993).
\textsuperscript{85} Id.
\textsuperscript{86} See, e.g., MARC LINDER, MIGRANT WORKERS AND MINIMUM WAGES 190 (1992).
\textsuperscript{87} S. G. Borello and Sons v. Dept. of Indus. Rel., 48 Cal. 3d 341, 355 (1989) (holding that "sharefarmers" are classed as employees for the purpose of worker’s compensation coverage).
\textsuperscript{88} Id. at 355.
\textsuperscript{89} Id. at 355-58.
\textsuperscript{90} Id. (citing Bartels v. Birmingham, 332 U.S. 126, 130 (1947)).
\textsuperscript{92} Id. at 1291.
drivers leased cabs and were no longer considered employees.\footnote{93} In its
defense, Yellow Cab argued that drivers were independent contractors
because they “voluntarily” assumed the status.\footnote{94} According to the
defendant, one of the plaintiff drivers had voluntarily assumed independent
contractor status by describing himself as self-employed to hospital
personnel and the taxing authority.\footnote{95} The court correctly rejected this
argument and held that when no actual choice of work terms is offered by
the employer, a worker’s acquiescence to a particular characterization is not
evidence of a valid waiver of his or her rights.\footnote{96}

As in Yellow Cab Cooperative, some employers of erotic dancers have
unilaterally switched dancers from employees to independent contractors
without material changes in the work requirements.\footnote{97} Some women of the
erotic dance world, like the Yellow Cab drivers, have refused to accept the
fact that they have been unfairly classified as independent contractors.
From Alaska\footnote{98} to Texas,\footnote{99} from Minnesota\footnote{100} to California,\footnote{101} some
dancers are turning to litigation as a means of asserting their rightful
employee status. Each case has arisen from similar circumstances: a
working situation constructed by employers in order to deprive workers of
their rightful benefits and to further reap profit by charging the workers a
fee to work.\footnote{102}

Prior to 1988, dancers of the O‘Farrell Theatre of San Francisco were
classified as employees and were paid minimum wage in addition to their
tip income.\footnote{103} In 1988, dancers were allegedly coerced into signing new
agreements with the Theatre.\footnote{104} These new agreements classified the
dancers as independent contractors.\footnote{105} In 1992, an O‘Farrell Theatre
dancer filed a complaint with the Labor Commission charging the theatre

\footnote{93. Id.}
\footnote{94. Id. at 1301.}
\footnote{95. Id.}
\footnote{96. Id.}
\footnote{97. Martin, supra note 3, at 54, 85.}
\footnote{98. See, e.g., Jeffcoat v. Alaska Dept. of Lab., 732 P.2d 1073 (Alaska 1987).}
\footnote{99. See, e.g., Reich v. Circle C Investments, Inc., 998 F.2d 324 (5th Cir. 1993).}
\footnote{100. See Mark Brunswick, Jury: Deja Vu Dancers Are Club Employees, STAR TRIB., Nov.
15, 1994, at 1B.}
\footnote{102. See, e.g., Reich, 998 F.2d at 324; Vickery v. Cinema Seven, Inc., No. 970610 (Cal.
Super. Ct. filed Mar. 24, 1994).}
\footnote{103. See Brazil, supra note 2, at A-18; see also, Declaration of Catherine Sanders at para.
4, Vickery v. Cinema Seven, Inc., No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994); Martin, supra note 3, at 54.}
\footnote{104. Declaration of Catherine Sanders at paras. 3-6, 12, Vickery v. Cinema Seven, Inc.,
No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994).}
\footnote{105. See Brazil, supra note 2, at A18.}
with liability for unpaid worker's compensation benefits, unpaid minimum wage, and wrongfully collected stage-use fees. The Labor Commission decided in favor of the sole plaintiff, and the defendants appealed. During the appeal, the case settled out of court, thus setting no precedent for other dancers similarly situated.

In March 1994, two more dancers filed a class action lawsuit against the O'Farrell Theatre. Similar to the 1992 Labor Commission complaint, the plaintiff's complaint in Vickery v. Cinema Seven, Inc. alleged that the theatre was liable for unpaid worker's compensation benefits, wrongfully collected booking fees, and unpaid minimum wage. A contingent of other dancers later filed a motion to intervene in the suit, alleging that the lawsuit's plaintiffs did not adequately represent their interests and that they wished to remain independent contractors. The intervention suit was unexpected; it was unclear what motivation the intervening dancers had in retaining their independent contractor status.

Objectively speaking, the O'Farrell Theatre dancers enjoyed the same working conditions before they were re-classified as independent contractors as they did after the re-classification. The only difference was that the dancers received benefits and minimum-wage pay beyond their tip income before they were re-classified as independent contractors.

As in any class action suit, a common ploy of the defense is to cut its losses by preventing class certification. On closer inspection of the intervention suit, it became apparent that it was, in fact, initiated by the O'Farrell Theatre management. On April 6, 1994, Jim Mitchell, owner of the theatre, addressed a group of dancers at a mandatory meeting held at the theatre. During this meeting, he introduced the dancers to a lawyer named Richard Idell. Mitchell and various agents of the theatre proceeded to pressure the dancers to sign various papers in opposition to the lawsuit, to retain Idell as their attorney, and to buy and sell tickets to

107. Id.
110. See Hamlin, supra note 4, at E2.
111. See, e.g., Martin, supra note 3, at 54.
112. Id.
114. Declaration of Catherine Sanders at para. 3, Vickery (No. 959610); Declaration of Stephanie Friedland at paras. 3-5, Vickery (No. 959610).
a fund-raiser for legal fees. 115 The dancers were threatened, in both subtle and overt ways, with the loss of their jobs if they did not comply. 116 Agents of the theatre reminded individual women that they were keeping careful track of who had and had not signed a lawyer retainer agreement and that the management held the power to terminate non-compliant dancers. 117 On October 20, 1995, Judge William Cahill dismissed the intervention suit on demurrer. 118 He also certified a class of present and past dancers of the O’Farrell Theatre for the purposes of the class action. 119

The plaintiffs’ allegations in *Vickery* transcend obvious complaints about the lack of pay and benefits and the illegal “booking” and “stage-use” fees. The complaint also alleges that the O’Farrell Theatre’s management forced employees to agree to illegal conditions of employment and engaged in various kinds of unfair business practices. 120 For example, the law states that an employee may not waive employee status. 121 The complaint alleges that this group of employees were forced to do precisely that by signing agreements as independent contractors. 122

The complaint further charges the defendants with operation of an unlicensed talent agency. 123 When defendants established the independent contractor arrangement, the theatre employee responsible for scheduling dancers was moved from an in-house office to an office separated from the theatre by a city block. 124 The complaint alleges that this agent failed to obtain a talent license from the State Labor Commission as required by law. 125

115. Declaration of Catherine Sanders at paras. 3-7, *Vickery* (No. 959610); Declaration of Stephanie Friedland at paras. 5-10, *Vickery* (No. 959610); Martin, *supra* note 3, at 86.
116. Declaration of Catherine Sanders at para. 7, *Vickery* (No. 959610); Declaration of Stephanie Friedland at paras. 9-10, *Vickery* (No. 959610).
117. Declaration of Catherine Sanders at paras. 4-6, 12, *Vickery* (No. 959610); Declaration of Stephanie Friedland at paras. 9-10, *Vickery* (No. 959610).
118. *Vickery* v. Cinema Seven, Inc., No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994) (order for reassignment to plan 3 and resetting trial date; granting plaintiffs’ motion for reconsideration; approving class notice and procedures and restricting defendants’ and intervenors’ contact with class members; granting motion for judgment on the pleadings re: intervenors’ complaint with limited leave to amend).
119. Id. para. 2.
123. Id. at 21.
124. This separate office is located at 990 Geary Street in San Francisco, Cal.
An additional innovative cause of action included in the claim is "failure to provide uniforms."\textsuperscript{126} The theatre encourages, and clients expect, that certain attire be worn by the dancers.\textsuperscript{127} While many people might associate a uniform with a drab polyester coat or perhaps an apron, a uniform is legally defined to include any clothing of distinctive design or color which an employer requires the worker to wear as a condition of employment.\textsuperscript{128} Lingerie was never before described in such a mundane fashion.

"For women supposedly in control of their work lives, the dancers are required to follow a lot of other people's rules."\textsuperscript{129} In addressing the basic legal question—whether these workers are employees or independent contractors—\textit{Vickery} is quite similar to other legal battles which have been successfully fought by erotic dancers elsewhere.\textsuperscript{130} These other cases will undoubtedly be persuasive authority because of their factual similarities to the \textit{Vickery} case.\textsuperscript{131} These cases identified the factors described below,\textsuperscript{132} as germane to the distinction between employees and independent contractors.

\textbf{A. PERMANENCE OF RELATIONSHIP}

The longer a worker remains with the same employer, the more likely courts are to categorize that worker as an employee, rather than as an independent contractor.\textsuperscript{133} In general, dancers of the O'Farrell Theatre work at a theatre for several years\textsuperscript{134} and thus establish long-term relationships with their employers. These employers would most likely find it difficult to maintain, on a consistent basis, fresh new faces willing to perform the job. Quality control demands that clubs retain women who appeal to their clients; this leads to extended relationships with the pools of dancers who satisfy that need.

However, length of employment is not wholly determinative of employee status. Defendants in \textit{Reich v. Circle C Investments, Inc.}\textsuperscript{135} argued that the relevance of the permanent relationship between dancer and

\begin{thebibliography}{135}
\bibitem{126} Id.
\bibitem{127} Id.
\bibitem{128} Id. at 85.
\bibitem{129} Id. at 85.
\bibitem{121} Id.
\bibitem{130} Id.
\bibitem{131} Supra notes 77-90 and accompanying text.
\bibitem{132} Reich v. Circle C Investments, Inc. 998 F.2d 324, 328 (5th Cir. 1993).
\bibitem{133} Interview with Beth A. Ross, counsel for plaintiffs in \textit{Vickery v. Cinema Seven, Inc.}, No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994).
\bibitem{134} Reich, 998 F.2d at 328-29.
\end{thebibliography}
strip club was minimized by the fact that dancers were not restrained from seeking employment or from dancing at clubs other than the defendant's club. The court acknowledged the validity of this argument, but was not persuaded that it outweighed other relevant factors.\textsuperscript{136} The court's acceptance of this argument was perhaps overly generous. After all, many employees who accept positions with several different employers can be considered employees of each employer.

B. SKILL REQUIRED

If an employment position requires special skill, courts are more inclined to categorize that position as one of an independent contractor rather than that of an employee.\textsuperscript{137} Strip clubs are eager to have young, inexperienced workers\textsuperscript{138} who are unaccustomed to making the high salary the profession may command. Youth, inexperience, and the potential for significant financial reward make these workers less inclined to question working conditions.\textsuperscript{139} Of additional benefit to the employer is the fact that youth is a big draw for clients.\textsuperscript{140} As for the work itself, a job description might read, "Must be capable of strutting across a stage, removing clothing, and of making social and/or sexual contact with customers."\textsuperscript{141} Gone are the days of burlesque which some people\textsuperscript{142} consider a true art form.\textsuperscript{143} The argument that nude dancing is an art form has been attempted by at least one club-owner defendant but was rejected by the court. The court held that "the skill required for topless dancing was slight."\textsuperscript{144}

As a corollary to the measure of skill required, some courts also consider the degree of initiative required in the performance of the job when determining employee status; the greater the amount of initiative required, the more likely the worker is an independent contractor.\textsuperscript{145} As

\begin{footnotesize}
\begin{enumerate}
\item[136.] Id.\textsuperscript{ at 328-29.}
\item[137.] Id.\textsuperscript{ at 328.}
\item[138.] Martin, supra note 3, at 55.
\item[139.] Id.
\item[140.] Id.
\item[141.] In my capacity as a summer associate for the law firm representing the plaintiffs in Vickery v. Cinema Seven, Inc., No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994), I heard a dancer describe her job in this way. A visit to a typical strip club will substantiate this job description.
\item[142.] Luminaries such as burlesque queen Tempest Storm and cult film maker John Waters would include themselves in this category of nostalgic theatre connoisseurs.
\item[143.] This is not to say that present-day erotic dancers are not inventive and artistic in their presentation but to say that such skill is not required or expected.
\item[145.] See, e.g., Reich v. Circle C Investments, Inc., 998 F.2d 324, 328 (5th Cir. 1993); Brock v. Mr. W. Fireworks, Inc., 814 F.2d 1042, 1043 (5th Cir. 1987), cert. denied, 484 U.S. 924 (1987).
\end{enumerate}
\end{footnotesize}
for the initiative exerted by dancers, the court in *Reich* concluded that this element is neither satisfied by a dancer's ability to establish a rapport with customers nor by her costume and dance choices. The *Reich* court held that neither of these facts indicate sufficient initiative to demonstrate that a worker is in business for herself, or, in other words, that she is an independent contractor.

C. INVESTMENT IN WORK FACILITIES

A third factor courts will weigh in determining employee status is the extent to which a worker invests in the work facilities; greater worker investment indicates independent contractor status. Most employees are non-investors in the workplace. The policy underlying worker protection laws is that “workers without capital must submit to the authority of those who attach them to their capital.” A disparity in economic power typically places the investor in a position of authority over those who would be unable to finance their own business venture.

In the case of the typical strip club, the investment in the work facilities comes directly from the employer. The employer rents the building, constructs whatever internal environment is necessary (i.e. a stage and audience chairs), and hires the lighting and sound technician and management to run the operation. The dancers are dependent on their employers because they are less endowed to make these investments. In contrast to the major expenditure of running a theatre, a dancer generally limits her investment to costumes and a padlock. Such a minor and necessary expenditure on behalf of the dancer leads to a finding that the dancer is not in business for herself and thus is not an independent contractor.

D. OPPORTUNITY FOR PROFIT OR LOSS

Employer control over a dancer's opportunity for profit or loss leads to a finding of employee status for dancers. Club management influences this opportunity in several ways. The dancer, who works for tips alone, is vulnerable to an employer's whim regarding when she will

146. While there may be some latitude for costume choice, many clubs set particular boundaries for what is permissible attire. My familiarity with strip club dress codes derives from my discussions with dancers from the O'Farrell Theatre and elsewhere in my capacity as a summer associate with the law firm representing the plaintiffs in *Vickery v. Cinema Seven*, Inc., No. 959610 (Cal. Super. Ct. filed Mar. 24, 1994).
147. *Reich*, 998 F.2d at 328.
148. *Id.*
149. *Id.* at 327-28.
150. LINDER, supra note 86, at 194.
151. See *Reich*, 998 F.2d at 328.
152. *Id.* at 327-28.
153. *Id.* at 327.
work, how many hours she may work, and with whom she will have opportunity to come into contact. The employer schedules the dancer for certain time slots, with full authority to decide whether a dancer will work a popular, profitable Friday night, or a slower, less lucrative Monday day shift. The employer has final say concerning what area of the club the dancer will work in if there are a variety of performance options, and determines the length of a dancer’s shift and the amount of time she will spend performing on stage. Through choice of advertising venues and content of ads, the employer determines the type of clientele the dancer is likely to encounter. Finally, the employer sets a door fee which will be prohibitive to some potential customers and decides which customers will be granted or refused admittance at the door. In short, the employer has virtually complete control over a dancer’s opportunity for profit or loss. The only influence a dancer may have over her opportunity for profit or loss is by virtue of her personal interactions with the customer, and even those interactions are subject to the management’s scrutiny.

The fact that “a dancer’s initiative, hustle, and costume significantly contribute to the amount of her tips,” does not outweigh the theatres’ significant role in her opportunity for profit or loss. Further, the existence of tips alone is not indicative of independent contractor status. After all, waitresses and bellhops also receive tips but are still entitled to employee status.

E. INTEGRAL PART OF THE BUSINESS

A final factor courts will weigh in determining employee status is whether the worker is an integral part of the business: the more integral, or essential, a worker is to the business, the more likely a court will be to categorize her as an employee. The dancers are the central reason for customers to patronize strip-clubs. While some erotic theatres also show pornographic videos, such videos could be rented or seen at theatres which specialize in adult movies at less expense. The only reasonable

155. Id.
156. Id.
157. For example, San Francisco’s O’Farrell Theatre charges a thirty-dollar-per-person door fee. Martin, supra note 3, at 52.
158. Id.
159. Reich v. Circle C Investments, Inc., 998 F.2d 324, 328 (5th Cir. 1993).
161. Id.
162. Id. at 1077.
163. See Martin, supra note 3, at 53.
explanation for this willingness to suffer added expense is that the customers pay to see the dancers. In the truest sense of the word, the dancers are an integral part of the business; there is a symbiotic relationship between the theatre and the performer which indicates the employee status of these performers.

V. Policy Reasons to Enforce Minimum Wage Laws on Behalf of Erotic Dancers

Some may argue that workers who receive tips, such as erotic dancers, have less need to receive a guaranteed minimum wage. After all, the argument goes, why should it matter whether a worker is paid by a customer of the business or by the employer when she will end up with money in either scenario?

This argument is myopic. Independent contractors who depend solely on tips for their income are not assured of that income in the way that employees are. To further understand why this argument is unsound, we must probe the legislative reasoning behind minimum wage laws, as provided for under the Fair Labor Standards Act.

First, a minimum wage is intended to provide a "living wage." In the case of erotic theatres or other tip-dependent industries, there is never a guarantee that customers will frequent a business, much less that such customers will tip. Because tips are not a guaranteed substitute for wages, the onus is upon the employer to assure the worker of a living wage. Statutes and case law address the employer's obligation by stating that tips may not in any way substitute for a minimum wage.

Second, the owner of a business may not impose upon the community the social costs of maintaining a work force. Unemployment insurance, which is deducted from wages, provides a safety net for employees. Conversely, independent contractors are not eligible to receive unemployment benefits and thus may have to appeal to welfare in a worst-case scenario. Society should not have to provide a subsidy for unconscionable employers by footing the costs of social welfare.

164. This argument has been unsuccessfully used by restaurants contesting the even application of minimum wage laws to their wait staff. See, e.g., Cal. Drive-in Restaurant Ass'n et al. v. Clark et al., 22 Cal. 2d 287 (1943) (stating that the purpose of minimum wage laws would be compromised by allowing tips to substitute for all or part of the wage); Henning et al. v. Industrial Welfare Comm'n et al., 46 Cal. 3d 1262 (1943) (holding that tips are the sole property of the worker and may never be deducted from wages the employer owes the employee).


166. LINDER, supra note 86, at 119.

167. See, e.g., CAL. LAB. CODE § 351 (West 1989); Cal. Drive-in Restaurant Ass'n, 22 Cal. 2d 287; Henning, 46 Cal. 3d 1262.

168. LINDER, supra note 86, at 96.
Perhaps finally, minimum wage legislation was intended to serve as a
form of surrogate labor union. The typical minimum wage earners
tend to be women, younger workers, or minorities who might not be
protected otherwise. In order to guarantee erotic dancers of a “living
wage,” and in order to place that cost burden and the burden of protection
against unemployment correctly on employers rather than on society, we
must ensure that dancers receive the benefit of minimum wage laws.

VI. Proposal

This section offers three solutions to the social and legal problems that
many female sex workers face. First, the concept of harm reduction should
be applied to the occupation of erotic dance. Second, and related to the
change in attitudes which could result from an application of harm
reduction, legislators should give greater attention to involuntary independ­
ent contractors. Finally, programs should be funded which encourage
broader occupational options for women.

A. CHANGE IN ATTITUDES—THE CONCEPT OF HARM REDUCTION

Sex work has endured many obstacles and persevered through the ages.
Neither strict legislation, various types of negative attention, nor strategic
ignorance will likely effect its demise. Legislators have focused perhaps
an undue amount of regulation upon the field of sex work, creating a broad
class of victimless crimes. This regulation has penalized thousands of
women for pursuing a profession which is a readily available alternative to
dependence upon individual men in the roles of husband, father, or
significant other. No body of research conclusively proves that sex work
causes a particular harm, yet society has condemned it for centuries.
Consumption of commercial sex is viewed as a vice, alongside such
activities as gambling, drinking and drug use. Fostering acceptance for the
various forms of sex work can only lead to an improved quality of life
for those engaged in such work.

169. Id. at 98.
170. See id. at 97.
171. These regulations include laws against prostitution and rules governing the permissi­
ble acts which may be performed within a strip club. See, e.g., SAN FRANCISCO, CAL.,
POLICE CODE art. 15.3 § 1071.1 (1985); SAN FRANCISCO, CAL., POLICE CODE art. 2 § 215
(1985).
172. The title of the police detail assigned to prostitution—the “vice squad”—is indicative
of this view.
173. Even if certain types of sex work, such as prostitution, remain criminal, an active
acknowledgment and acceptance of sex work as a valid means of earning a living could
improve conditions by removing the shroud of anonymity that sex workers currently must
adopt.
Such acceptance would be fostered by an embrace of the concept of harm reduction. Harm reduction, propounded by such noted scholars as Joe McNamara of the Hoover Institute, calls for a decriminalization of all vices on the theory that a great deal of energy is wasted in an effort to curb those practices which are consensual and arguably harm only the consenting parties.\textsuperscript{174} The proponents of harm reduction call for society to mitigate the resulting harm, rather than continue attempts to stifle the conduct itself.\textsuperscript{175}

For example, in the context of drug use, harm reductionists advocate providing clean needles for addicts who will use drugs regardless of whether they have clean needles in the hopes that those addicts can at least benefit from HIV protection.\textsuperscript{176} This type of mitigation of individual harm is not without a greater benefit to society. An obvious benefit is that an addict who is prevented from contracting HIV will cost the public less in medical treatment bills. Also, such action will decrease the number of vectors for transmission. An additional, though perhaps less obvious, benefit is that a police officer who may be accidentally pricked by a needle in making a drug arrest would experience less risk of contracting HIV.\textsuperscript{177}

An often-heard conservative argument against harm reduction contends that if society condones certain conduct by reducing the resulting harm to individuals who engage in the conduct, more people will engage in that harmful conduct. However, providing clean needles to drug users, or even regulating drugs rather than criminalizing them, while producing great overall social benefit, would not necessarily lead to an increase in addicts. There is no evidence that a larger number of addicts exist in countries which have higher legal tolerance for drugs. In fact, evidence to the contrary exists.\textsuperscript{178} Further, social outreach to those who would appreciate help in freeing themselves from addiction is facilitated by an atmosphere of support rather than one of animosity.\textsuperscript{179}

Society marginalizes sex workers in the same way it does drug users; such an attitude is counter-productive in both instances. The theory of harm reduction, if applied within the context of erotic dance, would call for

\textsuperscript{174} Joe McNamara, Address at the San Francisco Chapter of the American Civil Liberties Union Annual Meeting (June 21, 1993).
\textsuperscript{175} Id.
\textsuperscript{176} Michael R. Aldrich, Ph.D., Address at the California Drug Policy Coalition/California NORML International Drug Reform Conference 1 (Aug. 21, 1993) (transcript on file with the author).
\textsuperscript{177} Id.
\textsuperscript{179} See Aldrich, supra note 177.
protection rather than harassment and derision of sex workers.\textsuperscript{180} If society did not, on some level, believe that these dancers deserve to be exploited,\textsuperscript{181} and if clubs did not classify them as independent contractors, erotic dancers would benefit from the unemployment insurance which accumulates from wages. This insurance protects the rest of society from having to support those workers, in times of poverty, through welfare programs. In addition, taxes are easier to collect directly from wages. The forms which the strategy of harm reduction take can range from an equal application of existing laws to special outreach and education. Some suggested forms are discussed below.

B. LEGAL PROTECTION OF CONTINGENT AND SEX WORKERS

Legislators should give increased attention to the plight of the often-involuntary contingent worker. For example, Representative Tom Lantos of California has sought to prohibit companies from using long-term contractors instead of offering the job security and benefits of full-time employment.\textsuperscript{182} While this move may be somewhat extreme, it correctly recognizes that independent-contract labor is subject to grave exploitation by companies who seek to save money by paying workers less, or not at all.

Another legislative solution might be to offer tax amnesty to employers who offer to re-classify workers who were in good faith wrongly classified as independent contractors.\textsuperscript{183} This move would encourage employers to admit their error without penalty. However, the danger in offering tax amnesty is that companies may prefer to take a calculated business risk, specifically, to misclassify workers and save money for perhaps several years, if such a strategy may later be rectified, penalty-free.

C. WORK ALTERNATIVES TO THE SEX INDUSTRY

Women are slowly gaining acceptance within the world of ideas and business. However, while a position in the business world may offer a woman a salary comparable to that available in the sex industry,\textsuperscript{184} any current occupational choice will likely have some gender-based drawbacks.

\textsuperscript{180} Harm reduction has most often been applied to drug use, but has recently appeared in the idea of providing condoms for prostitutes.
\textsuperscript{181} Martin, supra note 3, at 55.
\textsuperscript{182} True, supra note 39.
\textsuperscript{183} An effort at such a solution was unsuccessfully made in 1991; California Congressperson Tom Lantos introduced the “Misclassification of Employees Act” which would have provided for such tax amnesty. H.R. 3813, 102d Cong., 1st Sess. (1991); H.R. 4216, 102d Cong., 2d Sess. (1992). The Act was not passed into law.
\textsuperscript{184} I am advocating for an increase in options for women rather than condemning sex work as an occupational choice. I believe that choice of occupation should not be dictated by economic circumstances.
For instance, Clarence Thomas’ nationally broadcast Supreme Court confirmation hearings opened a dialogue about one vexing situation that many women face in the mainstream work environment—sexual harassment.185

Women have traditionally been forced to work in underpaid professions. There are at least two apparent solutions to that situation. These solutions are not necessarily mutually exclusive. One solution requires changing society’s value system to promote greater appreciation for “women’s work,”186 such as teaching, mothering, nursing, cooking, etc.

This particular route requires a wholesale restructuring among a population which may not recognize any benefit from such a change in attitude.

The other solution, which would be arguably easier to implement, is to support and encourage women who enter non-traditional fields. Several agencies and organizations specialize in helping women in the sex industry make transitions into other work.187 Organizations such as the American Association of University Women focus on educating young girls through such efforts as science and math events for girls exclusively and by fostering positive role models: women who promote their outside-the-home professions to schoolchildren.188 The AAUW has also followed the lead of the Ms. Foundation in implementing a “Take Our Daughters to Work Day.”189

“Take Our Daughters to Work Day” is a day for girls to accompany their employed mothers190 and to witness the fact that many women perform societal functions in addition to those of wife and mother. The world is replete with images of women which narrowly categorize them. Perhaps “Take Our Daughters to Work Day” is one way in which this ubiquitous and limiting conditioning can be countered.

This specially organized event is not without its critics, however. For instance, Katha Pollitt said:

If a girl’s mother is a construction worker or a professor or a tuba player, it’s a safe bet her daughter already sees the advantage of bucking gender stereotypes. If, as is vastly more likely, her mom

185. See, e.g., Morning Edition (National Public Radio, July 26, 1995) (transcript on file with the author). In this interview, California Senator Barbara Boxer commented, “If you look at the Anita Hill-Clarence Thomas case, which was brought into the public and it was embarrassing, it was uncomfortable, but it started a dialogue across this nation . . . .” Id.
186. I intend this term to mean work traditionally performed by women.
187. The Mary Magdelen Society in Los Angeles, Cal., and COYOTE (“Call Off Your Old Tired Ethics”) in San Francisco, Cal., are examples of such organizations.
188. EVA MERRICK, A WOMAN’S PLACE IS IN THE WORLD (Am. Ass’n of Univ. Women, Cal. State Div. and S.F. Branch) (pamphlet on file with the author).
189. I served as Public Policy Chair to the AAUW’s San Francisco Branch in 1992-93 and thus have personal knowledge of this implementation.
190. This practice is undoubtedly not limited to a girl’s legally recognized “mother.”
belongs to the 77 percent of women who are cramped into female-ghetto job categories (clerical, sales, secretarial, nursing, etc.), going to work with her mother will open a girl’s eyes to how hard her mother works—and that too is important—but how will it suggest another life?\(^{191}\)

Despite Ms. Pollitt’s criticism, this program serves its intended purpose by making visible a greater number of options to girls.

VII. Conclusion

The ponderous process of litigation and the lack of social support for dancers reward strip theatres by permitting them to profit from unfair business practices.\(^{192}\) For instance, “by charging stage fees and cutting out employment costs, the [O’Farrell Theatre] may come out ahead as much as $2 million a year.”\(^{193}\) Each day brings a fresh batch of theatre customers who pay a full door charge to the theatres to see dancers who are, ironically, also paying the theatres.

If nothing else, however, the Vickery suit, and other similar suits, may have commanded the attention of theatre managements and dispelled some unrealistic images of erotic dancers held by the public.\(^ {194}\) In fact, these dancers are just like other exploited members of the work force. Hopefully, in time, and through the efforts of activist dancers and those who support them, the law will acknowledge their equal status.

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192. See, e.g., Martin, supra note 3, at 54.
193. Martin, supra note 3, at 54.
194. Sex workers are rarely depicted as leading average human lives. Movies glamorize the high-class call girl who lives a jet-set life or is rescued from her profession by a wealthy and invariably handsome man. Movies illustrating this point include PRETTY WOMAN (Touchstone 1991) and the recently released HEIDI FLEISS: HOLLYWOOD MADAM (In Pictures 1996). Erotic dancers are portrayed as consorting with Mafioso and leading a generally colorful life. These images are contrasted with gritty, dramatic images of street prostitutes. Perhaps the press coverage of erotic dancers who are trying to gain the respect which employee status and benefits accord will cause some people to see erotic dancers in a more realistic light.