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SEX EDUCATION AND RAPE

*Michelle J. Anderson**

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INTRODUCTION

In the law of rape, consent has been and remains a gendered concept. Consent presumes female acquiescence to male sexual initiation. It presumes a man desires to penetrate a woman sexually. It presumes the woman willingly yields to the man's desires. It does not presume, and of course does not require, female sexual desire. Consent is what the law calls it when he advances and she does not put up a fight.

The law currently allows a man to penetrate a woman without discussing the prospect of the act with his partner, without discovering whether she is delighted or repulsed by the idea. It allows him to assume consent based on a range of things, including: 1) her silence or failure to fight him off physically, 2) her nonverbal behavior, and 3) intimacy—such as kissing, fondling, or oral sex—that the two engaged in earlier. In another article,¹ I explained why the assumption of agreement to sexual penetration under these conditions is incorrect: 1) people sometimes experience peritraumatic dissociation and paralysis when confronted with sexual aggression, which causes silence and stillness but does not suggest agreement, 2) men overestimate the extent to which women's nonverbal behavior indicates sexual interest, and 3) people substitute other intimacy for penetration in order to avoid the health risks associated with it, so

* Dean and Professor of Law, CUNY School of Law, B.A. University of California at Santa Cruz; J.D. Yale Law School; LL.M. Georgetown University Law Center. I would like to thank Mary Lu Bilek, Rebecca Bratspies, Sue Bryant, Angela Burton, Natalie Gomez-Velez, Gavin McCormick, and Sarah Valentine for their insight and critique of this Article. I would like to thank Douglas Cox, Angela Kofron, Julie Krishnaswami, and Dana Ramos for invaluable assistance.

1. Michelle J. Anderson, *Negotiating Sex*, 78 S. CAL. L. REV. 1401 (2005 [hereinafter *Negotiating Sex*]); see also Michelle J. Anderson, *Rape Law Reform Based on Negotiation: Beyond the Yes and No Models*, in CRIMINAL LAW CONVERSATIONS 295 (Paul H. Robinson, et al., eds., Oxford Univ. Press 2009).

prior instances of intimacy cannot be interpreted to mean agreement to penetrative acts.² “Consent,” as expressed by silence and failure to fight back, nonverbal behavior, or prior intimacy, is not equivalent to agreement to sexual penetration or the desire for it.

I have argued elsewhere that the kind of thin consent that the law focuses on is not enough ethically and it should not be enough legally to justify sexual penetration.³ I advocate sexual negotiation, where individuals discuss sexual desires and boundaries and agree to engage in penetration before it occurs, except under circumstances in which the partners have a reasonable basis to assess one another’s nonverbal behavior.⁴ I argue that not only is verbal consultation about desire ordinarily ethically necessary before most acts of sexual penetration, it should be legally required.⁵ Consultation to ascertain sexual desires and boundaries assures that both parties desire penetration.

One challenge often posed by those who object to a legal requirement of negotiation before penetration is that people do not know how to engage in the required consultation.⁶ This Article attempts to address that challenge. Although teens and young adults increasingly do communicate about desires and boundaries,⁷ mainstream media offers few examples of sexual negotiation and sex education in schools rarely teaches it.

Part I of this Article describes what we know about the sexual experiences of teens and young adults to provide context for the argument. Part II describes the damaging messages about sexuality and gender that the popular culture teaches, and highlights their impact on sexual health, autonomy, equality, and pleasure. Part III surveys sex education programs in schools, which avoid discussions of sexual desires and boundaries, except for the boundary of abstinence, defined as waiting to engage in heterosexual, vaginal intercourse until marriage. Part IV proposes that sex education programs teach sexual negotiation to prevent rape and to increase sexual health and pleasure.

2. For a fuller analysis of prior instances of intimacy and subsequent consent, see Michelle J. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS L.J. 1465 (2003).

3. Anderson, *Negotiating Sex*, *supra* note 1, *passim*.

4. *Id.*

5. *Id.*

6. See Anderson, *Negotiating Sex*, *supra* note 1.

7. See *infra* notes 116–117 and accompanying text.

I. TEENS' SEXUAL EXPERIENCE

To understand the importance of sex education, it helps to begin with the sexual behavior of teens, those whom formal programs about sexual education in schools aim to educate. From the outset, however, it is important to note that studies of teen sexual behavior assume (and reinforce) heterosexuality and so give us little insight about same-sex erotic behavior.⁸

About half of high school students report having had sex.⁹ By the time they graduate from high school, almost two-thirds of students report that they have engaged in sex.¹⁰

Does oral sex count as "sex"? "Teens are evenly divided on whether or not oral sex is sex,"¹¹ and most surveys on sexuality are too demure to specify the point. What we do know is that about 55 percent of teens have had oral sex with someone of the opposite sex and almost a quarter of teens have had oral but not vaginal sex.¹² Interestingly, about a quarter of sexually active adolescents explain that they have engaged in oral sex in order to avoid intercourse and the risks associated with it.¹³

Do teens use contraceptives when they first engage in heterosexual, vaginal intercourse? Many do, but a sizable minority does not. About 25 percent of female teens and 18 percent of male teens report that they used no method of contraception the first time they engaged in sexual

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8. James McGrath, *Abstinence-Only Adolescent Education: Ineffective, Unpopular, and Unconstitutional*, 38 U.S.F. L. Rev. 665, 681–685 (2004).
 9. KAISER FAMILY FOUND., *SEXUAL HEALTH OF ADOLESCENTS AND YOUNG ADULTS IN THE UNITED STATES 1* (2008), www.kff.org/womenshealth/upload/3040_04.pdf [hereinafter *SEXUAL HEALTH SURVEY*]. There are some racial disparities on this question: "African-American high school students are more likely to have had intercourse (67%) compared to White (44%) and Hispanic students (52%). 16% of African-American high school students and 8% of Latino students initiated sex before age 13 compared to 4% of White students." *Id.*
 10. KAISER FAMILY FOUND., *NAT'L SURVEY OF ADOLESCENTS & YOUNG ADULTS: SEXUAL HEALTH KNOWLEDGE, ATTITUDES AND EXPERIENCES 12* (2003), <http://www.kff.org/youthhivstds/3218-index.cfm> [hereinafter *NAT'L SURVEY OF ADOLESCENTS & YOUNG ADULTS*].
 11. KAISER FAMILY FOUND. and SEVENTEEN, *VIRGINITY AND THE FIRST TIME: A SERIES OF NATIONAL SURVEYS OF TEENS ABOUT SEX 2* (2003), <http://www.kff.org/entpartnerships/upload/Virginity-and-the-First-Time-Summary-of-Findings.pdf> [hereinafter *VIRGINITY SURVEY*] (national random sample telephone survey with 508 teens ages 15 to 17).
 12. *SEXUAL HEALTH SURVEY*, *supra* note 9, at 1.
 13. *NAT'L SURVEY OF ADOLESCENTS & YOUNG ADULTS*, *supra* note 10, at 3.

intercourse.¹⁴ After the first time, the use of contraceptives appears to become even spottier: only 62 percent of currently sexually active high school students report using a condom the last time they had sexual intercourse.¹⁵

In the United States, teens have one million unintended pregnancies each year,¹⁶ about half of which result in childbirth.¹⁷ Nearly one in four sexually active young people contracts a sexually transmitted disease (STD) each year, and one-half of new HIV infections in this country occur among people under the age of 25.¹⁸

How does teen sex occur? Most teens say that sex the first time is unplanned; it is something that “just happens.”¹⁹ Alcohol and drugs may contribute to the conditions of many teens’ first experience:

Part of the reason so many teens may perceive the “first time” experience as unplanned may be the involvement of drugs or alcohol. Eight in 10 have the impression that alcohol or drugs are a part of many teens’ first sexual experience, and nearly one in five sexually active teens surveyed said that they were using drugs or alcohol when they lost their virginity.²⁰

After the first time engaging in sex, alcohol and drug use appear to become more common factors. Almost a quarter of sexually active high school students report using alcohol or drugs during their most recent sexual encounter.²¹ More than one in five sexually active teens has engaged in unprotected sex while intoxicated.²²

14. SEXUAL HEALTH SURVEY, *supra* note 9, at 2 (“Research has shown that those who reported condom use at their sexual debut were more likely than those who did not use condoms to engage in subsequent protective behaviors.”).

15. *Id.*

16. KAISER FAMILY FOUND., IT’S YOUR (SEX) LIFE: YOUR GUIDE TO SAFE & RESPONSIBLE SEX 6 (2005), www.kff.org/youthhivstds/upload/MTV_Think_IYSL_Booklet.pdf.

17. Barbara Dafoe Whitehead, *The Failure of Sex Education*, ATLANTIC MONTHLY, Oct. 1994, at 73 (“About 37 percent of teenage pregnancies end in abortion and about 14 percent in miscarriage.”).

18. NATIONAL SURVEY OF ADOLESCENTS & YOUNG ADULTS, *supra* note 10, at 12. *See also* SEXUAL HEALTH SURVEY, *supra* note 9, at 2 (“An unpublished 2008 CDC study finds that among female adolescents ages 14 to 19, one in four (26%) either has HPV, chlamydia, HSV-2 infection or trichomoniasis, with HPV accounting for the vast majority of infections. African-American girls had a higher STI prevalence (48%) than Whites (20%) and Latinas (20%)”).

19. VIRGINITY SURVEY, *supra* note 11, at 3.

20. *Id.*

21. SEXUAL HEALTH SURVEY, *supra* note 9, at 3.

22. NAT’L SURVEY OF ADOLESCENTS & YOUNG ADULTS, *supra* note 10, at 3.

About a third of teens report feeling pressure to have sex.²³ Boys “feel more pressure to ‘have sex’ by a certain age, and they are twice as likely as girls to say that sex ‘is expected in a relationship.’”²⁴

The statutory rape of preadolescent minors is a common problem. Nine percent of sexually active adolescents, for example, say they were 13 or younger when they first had sexual intercourse.²⁵

Traditionally defined forcible rape is also common. Almost 10 percent of high school students have been “physically forced to have sexual intercourse.”²⁶ Not surprisingly, females report having been physically forced more often than males, although the number for males is also substantial, 11 percent and 5 percent, respectively.²⁷

Teens are engaged in sexual behavior. That sexual behavior frequently includes oral sex and heterosexual vaginal intercourse. Teens and young adults use alcohol and drugs frequently when engaging in sexual behavior. They do not use contraceptives consistently. They feel pressure to engage in sex. Among teens, STDs, unwanted pregnancy, preadolescent statutory rape, and forcible rape are common problems.

II. MESSAGES ABOUT SEX IN THE POPULAR CULTURE

Where do children, teens, and young adults learn about sexual behavior? Although parents top the list, more than half of teens have never had a conversation with their parents about sexual decision-making and how to know when they are ready to have sex; fewer still have discussed birth control or STDs with their parents.²⁸ Close to 40 percent of sexually active teens say their parents do not know they are sexually active.²⁹ Just one in ten teens talks to a parent about the decision to have sex with

23. *Id.*

24. KAISER FAMILY FOUND. and SEVENTEEN, DECISION MAKING: A SERIES OF NATIONAL SURVEYS OF TEENS ABOUT SEX 3 (2000), <http://www.kff.org/youthhivstds/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=13538> [hereinafter DECISION MAKING].

25. NAT'L SURVEY OF ADOLESCENTS & YOUNG ADULTS, *supra* note 10, at 3.

26. SEXUAL HEALTH SURVEY, *supra* note 9, at 1.

27. *Id.*

28. KAISER FAMILY FOUND. & SEVENTEEN, COMMUNICATION: A SERIES OF NATIONAL SURVEYS OF TEENS ABOUT SEX 2 (2002), <http://www.kff.org/entpartnerships/upload/Teens-and-Sexual-Health-Communication-Summary-of-Findings.pdf> [hereinafter COMMUNICATION] (national random sample survey of 503 teens ages 15 to 17).

29. *Id.* at 2.

a partner before engaging in it.³⁰ On this point, teens are not talking to their doctors either; fewer than one in five have talked to a doctor about sexual decision-making or how to know when they are ready to have sex.³¹

In addition to what they learn from parents and doctors, teens learn about sex and sexuality from sex education in schools and popular media.³² Part III of this Article addresses sex education in schools, but this Part focuses on popular media.

The amount of popular media children watch is massive. Five years ago, the average child or teen consumed six and a half hours of media per day, which included watching television, surfing the net to frequent chat rooms, downloading videos on YouTube, and listening to music.³³ Since that time, there has been a huge increase in media consumption among youth. Today, through multitasking, youth pack in almost eleven hours of media content into the seven and a half hours they spend consuming media each day.³⁴ This popular media includes a high level of sexual content.³⁵

Sixty-five percent of American children have televisions in their bedrooms.³⁶ Research indicates that this arrangement increases children's exposure to televised sexual content.³⁷ Additionally, the more hours of television children watch, the more sexual the content of the programming they view.³⁸

30. *Id.* at 2. Experts say that kids whose parents talk with them about sex are more likely to wait longer before they have sex, and to use birth control or protection when they do. *Id.*

31. *Id.* at 3.

32. NAT'L SURVEY OF ADOLESCENTS & YOUNG ADULTS, *supra* note 10, at 4–5.

33. AM. PSYCHOLOGICAL ASS'N, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS 5 (2007) [hereinafter AM. PSYCHOL. ASS'N. REP.].

34. KAISER FAMILY FOUND., GENERATION M2: MEDIA IN THE LIVES OF 8- TO 18-YEAR-OLDS 2 (2010), <http://www.kff.org/entmedia/upload/8010.pdf>.

35. AM. PSYCHOL. ASS'N. REPORT, *supra* note 33, at 5

36. Janna L. Kim et al., *Sexual Readiness, Household Policies, and Other Predictors of Adolescents' Exposure to Sexual Content in Mainstream Entertainment Television*, 8 MEDIA PSYCHOL. 449, 452 (2006).

37. *Id.* at 464 (“Having a TV in the bedroom emerged as the strongest predictor of the relative amount of sexual content [children] viewed. Irrespective of the average amount of TV they viewed, teens who had TVs in their bedrooms viewed more content that was sexually oriented than teens who did not have this privilege”).

38. *Id.* at 462. (“teens who viewed more TV in general also viewed higher amounts of sexual content on TV. Among the various demographic predictors, Black adolescents viewed more content on TV that was sexually oriented than did teens from other ethnic groups. In addition, age emerged as a significant negative predictor, such that younger adolescents were viewing heavier levels of sexual content at follow-up than older adolescents, relative to their total TV viewing amounts”).

A study of 1,700 teens indicates that the more sexual the content they view on television, the more likely teens are to engage in sexual intercourse sometime during the subsequent year, controlling for sexual activity at baseline, as well as a dozen other factors.³⁹ Researchers note:

Heavy exposure to sexual content on television related strongly to teens' initiation of intercourse or their progression to more advanced sexual activities (such as "making out" or oral sex) apart from intercourse in the following year. Youths who viewed the greatest amounts of sexual content were two times more likely than those who viewed the smallest amount to initiate sexual intercourse during the following year or to progress to more-advanced levels of other sexual activity. In effect, youths who watched the most sexual content "acted older": a 12-year-old at the highest levels of exposure behaved like a 14- or 15-year-old at the lowest levels.⁴⁰

Interestingly, talk about sex on television had "virtually the same effect on teen behavior" as visual depictions of sexual activity.⁴¹

"Sexual content" in television programming may sound like a neutral concept to many. To some, even sexual content that hastens advanced sexual activity and intercourse among adolescents may sound neutral. But the sexual content portrayed on television is not neutral, and it does not feature messages that educate youth for pleasurable and responsible sexual behavior.

Sexual content on television celebrates uncommunicative (almost exclusively heterosexual) intercourse, in which two people do not practice safe sex or discuss their desires and boundaries. Sex on television "is frequently depicted as a game or competition."⁴² Often, popular media

39. *Id.* at 450 ("Collins et al. (2004) completed a prospective study that partially addressed this issue. In a national telephone survey of more than 1,700 adolescents, they found that the proportion of an adolescent's TV viewing that included sexual content predicted intercourse initiation and advancing noncoital sexual activity over the subsequent year").

40. RAND CORP., DOES WATCHING SEX ON TELEVISION INFLUENCE TEENS' SEXUAL ACTIVITY? 2 (2004), http://www.rand.org/pubs/research_briefs/RB9068/index1.html [hereinafter SEX ON TELEVISION] ("Analysts surveyed a national sample of households containing an adolescent from 12 to 17 years old. A total of 1,762 adolescents were asked about their sexual experiences and also their television-viewing habits and, one year later, were surveyed again"). The study concluded: "Reducing the amount of sexual talk and behavior on television, or the amount of time that adolescents are exposed to them, could appreciably delay the onset of sexual activity."

41. SEX ON TELEVISION, *supra* note 40, at 2.

42. Kim et al., *supra* note 36, at 450.

portrays sex as something that happens by instinct rather than by decision: two people make eyes at each other across a crowded party, the music swells, and in the next scene they are having sex. The glamour and spontaneity of sex are overemphasized, and rarely are emotional or physical risk, protection, or sexual decision-making featured.⁴³

To make it worse, sexual content on television is pervasively sexist.⁴⁴ An in-depth study of the sexual content of television by the American Psychological Association (APA) indicates, “[m]assive exposure to media among youth creates the potential for massive exposure to portrayals that sexualize women and girls and teach girls that women are sexual objects.”⁴⁵

The APA explains what it means to “sexualize” in this way:

Sexualization occurs when a person’s value comes only from his or her sexual appeal or behavior, to the exclusion of other characteristics; [or] a person is held to a standard that equates physical attractiveness (narrowly defined) with being sexy; [or] a person is sexually objectified—that is, made into a thing for

43. Kim et al., *supra* note 37, at 450 (“Indeed, in their study of more than 1,000 TV programs, Kunkel and his colleagues (2003) found that only 15 % of programs with sexual content made reference to sexual risk or responsibility, and only 1% included sexual risk or responsibility as a major theme.”).

44. Popular portrayals of sex are almost invariably heterosexual and intraracial, as well.

45. AM. PSYCHOL. ASS’N. REPORT, *supra* note 33, at 5. See also *id.* at 6:

On television, young viewers encounter a world that is disproportionately male, especially in youth-oriented programs, and one in which female characters are significantly more likely than male characters to be attractive and provocatively dressed. Sexual comments and remarks are pervasive on television, and research has shown that they disproportionately objectify women. . . . 11.5% of the verbal sexual messages coded involved sexually objectifying comments, nearly all of which were about women. . . . 23% of the sexual behaviors coded were leering, ogling, staring, and catcalling at female characters. . . . In their analysis of sexual harassment on prime-time programming, Grauerholz and King (1997) reported of the 81 episodes analyzed, 84% contained at least one incident of sexual harassment, with an average of 3.4 incidents per program. The most frequent acts were sexist comments (33.3% of the incidents) in which a wide variety of deprecating words were used to describe women (e.g., broad, bimbo, dumb ass chick, toots, fox, babe, blonde). The next most frequent occurrences were verbal sexual comments (32% of the incidents). These comments typically focused on women’s bodies or body parts, especially breasts, which were referred to as jugs, boobs, knockers, hooters, cookware, and canned goods. The third most common category was body language (13%) and generally involved men or adolescent boys leering at women or girls. In total, the authors reported that approximately 78% of the harassment focused on demeaning terms for women or on the sexualization of their bodies.

others' sexual use, rather than seen as a person with the capacity for independent action and decision making; [or] sexuality is inappropriately imposed upon a person.⁴⁶

The APA describes the frequency of sexualizing imagery in mainstream media: "Girls (and boys) grow up in a cultural milieu saturated with sexualizing messages. Throughout the U.S. culture, and particularly in mainstream media, women and girls are depicted in a sexualizing manner. These representations can be seen in virtually every medium, including prime-time television programs."⁴⁷

Television is not the only problem, of course. Magazines, music videos, and advertising, for example, contain images and ideas that sexualize women. Young women's magazines, for example, are usually devoted to teaching females how to hold the male gaze:

One of the dominant themes about sexuality reported across . . . studies and across magazines is that presenting oneself as sexually desirable and thereby gaining the attention of men is and should be the focal goal for women. Nearly everything [magazines encourage] girls and women . . . to do in the line of self-improvement is geared toward gaining the attention of men.⁴⁸

Magazines for young men teach that women are sexual objects:

46. *Id.* at 2.

47. *Id.* at 5.

48. *Id.* at 9. The report continues: "Thus, much of the content of mainstream magazines is geared toward adolescent girls and young women heavily emphasizes the centrality of heterosexual relationships for women and the need to achieve rigid norms of physical attractiveness through the consumption of products such as cosmetics and fashionable clothing." *Id.* at 9. Analysis of the imagery and text in *YM* magazine (now *Teen Vogue*) concluded:

[T]he world of *YM* is a place where young women . . . must consume and beautify themselves to achieve an almost impossible physical beauty ideal. And, it is a place where sexuality is both a means and an objective, where the pursuit of males is almost the sole focus of life. In fact, the objective of attracting males is the only objective presented - it is an unquestioned "good."

Id. at 9 (citation omitted). Melissa Farley sums up the depictions of women and girls in these magazines in this way: "Young women's magazines advertise pornified girls inviting sex. Young women are taught the sexuality of prostitution, which in essence means that they ignore their own sexual feelings (or lack of them) and learn that their role is to service john-like boyfriends who have learned about sex via pornography." MELISSA FARLEY, *Prostitution and the Sexualization of Children*, in *THE SEXUALIZATION OF CHILDHOOD* 143, 148 (Sharna Olfman ed., 2008).

Analyses of photographs from Maxim and Stuff (two popular men's magazines) revealed that 80.5% of the women were depicted as sex objects. . . . These data indicate that young women and adult women are frequently, consistently, and increasingly presented in sexualized ways in advertising, creating an environment in which being female becomes nearly synonymous with being a sexual object.⁴⁹

The portrayal of sexuality in popular magazines is mirrored in music videos:

In music videos, women more frequently than men are presented in provocative and revealing clothing, are objectified, and typically serve as decorative objects that dance and pose and do not play any instruments. They are often displayed in ways that emphasize their bodies, body parts, facial features, and sexual readiness. 57% of the videos featured a woman portrayed exclusively as a decorative sexual object.⁵⁰

The portrayal of sexuality in music videos is mirrored in some video games as well:⁵¹

Games made for specialized systems and those made for personal computers contain highly sexualized content and few strong female protagonists. Games were significantly more likely to depict female characters partially nude or engaged in sexual behaviors.⁵²

49. AM. PSYCHOL. ASS'N. REP., *supra* note 33, at 11.

50. The report continues:

More recent analysis of the most popular music videos on Black Entertainment Television found sexual imagery in 84% of the videos; the two most frequently occurring sexual behaviors were sexual objectification and women dancing sexually. Seventy-one percent of women in these videos were dressed in mildly provocative or provocative clothing or wore no clothing at all, compared with 35% of male characters.

Id. at 6-7.

51. The vast majority of children play video games: 87% of younger children and 70% of adolescents. A gender divide in heavy video game play exists, with 41% of boys playing games for more than an hour a day and only 18% of girls doing so. Girls, however, spend an average of 40 minutes per day playing games online or on home systems.

Id. at 10.

52. *Id.* at 10. Although some video games are educational, others celebrate violence against women. FARLEY, *supra* note 48, at 153. The most well known among the latter may be Grand Theft Auto:

Teens also receive sexualized messages about women while surfing the internet, where pornography is readily available.⁵³

Several versions of [Grand Theft Auto] exist, all involving the use of a prostitute. In some versions, players who are overwhelmingly teen-aged boys have the option to sexually exploit a prostitute, beat her up, run her over or shoot her in order to earn points in the game. Points are also earned in GTA Vice City by owning a strip club or a pornography production studio.

Id. at 153–54.

53. AM. PSYCHOL. ASS'N. REP., *supra* note 33, at 11:

Pornography is readily available on the Internet, with one source estimating that 12% of all Web sites are pornography sites, and 25% of all search engine requests are for pornography. A Kaiser Family Foundation (2001) study found that 70% of teens 15–17 years of age had accidentally encountered pornography on the Internet, with 23% saying this happened somewhat or very often.

One-third of children have received unwanted pornography on the internet. FARLEY, *supra* note 48, at 147. “I go to web sites about racing dirt bikes,” said one boy, “and when I’m on there pop-up ads come up with naked pictures of girls and guys.” *Id.*

Even some toys for young girls reflect a sexualized vision of females:

The prostitution-like Bratz dolls, dressed in stripper outfits with miniskirts, fishnet stockings, feather boas, and collagen-injected lips are marketed to 7-10-year-olds. Marketed to toddlers, Bratz Babyz, with painted toenails as well as bottles, are advertised as infants who ‘already know how to flaunt it, and they’re keepin’ it real in the crib!’ When ‘girl power’ is continuously and subliminally associated with sexualization and status obtained from pleasing men, all forms of female autonomy, identity-construction, and individuation from degrading and objectified cultural stereotypes have been completely coopted

Id. at 150–51. Halloween costumes for children also reflect an “increasingly sexualized childhood”:

How did we go from witch, devil and nurse to vampy witch, sexy devil and seductive nurse? Kids are trying to figure out from an early age, “What does it mean to be a girl, or to be a boy?” They look at the most dramatic examples they can find to figure that out. Marketers are making it the most extreme they possibly can for that reason. Sexy is part of that marketing to girls—just as macho and violent has become the way to market things to boys.

Melissa Healy, *Sexy Halloween Costumes . . . For Little Girls?*, L.A. TIMES, Oct. 27, 2008. The APA reports:

In a recent content analysis of Halloween costumes, Nelson (2000) found that there was greater variation in the types of costumes marketed to boys than in those marketed to girls and that girls’ costumes nearly always emphasized physical attractiveness (e.g., beauty queens and princesses). Among the few female villain costumes, sexual eroticism was emphasized (e.g., “Sexy Devil” or “Bewitched”).

AM. PSYCHOL. ASS'N. REP., *supra* note 33, at 15. Melissa Farley believes, “[c]hildren and their parents spend lots of money helping girls mimic smiling strippers and escorts—the mainstreamed mask of prostitution.” FARLEY, *supra* note 48, at 144.

Popular media contain messages about sex and gender that are unhealthy. The bottom line is that corporations “project rigid and stereotyped ideas of femininity and sexuality onto children who are not able to analyze or reject” them.⁵⁴ The APA noted: “[I]n the current environment, teen girls are encouraged to look sexy, yet they know little about what it means to be sexual, to have sexual desires, and to make rational and responsible decisions about pleasure and risk within intimate relationships that acknowledge their own desires.”⁵⁵

As a result of massive exposure to popular media, teens tend to “internalize the standards” they are taught: that power for a female derives from her ability to present herself in a sexualized fashion.⁵⁶ As a result, many girls suffer from self-sexualization:

Girls sexualize themselves when they think of themselves mostly or exclusively in sexual terms and when they equate their sexiness with a narrow standard of physical attractiveness. . . . Psychological researchers have identified self-objectification as a key process whereby girls learn to think of and treat their own bodies as objects of others’ desires.⁵⁷

Children and teens may model the objectified behavior they are taught, acting in “sexually precocious ways”⁵⁸ or imitating the sexualized dancing, gestures, or postures that they see in popular media “where such behavior is tacitly encoded with power, privilege, and prestige.”⁵⁹

The consequences of self-sexualization are severe. They include a culture of dieting,⁶⁰ appearance anxiety and self-disgust,⁶¹ low self-esteem,

54. FARLEY, *supra* note 48, at 144.

55. AM. PSYCHOL. ASS’N. REP., *supra* note 33, at 3.

56. *Id.* at 3.

57. *Id.* at 18 (citation omitted).

58. *Id.* at 19.

59. FARLEY, *supra* note 48, at 147.

60. AM. PSYCHOL. ASS’N. REP., *supra* note 33, at 16–17 (“There is evidence that parents, peers, and the media all support a “culture of dieting” for girls. . . . [Researchers] found that girls police each other to ensure conformance with ideals of thinness and sexiness, and [another researcher] found that teenage girls will seek revenge by negatively sexualizing girls whom they perceive as a threat (e.g., by labeling them as “sluts”). . . . [P]opularity required girls to construct a femininity that focused on physical attractiveness and “emphasized the male gaze”).

61. *Id.* at 23 (“Sexualization and objectification undermine confidence in and comfort with one’s own body, leading to a host of negative emotional consequences, such as shame, anxiety, and even self-disgust. . . . [T]he near-constant monitoring of appearance that accompanies self-objectification leads to increased feelings of shame about one’s body. . . . [N]umerous studies have shown stronger appearance anxiety in those young women who internalize a sexualizing gaze as their primary view of self. Other studies have shown that young women, in general, will have stronger appearance

eating disorders, depression,⁶² disrupted physical performance,⁶³ and even decreased mental capacity.⁶⁴ Regarding this last point, the APA points out:

Self-objectification has been shown to diminish cognitive ability and to cause shame. This cognitive diminishment, as well as the belief that physical appearance rather than academic or extracurricular achievement is the best path to power and acceptance, may influence girls' achievement levels and opportunities later in life.⁶⁵

The APA concludes:

Taken together, the work on the cognitive and physical decrements associated with self-objectification suggests that sexualization practices may function to keep girls "in their place" as objects of sexual attraction and beauty, significantly limiting their free thinking and movement in the world.⁶⁶

-
- anxiety after viewing media portrayals of idealized women's bodies. . . . [S]exualizing treatment and self-objectification can generate feelings of disgust toward one's physical self.")
62. *Id.* at 24 ("Research links sexualization with three of the most common mental health problems of girls and women: eating disorders, low self-esteem, depression or depressed mood."). That said, "research to date suggests that these effects are not as pronounced for African American girls. There is no research to date on lesbian, bisexual, or transgendered youths." *Id.* at 35.
63. *Id.* at 22 ("Self-objectification appears to disrupt physical performance as well. . . . [T]he extent to which girls viewed their bodies as objects and were concerned about their bodies' appearance predicted poorer motor performance on the softball throw. Self-objectification, it appears, limits the form and effectiveness of girls' physical movements. . . . [G]irls and women who are physically active and confident are more able to defend themselves from physical attack and abuse.").
64. *Id.* at 22 ("Perhaps the most insidious consequence of self-objectification is that it fragments consciousness. Chronic attention to physical appearance leaves fewer cognitive resources available for other mental and physical activities. . . . While alone in a dressing room, college students were asked to try on and evaluate either a swimsuit or a sweater. While they waited for 10 minutes wearing the garment, they completed a math test. The results revealed that young women in swimsuits performed significantly worse on the math problems than did those wearing sweaters. No differences were found for young men. In other words, thinking about the body and comparing it to sexualized cultural ideals disrupted mental capacity.").
65. *Id.* at 35.
66. *Id.* at 22. See also FARLEY, *supra* note 48, at 1 ("The process of imposing a sexualized[,] subordinate identity on women begins in childhood. Men's dominance over women is established by sexual objectification, a dehumanizing process that is at the psychological core of violence against women. Sexual objectification subordinates

Kids tend to adopt the ideas about sex that they see in popular media. The more television kids watch, for example, the more they “support gender and sexual stereotypes.”⁶⁷ In particular, those who watch more television “offer stronger endorsement of sexual stereotypes that paint women as sexual objects.”⁶⁸

Popular media images also affect female and male attitudes toward rape: “[E]xposure to sexualizing and objectifying media has been shown to relate to girls’ and boys’ views on dating, boys’ sexual harassment of girls, and attitudes toward sexual violence.”⁶⁹ In terms of sexual health and the ability to articulate their own desires and boundaries, self-objectification has further negative effects:

Self-objectification has been linked directly to diminished sexual health among adolescent girls. A more objectified view of their bodies diminished sexual health, measured by decreased condom use and diminished sexual assertiveness. A woman who has learned to fear negative evaluations of her body may be more focused on her partner’s judgments of her than on her own desires, safety, and pleasure.⁷⁰

The APA continues:

Focusing critically on one’s own appearance can limit the pleasure drawn from these sexual experiences and can make it difficult for women to enact safer sex practices. At the same time, a woman who has been socialized to separate from her inner feelings and experiences of arousal and desire may find it difficult to assert her desires or feel entitled to satisfaction in sexual situations. She may instead opt to let events unfold based on her partner’s wants and interests.⁷¹

The APA concludes:

Greater levels of body discomfort and body self-consciousness each predicted lower levels of sexual assertiveness, sexual experience, and condom use self-efficacy, as well as higher levels

women to men by exaggerating differences and by treating women and girls with contempt, ridicule and violence, thus placing them in an inferior status”).

67. Kim et al., *supra* note 36, at 468.

68. AMER. PSYCHOL. ASSOC. REPORT, *supra* note 33, at 27.

69. *Id.* at 35.

70. *Id.* at 26–27.

71. AM. PSYCHOL. ASS’N. REP, *supra* note 33, at 27.

of sexual risk-taking. Body shame may inhibit women's ability to advocate for, or even acknowledge, their own sexual feelings or pleasure.⁷²

Messages about sex in popular media in the mainstream media may decrease male sexual pleasure as well:

Exposure to narrow ideals of female sexual attractiveness may make it difficult for some men to find an "acceptable" partner or to fully enjoy intimacy with a female partner. When one person objectifies another, it is difficult, perhaps even impossible, to treat that person with empathy . . . an important predictor of satisfaction and stability in intimate relationships.⁷³

Therefore, popular media's sexual content has a negative influence on sexual health and pleasure. Messages about sex in popular media tend to teach rigid gender roles and a degraded view of females as sexual objects for male use. The American Psychological Association has warned, "[t]he sexualization of girls may not only reflect sexist attitudes, a societal tolerance of sexual violence, and the exploitation of girls and women but may also contribute to these phenomena."⁷⁴ Sexual health and autonomy, sexual pleasure, and sexual equality suffer as a result.

III. FORMAL SEX EDUCATION

Teens indicate that formal sex education programs in schools are one of their most important sources of information about sex.⁷⁵ The way school sex education programs are currently constructed, however, does very little to mitigate the widespread, negative messages about sexuality advanced in popular media.

72. *Id.*

73. *Id.* at 29.

74. *Id.* at 3. Researchers conclude that, because the sexual content of mainstream media "contains limited and stereotypical messages about gender roles and sexual consequences, the media may serve as a poor vehicle for sexual socialization." Kim et al., *supra* note 36, at 468.

75. See KAISER FAMILY FOUND., *SEX EDUCATION IN AMERICA: A VIEW FROM INSIDE THE NATION'S CLASSROOMS 2* (2000), <http://www.kff.org/youthhivstds/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=13531> [hereinafter *INSIDE THE NATION'S CLASSROOMS*] (interviews with 313 principals, 1001 teachers of sex education, and 1,501 pairs of students and parents nationwide).

Almost all public schools provide some sex education between the seventh and twelfth grades. The time devoted to sex education is usually limited to between one and three class periods packaged as part of a different course, such as health or physical education.⁷⁶

There are two kinds of sex education in public schools: abstinence-only sex education and so-called “comprehensive” sex education, often referred to as “abstinence-plus.” The federal government has funded abstinence-only sex education since 1981 under the Adolescent and Family Life Act.⁷⁷ President Barack Obama’s 2010 budget would eliminate most federal funding for abstinence-only education, but it is not clear that Congress will agree to that cut.⁷⁸

The Department of Health and Human Services has strict guidelines about the content of abstinence-only sex education. Section 510 of the Social Security Act covers the requirements of abstinence-only education:

(2) For purposes of this section, the term “abstinence education” means an educational or motivational program which—

(A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

76. INSIDE THE NATION’S CLASSROOMS, *supra* note 75, at 2.

77. *Id.* at 50. For an analysis of federal restrictions on abstinence-only sex education, see Michelle Fine & Sara I. McClelland, *The Politics of Teen Women’s Sexuality: Public Policy and the Adolescent Female Body*, 56 EMORY L.J. 995, 1001–05 (2007).

78. Laura Meckler, *Budget Widens Teen-Pregnancy Prevention Efforts*, WALL ST. J., May 7, 2009, <http://online.wsj.com/article/SB124171750523696797.html>.

(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.⁷⁹

The federal government's funding of abstinence-only sex education has not had an enormous effect on curricula; 55 percent of school principals, for example, report that federal funding restrictions "have had little or no influence at all."⁸⁰

Abstinence-only and abstinence-plus sex educations have similar core messages. The core message of abstinence-only sex education is: You should wait until marriage before engaging in sex (heterosexual, vaginal penetration), and sexual abstinence is the only sure way to protect yourself from pregnancy and STDs.⁸¹ The core message of abstinence-plus sex education is: You should wait until marriage before engaging in sex (heterosexual, vaginal penetration), but if you do not wait, you should use condoms to protect yourself from pregnancy and STDs.⁸²

79. Social Security Act, § 501(a), Separate Program for Abstinence Education, 42 U.S.C. § 710 (2006).

80. INSIDE THE NATION'S CLASSROOMS, *supra* note 75, at 50. That said, "Teachers and principals whose sex education courses emphasize an abstinence-only message are more likely to report oversight than those who teach primarily a comprehensive message." *Id.* at 52. Curriculum guidelines developed at the state and local level drive what most sex education classes teach. *Id.* at 50.

81. For arguments that abstinence-only sex education is foolhardy and counterproductive, see Hazel Glenn Beh & Milton Diamond, *The Failure of Abstinence-Only Education: Minors Have a Right to Honest Talk About Sex*, 15 COLUM. J. GENDER & L. 12 (2006).

For arguments that abstinence-only sex education is unconstitutional, see Naomi Rivkind Shatz, *Unconstitutional Entanglements: The Religious Right, the Federal Government, and Abstinence Education in the Schools*, 19 YALE J.L. & FEMINISM 495 (2008); James McGrath, *Abstinence-Only Adolescent Education: Ineffective, Unpopular, and Unconstitutional*, 38 U.S.F. L. REV. 665 (2004); Julie Jones, *Money, Sex, and the Religious Right: A Constitutional Analysis of Federally Funded Abstinence-Only-Until-Marriage Sexuality Education*, 35 CREIGHTON L. REV. 1075 (2002); Gary J. Simson & Erika A. Sussman, *Keeping the Sex in Sex Education: The First Amendment's Religious Clauses and the Sex Education Debate*, 9 S. CAL. REV. L. & WOMEN'S STUD. 265 (2000).

82. INSIDE THE NATION'S CLASSROOMS, *supra* note 75, at 16.

Both abstinence-only and abstinence-plus sex educations focus on the biology of heterosexuality and reproduction. They usually cover the plumbing of male and female reproductive organs and the mechanics of heterosexual, vaginal penetration, conception, pregnancy, and birth. They address the risk of HIV/AIDS and other STDs posed by heterosexual, vaginal penetration. Both kinds of sex education encourage teens to wait to engage in this kind of sex until marriage.

Abstinence-only sex education tends to be shorter in duration than abstinence-plus sex education.⁸³ With the extra time, abstinence-plus sex education teaches about contraception, including condoms and birth control pills, and, less often, abortion and emergency contraceptives. In either abstinence-only or abstinence-plus sex education, there is rarely a full discussion of intimate acts other than heterosexual, vaginal penetration, such as masturbation, fondling, or oral sex.

About one-third of public secondary schools report that they offer abstinence-only sex education, with the other two-thirds reporting that they offer “comprehensive” or abstinence-plus sex education.⁸⁴ Despite different nomenclature, however, the Kaiser Family Foundation reports that abstinence-only and abstinence-plus sex educations may offer students similar experiences:

83. *Id.* at 22.

84. *Id.* at 3. This split roughly matches parental responses to one survey:

Which of the following statements comes closer to your view?

30 % Statement 1: The federal government should fund sex education programs that have abstaining from sexual activity as their only purpose.

67 % Statement 2: The money should be used to fund more comprehensive sex education programs that include information on how to obtain and use condoms and other contraceptives.

NATIONAL PUBLIC RADIO, KAISER FAMILY FOUND. & HARV. UNIV. JOHN F. KENNEDY SCHOOL OF GOV'T, *SEX EDUCATION IN AMERICA: GENERAL PUBLIC/PARENTS SURVEY 7* (2004), <http://www.kff.org/newsmedia/upload/Sex-Education-in-America-General-Public-Parents-Survey-Toplines.pdf> [hereinafter *SEX EDUCATION IN AMERICA*] (random nationally representative sample of 1,759 respondents 18 years of age or older, including oversample of parents of children in 7th through 12th grade, which resulted in interviews with 1001 parents). Those same parents, however, answered the following question more evenly:

Which of the following two statements comes closer to your views?

47 % Statement 1: When it comes to sex, teenagers need to have limits set, the must be told what is acceptable and what is not

51 % Statement 2: Ultimately teenagers need to make their own decisions, so their education needs to be more in the form of providing information and guidance.

Id.

Despite the apparent differences between the two approaches, the study finds that in reality the boundaries are often hazy in terms of what is actually covered in abstinence-only and more comprehensive sex education classes. At least some students and teachers in courses that they describe as having a main message of abstinence-only report that information was still included about how to use and where to get birth control or how to get tested for HIV/AIDS. Likewise, many sex education courses described as comprehensive appear to provide only surface-level information about birth control and HIV/AIDS and other STDs while not addressing more practical aspects of how to use birth control or talk with a partner about sexual health issues, or where to go to get tested for HIV or other STDs.⁸⁵

Regardless of type, formal sex education does not do an adequate job of conveying the information, even within its limited, intended scope. Despite the drumbeat of abstinence, for example, 40 percent of students report that they feel unprepared or only somewhat prepared to wait until they are older to have sex.⁸⁶ More than one in five students indicate that how to resist peer pressure to have sex was not addressed in their sex education classes.⁸⁷

Because sex education courses can be squeamish about discussions of oral sex, as well as other forms of intimacy, there is little frank talk about the relative safety of a range of sexual practices. In an abstinence-only course, “[i]t may not be clear to an adolescent whether a recommendation of abstinence means abstinence from vaginal intercourse, from anal and oral intercourse, or from all types of sexual activity.”⁸⁸ The result of not discussing the risks of a range of behaviors is ignorance and the health risks associated with it. For example, about 20 percent of teens are unaware that oral sex can transmit STDs.⁸⁹ Moreover:

[O]ne-fifth of young people believe they would simply “know” if someone else had an STD even if they were not tested, and

85. INSIDE THE NATION'S CLASSROOMS, *supra* note 75, at 3.

86. *Id.* at 60.

87. *Id.* at 19.

88. RAND CORP., UNDERSTANDING THE SEXUAL BEHAVIOR OF ADOLESCENTS (2002), http://www.rand.org/pubs/research_briefs/RB4543/index1.html.

89. NAT'L SURVEY OF ADOLESCENTS & YOUNG ADULTS, *supra* note 10, at 3.

one-sixth believe that STD transmission can only occur when obvious symptoms are present.⁹⁰

In “comprehensive” or abstinence-plus sex education, students are supposed to learn about contraception and preventing the spread of STDs through barrier protection. But this kind of sex education does not do a thorough job discussing how people contract STDs, how to discuss potential or contracted STDs with a partner, or how to obtain and properly use contraceptives.⁹¹

A sizeable minority of teens share dangerous misconceptions about contraceptives. For example, 17 percent of teens believe that birth control and condoms are not necessary the first time one has sex.⁹² One fifth of teens consider last minute removal of the penis before ejaculation or having sex during a woman’s menstrual cycle good ways to avoid pregnancy and STDs.⁹³ About 40 percent of teens do not know for sure or believe that birth control pills prevent the transmission of STDs.⁹⁴ One-third of teens believe that condoms are “not too” or “not at all” effective in preventing the transmission of STDs.⁹⁵ Fifteen percent of teens believe that condoms are not effective at preventing pregnancy.⁹⁶ Almost 25 percent of teens believe that condoms break so often that “they are not worth using.”⁹⁷

Beyond its limited, intended focus on abstinence, conception, STDs, and contraception, formal sex education in schools does not address crucial aspects of sexuality that are especially needed, particularly given the popular media messages teens absorb. Sex education does not counter the message that women are sexual objects for men’s use, nor

90. *Id.* at 4.

91. INSIDE THE NATION’S CLASSROOMS, *supra* note 75, at 21 (“For example, one third of students (37 %) in courses with a comprehensive message say that how to use and where to get birth control was not included, and slightly more than one out of four students (28 %) say that condom use was not discussed. Likewise, while sex education courses that stress an abstinence-only message are less likely to include safer sex skill, some do. For example, almost half (48 %) who describe the main message of their most recent sex education as abstinence-only report that information about “how to use and where to get birth control” other than condoms was included, and six in 10 (61 %) say that condom use specifically was discussed”).

92. VIRGINITY SURVEY, *supra* note 11, at 4.

93. NAT’L SURVEY OF ADOLESCENTS & YOUNG ADULTS, *supra* note 10, at 4.

94. KAISER FAMILY FOUNDATION & SEVENTEEN, SAFER SEX, CONDOMS, AND “THE PILL”: A SERIES OF NATIONAL SURVEYS OF TEENS ABOUT SEX 3 (2000), <http://www.kff.org/entpartnerships/upload/SexSmarts-Survey-Safer-Sex-Condoms-and-the-Pill-Summary.pdf> [hereinafter SAFER SEX SURVEY].

95. SAFER SEX SURVEY, *supra* note 94, at 3.

96. *Id.*

97. *Id.*

does it consistently teach critical perspectives on media images of gender and sexuality. It does little to counter the message that having sex is spontaneous and glamorous.

Sex education does not grapple thoroughly with the emotional aspects of sexuality.⁹⁸ Even in later grades, sex education does not discuss how to express one's sexual desires in an ethical manner or how to find out about a partner's desires. It does not address how to assert one's own sexual boundaries or how to find out about a partner's sexual boundaries. (The only boundary sex education consistently discusses is abstinence from heterosexual, vaginal penetration.)

In abstinence-only sex education, the content is not just limited; it can reinforce the very negative stereotypes about gender and sexuality that teens receive from the popular culture. Abstinence-only curricula include "persistent, official promulgations of retrogressive, anti-egalitarian sexual ideologies—of male pleasure and female shame, male recreation and female responsibility, male agency and female passivity, and male personhood and female parenthood."⁹⁹

The limited and retrograde content of sex education classes is troubling. Parents want sex education courses to be longer¹⁰⁰ and to cover a broader scope of information than they currently do:

In general, parents want a wider range of topics taught than is often included in sex education today. Not only do parents strongly support covering the "core elements" already taught in most sex education—HIV/AIDS and other STDs, the basics of reproduction, and abstinence—they often want sex education to cover topics that are not uniformly taught, such as safer sex and negotiation skills.¹⁰¹

Parents also want sex education in schools to cover more on relationships, emotional issues, and communication.¹⁰² They want classes to include discussions of how to talk with a girlfriend or boyfriend about "how far to go" sexually.¹⁰³ Importantly, parents want sex education to cover more about rape and sexual assault and how to address the pressure to have sex.¹⁰⁴

98. INSIDE THE NATION'S CLASSROOMS, *supra* note 75, at 19.

99. Cornelia T. L. Pillard, *Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work-Family Policy*, 56 EMORY L. J. 941, 942 (2007).

100. Pillard, *supra* note 99, at 26.

101. *Id.*

102. *Id.*

103. SEX EDUCATION IN AMERICA, *supra* note 84, at 11.

104. INSIDE THE NATION'S CLASSROOMS, *supra* note 75, at 30.

Students themselves crave more coverage of these issues as well. They “are hungry for more information about both the basics and more complex skills,” including “what to do if they or a friend are raped or sexually assaulted.”¹⁰⁵ The main thing students want more information on is “negotiation and communication skills.”¹⁰⁶

Even “comprehensive” or abstinence-plus sex education in public schools leaves students sexually ignorant when it comes to negotiating sexual desires and boundaries, and preventing and addressing rape. Both “students and parents said sex education—regardless of approach—could do a better job at teaching communication and negotiation skills.”¹⁰⁷ Coupled with popular sexual imagery that glamorizes spontaneous, uncommunicative sex, the lack of formal education about verbal sexual negotiation leaves students dangerously ignorant.

IV. LEARNING TO NEGOTIATE SEX

Teens are bombarded with messages about sexuality in popular media that reinforce narrow gender norms and decrease sexual equality, autonomy, pleasure, and health. Formal sex education programs in schools need to work to counteract those messages. The APA notes, “[a] central way to help youth counteract distorted views presented by the media and culture about girls, sex, and the sexualization of girls is through comprehensive sexuality education.”¹⁰⁸ The group indicates that sex education needs to “address media, peer, and cultural influences on sexual behaviors and decisions, and promote a notion of sexual responsibility that includes respect for oneself and an emphasis on consensual, nonexploitative sexual activity.”¹⁰⁹ The APA concludes that this “kind of sex education may reverse the negative effects of the sexualization of

105. *Id.* at 36; see also DECISION MAKING, *supra* note 24, at 2–3 (“As teens make decisions about sex and relationships, many express a need for more information. While most teens say they are comfortable talking about sexual decision making with friends and trusted adults, they want to know more about the specifics: how HIV and STDs are spread, their consequences and testing, which types of contraception are best, and how to get them. They also want to learn more about how to communicate with their partners about tough issues. Almost half of teens say learning more about how to talk about STDs and birth control is a high priority. About one third of all teens also want to know how to talk with their partners about what they feel comfortable doing sexually”).

106. INSIDE THE NATION’S CLASSROOMS, *supra* note 75, at 5.

107. *Id.* at 3.

108. AMER. PSYCHOL. ASS’N. REP., *supra* note 33, at 37 (citations omitted).

109. *Id.*

girls” and is “likely to have other positive effects and unlikely to have adverse consequences.”¹¹⁰

As part of the media literacy that sex education programs should include, students need to learn how to identify stereotypes about gender and sexuality as they encounter those ideas and images in the media.¹¹¹ They need to be able to critique and reject those ideas and images for their damaging effects, hopefully in real time as well.¹¹² Critical thinking around sexuality and gender is crucial for sexual autonomy, pleasure, and health. The APA reports:

Schools are beginning to recognize the importance of media literacy. When media literacy programs teach girls to critique and understand the salience of sexualizing images in the media, the hope is that they will be better protected from these images. Comprehensive sex education can also address the issue of sexualizing media, culture, and peers and counter their influence by teaching girls and boys the importance of autonomy and mutual respect in sexual relationships.¹¹³

Sex education must also deconstruct how unrealistic the sex is that is portrayed in mainstream media.

Sex education must also take a range of sexual boundaries seriously and not assume sex is only about heterosexual, vaginal intercourse. It should equalize the interests of women and men in sexual interactions, teaching that it is everyone’s responsibility to elicit her or his partner’s sexual boundaries and honor them.¹¹⁴ It should focus less on sexual plumbing (which should be taught in biology class) and more on intimate human interactions that are difficult to navigate without practice.¹¹⁵

Not only does sex education need to deconstruct negative images and ideas about sexuality advanced in the media, it should teach that

110. *Id.* at 38.

111. FARLEY, *supra* note 48, at 162.

112. *Id.*

113. AMER. PSYCHOL. ASS’N. REP., *supra* note 33, at 42.

114. Other scholars have advocated different version of feminist sexual education. *See, e.g.*, Linda C. McClain, *Some ABCs of Feminist Sex Education (In Light of the Sexuality Critique of Legal Feminism)*, 15 COLUM. J. GENDER & L. 63, 68 (2006) (describing feminist principles of sex education as capacity, equality, and responsibility).

115. Some research suggests that peers may be more effective than non-peers at delivering sexual education. *See, e.g.*, Postponing Sexual Involvement/Human Sexuality Educational Series, Promising Practices Network, <http://www.promisingpractices.net/program.asp?programid=29> (reviewing studies of peer-delivered sex education program).

people sometimes experience peritraumatic dissociation and paralysis when confronted with sexual aggression, which causes silence and stillness but does not suggest desire for penetration. Sex education also needs to deconstruct the mythology that silence or failure to fight back means consent. It needs to note that men often misinterpret nonverbal behavior to indicate consent when women do not mean to consent. It should explain that men tend to overestimate the extent to which women's nonverbal behavior indicates sexual interest. It should teach that people often substitute other intimacy for penetration in order to avoid the health risks associated with it,¹¹⁶ so prior instances of intimacy cannot be interpreted to mean agreement to penetration.

Sex education needs to teach students how to negotiate sex verbally and how to engage with sexual partners in a humane way. The desire for humane interactions with sexual partners must be strong. Despite popular media scripts that emphasize spontaneous, nonverbal sex without consequences, and despite the failure of formal sex education to teach sexual communication skills, 84 percent of sexually active adolescents and young adults report that they have had a conversation with their current or most recent partner about what they feel comfortable doing sexually.¹¹⁷

Unfortunately, these conversations are not as early or wide-ranging as they should be:

While the majority of sexually active young people report having conversations with their current or most recent sexual partner about contraceptive choices or their personal level of comfort around sexual activity, fewer are having an open dialogue about HIV/AIDS and other STDs. In fact, only about half of sexually active adolescents and two-thirds of young adults have talked about these kinds of sexual health risks with their partners.¹¹⁸

More than one in five sexually active teens has never talked to their partners about condoms or other birth control.¹¹⁹ Overwhelmingly, teens believe that their peers are only talking about condoms or STDs after they have engaged in intercourse.¹²⁰ Most teens feel that sex educa-

116 *See infra*.

117. NAT'L SURVEY OF ADOLESCENTS & YOUNG ADULTS, *supra* note 10, at 19.

118. *Id.*

119. COMMUNICATION, *supra* note 28, at 4.

120. *Id.*

tion has not prepared them to talk about contraception, sexual desires, or sexual boundaries.¹²¹

Sex education needs to do better at what it purports to do already, and it needs to tackle topics that it has not tackled before. Sex education has to teach teens to identify their own sexual boundaries. This is not an obvious or trivial matter. Few teens are encouraged to think carefully about what would make them feel uncomfortable and what they would prefer to keep off limits. Fewer teens still are encouraged to think about how to articulate those boundaries. Messages about sex in the media imply that people can read minds about their partner's sexual boundaries, which is dangerous and contributes to misunderstanding of nonverbal behavior.

Sex education needs to teach students how to articulate their boundaries. The only sexual boundary that sex education currently focuses on is abstaining from heterosexual, vaginal penetration, which is a fine boundary, if one shares it. But sex education is not teaching teens how to identify and discuss other boundaries.

One way to assess the sensitivity of a potential sexual partner is to express a less intimate boundary and see if the person honors it. For example, a person may not want her partner to touch her buttocks in public because she believes the gesture expresses sexual ownership. Explaining that boundary with a partner and seeing if she or he respects it tells her a lot about whether the potential sexual partner is trustworthy, conscientious, and responsive.

Not only must sex education teach teens to identify and articulate their sexual boundaries, it has to teach them how to *engage* with potential sexual partners on the question of sexual boundaries. It has to teach that it is everyone's responsibility to elicit, honor, and abide by their partner's sexual boundaries. As part of that instruction, sex education has to give students language and practice for how to conduct these dialogs or negotiations. Students have to engage in role-playing. Sex education must develop dialogs for this kind of interchange because the popular sexual culture rarely displays anything like it. Moreover, many children will have no other opportunity to learn and practice this kind of communication out loud. Sex education needs to stress that this kind of dialog needs to happen before sexual intimacy takes place.

But sexual negotiation is not just about speaking boundaries and remaining silent about desires. We as a society need to acknowledge and deal with the fact that, at times, teens have sexual desires and that, at times, they will want to act on those desires with other teens. Sex

121. *Id.*

education needs to teach them to do it in an ethical, responsible manner that values the humanity of themselves and their partners. It should offer language, practice, and encouragement for open sexual communication before penetration occurs.

Sex education has to teach teens to identify their own sexual desires and how to articulate them. The ability to identify one's own desires can be difficult, even for adults. It requires self-knowledge and reflection that are not innate, but must be learned and practiced. Sex education has to teach teens that it is okay to identify their desires, to share their desires, and to elicit information about their partners' desires as well. Importantly, it also has to teach teens how to determine if it is wise to act upon those desires. Teens need to be taught that desires do not have to be acted upon, and it is unethical to act upon them when they conflict with a partner's boundaries. Again, sex education has to offer teens language and provide out loud role-playing opportunities around sexual desires.

Students need to learn that their job in sexual interactions is to assess and express their own desires and boundaries, and to elicit their partner's desires and boundaries. Sex education must explain why people cannot rely on silence or nonverbal behavior as a cue for interest in sexual penetration. Students need to learn that boundaries trump desires and that the most affectionate thing one can do for a partner is to honor their boundaries as they take pleasure in mutually desired intimacy.

Sex education also needs to address what someone should do if a potential partner is not interested in hearing about their desires and boundaries. Students need to practice saying, "No, I'm not interested" and "Back off!" to imaginary dunderheads, and "Yes, that sounds like fun" to imaginary paramours who exude more interest and respect.

Teaching sex education focused on how to negotiate sexual desires and boundaries is anti-rape education. It teaches the ethics of sexuality explicitly. Ponder and identify your own desires and boundaries. Express yourself honestly and seek to elicit honest responses from your partner. Honor your own and your partner's boundaries. Seek pleasure that is mutually desired. If these principles were taught, students would see sexual communication as open and normal rather than tacit and mysterious.

So many date rapes happen in which a male has desires and boundaries that are unarticulated, perhaps even to himself. He is not taught that it is normal to engage in conversation with his partner to share his desires—much less to identify and share his boundaries. The media suggest instead that a man is supposed act before thinking, to

sweep a woman off her feet and have his way with her, which degrades her autonomy, desires, and boundaries.

So many date rapes happen in which a female has desires and boundaries that are unarticulated, perhaps even to herself. She is not taught that it is normal to engage in a conversation with her partner to share her boundaries—much less to identify and share her desires. The media suggest instead that if she is sufficiently sexually attractive, she will be desired and therefore worthy, which encourages her to acquiesce tacitly to his desires—and decreases her pleasure, and often his as well.

Normalizing sexual conversations about desires and boundaries is crucial to decreasing rape. Teaching these skills in sex education classes in schools is a necessary step in encouraging humane behavior between partners and counteracting the sexualized images in popular media.

CONCLUSION

At the outset of this Article, I argued that rape law should require negotiation before sexual penetration. It is true, however, that people have few models for how to engage in sexual negotiation. Popular media do not often feature forthright and ethical sexual communication. Formal sex education does not often teach it. Revising sex education curricula to teach ethical sexual communication about desires and boundaries is crucial to helping stop rape. Such instruction must go beyond sex education in schools, however. A popular media campaign could help teach the ethical requirements of sexual communication.

Teaching teens how to negotiate the boundaries and desires of ethical sexuality in sex education classes is an important step in preventing rape. Sex education alone, even sex education that teaches critical thinking around media literacy, cannot cover all the important ground, of course. Ideally, kids would also have instruction in self-esteem, as well as the basics of verbal and physical self defense in physical education classes, health classes, and/or in the kind of anti-bullying programs or sensitivity trainings that are now popular.

The relationship between law and social change is a complicated one. At times the law leads, breaking new ground for egalitarianism and demanding new social assumptions and conventions. At other times, the law follows, sometimes far behind shifts in the culture that would otherwise warrant the enforcement of stronger egalitarian norms. If the law required negotiation before sexual penetration, it would take a leadership role in some ways and a follower's role in others.

It would lead a move toward enforcing egalitarian sexual ethics in a world in which sexual penetration too often happens without mutuality or agreement. It would, however, follow a trend toward greater sexual explicitness in sexual dialog that has been occurring for decades, brought about largely by the AIDS crisis. Whether or not we change the law, however, we have to change sex education to counteract the sexist stereotypes delivered by the media and to reflect the importance of explicit verbal dialog about boundaries and desires before penetration occurs. To do this in tandem with popular education and rape law reform would reinforce the egalitarian norms in constructive ways. ♣