

State of Sexual Freedom in the United States

2010 Report



WOODHULL FREEDOM FOUNDATION

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A Woodhull Freedom Foundation Report Affirming Sexual Freedom as a Fundamental Human Right

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Forward

Our Fundamental Human Right to Sexual Freedom And the State of Sexual Freedom in the United States Report For 2010

By Ricci Levy

"These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."

LAWRENCE V. TEXAS (02-102) 539 U.S. 558 (2003) 41 S. W. 3d 349.

Welcome to the first State of Sexual Freedom in the United States report. In this report you will find a compilation of information from various individuals: attorneys, professors, published authors, advocates and activists all addressing the various issues in the vast realm of our fundamental human right to sexual freedom.

This report reflects on how we conduct the conversation, rather than about how we change society. Change is happening all around us and it will continue to happen with us or without us. And, although we clearly articulate the state of sexual freedom in the US today, we are focused on looking toward the future – identifying our goals and then looking at the things that have to change for us to reach those goals.

The opportunity that we see is to create a safe space for conversation; for the discussions that will allow society to accept the inevitable change and move forward without anxiety.

It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change.

—Author unknown, commonly misattributed to Charles Darwin

Let's take a look at some change....

It's the 1950s. People are concerned about "McCarthyism" and the Cold War. The cost of a new house is \$8450 and the average annual income is \$3210. The first credit card is issued by Diners Club International, and, for the first time, the shape of the political landscape in the world could be clearly defined between the Soviet dominated East and the capitalist West.

The Civil Rights Movement happens in America, led by Dr. Martin Luther King, Jr. The Supreme Court, in *Brown v. Board of Education*, overrules a previous ruling which said "separate but equal" and ruled for complete integration.



Same-sex marriage was of no concern to anyone and Norma Leah McCorvey, the plaintiff in *Roe v. Wade*, was a young child not even 10 years old.

But society was changing and sexuality began to occupy a new space. Sex began to sell. Marilyn Monroe became the first post-war sex symbol of the United States and was the first centerfold for Playboy Magazine. Sexuality was more openly expressed, but not more accepted. Ground-breaking publications such as Alfred Kinsey's *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1952) were published and met with ridicule and unease. Dr. Ruth Westheimer, PhD, always pays

some type of homage to sex researcher Alfred C. Kinsey, PhD.

"In the Jewish tradition, we are taught that if you stand on the shoulders of giants, you can see farther, so I do mention Kinsey," Dr. Ruth, the famed New York City-based sex therapist and radio and TV personality, tells WebMD. "I think we have to be grateful to Kinsey because 50 years ago, he was willing to talk about a subject matter that was really taboo," says Dr. Ruth.

The sexual revolution had begun, encouraged by the newly available birth control pill and portrayals in magazines like Playboy.



Was this change welcomed? By some, yes. By others, no. And yet, the change happened.

People look back on the 50s as "the good old days." But then people always look back from where ever they are today and think it was better then – whenever *then* may be. Why? Because we tend to fear change even though change is a constant.

From the Woodhull Freedom Foundation Questionnaire: *Education and awareness is slowly marching forward. When I think how things were when I was coming of age. I knew I was different but couldn't tell you why much less put a name to it.*

My grandmother had a saying she shared often, usually in Yiddish. "If you can stay alive long enough, you can even get used to hanging."

Even with the best of intentions and a sincere desire to see change, people are often invested in maintaining the status quo. Better the Devil you know than the Devil you don't know, perhaps? Whatever the motivation, whatever the reason, we are often our own worst enemies when it comes to being the change we want to see.

The circumstances of the world are so variable that an irrevocable purpose or opinion is almost synonymous with a foolish one.

—William H. Seward

We cannot look back at the 50s, or even further back to the year that Victoria Woodhull was born, and then look at today and question whether there has been a change in areas of sexual freedom. It's obvious that a huge change has taken place.

CONVERSATIONS

No two men ever judged alike of the same thing, and it is impossible to find two opinions exactly similar, not only in different men but in the same men at different times.

—Michel Montaigne

In the affirmation of sexual freedom as a fundamental human right we have a space for these conversations that have to take place among us all – both sides, all sides – transpartisan conversations that seek a common dialog.

The term “Transpartisan” has emerged to provide a meaningful alternative to “Bipartisan” and “Nonpartisan.” Bipartisanship is limited to a debate among two political viewpoints or entities striving for compromise solutions. Nonpartisanship, on the other hand, tends to deny the existence of differing viewpoints. “In contrast, transpartisanship recognizes the validity of all points of view and values a constructive dialogue aimed at arriving at creative, integrated, and therefore, breakthrough solutions that meet the needs of all sides.”

Imagine conversations where the point of view of each participant is listened to, respected and valued. Imagine questioning old assumptions and suspending automatic judgments, where all parties seek to understand rather than to persuade. And, most importantly, where the goal is to seek out common values and common ground for cooperation.

Here is one example of this type of conversation. Let’s look at a highly charged issue with two apparently polar opposing points of view: the pro and anti-choice debate. On May 17, 2009, President Obama outlined a strategy for people on all sides of the issue to work together to reduce the number abortions in America through decreasing unintended pregnancies and increasing support for women and families. [1]

There is actually a precedent for this type of unified discussion. Three pro and three anti-abortions activists were brought together by then Gov. William Weld and Cardinal Bernard Law in 1995 after John Salvi killed Shannon Lowney and wounded three others when he open gun fire in the Brookline Planned Parenthood clinic.

The goals of these discussions were not to find common ground but “to communicate openly with our opponents, away from the polarizing spotlight of media coverage; to build relationships of mutual respect and understanding; to help deescalate the rhetoric of the abortion controversy; and, of course, to reduce the risk of future shootings.”

The meetings were secret and were moderated by the director of the Public Conversations Project and

an independent public policy mediator from Brookline, Massachusetts. [2] These discussions went on for almost six years.

The first step was to find a common thread – something about which all sides of the issue could agree. That thread was that all participants were passionate about the issue of abortion. Discussions required that no one have to compromise their core beliefs as they sought agreement within this highly charged issue. The agreement was that there should be fewer abortions. The next step was how to address that agreement in a way that didn’t compromise either side’s advocacy or beliefs. One thing on which the participants could agree was that one way to prevent unwanted pregnancies and thus reduce the number of abortions would be to educate on what caused pregnancy. Both sides of the debate could incorporate that information into their advocacies without compromising their mission.



That same model can be applied to many of the social issues with which we deal today. Without going into whether the end-result should be marriage or some other formal relationship for everyone, we have found that virtually everyone agrees on the issue of equal rights. The dissonance, the disagreement tends to be around the word “marriage.” By coming together around equal rights for all individuals and all relationships – traditional and less traditional – discussions could take place just as they did around pro and anti-abortion.

PUBLIC PERCEPTION

From the Woodhull Freedom Foundation Questionnaire: *I am a monogamous het leatherwoman in a 9 year relationship with my husband. I am also a public school teacher of 23 years and am a former teacher of the year. I am very active in the leather community, yet I'm constantly living in fear that someone will take a picture, say something, or do something vindictive to out me. A few years ago, my husband and I ended up with our picture in the leather journal...and I actually had to go on anxiety medication for a while.*

There is a safe place in society to talk about what car we drive, what restaurant we favor, what wines we choose to drink, hair dye, erectile dysfunction, and fashion. There is not a safe place to talk about sex and sexuality, sexual expression and relationships.

If it was decided that beef wasn't good for us and a Congressperson introduced a bill that created onerous restrictions on the production of cattle and the consumption of the meat, the cattle growers, meat processing plants, and end-consumers would rise up without hesitation, declaring that they grow the cattle, process the meat, eat the meat and that it's part of their every day lives and they will not let Congress penalize them for their reliance on or consumption of beef. Where was the laughter at and rejection of a law in Texas that limited you to having six dildos (and who came up with that particular number anyway)? Very few people can risk standing up and declaring their "consumption" of erotic literature or their reliance on a sex toy or that they enjoy going to a strip club once in a while. There is just too much at risk for them!

From the Woodhull Sexual Freedom Questionnaire: *As the child of queer-identified parents, I can personally attest to the angst and fear of a child whose parents could lose their jobs, friends, communities, and children, simply for falling outside of accepted cultural norms. In my life I have known people whose sexual identities, preferences and choices have caused them to lose not only custody but also*

respect and trust of their children due to bias, misdirection, and outright lies. As an adult whose life includes openly alternative sexual activities, I've lost a job, contact with social acquaintances, the love and friendship of a relative, and the right to build relationships in plain sight.

When Congress and state legislatures place onerous restrictions on erotic literature and adult entertainment, there is no safe place for people to stand up and protest. An organization can lobby for individuals, but individuals would risk much were they to stand up and declare that they enjoy reading or watching adult entertainment and that they don't want these limitations in place. And for legislators, it is often easier to be against than in favor of our personal freedoms around sex and sexuality.

"...And it is also immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." [3]

When fear, bigotry and ignorance are the motivators for legislation, resulting laws are often catastrophic for various groups of people. Just recently, in Arkansas, a law was passed in an effort to prevent same sex couples from adopting or fostering children. Rather than specify the discrimination against same sex couples implicit in the legislation, the law restricted all unmarried individuals from adopting or fostering children. Since there is no same sex marriage in Arkansas, the law, as anticipated, eliminated the possibility of same sex couples adopting or fostering children. The reality of the legislation, the consequence of the new law, was that 1100 children went back into the foster care system because anyone who wasn't married was included in the law – heterosexual couples or families cohabitating without the "benefit" or marriage and even single individuals.

We need look no further than the current political landscape. When our economy is in such a dire situation, how can anyone justify spending time on an issue like “Don’t Ask, Don’t Tell” – a policy that should never have been implemented in the first place. There should be no more debate, no more time wasted. The law should be repealed. Any citizen of the United States should be free to serve their country in any capacity for which they are qualified.

But sexual repression is a perfect distraction for people. And it creates the impression for much of the population that there is something they can control – sexual expression. And, were we to believe what we hear and see, we would believe that those of us living our lives outside of the Norman Rockwell portrayed “norm” are the minority.

Not so!

We are, in fact, the majority. And the only time the minority can control the majority is when the majority are silent. We must have these conversations and shine the bright light of dialog on the very issues that are tools of repression by those who consider sexual freedom a threat.

There are two portions of the population with whom these conversations much take place. One is the estimated two-thirds of the population who have disengaged from “traditional” politics –by not registering to vote or by joining fringe political groups like the Tea Party or even by actively rejecting both parties and choosing instead to register as “Independent”. This is truly the majority of the population and it is with them that we should be seeking conversations.

Equally important is a conversation with “millennials” – the portion of our population between the ages of 15 and 35 years of age. Until we have looked at our conversations with their eyes, looked at our issues in the context of their lives and what’s important to them, we are not crafting a future of sexual freedom. We must engage this portion of the population and, to do that, we have to know what matters to them and how we can reach them to even begin the dialog.

Part of the work that needs to be done is to advance these conversations, to create a safe space for our elected officials and for concerned individuals to stand up and declare themselves in favor of our personal freedoms.

These conversations have evolved – imagine discussions of sodomy laws in the time of Victoria Woodhull – and we want to build on this evolution, bringing the conversations more and more into the space already occupied by the majority of the population living lives that are not reflected in the rhetoric or the laws that restrict our personal freedoms and that try to take away our inalienable rights as human beings to sexual freedom.

The opinions and information you will find in the following pages of the State of Sexual Freedom in the United States, 2010, reflect the efforts of the various authors to help this conversation evolve. Each paper is an opportunity for further discussion, for exploration of intersections between issues, identities and community, and for new alliances and efforts to further the affirmation of sexual freedom as a fundamental human right.

As part of the questionnaire we sent out a year ago, we received hundreds of stories and suggestions for strategic advocacy moving forward. Some of these stories and strategies are reflected in the articles that follow and all of them will be part of our future work and research moving forward.

This report is the first. There will be others as our conversations continue. We will need more research, better research, but data won’t change minds. We know from research done in focus groups that all of the data in the world won’t change someone’s core beliefs. The most touching commercial about a same-sex partner denied access to their loved one, dying alone in an emergency room in Jackson Memorial Hospital in Florida, outrages many people, but it may not change their minds about whether or not this couple should be permitted to marry. It will, though, reinforce agreement that we should all have equal rights around our families and relationships.

What will help advance the change that needs to happen? Conversations. Open, honest, transparent, welcoming, accepting dialogs between passionate individuals – recognizing that each side believes passionately in their own point of view, honoring that point of view and seeking opportunities for agreement and for common grounds.

The only man I know who behaves sensibly is my tailor; he takes my measurements anew each time he sees me. The rest go on with their old measurements and expect me to fit them.

—George Bernard Shaw

THE FUTURE

Of course the future is yet to be written. And projections are often flawed and unreliable. In the 1950s no one would have imagined that same sex marriage could ever be an issue. Advocacy for the decriminalization or legalization of consensual sex work would never have crossed anyone's mind. That idea a black man could be President of the United States would have been fair reason to carefully consider your sanity. That relationships could begin and end on the internet without individuals ever meeting one another; that families could be crafted in loving ways that weren't necessarily sexual; that people could advocate for morning after pills to prevent unintended pregnancy – none of these issues were even a consideration.

There is no way to predict – only to dream; to envision; and to work toward a future where every individual truly enjoys their fundamental human right to sexual freedom, a right granted in our Constitution and an inalienable right of our very humanity.

“The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment”.[3]

[1] Video and transcript of President Obama's speech: http://www.huffingtonpost.com/2009/05/17/obama-notre-dame-speech-f_n_204387.html

[2] *Talking with the Enemy*, written by Anne Fowler, Nicki Nichols Gamble, Frances X Hogan, Melissa Kogut, Madeline McComish, and Barbara Thorp. <http://www.feminist.com/resources/artspeech/genwom/talkingwith.html>

[3] Justice Louis D. Brandeis, *Olmstead v. US*

Introduction

Why Sexual Freedom is a Fundamental Human Right

*An Introduction to the Woodhull Freedom Foundation's
State of Sexual Freedom Report.*

Barnaby B. Barratt

“Freedom is the absolute right of all adult men and women to seek permission for their actions only from their own conscience and reason, and to be determined in their actions only by their own will, and consequently to be responsible only to themselves, and then to the society to which they belong, but only insofar as they have made a free decision to belong to it.”

—Mikhail A. Bakunin

Freedom is perhaps both one of the highest human aspirations and the foundation of all human rights, the cornerstone for all our civil liberties. It is both source and prerequisite for much, if not all, that motivates human beings. Yet what do we mean by “freedom”? Many have written about it, and many invoke its inspiration. But what it actually entails is often confused, and shrouded in rhetoric as well as controversy. And why is freedom of our erotic expression, the sexuality of our bodily experience, so fundamentally important?

Those who hold power—whether they be priests, politicians, or the purveyors of wealth—do not want us to think too clear mindedly about this question. Most people will agree that, in a profound sense, authentic freedom starts with our ability to be free in what we do with our bodies and our minds. Yet few people are willing to follow this insight to its essential conclusion: Without freedom of sexual expression, all other liberties are constructed on a precarious foundation. In this short article, I will outline some of the issues surrounding the idea of freedom itself, and then present three arguments to explain why sexual freedom is the necessary foundation for all human rights and civil liberties.

Pundits and those who hold power in the “free world” routinely invoke the idea of freedom (Murrin, Johnson, McPherson, Fahs & Gerstle, 2007). It is comforting to know that “the United States is a nation built upon

principles of liberty” (Breyer, 2005), even if our liberties are in fact shakier than we might wish to believe (Berlin, 2003, 2007; Hayek, 1978). Has there ever been a politician in the United States who did not garner votes by alluding to our inalienable right to life, liberty and the pursuit of happiness? Skeptically, we might add that politicians seem to need to refer to this “inalienable right” despite the fact that the Declaration of Independence holds it to be a “self-evident” truth (Grafton, 2000). They invoke its inspiration rhetorically, rarely if ever actually examining too deeply what liberty might mean, let alone how much human happiness is tied to, and anchored in, our sensuality to the enjoyment of our sexual bodies. In short, the notion of liberty generates much heat, often with too little light.

We frequently fail to realize the extent to which the pursuit of liberty is part of the entire range and depth of human activities including activities that might appear to have little or no connection with a desire to be free (Franken, 2006). But on examination, other motivators seem inextricably connected to issues of liberty. For example, it might be pointed out that the pursuit of wealth, authority, dominion, fame, or even “excitement” all forces that account for many of the events around us is actually tied to certain sorts of freedom. One does not pursue money, power or prestige unless one anticipates having the liberty to enjoy the prerogatives that they bestow. And if you think about the higher aspirations of love, in any of its conventional senses (such as the exercise of attraction, affection, empathy, generosity, and compassion), then it is readily evident that there is no such thing as genuine love unless it is freely given. Even the pursuit of virtue and devotion to a moral code, such as is taught by the world’s great religions (for example, by Judaism, Christianity, and Islam), entirely loses its significance unless it can be practiced with freedom of faith (Noonan & Gaffney, 2001; Waldman, 2009). And with spiritual practices that do not

depend so much on belief or faith (for example, some of the Dharmic and Taoic religions), the attainment of a good life is held to depend on the possibility of liberation of the human spirit from the constraints of mundane conditions, which is yet another invocation of the notion of freedom (e.g., Krishnamurti, 1996; Osho, 2002, 2004a, 2004b).

Freedom is—in the words of that famous American businessman, Elbert Hubbard—“the supreme good” (Hubbard, 1927). In one way or another, the issue of freedom inheres to virtually every human activity. This is why great thinkers have said some of the following things about freedom (see Kastin, 1996). Albert Einstein wrote that life cannot be improved without inner and outer freedom. Will Durant echoed Hubbard in arguing that freedom is the supreme good, and added that there can be no individuality or personality without it. At various points in history, diverse commentators have specifically argued that without freedom there can be no genuine morality (Carl Jung), no justice (Jiddu Krishnamurti), no peace (Malcolm X), and no progress in science or in the arts (Baruch Spinoza). From whichever angle one looks at the issue, freedom is indeed crucial to the human condition—it is not merely a rhetorical ploy, even if it is often used as such.

Although the wish to feel free and to be free may characterize much of human history, the expression of such wishes has obviously taken many different forms. Recipes for spiritual freedom are enshrined in the world’s oldest texts and communal practices (Beckwith, 2008). And on a material level, as long as there have been slaves, there have been runaways and rebellions (Meltzer, 1993). Those who own capital or property have argued their “natural” rights to do so; those who uphold a socialist vision of justice have insisted on the contravening rights of those who are actually engaged in the labors of material production (Cohen, 2009). As is well known, our contemporary ideas about freedom—political ideas about the individual having certain rights and liberties in this earthly world—have been powerfully influenced by 17th and 18th Century upheavals in Europe (including the 1689 formulation of the English Bill of Rights and the French revolution of 1789 to 1799) and by the United States Constitution of 1787 along with the

Bill of Rights and the seventeen additional Amendments (Hayek, 1978; Mill, 1859/1956). It is more recently profoundly impacted by the 1948 Universal Declaration of Human Rights, which has been elaborated in several subsequent covenants, treaties and declarations (Claude & Weston, 2006; Donnelly, 2003; Hayden, 2001; Hunt, 2007; Ishay, 2007). Yet despite all these proclamations, there is still a pervasive murkiness—perhaps even abstruseness—as to what we mean by “freedom” and its attendant notions of human rights and civil liberties. This is exemplified by the voluminous literature that is contemporarily available on these topics, written by commentators of diverse perspectives and persuasions (e.g., Berry, 1992; Dewey, 1939/1989; Donohue, 1990; Dussel, 1977; Hayek, 1978; Nozick, 1977; Rawls, 2005; Rothbard, 2006). I will argue that, in large measure, this murkiness stems from the fact that, again and again, theorists of freedom have repeatedly sidestepped an essential truth: As human beings, our sexuality is central to our sense of freedom and our desire to be free.

While holding this proposition in mind, it is worth pausing here to review some of the many areas of controversy and contentiousness about the notion of freedom. Let us note just five such arenas of debate.

There is a tension between the concept of freedom from and the seemingly more positive formulations of freedom for, freedom to or freedom of. This has been extensively discussed by several commentators, including Erich Fromm (1941/1994). Philosophical and political commentators have always found it far easier to define freedom in terms of its antinomies as the absence of prohibition and restraint than to arrive at a workable definition of its nature as a positive aspiration. I suggest that the reason for this difficulty is that these commentators have tried for definitional clarity of freedom as if it were primarily an abstract concept, rather than an integral dimension of the human condition that is grounded in the sensuality of our embodied experience (Barratt, 2006, 2009, 2010).

The difference between freedom from and freedom for (to or of) is well illustrated in Franklin Roosevelt’s famous “four freedoms” speech of 1941, which

specified the fundamental First Amendment tenets of freedom of speech or expression and freedom of religion (which could be said to be the positive side of freedom from censorship and from persecution), but then he added the so-called “human security” tenets of freedom from want and freedom from fear (Black, 2003). This issue leads into many different sorts of discussion and dilemma. For example, while no one seeks to have unfulfilled needs or “wants,” and few if any wish to live in fear, the freedom to express oneself authentically is often an act of responsibility that may require great courage, and for this reason is often avoided in favor of a life of greater ease (Perry, 1998). History is replete with incidents in which someone failed to speak up for fear of material loss—that is, failed to exercise a potential freedom to express an opinion for fear of loss of freedom from pain, scarcity, or even death. Indeed, this conflict has been the subject of much scholarly investigation from the Greek historian, Thucydides (over 400 years before the common era) to Jean-Paul Sartre’s existential philosophy (in twentieth century France). Here we may note how frequently discussion of the exemplars of freedom to focuses on the expression of speech and belief, thus avoiding the fact that there are modes of human expression more basic (in both a developmental and an epistemological or ontological sense) than those of language and the formulations of religious faith: namely, the expressiveness of the human body in pleasure and in pain.

As is well known, Roosevelt’s perspective leads us into controversies over the many circumstances in which the positive freedom of one group of individuals may impact another’s. In the classic example known to every law student, an individual does not, as an act of malicious caprice, have the right to cry “fire” in a crowded theater (yet if he or she actually perceives a conflagration, most commentators would say that alerting those in danger is a mandated social or ethical responsibility, even if not legally imperative). There are innumerable instances in which rights and interests may compete. For example, many of us believe in the individual’s right to view erotic materials (Klein, 2008; Strossen, 2000); but only a very few believe that the individual has a right to compel or coerce another individual to participate in such activities (or that such erotic materials may

legitimately involve the activities of minors). In this sense, the principle of noninfringement—meaning that liberties may be freely enjoyed but only in circumstances in which they do not violate or impact the liberties of others—is foundational to the operational implementation of any notion of basic rights and freedoms.

This segues to the recurrent controversies over issues of conflict between individual and communal rights. This is an enormous issue, which is acutely exemplified by the many laws that attempt to regulate private choice over sexual behaviors, supposedly in the name of the “collective good” (e.g., Garrow, 1998). The tension between individual liberty and societal interest has been more frequently illustrated by the debate around conflicts between political, economic, and cultural rights (Ignatieff, 2001; Shute & Hurley, 1993). For many years, communist and capitalist countries debated the priority of political and economic rights; the former arguing that economic progress for the good of the collective required the attenuation of individual rights (to free expression, democratic privileges, and so forth). In a very different context, some Muslim nations currently refuse to endorse the Declaration of Human Rights insisting that their society’s “choice” to live under the Islamic Shari’ah conflicts with the possibility of gender equality between individuals (Mayer, 2006). In these instances, the rights of individuals are set aside in favor of what is presented as a collective wish to live under the economic system of statecontrolled communism, under one interpretation of Islamic law, and so forth.

This sort of issue is not just a matter involving anticapitalist social formations or involving religious fundamentalism. Nor is it just a matter concerning political conflicts in the so-called “second,” “third” and “fourth” worlds. Currently, the United States has not signed the Second Optional Protocol to the International Covenant on Civil and Political Rights because of its commitment to continued use of the death penalty. It has neither signed nor ratified the Inter-American Convention to Prevent and Punish Torture, which defines torture more inclusively than the prior United Nations Convention against Torture (presumably because it is “in the nation’s best interest” to continue the use of torture against adversar-

ies and suspected adversaries). Additionally, many independent commentators are now concluding that prison conditions in the United States are currently in violation of several sets of standards established by international covenants to which this country was signatory. On the rare occasions when governmental officials in Washington have attempted to justify the United States' stance on such matters, the rebuttal has always cited some sort of national interest as taking precedence over individual rights.

This brings us to a further point concerning the "rights and responsibilities" of individuals to engage activities that might transgress what is held to be the common good or collective will for example, possibly illegal acts of civil disobedience (Thoreau, 1993; Zinn, 2003). It has been said, in a variety of different formulations, that "in an unjust society, just men are imprisoned" (cf., Gandhi, 1928/2001; Gramsci, 1971), and Fromm (1981) formulated this as "freedom means saying 'no' to power." There are many issues here concerning the connection between rights, as an individual matter, and responsibilities, as an attitude that considers the collective or societal good. At one pole is the opinion that all rights bring with them the obligation of responsibility. Many of us would say, for example, that we have a right to view pornography in our homes, but not a right to impose it on our children or our neighbors. At another pole, is the attitude expressed in Jacob Hornberger's famous or infamous libertarian formula "if you are not free to choose wrongly and irresponsibly, you are not free at all." This is not the place for deeper discussion of this issue, except to point out that much of the tension between rights and responsibilities is rooted in conflicts over what one does with one's body.

After all, if being free implies our ability to disobey those in power, where does this sense of freedom and its clash with authority come from? The answer, known to every psychoanalyst, is that it comes precisely from our earliest struggles with the authority of caretakers as to where we may urinate, where we may defecate, why we cannot run around joyously unclothed, whether our selfpleasuring is acceptable socially or must be sequestered in shameful privacy ... and so forth (Barratt, 2006, 2010; Muller & Tillman, 2007). These are primary and universal struggles of

childhood. Only secondarily do we clash with powerful forces over our wish to express divergent viewpoints in our speech or to practice our religious faith in a manner that contravenes the prevailing authorities. Finally, there is, of course, extensive philosophical debate over issues of freedom in relation to the question whether humans actually have free-will with which to exercise rights and liberties (Kane, 2005; Watson, 2003). It is undeniable that our position and trajectory from cradle to grave are strongly determined by our biology, our social upbringing, and the cultures in which we find ourselves. So there is a sense in which, if free-will is entirely illusory, then all the debates over freedom, human rights and civil liberties, would seem to be empty (Honderich, 2002; Wegner, 2003). But this cannot be true in one important way: because, even if freewill is chimerical, no one acts as if they lack it entirely (except perhaps those who are condemned as delusional). Whether we are free upon philosophical scrutiny belies the fact that humans have a redoubtable capacity to feel free, and that this capacity is of such significance that many humans are ready to live or die in pursuit of this feeling or the reality that portends it. For this reason—and even if for this reason alone—the struggle for freedom does, and must, continue.

To examine the history of the philosophical debate over freewill and freedom is to realize that despite valiant and erudite efforts at clarification from the metaphysics of Plato and Aristotle, to the labors of Immanuel Kant, Martin Heidegger, Emmanuel Levinas, Jacques Derrida, Enrique Dussel, and others the notion has evolved in a disappointingly bricàbrac, pragmatic and highly politicized manner. Perhaps this is because almost none of these illustrious contributors have considered the bodily origins of our human capacity to feel free (even if and when we are in fact determined by forces beyond our comprehension). In this sense—as I have already suggested our notion of freedom is not philosophically acquired, but grounded in the foundational sensuality of our embodiment. This may seem an obvious point, but it is crucial to this essay: Freedom is not primarily a cognitive construct nor does it derive from philosophical propositions; rather it is founded experientially in our sense of being free, which is a practical matter of bodily sensuality.

Surely a major reason why there is so much conflict and contentiousness around the issues of freedom is that the essential question of sexual freedom—the sensuality of our erotic embodiment—has almost entirely gone missing from the major philosophical and political formulations and deliberations as to what we mean by rights and liberties (Bergmann, 1991). In the remainder of this article, I will augment the argument that sexual freedom is the essential foundation for all other human rights and civil liberties with three theses that I am convinced are important for our future (before you resist the first two, please consider the third).

First Thesis: No freedom is secure unless sexual freedom is assured. Unless freedom of erotic expression is well established, then all the other individual human rights and civil liberties that are operative in any particular society or culture are endangered. That is, they are profoundly vulnerable to erasure, because they have only a shaky foundation. In this sense, the degree of sexual freedom in any society indicates how free a society actually is. Freedom of erotic expression is the salient measure.

Lest I be misunderstood: I am not saying that other freedoms are trivial. Indeed, other freedoms might sometimes seem to take priority. Two examples will suffice. Freedom from want, our right not to starve, might well seem more essential than our liberty to pursue sensual pleasure. However, there is also a sense in which such an example misses the point. We seek not to die of starvation precisely because we wish to persist in our embodied experience—and we wish to persist in our embodied experience because of its sensuality. So in a profound way, bodily freedom is the basis of all others. Likewise, freedom of religious belief is important even if it occurs in a culture that represses and oppresses variability and liberty of erotic expression. But, in such a culture, freedom of belief is ultimately in jeopardy, inevitably imperiled because all matters of opinion and faith are ultimately grounded in our embodied experience of being in the world, in relation to whatever we believe to be divine (Barratt, 2009). Again, if there is no freedom with respect to the sensuality of the body, then all “higher” forms of freedom are asserted only precariously.

Second Thesis: If sexual freedom is securely established, other freedoms will invariably follow. A society that values the individual’s freedom of erotic expression will necessarily establish the conditions under which other human rights and civil liberties will be generated, established and protected. This is because our notion of freedom itself flows from freedom of erotic expression (which is also the burden of the third line of argument). This is the point missed by many of the great treatises on the ontology and epistemology of freedom (e.g., Heidegger, 1982/2005). Setting aside conventional ways of approaching this topic, it would seem almost bizarre that a society might grant an individual the freedom to speak his or her thoughts, even while attempting to regulate the sensual expressivity of the body that generates the thoughts and that enables the individual to speak them. Yet this is exactly what Western societies have attempted since the sixteenth century.

As utopian as this may sound, in any society that recognized the individual’s fundamental right to free sensual expression, there would surely be no debate over the individual’s prerogative to freedom of speech, religious belief, as well as freedom from want, fear, and so forth.

It has been argued by Mohandas Gandhi (2007) and others that the notion of freedom is indivisible. In a practical or political sense, this is a principle that may rarely be realized, in that we see all around us social formations in which individuals are permitted some rights and liberties but not others. Yet the principle of indivisibility has both social and philosophical aspects. Socially, am I really free if my neighbor is not, and if it is seemingly happenstance that my neighbor’s plight is not my own? Philosophically, is my freedom real if it is predicated on another’s lack of freedom? For example, is my “freedom” to accumulate wealth really to be considered a freedom if it is actually predicated on others being condemned to poverty? Or is the invocation of “freedom” in this example a pernicious rhetorical ploy by which I justify my exploitations? Moreover, if the notion of freedom is indeed derived from the human experience of feeling free, then the issue of indivisibility has other aspects. How meaningful is my freedom of religious faith if I live in a society that determines how and in

what ways I may or may not touch my own body, or the body of a consenting adult partner?

There is indeed a theoretical as well as experiential and perhaps even spiritual sense in which all freedoms are connected with each other. Gandhi and others have been correct in asserting the general principle of indivisibility. But the connections are hierarchical, in that some freedoms are more fundamentally rooted in our human psyche our psychology as human beings than others. This is one point that has been repeatedly missed.

Third Thesis: The human ability to imagine freedom, as well as to think about and to struggle for rights and liberties pertaining to freedom, is founded in the freedom of embodied experience that is the deepest root of our psyche. As I have already suggested, the human capacity to enjoy a sense of freedom, and to value being free, is not some abstract proposition instigated and elaborated by our cognitive faculties as has generally been assumed by philosophers for over two thousand years, and by political theorists for well over three centuries (despite their practical orientation). Our notion of freedom does not begin as a product of our ability to reason; for example, our ability to reason about the rights of one individual to practice his or her religious faith in a manner that is different from another. Rather, in terms of human psychology, our capacity to enjoy a sense of freedom, and to value being free, develops from our embodied experience. It comes to us from our ability to live freely in the sensuality of our bodies; that is, to feel profoundly the ways in which our bodily sensations belong to us, or indeed are us (Barratt, 2010). At the infantile beginnings of life, we do not engage in logical and rhetorical arguments about the right to vote for those who govern us. We begin with the sensual experience of our bodies as our own medium of selfgovernance, by which and through which we articulate ourselves in the world, both in pain and in pleasure. It is on the basis of this experience that we later construct and pursue our ideas about freedom.

In this respect, our ability to reason about freedom is almost epiphenomenal. Reason develops from the vicissitudes of our experiential embodiment; not vice versa. Our ability to feel free in our embodied

experience which is, in a broad sense, a matter of “erotics” is thus foundational. In this profound sense, sexual freedom is the fons et origo of all other freedoms. Again, our sense of freedom is derived from bodily experience that is, in a general sense, sexual or “erotic,” and without sexual freedom all other freedoms can only be precariously established. Thus, the human desire for freedom is not built on argumentation, but on the experiential primacy of the caress.

The pursuit of human rights and civil liberties requires attention to three principles: the principle of noninfringement, the principle of hierarchized indivisibility and, what I will call, the principle of erotics. This principle addresses the totalized sensuality of the individual’s embodiment as the foundational orientation of our beingintheworld to the dynamics of pleasure and pain. This is what I shall call “the philosophy of the caress” the recognition that our knowing and our being as humans is grounded, not in abstracted relations between a subject and an object, nor in some ontological metaframework of interpretation, but in the sensuality of the way in which we touch ourselves, touch others, are touched by others, and in turn touch and are touched by the world we inhabit. Under a different mode of description, this is the fundamental “polysexuality” of being human (Barratt, 2006, 2010). The experience of freedom starts with my ability to stir the sensuality of my own embodiment. Where freedom begins is with my ability to touch my own body, to touch the body of those who thus agree to be touched, to receive the touch of those whose caress I desire, or to freely look at that which I find to be beautiful or otherwise alluring. This is the erotic basis of freedom that is the unacknowledged platform for all other rights and liberties. This is our human constitution and, in an important sense, it is far more fundamental than “The Constitution” or any “Universal Declaration.”

Sadly, it is striking how all the debates over freedom almost invariably sidestep this core of human experience the sensuality of our orientation to the dynamics of pleasure and pain. In this sense, perhaps more significant than the Bill of Rights and its subsequent Amendments is the more recently asserted right of a woman to engage in sexual activities that might

result in unwanted impregnation and her right to terminate such a situation the right established and inscribed by *Roe vs. Wade* in 1973 (Garrow, 1998). More salient to her personal freedom than her Nineteenth Amendment right to vote is her right to govern her own embodied experience (see Barnett, 1973). Surely more fundamental than my First Amendment right to attend this or that church or temple is my liberty to engage in whatever sexual activities I wish in the privacy of my own home the liberty established by *Lawrence vs. Texas* in 2003 (Richards, 2009). Very significantly, the Ninth Amendment is virtually forgotten (“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”), although it constitutes the marginalized basis on which the rights of sexual minorities might be asserted, as has been discussed in an important text on this topic (Abramson, Pinkerton & Huppert, 2003). No doubt the framers of the constitution were in no position to be able to acknowledge publicly the significance of their own sensual beings. Yet what do my freedoms of speech, religious practice, peaceable assembly and governmental petition really constitute if I am prohibited from free consensual activity with my sensual body? I do not intend these statements to belittle the significance of the First Amendment (or the Nineteenth), but rather to point to the key insight that expression begins with the body, not with the mind, and that therefore freedom of bodily expression is ultimately the *sine qua non* of freedom itself.

Although an adequate discussion of this cannot be initiated here, the same criticism may be leveled against the Universal Declaration of Human Rights. For example, this important document endorses our right not to be tortured as or subjected to cruel and inhumane punishment (Article 5), as well as the right of heterosexuals to form legal marriages (Article 16, which is clearly directed toward the right to reproduce and “found a family”), yet skates over the underlying significance of these experiences as representative of a right to bodily integrity and sensual expression. The freedoms specified in this and similar statements are dependent on our liberty to do, or not to do, certain things with our own bodies; yet freedom of sensual expression is never addressed. With this foundation missing, the Universal Declara-

tion and all its subsequent covenants as important as they truly are appear as pragmatic lists of almost disconnected issues.

Erotic freedom entails the right and liberty to sensual bodily expression, to the enjoyment of our embodied experience as human beings. It is the mission and vision that acknowledges the polysexuality of the human condition, and it is the ethical foundation for our sense of being free. This is because our right to engage or not to engage in sexual thoughts, fantasies, desires, and consensual activities without fear of persecution, condemnation, discrimination or stigma, and protected from interference by the forces of organized religion, bogus science, and governmental agencies is the bedrock of liberty itself. This is the right to sensual selfdetermination, which was so bravely articulated by Victoria Woodhull, the first female candidate for the presidency of the United States (Woodhull, 1871/2010), and from which all other freedoms and civil liberties are derived. In this sense, sexual freedom is the essential liberty.

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Sexual Rights and Moral Values of Erotic Expression

Introduction

Gaylen Moore

Thanks to efforts over the past several decades to promote international human rights and tolerance of diversity, people around the world have started growing accustomed to the idea of celebrating – or at least tolerating – cultural diversity. Realistically, we know that human rights are still abused in many ways and in many places, but in most parts of the world today there is at least a certain amount of official lip service given to the concept of cultural diversity.

Erotic diversity, on the other hand, is an entirely different matter. In the grand fabric of human social and political activity, human rights related to sexual expression tend to be hidden in the folds, thanks to an array of historically ingrained negative emotions: embarrassment, shame, humiliation, feelings of vulnerability, fear, disgust, and moral indignation. Indeed, the very thought of erotic diversity commonly generates considerable anger, disgust, and moral condemnation. In most cultures, the official lip service is more likely to take the form of denunciation rather than praise. In the United States, citizens are legally protected from various forms of discrimination based on race, religion, and gender, but those involved in non-traditional family structures and lifestyles often find themselves seemingly guilty until proven innocent in cases involving employment or **child custody**. There is, of course, virtually no protection, and plenty of peril, for most sex workers, but even your friendly neighborhood **sex blogger** who breaks no laws and writes simply for fun, not money, can be easily fired from her job if her true identity is discovered by her employer.

Erotic diversity¹ is resisted and openly denounced because diverse sexualities strike many people as sick, perverted, and blatantly sinful. To make matters worse, sexuality is often thought to involve mere preferences or lifestyle choices, and thus sexual rights, if recognized at all, are not taken as seriously as other forms of human rights. For these reasons one might say that sexuality is the “Rodney Dangerfield” of political rights – it rarely gets any respect.

In the first part of this section, I will take a look at some of the political issues surrounding the subject of sexual rights and point out various ways in which sexual rights go hand-in-hand with more widely-recognized fundamental human rights. I will then outline several of the most common negative reactions to sexual rights and offer counter arguments. In the second part of this section, I will switch gears and focus on the moral dimensions of erotic expression. Here I will briefly consider some possible biological roots of morality, then look at the historical roots of traditional views on sex. In the final part, I will consider some ways in which our views on sexual morality might be radically different if we were to adopt a sex-positive paradigm, focusing especially on the potentially positive moral and spiritual dimensions of recreational sex.

Sexual Rights as Human Rights

Gaylen Moore

The idea of human rights has long-established roots in philosophy, primarily based on the notions of “natural law” and “divine law.” The modern concept of international human rights emerged with *The Universal Declaration of Human Rights* in 1948 in response to the horrors of genocide and torture associated with the Second World War. The general idea is that certain rights to life and individual liberty are fundamental to modern human civilization and may even be in some deep sense natural. Philosophers, generally speaking, are reluctant to ground the modern concept of human rights upon the concept of natural law, since the idea of natural law, itself, is highly controversial. For the general public, however, the default assumption is that human rights are simply political expressions of natural law. I will not attempt to engage the debate over natural law here; for the most part I will simply try to avoid the term. The notion that human rights are in some important sense *fundamental* to civilized life, however, I see as highly plausible.

Those who accept the idea of human rights, but nevertheless tend to trivialize the notion of sexual rights, generally do not see the ways in which sexual rights are linked to fundamental human rights. I suspect that most of these people do not realize that, in fact, sexuality can be a matter of life or death for many people. Homosexuality, for example, is a criminal offense in 77 countries and is [punishable by execution in seven countries](#). Some religious fundamentalists in America have even come out in favor of [executing homosexuals](#), or have at least suggested that it [would not be immoral to do so](#). If these facts are not sufficiently shocking, I would also point out a further startling implication: For all practical purposes, allowing the death penalty for homosexuality is, in effect, allowing local genocide with regards to the homosexual population.

“Shouldn’t local communities have the right to enforce moral standards?”

This ever-so-brief review of the state of sexual rights around the world makes it apparent that the dangers, indignities, and civil rights violations facing sexual minorities of all sorts can be as serious and as devastating in terms of human suffering as any form of religious, ethnic, racial, or political oppression. Sexuality is not always a matter of “mere” lifestyle choice, but even in those cases where it is, I would argue that we need to take sexual rights seriously.

In the United States, sexual minorities and sex workers are not officially executed, but they are denied equal rights and privileges in various realms of life. A recent example of discriminatory American attitudes can be found in Texas in the [2010 State Republican Party Platform](#), which favors policies that would, for example, prevent homosexuals from having custody of children. On a brighter note, the 2003 US Supreme Court ruling in *Lawrence v. Texas* makes blanket laws against homosexual relations in the United States unconstitutional and unenforceable. More recently (August, 2010), in the case of [Perry v. Schwarzenegger](#), U.S. District Judge Vaughn Walker stopped California’s ban on same sex marriages (“Proposition 8”) from being enforced on the grounds that the state has a “constitutional obligation to provide marriages on an equal basis.” According to Judge Walker, California’s ban would violate both the Due Process and the Equal Protection clauses under the Fourteenth Amendment.

Unfortunately, these recent victories in the US do not mean that sexual rights are now firmly settled in America. According to [some observers](#), lower courts across the country are basically ignoring the Supreme Court’s ruling in *Lawrence v. Texas*. In one case, for example, a federal appeals court in Alabama upheld a state law criminalizing the sale of sex toys. The federal court found that local “public

morality” was a sufficient basis for such laws. In other words, if the majority says that some behavior is *immoral*, then states can make it *illegal*, despite the Fourteenth Amendment.

Later I will discuss some common arguments made *against* treating sexual rights as human rights, but first I want to emphasize a couple of major points to help guide us along the way. One problem that often crops up in discussing sexual rights stems from a simple misunderstanding of the concept of “sexual rights.” People commonly interpret the phrase as though it is referring to special rights that apply only to certain fringe groups. Based on this misunderstanding, a typical reaction is “Why should these people get special rights or privileges?” The answer, of course, is that the advocates of sexual rights are not asking for special rights or privileges based on sexuality. Most advocates of sexual rights are simply asking for protection under the same rights that already protect people in general.

We should also note up front that although gay, lesbian, bisexual, transgender, and queer (GLBTQ) issues are most commonly discussed, these are not the only issues of concern to sexual rights advocates. Prostitution, for example, is illegal in most places around the world, causing many prostitutes to live in degrading and dangerous conditions. One might also highlight the practice of clitoridectomy – the surgical removal of the clitoris – as a form of genital mutilation stemming from certain oppressive cultural attitudes regarding sexuality. A more prevalent form of genital mutilation throughout the world is genital surgery performed on “**intersex**” children – children with non-standard (often hermaphroditic) sex organs. The questionable assumption underlying this practice is that all people should be either clearly male or clearly female, whereas Mother Nature seems to prefer a continuous spectrum of sexual organs. One might also mention that people living in diverse lifestyles such as swinging, polyamory, and various forms of “kink” sometimes find themselves treated unfairly in societies that wish to promote heterosexual monogamy as the only valid form of sexual relations. Finally, I should mention efforts in the United States to allow **female toplessness** in public. In this case, women are not asking to express themselves eroti-

cally; they simply want to have the same rights as men. But sexual rights still have a role to play in this debate because the reason women are not allowed to be topless in public boils down to public morality laws – the same kinds of laws based on the same kinds of intolerance that restrict sexual rights.

For the purposes of discussing sexual rights, some of the most important human rights would include rights to the pursuit of happiness, individual liberty, privacy, religion, and the pursuit of life-sustaining activities, such as gainful employment. It can be argued that any person or government claiming to take these human rights seriously must also take sexual rights seriously, for the simple reason that these widely-accepted human rights *logically imply* a variety of sexual rights. Given the interlinked network of human rights just listed, the only way in which one could logically deny a particular sexual right would be to claim that the proposed sexual right conflicts with some other right that is more important or more fundamental than the sexual right. As we shall see in a moment, this is exactly what most opponents of sexual rights are inclined to do.

Arguments Commonly Made Against Sexual Rights

Given the controversial nature of sexual rights, one can find countless hordes of people claiming that there are no such rights or, if there are such rights, they are overpowered by more important rights. One can also find endless arguments to the effect that various sexual behaviors are just plain wrong and have nothing to do with rights at all. Here I will offer a sample of common arguments against sexual rights. These arguments and assertions apply to a wide range of sexual activities, including homosexuality, non-monogamous lifestyles, and prostitution. Later I will take a closer look at two specific issues: prostitution and same-sex marriage.

One common approach taken by the opponents of sexual rights is to appeal to a concept of “local community standards.” The general idea is that the happiness of people in a community depends on the stability and security of the community. Certain practices may disrupt the community sense of decency, and thereby pose a risk of social unrest. In other words,

the breakdown of community standards may harm individuals in the community. An important role of government is to arbitrate in situations in which some rights conflict with other rights. By this way of thinking, a gay person's right to privacy or a sex worker's right to pursue happiness in accordance with his or her own inclinations might be deemed less important than the rights of the majority of the community to enjoy a stable community environment. There is, however, a serious flaw in this approach.

The notion of individual liberty is generally considered to be among the most important and fundamental of human rights. The acknowledgement of liberty *cannot* reasonably be based on the premise that a liberty is only allowed so long as no one is offended by the exercise of this liberty. Being morally offended by an activity does not, in itself, mean that this activity counts as a serious violation of one's rights. Some people, for example, are morally offended by dancing, but this does not mean that their individual rights are seriously violated by, say, a dance troupe performing in a public park.

Of course, dancing in a park is vastly different than sex performed discretely in the privacy of one's home. Most people would agree that no local community has the right to criminalize dancing *in the privacy of one's own home*. The advocates of sexual freedom could thus point to an important aspect shared by both dancing and sex, namely, the fact that neither activity does any direct harm to the community, especially insofar as such activities can be performed privately. The fact that some people might be morally offended by the activity is simply not a valid reason for the government to ban it, even if a majority of people in the local community favor such a ban.

“Who is to say that liberal moral tolerance should be more important, legally, than traditional family values?”

Obviously human beings have to make moral decisions, and obviously some of these moral decisions will have legal ramifications. There will always be some people who are morally offended by some activity that is accepted by society. In order to determine what is just in a civil society, some politi-

cal process is required. For the purposes of exposition, I will focus on the American legal system. In the United States, political decisions are supposed to be guided by the Constitution. An important aspect of this process is that it is based on the definition of certain *fundamental* rights, and these fundamental rights *should not* be violated, even if the majority of people at a given point in history want to violate them. (I emphasize “*should not*” because in reality the majority sometimes does, if fact, succeed in violating these fundamental rights for a period of time – until some sort of social upheaval manages to correct this problem.)

Another important aspect of this process is that it *should* be guided primarily by *rational* argumentation proceeding, to the greatest extent possible, via the logical implications that can be derived from the fundamental rights and principles outlined in the Constitution. Freedom of religion is important, but we all know that some of our fundamental rights go deeper than the freedom of religion. If, for example, your religious sentiments or moral beliefs encourage you to blow up a building full of innocent people, then your right to practice your religion gets ranked below other people's right to life. The general idea, of course, is that rights sometimes conflict, and these conflicts must be resolved as reasonably as possible. Along these lines, one might want to say that a community's right to publicly express moral indignation over a person's sexuality must end where that person's right to liberty and privacy begins.

The process for weighing the importance of conflicting rights really ought to be a rational process, and concerning questions of sexual rights, the only *rational* thing to do is to simply accept the fact that erotic diversity exists, and hold steadfast to the idea that people should not be discriminated against purely on the basis of their sexual orientation and lifestyle choices. The *only* time that any person should suffer public scrutiny or legal action on account of their sexual activities should be if their actions cause demonstrable harm to a clearly identifiable victim. Most sexual practices simply do not meet this quali-

fication, and thus a person's sexual freedom cannot rationally be infringed upon just because, in the eyes of the majority, it conflicts with a certain set of traditional values

"I don't force my lifestyle on anyone else, so why should they force theirs on me?"

The quick answer is that the advocates of sexual rights are not forcing their preferences on anyone; they are simply seeking to be treated fairly. I would claim that people's sexual rights are currently being violated around the world primarily because of a predominance of irrational prejudices, driven mostly by people's religious beliefs and/or the sheer psychological weight of tradition and personal tastes – especially the "yuck" factor that many people feel when they think about alternative sexualities. I especially want to point out that the vast, vast, *vast* majority of "yucky" alternative sexual encounters would go completely unnoticed and thus cause no disruption in a community if it were not for the "public disorder" laws and the preaching of indignant moralists bent on exposing these practices for the purposes of stirring up public condemnation! Laws against these otherwise private and relatively harmless sexual practices *force* such practices out into the open, which then attracts the attention of our sensationalist, scandal-loving media. Sexual minorities are simply not "forcing" their views on anyone; indeed, most people prefer that their sexual activities remain discreet and completely out of the public limelight. Those who oppose sexual diversity are themselves the ones who are responsible for forcing diverse sexual practices out into the open. Imagine sticking your face into a rose bush, then screaming and complaining because the thorns are forcing themselves on you!

I want to emphasize the incredible irony of the situation: If it were not for the "public disorder" laws, and the public condemnations proclaimed by those who are offended by diverse sexual practices, there would be no significant amount of public disorder, and relatively little activity "in your face" causing you to feel yucky.

"Many forms of sexuality are harmful or dangerous to a community, and thus should be banned."

Most opponents of sexual rights in the United States are political conservatives who claim to favor limited government. They typically decry the intrusion of government into our private lives, thus they feel uncomfortable promoting the principle that local communities should have the right to ban harmless private activities. Thus, in pushing the notion of community moral standards, they nearly always pursue the idea that diverse forms of sexuality are indeed, *harmful* to the citizens of a community. Here one can take different approaches. One can argue that non-traditional sexuality poses a threat to the sort of general public stability necessary for freedom to be protected, or one could claim that there is a public health risk due to the possibility of transmitting disease. I've already addressed the first claim, so let me now look at the notion of public health.

The reality of sexually transmitted diseases cannot be denied. Careless casual sex with multiple partners is risky, and most people would say that it is perfectly reasonable for society to condemn this sort of behavior, just as society condemns drunk drivers and needle-sharing drug addicts. STDs are common and most can be caught and spread unknowingly to other people, but not all of the forms of alternative sexuality imply multiple sex partners, so if one is pressing the issue of public health, one must focus primarily on the non-monogamous lifestyles.

Here we enter the grey area of relative risks. Virtually everything a person does throughout an average day involves some level of risk to themselves and others. Driving a car is notoriously risky, and, like sex, people often engage in driving simply for frivolous pleasure. Every time a family gets into their car to go see a movie, the driver is putting themselves, their passengers, and everyone else on the road at risk of death or serious injury. Is this morally acceptable? We generally think so, but why?

The answer might be put this way: life is simply not worth living if it is not pleasurable, and almost every form of pleasure involves some level of risk. Almost

everything we do could conceivably lead to harm for someone. Despite the risks, we drive and fly and we don't generally feel that we are immoral in doing so. It comes down to an intuitive form of cost-benefit analysis. We compare the potential risks to the expected reward, and go from there. Non-monogamy, in itself, does not pose a significant threat to public health. *Careless* sex with multiple partners can put oneself and others in unnecessary danger, just as careless driving can, although there is an important difference between consensual sex and driving. Careless driving can cause harm to innocent pedestrians or homeowners who did not willingly partake in any risky behavior. In this sense, driving is a public activity. Unprotected, consensual sex involves people who are more or less knowingly partaking in risky behavior, and thus it is best considered to be a private act.

In light of these general arguments for and against the tolerance of sexual diversity, let me now turn to a few specific issues.

The Rights of Sex Workers

Having already mentioned several of the major arguments for decriminalizing prostitution, I won't say much more about it here. I do, however, want to address a few specific points. The introduction of money into any private activity does, as a matter of fact, change the political and legal landscape in which that activity occurs. For one thing, the government has reserved for itself the right to collect taxes on most exchanges of wealth. This gives the government an opportunity to poke its nose into activities that would otherwise be protected within the realm of privacy. The government takes an interest in the nature of the commodity that is being exchanged in any financial transaction. Since the government has already granted itself the opportunity to interfere in commercial transactions for the purposes of the public interest, the question in the case of prostitution becomes should the government interfere in these particular types of transactions? Is there a genuine public interest to be protected here? The short answer is yes, because of the possibility of something more or less like human slavery. If someone purchases a service provided by someone, the public needs to be assured that the service was provided *willingly*.

For this reason, I would argue that prostitution should be controlled by the same kinds of mechanisms used in other professions. One cannot legally claim to be a medical doctor or a counselor unless one has certification, and getting certification requires some training. For the protection of both the sex worker and the consumer, it is not unreasonable for the government to insist that the acceptance of money for sexual service may require certification – or at least some form of registration – to insure that the activity is consensual, reasonable safety precautions are followed, the consumer's rights are protected, the sex worker's rights are protected, appropriate taxes are paid, and so on.

What is *not* reasonable is the simple outright ban on prostitution. The criminalization of prostitution unfairly restricts the rights of people to creatively use their own private resources (their own living space, their own office space, their own minds and bodies) in the pursuit of a lifestyle that does no demonstrable harm to the public welfare.

Some people claim that it is simply impossible for a prostitute to freely choose to offer sexual services because no one would freely choose to degrade themselves in this way. The mere fact that they would offer such services is, according to such a view, evidence that the person's options have been woefully restricted due to economic hardships, drug use, exploitation, or some form of social oppression. The obvious flaw here is that this approach starts from the presumption that certain forms of sexual behavior are inherently degrading. This assumption stems from people's personal morality. Some people would argue that sex for money is no more inherently degrading than, say, house-cleaning for money, or car-repair services for money, or medical care for money.

When all of the smoke and mirrors are cleared away, the true basis for banning prostitution turns out to be nothing other than the imposition of some people's moral views upon other people. The mere fact that something has been done a certain way in the past is not, in itself, justification for why it should be done today, and the fact that some people are offended by an activity is not, in itself, justification for restricting people's rights to liberty, privacy, and the opportunity

to earn a living. The bottom line is simply that sex workers are oppressed by governments around the world, and that their human rights to life, liberty, and the pursuit of happiness are blatantly violated.

Same Sex Marriage

One of the main arguments against same sex marriage is that homosexuals are not being discriminated against insofar as marriage is concerned. Marriage, they insist, *is* – and, in the interest of public order, *must continue to be* – defined as a certain type of commitment between one man and one woman. There simply are no legal restrictions to gays getting married, thus their rights are not being violated. No one has a right to marry someone of the same sex, and thus everyone is being treated equally. The obvious crux of this argument is the definition of marriage and the supposed need to keep this definition from ever changing.

One obvious problem is that marriage has not always been defined as a commitment between “one man and one woman.” Polygamy has been, and still is, legally practiced in many cultures. This gives some precedence to the idea that the definition of marriage does not have to be exactly what the opponents of same sex marriage say it has to be. It is also clear that the concept of marriage has evolved over time. Women are no longer literally “given away” as property in marriage, and restrictions on interracial marriages were dropped in 1967 in the United States, thanks to the Supreme Court’s ruling in the case of *Loving v. Virginia*. There is, therefore, no logical or historical barrier to the idea that the definition of marriage cannot be changed. The question, then, is should the definition be changed? The short answer is yes, if it can be shown that the current definition is responsible for a violation of human rights.

Some “marriage defenders” claim that there is no such thing as a “right to marriage,” so there is no basis for talking about human rights regarding this issue. They also point out that the notion of love is not explicitly included in the legal concept of marriage, so there is really no discrimination if gays don’t have the opportunity to marry someone they love. There are certain people who we might love, who we nevertheless are not allowed to marry – a sibling, for

example, or someone who is underage, or someone who simply does not want to marry us. It is unfortunate if, by chance, the only people we want to marry are ineligible for marriage, but this is not the fault of the government, no one’s rights are being violated, and it does not make sense that society should redefine marriage just so that you can find an eligible marriage partner.

There is, however, an important flaw in this entire line of thinking. In the context of discussing human rights, marriage is a term for a legal concept that, in itself, exists only in the light of larger socio-political context, namely, the grand web of meaningful human existence. We don’t live just so that we can obey laws or conform to certain principles. Rather, we create laws and identify certain moral and logical principles so that we can live richer, happier, more meaningful lives. Marriage, as traditionally defined for legal purposes, is not “about love,” but our actual human lives are, in fact, to a very great extent, about love. Laws and principles are important in order to help us protect what we value; they are not what we value. What we value is life, liberty, and happiness. If it is possible to increase the joys and liberties of some people without violating the rights of others, then it is perfectly reasonable to do so, even if this means redefining some terms and reorganizing some of our traditional institutions. In the real world (beyond the fine points of academic and legal argumentation) the real reason that most people get married is first and foremost because they love each other. Feelings of love are what make marriage worth doing in the first place, and these feelings cannot be simply ignored if we want to have a truly meaningful and productive discussion about the best definition for the word ‘marriage’.

In any discussion of same sex marriage, some people are sure to bring up the needs of children. Men and women are obviously different, and the ultimate biological basis for sex is procreation. Marriage, according to some, is the primary means by which we create and protect intimate family environments wherein children can be raised in the best possible circumstances. They claim that the best environment for children is a stable household with both male and female adult caregivers, i.e., parents. Therefore, mar-

riage should be restricted to male/female pair bonds. This is a wonderful argument up until the conclusion. The problem is this: From the fact that marriage might help to create stable family environments for the raising of children, it does not follow that this is the only valid function of marriage in society. Furthermore, same sex marriage does not conflict with the possibility of raising children in a stable environment with both male and female caregivers. A child's parents are never the only caregivers. Gay couples, like everyone else, have friends and extended family members of both sexes who can (and in most cases do) end up playing some role in care giving and mentoring. So, even if we did want to focus the meaning of marriage on the raising of children, and even if we did accept the claim that both male and female caregivers are needed for proper child-rearing, it would still not follow that gays couldn't be good parents. But, of course, there is no logical reason for focusing the entire meaning of marriage on children in the first place. Throughout history, and even today, there have been plenty of married couples who do not have children, and there is no reason to say that their marriages are any less respectable because of it.

A final last-ditch effort of the opponents of same sex marriage often takes the form of a "slippery slope" argument. They worry that if we start to change the definition of marriage today, where will it all end? What if people fall in love with goats or plastic dolls? If we write the concepts of love and/or sexual preference into marriage, how do we tell the goat-lover or doll-lover that they can't marry their beloved? The answer, I suspect, is fairly simple. We can redefine marriage without writing love or sex explicitly into the definition. My proposal might go roughly like this: Marriage is a legally sanctioned social contract between *human beings* that unites their lives legally and economically, in accordance with a variety of laws (tax laws, inheritance laws, property rights, and so on). This protects the genuine core of marriage without any danger of a slippery slope leading to goats and plastic sex toys. And what is the genuine core of the modern marriage concept? The core is exactly what nearly everyone's gut intuitions say it is, namely, *love for another human being and the desire*

to build a life together. As I hope I have shown, we are perfectly capable of preserving this core aspect of marriage without explicitly defining love or sex into it. It also happens to be the case that the form of love leading to marriage is the best basis for raising children, and this is true whether or not a given couple is biologically capable of actually having children.

In the real world, human rights are defined in order to help us to protect what really matters – life, liberty, and the joys of a meaningful existence. When our rights conflict, our primary responsibility is to identify the flesh-and-blood victims who are experiencing demonstrable harm. If it is not clear exactly who the supposed victims are, and if it is not clear exactly what harm is being done, then we cannot favor the rights of these illusive victims suffering their theoretical harm over the tangible interests of genuine victims who are pleading for their lives and liberties.

The Future of Sexual Rights

Positive images and messages portraying diverse sexual lifestyles are easier to find in the mass media today than ever before. Consider the relatively positive treatment of gay people on the TV show *Will and Grace*, for example, or the amazingly positive portrayal of Inara, the courtesan in the science fiction TV series *Firefly*. These fictional characters could not have had such high public profiles just 20 years ago. Of course one can also find even more mass media images of hatred than ever before, but it appears that the overall trends are in favor of diversity and tolerance. Given the increasingly positive lip service given to cultural diversity in general and the availability of positive images of diversity, it is perhaps not too surprising that, according to [recent surveys](#), young people today are far more likely to support gay marriage than older people. This does not mean that the battle for sexual rights has already been won, but it does encourage us to think that it is at least winnable. No doubt there will always be some level of hatred and intolerance for sexual diversity, but we now have good reason to believe that these attitudes may soon be held by a minority of the world's population, rather than a majority.

One major problem that will almost certainly get worse rather than better in the near future involves the tension between an increasing appreciation of cultural diversity and the hopefully increasing appreciation of sexual diversity. Certain nations dominated by religious fundamentalists complain that their traditional cultures are being trampled upon by the industrial world's embracement of diversity. There is obvious dissonance in the ideas of those who support tolerance forcing their version of tolerance on diverse cultures. We've already seen major clashes of this sort triggered by women's rights, and I have no doubt that the concept of sexual rights will be even more bitterly opposed. There may be relatively little that diversity-embracing people can do in the short term to extend the sexual freedoms of people living in these restrictive cultures – especially since most of these nations do not allow freedom of speech. Life on earth is not perfect, and probably never will be. Perhaps the best we can do is to keep our own house in order and lead by example - even if no one is following.

Sex and Morality

Gaylen Moore

The doctrine that I wish to preach is not one of license; it involves exactly as much self-control as is involved in the conventional doctrine. But self-control will be applied more to abstaining from interference with the freedom of others than to restraining one's own freedom.

– Bertrand Russell

In almost every realm of life we celebrate the seemingly inexhaustible human need to expand our horizons through creativity and exploration. In philosophy, the arts, the sciences, entertainment, clothing fashions, mathematics, marketing – you name it – we find inspiration in the new, the novel, and the unknown. If we ourselves are not caught up in the wellspring of creative advancement and exploration, we generally admire and sometimes even idolize those who are. There is, however, at least one significant realm of human experience in which this admiration for boldness and diversity is generally not appreciated – or, if it is appreciated it, there is tremendous social pressure and sometimes legal pressure to keep this appreciation secret. This oddly conservative realm is, of course, the realm of erotic expression.

When it comes to sexual behavior and erotic interests, a large portion of the world's population would prefer to see no diversity whatsoever. Americans are especially noteworthy in this regard; if you are not self-defined as a monogamy-seeking heterosexual, then you are most likely to be seen as mentally, emotionally, and spiritually defective. Certain members of the clergy are exempt from this rule to the extent that they are “married to the church” and thus celibate in the world of human relationships, but these notable exceptions simply serve to highlight the moral underpinnings of the general rule.

Neurobiology and the Golden Rule

The guiding forces that structure most aspects of human social interactions are moral precepts. Morality transforms mere aesthetics (judgments of taste) into the tools (and in many cases the weapons) of social control. Moral sensibilities are essential to the survival of human societies, and it has been argued that the foundation of all morality is an idea that most of us know as the “Golden Rule,” which is to say: “Do unto others as you would have them do unto you.” The Golden Rule is found, in one form or another, in every human culture, and is also widespread in non-human primate societies. In fact it is claimed that variations of Golden-Rule-like behavior, such as “reciprocal altruism,” can be found throughout the animal kingdom. Bats who return from a successful night of feeding are known to share their food with their less-successful companions.² Notably, a bat tends to feed other bats who previously helped it, which is where the “reciprocal” part of “reciprocal altruism” comes in. Empirical studies in the wild, as well as mathematical modeling techniques, confirm that reciprocal altruism is fostered by long histories of social interaction between individual animals.

Remarkable advances in neuroscience have provided insights into possible neurological bases for reciprocal altruism, as well as for the Golden Rule. These insights have fascinating implications for our understanding of morality in general and the morality of sex in particular. Donald Pfaff, head of the Laboratory of Neurobiology and Behavior at Rockefeller University, has proposed a neurobiological theory of moral behavior based on the idea that a certain type of loss of information in our brains may temporarily interfere with our brain's ability to sustain clear boundaries of identity between self and others. For brevity's sake I will avoid the fascinating neurobiological details here and simply touch upon the main points as follows: It takes a great deal of precisely-timed neurologi-

cal work to maintain the self/other distinction, so it is perfectly plausible to suppose that any disruptions of these processes might lead to blurring of the self/other distinctions in our minds.

In his theory of moral behavior, Pfaff does not conceive of these moments of identity-blurring as rare mystical experiences of “[oneness](#),” but rather as our ordinary emotional experiences of empathy.³ Most of this identity-blurring activity is unconscious, so it is not as if we suddenly find ourselves confronted by a problem – “Gee, now I’m not sure...is this my pain I’m feeling, or is it yours?” No, what we consciously experience is just the very tip of this neurological iceberg, which takes the form of an intuitive sense of what it must be like to be another creature, given what we see happening to that creature, and given how we interpret the creature’s behaviors. In a very real, albeit mostly unconscious way, our neurological wetware emotionally embodies an idea that we would express cognitively as “What I do to you, I do to myself.” Given the heavy neurological work needed in order to maintain self/other distinctions, and the relative ease with which these distinction-enforcing mechanisms can be disrupted, it appears that our default mode of being is nothing other than an on-going embodiment of the Golden Rule. These facts, along with the functionality of [mirror neurons](#), imply that we are, in effect, hard-wired for compassion.

Given the all too numerous examples of selfish and violent behavior throughout the world, it is obvious that our neurological predisposition for compassion is not the end of the story. Aggression is a basic requirement for survival throughout the animal kingdom. Compassion cannot be the sole source of motivation when capturing prey, competing for mates, and defending territory. Obviously the whole story is highly complex, but, for our purposes here, the main idea is that there must be a natural balance throughout the animal world between default compassion and the environmentally induced need for aggression. As noted earlier: In animal societies this balance, loosely speaking, takes the form of reciprocal altruism, which, in some higher primate societies, and in all known human societies, takes the form that we all know as “the Golden Rule.”

What is also deeply interesting – and, again, I cannot even begin to tell the whole story here – is that a great many biologists believe that all social behaviors are fundamentally rooted in sexuality. As biological processes, each and every organism living on the earth today is unimaginably old. Each of us could, in principle, trace our history through 3.5 billion years of continuous biological transformation – back to roughly the time at which life on earth originated. In other words: your own death, when it comes, will be the end of a 3.5 billion year old process.⁴ How can a continuous living process sustain itself for such an amazingly long time? The answer, of course, is reproduction. Each of us is alive today because our ancestors found some way to continue their biological life-processes into new generations. As a multi-cellular organic process each and every one of us is, in a manner of speaking, an entity that has been having sex for over three billion years. By this way of thinking, each one of us has an astounding sexual resume: Underlying every thought we think and every move we make there are eons of lived experience, we are masters of brute survival spiced with sexual passion. And the key to all of this success has been, and presumably always will be, a creative impulse toward increasing diversity. At the species level, the value of the individual life is not limited to whether or not the individual passes genes along to the next generation; the role of the individual is to explore the infinite realm of possibilities. Sex, therefore, is not just about procreation; it is also about exploration.

From this basic root, the next step in complexity for many animal species takes us to the level of parental behavior. Then, from here, the rest of our social behaviors grow. What I’m pointing out, therefore, is that the roots of human behavior are ultimately grounded in sexuality and compassion, mixed with parental love and aggression. Human cognition, and therefore human rationality and morality are rooted in these same sources. Human rationality and morality, in other words, are not invaders from beyond the natural world, but rather, they are embodied outgrowths of the natural world. For our purposes here in discussing morality in general and sexual morality in particular, the central point is that we now have a natural basis for discussing what we might think of as a modern version of what philosophers have for cen-

turies referred to as the moral dimensions of natural law and for what contemporary political activists refer to as *fundamental human rights*.

Given the universality of compassion in the form of the Golden Rule, and given the foundational nature of sexual, parental, and aggressive behavioral expressions, it is plausible that we might be able to engage in a rational (philosopher Sam Harris would even suggest **scientific**) exploration of the nature of human moral reasoning. I will certainly not attempt anything on such a grand scale here; my goal so far has been to establish a few of these basic concepts up front so that I can draw on them as I focus more closely on the subject of human sexual morality.

Faith and Reason

So what are we to say about sexual morality? The first thing I want to point out is that moral indignation over sexual behavior typically transforms something that might otherwise be mere aesthetic disapproval (distaste) into something far more ominous and socially precarious, namely, religious fervor or entrenched **xenophobia**. These are the kinds of feelings that historically lead to wide-scale physical conflicts, resulting in untold suffering and death. In light of this, we should be highly motivated to find out what exactly happens to our universal default compassion when we enter the arena of sexual morality. What happens to reciprocal altruism? (*I affirm your freedom to express your idiosyncratic sexuality, so why don't you return the favor and affirm the same liberty to me?*) If controversial forms of sexual behavior were highly dangerous or based on coercion, we could easily explain a great deal in terms of self protection and the protection of our loved ones, but many controversial forms of sexuality are not notably dangerous. As I suggested earlier, this perception of danger does, in fact, go a long ways toward explaining some of the conservative opposition to sexual freedom. But there is another deeply profound dimension that we must address. This is the intimate tie between moral beliefs and religious faith.

Loosely speaking, faith is belief beyond reason. This does not imply that faith is necessarily unreasonable or irrational, given the pejorative tone of these terms. In a very broad sense, faith is unavoidable, even for

the most rational of thinkers. The reasons for this are both logical and neurological. Logically we know that all rational arguments depend on basic premises that are not derivable purely from within the realm of logic itself.⁵ Loosely speaking, we engage in rational thinking because we have a seemingly ingrained faith in the value of logic. We think logically because we want to think logically. Without a desire to be logical, we would have no motivation to think logically. Neurologically, we know that all reasoning is inextricably tied up with emotions.⁶ Rationality is not an ontological realm that stands apart from faith and emotion; it is a naturally embodied outgrowth of them.

There is nothing strictly within the nature of either faith or logic, however, to explain the moral repugnance that many religious people feel toward homosexuality, swinging, polyamory, sexual kinks, public nudity, and prostitution. The roots of this repugnance are a matter of mostly historical accident. I won't discuss this history in extensive detail here, but I believe that a quick overview will be helpful.

The Historical Roots of Anti-Erotic Moralizing

As with almost everything in philosophy, a great deal of Western sexual morality can be traced back to at least as far as the ancient Greeks. In general, the ancient Greeks were sensual people who regarded sex in all of its forms as natural and did not debate about it in the moral terms we find so common today. Homosexuality, heterosexuality, and prostitution were all simply accepted in society without question. We do, however, see in ancient Greece and Rome the origins of a great debate over the nature of sex. Plato claimed that the pure, heavenly life of the mind or spirit is trapped, imprisoned, and degraded in the material realms of earthly passions. Here we see some of the earliest known forms of what we now take for granted as the fundamental dualisms of mind and body, spirit and matter, heaven and earth, reason and emotion, sacred and profane.

Plato set the stage for Epictetus who, about half a century later, considered sex to be rather brutish activity. He argued that rationality and sexuality are incompatible, and concluded that there is no room for sex in the life of a philosopher, that is to say, in the life of one who pursues wisdom through the pure

life of the mind. On the other hand, Ovid, the Roman poet, took a different approach. He portrayed erotic love as a beautiful art form. Thus, in the works of Epictetus and Ovid we see the framework for a basic philosophical question: Is sexuality just a part of our brutish animal nature – a primitive relic that must be overcome by those seeking spiritual advancement and higher morality? Or is sexuality, instead, a positive, uplifting aspect of our primordial essence – a source of creative energy and a form of artistry capable of inspiring spiritual insights?

Although Jesus, so far as we can tell, had relatively little to say on the subject of sexual passion, Saint Paul, the Apostle, ardently followed the anti-erotic approach, claiming that sexual passion is regrettable insofar as it distracts us from a pure life spent pleasing the Lord. According to Paul, marriage makes it possible to have sex without sin, but it is certainly not as pleasing to God as a life of pure devotion attained through celibacy.

The early Christian writer, Saint Augustine, and the medieval theologian, Saint Thomas Aquinas, followed in the footsteps of Plato, Epictetus, and Paul as they established the relatively modern form of Christian sexual morality. Augustine, for example, said that erotic love was a consequence of humanity's fall from grace. Sexuality is necessary to propagate the species, but, he believed, this is unfortunate in that the intense pleasure of arousal distracts us from thoughts of God. Notice that in some ways Augustine is going even further than Paul insofar as he explicitly associates all sex with sin and shame. He says that sexual intercourse was transformed from something innocent to something shameful by the original sin of Adam and Eve. This shamefulness, he says, has been passed on from generation to generation. He claims that any man of God would prefer, if possible, to have children without suffering sexual passion. As he sees it, a righteous man would wish that "just as all his other members obey his reason in the performance of their appointed tasks, so the organs of parenthood too might function in obedience to the order of will and not be excited by the ardors of lust."⁷

Aquinas offered strong defenses of sexual monogamy and life-long heterosexual marriage by claiming

that it is not God's arbitrary desire to restrict sexual pleasure. According to Aquinas, God's commandments flow from His desire to see us live the best lives possible in light of human nature, and human nature dictates that the only legitimate reason for sex is procreation. He also emphasized the natural desire of men to have certain knowledge regarding the paternity of children, thus making monogamy the only natural form of marital relationship.⁸ Obviously, if a man wants to be certain that his wife is giving birth to his biological offspring, he needs to know that she is monogamous; his own faithfulness is not nearly so important. This, of course, is the perfect set-up for a sexual double standard.

Western philosophy, of course, is not the only kind of philosophy, so let's take a quick look at one Eastern alternative, namely, the philosophy of Buddhism, insofar as it relates to sexual morality. Just as there are many different variations of Christianity, there are many different variations of Buddhism, but for my purposes here I will focus on a version that roughly parallels the sexual conservatism of Western cultures.

Moral precepts in Buddhism can be thought of as spiritual exercises designed to help us return to, or maintain, a state of normalcy, which is to say, our natural state of goodness. When we practice morality, we try to maintain our own default goodness – which I would equate with the default mode of being implied by Donald Pfaff's neurobiological theory of the universality of the Golden Rule. Immoral acts are committed when a person is blinded by such emotions as greed, rage or hatred. Negative emotions are disturbances in our natural state that, in effect, alter our nature and make us into something other than our true selves. In Buddhism one obeys moral precepts as a means to an end, which is to say, we practice moral behavior in order to find our true selves. Thus we can see that Buddhist moral precepts are not commandments imposed on us by a Supreme Being; they are self-restraints that we willingly exercise in order to achieve enlightenment.

In Buddhism, the exercise of moral self-restraint is the most important step on one's spiritual path. Without morality, you cannot attain right concentration, and without right concentration, you cannot attain wisdom

or enlightenment. Socially, moral precepts contribute to harmonious coexistence in a community. When morality prevails in society, there is general security and mutual trust, and this promotes prosperity.

Buddhist philosophy recognizes three essential components of moral action. 1) the intention that motivates the action, 2) the effect the action has on the person who does it, and 3) the effect that others experience as a result of the action. For the purposes of talking about sexual rights as human rights, I focused primarily on the effects that actions have on others, but when looking more generally at sexual morality, we cannot totally ignore the other two dimensions – the felt intentions and the effects on our own well being.

Since Buddhism is centered on finding one's true self nature, rather than worshipping a supernatural entity, one might expect Buddhists to be more open to the idea of exploring diverse erotic practices. And, indeed, some branches of Buddhism and other Eastern traditions are more open to sexual freedom than the typical Western spiritual traditions. However, if we look at the traditional (shall we say "fundamentalist"?) versions of Buddhism, we find that they are, in some ways, similar to Western traditions on the subject of sexuality. For example, one of the major Buddhist moral precepts is "abstinence from sexual misconduct," where "misconduct" includes rape, adultery, pedophilia, promiscuity, sexual fantasies, the use of sex toys, the inflicting of pain or humiliation on oneself or one's partner, and other assorted diversions. The central root of these restrictions is the general notion of self-restraint. Broadly speaking, the idea is to abstain from activities that are motivated by sensual desire. The general term for this way of thinking is asceticism (extreme self-denial and austerity) – not to be confused with aesthetics (the study of the nature of beauty and perception).

Mystics throughout the ages have disagreed over the need for asceticism, so I suspect that there is no neurobiological grounding for any universal default ascetic impulse along the lines that we saw in Pfaff's theory concerning the universal nature of the Golden Rule. Guided by my general observations concerning the fundamentally diverse nature of the biological

world, I would argue that "seeking our true selves" should not be limited up front by any automatic commitment to asceticism. It may be that asceticism is the best spiritual path for some people, but I seriously doubt that it is the one and only best path for everyone. In fact, I am skeptical of the notion that there is one true path, even as the concept is applied to the life of a particular person. Some people may go through phases wherein different approaches work best for different stages of their development. If this is true, then asceticism (or hedonism, or monogamy, or sexual kinks) may work well for a particular person at a particular stage in life, but may not be appropriate in another stage.

Moral Diversity and Individual Liberty

In comparing the typical Christian and Buddhist perspectives on morality, we see that we must eventually deal with a set of deep questions about the nature of morality itself. For someone whose moral beliefs are solely based on religious faith in the commandments of a supreme being, there is generally very little room for discussion or philosophical questioning about the nature of these commandments. They simply accept what their holy books say, or what their religious community says. Logical reasoning, historical records, and empirical data will ultimately be ignored by such people to whatever extent it conflicts with their faith. One role of religious freedom is to protect philosophical diversity from such absolutist viewpoints.

In a free society, no social standards should be based purely on religious faith, no matter how overwhelming the population of a particular religion might be. In a free society, the burden of proof ought to be on those who promote a particular moral restriction to show that the restriction is necessary in order to maintain individual liberties in a civil society. Here it might be good to recall John Stuart Mill's principle of liberty, which may be paraphrased as follows: The sole reason we are ever allowed, individually or collectively, to interfere with the liberty of any person is self-protection, or the protection of others. Mill says: "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient war-

rant.”⁹ These ideas are foundational for free societies in the modern world. Thus, even though religious people may not feel a need to engage in rational discussion for the purposes of evaluating their faith-based beliefs, they must be willing to engage in such debate if they want to promote their moral beliefs in a free society. This, at least, is how things ought to work.

It appears, however, that sexual morality has side-stepped the usual protective safeguards offered by free societies. Put simply: Because of the overwhelming dominance of Judeo-Christian sexual morality and asceticism in most Western cultures, there has been a failure to seriously engage in adequate rational discussion of sexual morals. Thanks to fears of public embarrassment and overwhelming social pressure, relatively few notable public figures have been willing to step forward and publicly offer strong rational defenses for, say, the moral advantages of recreational sex or the rights of sex workers. Thus, in the third part of this section I will try to sketch a few arguments favoring the positive benefits of sexual freedom. In other words, I will attempt to show that certain unpopular sexual practices such as swinging, polyamory, and sex work could, in fact, be seen as healthy and beneficial to the individuals who practice them, as well as to the society that allows these individuals to explore these realms. Following Ovid, I will compare erotic expression to artistic expression, and borrowing a theme from Buddhism, I will defend the idea that some people may best be able to find their true selves by fully and consciously engaging their diverse sensual desires.

The Positive Side of Recreational Sex

Gaylen Moore

Science may provide insights into a few universal traits or principles that will help us to identify certain foundational moral precepts, as suggested by Donald Pfaff's neurobiological theory of the Golden Rule, but I predict that these successes will go hand-in-hand with the strengthening of a complementary concept, namely, an ever-increasing appreciation for the breadth, depth, and power of natural diversity. While certain universal traits and principles unite us, other principles, such as the endlessly evolving complexity of certain types of dynamical systems, will no doubt continue to reinforce human individuality – the uniqueness of each person's personality accompanied by a parallel uniqueness in the nature of each person's spiritual journey. Simply put: The Golden Rule applies to everyone, but an emotional/spiritual path limited to, say, heterosexual monogamy, or monotheism, or asceticism almost certainly does not.

Although much of what I am about to say will seem bizarre and politically contentious, I would suggest that none of this is rocket science. Given our foundational beliefs in individual liberty, we simply cannot in good conscience allow the majority of a population to dictate what spiritual path a particular individual must take, nor can we credibly assert, based on our own limited knowledge and experiences, what is, or is not, spiritually possible for others. It is simply not our place to tell the erotic adventurer that their lifestyle must be spiritually empty. In saying this, I'm not suggesting that most sex workers or sexual adventurers actually see themselves as seeking spiritual fulfillment. Given the limited conceptual paradigms imposed upon us by the modern world, many erotic adventurers end up simply seeking pleasure or income with no conscious concern for spirituality, artistic expression, or professionalism. But if the dominant paradigm were different, then the common understanding of – indeed, the very meaning of – sexual adventurism within the social context would change, and more folks might indeed adopt the seemingly incredible viewpoints that I will now explore.

For the average person born into the Western world today, the association of sex with sin and shame does not seem like a matter of abstract belief. Most people find these beliefs deeply embedded in their intuitions and visceral emotions. Many people find that diverse forms of sexuality feel wrong, unnatural, sick, degrading, and spiritually misguided. By way of a rather dramatic example, try bringing to mind the image of a prostitute offering spiritual guidance to his or her clients. For many people, this image is impossible to take seriously. Yet today, as in ancient times, there are people who do, in fact, take this image seriously, and some of these folks are striving to embody this spiritual vision of sacred sexuality into their own lives.

We can begin to understand the advocates of sacred sexuality by engaging in an imaginative exercise: Think of the fundamental split between Epictetus and Ovid and ask: What if the dominant influences of Western culture had followed Ovid rather than Epictetus? What if we had never seriously accepted the equation of sex with shame, filth, and moral degeneracy? What if, let's say, the early Christian church had embraced diverse forms of erotic love as natural, divinely-sanctioned forms of artistic expression and spiritual insight? Contemplation of an alternative reality such as this might help foster our imaginations as we try to envision a world in which erotic sensuality is not shameful, homosexuality is not considered an abomination, and sex workers are simply accepted – and in some cases even highly respected – as artisans working in the medium of erotic sensuality.

Let me begin with an observation made by Robert Solomon, who suggests that sex might be thought of in terms of body language.¹⁰ We all know that written words have meanings that go beyond their mere physical dimensions. Words have meaning because they are interpreted by sentient beings – that is to say, beings with feelings. Solomon suggests that sex is a language and thus has meaning that goes beyond its physical dimensions; it is more than

thrusts, moans, and caresses. To master a language is to possess an extensive vocabulary, and through this mastery, one is able to actively engage in what Wittgenstein would call a form of life. We learn a language by practicing it. The language of sexuality is learned through sexual interaction.

People are like books in the sense that you can't really know them by just reading their covers. To read a book is to go on an adventure that, to some extent, weaves new knowledge into the fabric of your own being. There are many dimensions to a human personality, and some of these dimensions can only be known to those who gain access to the sexual life of a person. Every time we read a book we gain knowledge that helps us to reinterpret other books that we've already read, and we gain deeper potential for the understanding of the books that we have yet to read. Through explorations into the diverse realms of human sexuality we have an opportunity to embrace vast dimensions of human existence that may prove to be of great value once we truly come to understand them.

An active recreational sex life with multiple partners may have instrumental value as it facilitates the mastery of a language through which one can gain access to whole "cosmic libraries," so to speak. I want to emphasize that the kind of "mastery" I'm referring to is not limited to the mechanics of performance. All true masters of any art form must avoid a pitfall that I think of as the "tyranny of technique." Blogger [George Siemens](#), who has also adopted this term, points out (in a completely different context) that technique "has a way of forcing standardization on systems, minimizing innovation in the process." As I see it, the potential for a truly uplifting moral framework for recreational sex is radically diminished if the sex enthusiasts are ultimately focused on chalking up new methods in one's arsenal or swapping lovers like baseball cards.

Biologically, the foundation of sex is its potential as a creative act – the creation of new life. I am suggesting that the "creation of new life" ought to be metaphorically carried through to the psychological and sociological levels. The moral significance of sex is greatly impacted by the fact that it can be (and I

would say should be) re-creational to the greatest extent possible in our emotional and spiritual lives. What makes a sexual encounter "masterfully executed" is not the proficient application of some technique learned in a book or copied from a porno movie. A technically proficient but uninspired painter is not a truly masterful painter. If we take the concept of "sex as art" or "sex as recreation" seriously, we must pay most of our attention to the inspiration, creativity, and passion of the artist and/or recreationist.

Through sex we can meaningfully engage the subjectivity of another person – their autonomy and their individuality – within our own subjectivity. Sure, we could do this to a large extent by simply getting to know someone without having sex, but realistically we will always miss a number of interesting and important dimensions. Human life gains virtually all of its meaning through the interconnections of individual human beings. To the extent that recreational sex allows unique interconnections to form, it allows the meaningfulness of human life itself to blossom in ways that it otherwise could not. This is not to imply that everyone should try to have sex with everyone. A painter does not indiscriminately paint everything she sees; she seeks out what is inspiring and applies to the canvas only those colors and brush strokes that flow from her self-knowledge and self-expression. Her compulsion is not to mimic the popular crowd, nor to seek approval from others simply for its own sake. No, her compulsion is to express herself in such a way that she leaves the world more interesting and more beautiful on account of its now containing tangible manifestations of her own unique spirit. Sex, ideally, should be an expression of self-love, self-knowledge, and compassion for the world, woven creatively and beautifully into the very fabric of reality. In a certain sense, then, human sexuality can be seen as an erotically embodied expression of the Golden Rule.

Many people will shake their heads in disbelief upon reading these fancy notions of sex as an art form. They might claim that most sexual encounters are, in reality, disappointing exercises that often lead to painful interpersonal dynamics in the long run. Recreational sex, they will say, is spiritually empty. I would admit that, for many people, this is true. But my point

in emphasizing the natural diversity of the world is to argue that this view of sexuality does not ring true for everyone. It is possible that some people are, in fact, living their lives within the light of a radically different paradigm – a paradigm that is, shall we say, more in line with Ovid than Epictetus.

My general claim is that we are morally obligated to respect other people's freedom of expression, even if we find their style of expression to be distasteful. Our own liberties are not violated merely by the fact that we feel moral disgust for the actions other people; if anything, our own liberties are often reaffirmed by confrontations with alternative paradigms. Each moment of disgust is an instance of life experimenting with new ways of learning what it is to be human. If, as the Buddhists say, moral precepts are means to achieving enlightenment, then the exercise of self-restraint by (as Bertrand Russell suggests) abstaining from interference with the freedom of others, may play a major role in enlightening the whole world. The self-restraint required in order for individuals to collectively embody the concept of sexual freedom provides a form of spiritual feedback that operates on both the personal and social levels. Sexual freedom can thus be understood as a spiritual example of a positive feedback loop: Each person's self-restraint liberates both themselves and others, and each instance of personal liberation reinforces a social context favoring even more personal liberation and enlightenment.

Different people approach sex in different ways, so some people will find that recreational sex is not liberating or enlightening for them. They might find recreational sex to be empty, disappointing, and painful. Their exercise in self-restraint, however, as they affirm the rights of others to pursue non-monogamous lifestyles, may still bring them a form of deeper peace and self-knowledge. Thus, by default, sexual freedom may contribute to enlightening the lives of those who do not personally engage in sexual adventurism.

Skeptics will insist that erotic adventurism is nothing more than selfish pleasure-seeking and therefore cannot offer true freedom to anyone. But why should we accept their assessment? How do we measure

the value of a form of life? Think of grand master chess players, sports heroes, movie stars, or musicians. They all bring a certain amount of joy – and pain – to themselves and others as they pursue their dreams. If a person masters the art of connecting with people on a sexual level, or even if they merely dabble in recreational sex as a hobby, how are we to judge that their form of life is any less valuable than any other?

Again I return to the theme of diversity. Life is nothing if not diverse, and we all struggle to find our niches in the grand cosmic fabric as best as we can. How can anyone credibly argue that they know that recreational sex is empty and meaningless for everyone? How can they possibly know this? The best they can do is point to some religious figure who proclaims that sex is sinful, but unless we are already convinced by their religion, why should we believe them? I would argue that when a person masters the poetic artistry of sexual expression, she engages her own incarnate freedom and human dignity in a way that also acknowledges the freedom and dignity of the other. This, indeed, is what the true intertwining of subjectivities is all about. In many respects the beauty and value of this form of life may be far beyond the comprehension of anyone who has not mastered the same art to the same level, but this is true of any master of any art form. To master a realm (or even to simply live in a realm) is to understand that realm in a way that most outsiders cannot.

I do not mean to suggest that everyone who engages in recreational sex becomes the master of an art form. Not everyone who enjoys painting has mastered the art of painting. Not everyone who enjoys dancing is a masterful dancer. Mastery is not the sole criteria of value, and not every form of life generates tangible produce. A journey can be important and meaningful, even if the adventurer's artistry is minimal and the destination is obscure. The amateur erotic adventurer is worthy of our respect, no less than the amateur tennis player or the average weekend golfer.

Every form of recreation has its experts, and most can also be found to have some realm of professionalism. There are many tennis players, for example,

but relatively few expert and/or professional tennis players. We should not expect recreational sex to be any different. Unfortunately, the poisonous social and legal atmosphere that surrounds professional sex corrupts the art and makes it highly unlikely that anyone will develop their professional skills to their full potential. Professional sex work could be among the most emotionally powerful, socially beneficial, spiritually uplifting, and financially lucrative professions on the planet. If we look closely, we can find hints of this potential today in the form of sex surrogates – people professionally trained to offer a form of sexual counseling that sometimes involves sexual interaction. We see more hints of the potential power of sex work through the efforts of some folks to blend sexuality and spirituality by resurrecting and updating concepts buried in the practices of ancient pagan cultures. Sacred prostitution, [orgiastic rituals](#), and various other forms of nature-embracing [erotic spirituality](#) are currently practiced in the hidden corners of modern industrial life. And finally, one can point to the work of [modern day courtesans](#) who, having acquired advanced educations, are striving to renovate both the public image and the social reality of sex work.

The clear message readily available to anyone willing to open their minds to the possibilities is this: Sex work need not be a burden on society. Indeed, sex work can potentially make a highly positive contribution to the world, both in terms of increasing the emotional health and happiness of a great many people, and in terms of paying its own way, so to speak, through the generation of tax revenues and through an overall increased flow of cash through the world's legitimate economies. Sex workers today are a largely untapped, highly valuable resource, currently buried within the criminal “underground” economies of all major nations.

From a rational point of view, if we are striving to assess the moral value of recreational sex and professional sex work, what are we going to say? Without the traditional Western religious pronouncements equating sex with sin and shame, and without the ascetic denunciations opposing all forms of sensual indulgences, we would have little reason to think of recreational sex as anything other than a form of rec-

reation. The “naughtiness” of consensual recreational sex is, at its worst, comparable to the naughtiness of indulging in sweet treats, alcohol, or cigarettes – and from a standpoint of public health, recreational sex can actually be performed more safely than any of these other naughty habits. But recreational sex need not always be “at its worst.” The flip side of almost any erotic activity is that it has the potential to be a powerful form of emotional and spiritual healing – something roughly more comparable to, say, a physical exercise routine, deep conversation with a friend, or the appreciation of an awesome sunset.

In promoting the positive morality of recreational sex, I certainly do not mean to imply that all sex is merely recreation. Sex is a complex phenomenon with many aspects, and it can be understood from many different points of view. Sex can be an intimate language by which we express some of our deepest forms of love. Sex can lead to the creation of new life. Sex can be a weapon used by some people to inflict suffering upon others. Sex can be a route to emotional healing. Sex can be a means of social bonding. Sex can be a step on a path to spiritual awakening. And for many people, sex can simply be a highly rewarding form of entertainment.

Some types of entertainment are risky forms of thrill seeking (think of hang gliding, sky diving, race car driving, mountain climbing, boxing, alligator wrestling...), while others are relatively safe and quiet (knitting, watching TV, playing card games, going for a walk...). As a form of entertainment, sex can cover the spectrum of relative risks and levels of thrill seeking; it all depends on how you do it and who you are doing it with. We generally don't outlaw forms of recreation just because they attract thrill seekers and pose some risks. If we were to outlaw risky activities, then certainly boxing, American football, and tobacco smoking would all be illegal. In modern society, one can legitimately be a professional boxer or a professional football player, so once again we must pose the question: By what sort of logic do governments legally prevent people from becoming professional sex providers? The answer, of course, is that there is no good logic behind such laws; there are only the not-so-hidden hands of religious moralizing and majority tastes. Following the inspiration of John Stuart

Mill, we would have to say that, rightfully speaking, religious moralizing and majority tastes should never be the primary reasons for any restrictions of liberty, but as a matter of tradition we are conceptually blinded to the blatant injustice underlying our laws against prostitution.

Conclusion

I've argued that our concept of human rights should – and logically does – extend to sexual freedom, insofar as sexual activities are private interactions between consenting adults. The various forms of discrimination that are allowed (and in many cases encouraged) by the dominant erotic paradigm are unjust and tangibly harmful to many people. We have a right to express our sense of moral indignation over certain activities, but we are not always wise in our manner of doing so. In much of what I have said, I have emphasized the role of sex workers because their rights are among those whose rights are most blatantly trampled upon throughout the world. Most laws against prostitution are blatantly unjust and unwise. They not only infringe on the liberties of sex workers and their clients, they also block social progress toward potentially powerful avenues of personal expression, emotional healing, and human interconnection.

It could be argued that we are never truly free until we master the form of self-restraint needed to nurture the freedom of others.

Notes

- 1 The reality of sexual diversity was a major theme in the work of American biologist and sex researcher Alfred Kinsey, who published *Sexual Behavior in the Human Male* in 1948, and *Sexual Behavior in the Human Female* in 1953. These books appeared on bestseller lists, and made Kinsey into a celebrity. Modern popular audiences were re-introduced to Kinsey's research in the 2004 movie *Kinsey*, starring Liam Neeson and Laura Linney.
- 2 See Pfaff, 2007, p. 15.
- 3 Readers who are interested in a further discussion of the meaning of sex in the context of mystical Oneness may want to take a look at my essay entitled "[Quantum Sex](#)." There I consider the growth of a "new erotic paradigm" in light of philosophies inspired by quantum theory and Eastern mysticism.
- 4 Thomas Kirkwood makes this point in the September, 2010 issue of *Scientific American* in an article entitled "Why Can't We Live Forever?" See page 45.
- 5 Philosophers and mathematicians often refer to the work of Kurt Gödel when discussing the logical limits of logic itself. The brief discussion I present here takes a somewhat different tact.
- 6 Neuroscientist Antonio Damasio has done a great deal of work explaining the neurological interdependence of reason and emotion. His book *Descartes' Error: Emotion, Reason and the Human Brain* is one notable example.
- 7 See Augustine's *City of God*, Book XIV, Chap. 16.
- 8 In *The Irony of Monogamy* I argued that an emphasis on patriarchal decent mostly likely played a major role in the origins of women's oppression, and goes hand-in-hand with the historical origins of monogamy.
- 9 *The Essential Works of John Stuart Mill*, ed. Max Lerner (New York: Bantam, 1961), p. 263.
- 10 R.C. Solomon, "Sexual Paradigms," *Journal of Philosophy* 71 (1974): 336-45; See also Solomon's essay "Sex and Perversion" in Robert Baker and Frederick Elliston, eds. (1975) *Philosophy and Sex* (Buffalo, NY: Prometheus Books)

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Hyperlinks

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Kinsey - the movie (referenced in endnote #1): <http://www.imdb.com/title/tt0362269/http://www.imdb.com/title/tt0362269/>

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The Human Right to Sexual Expression

Personal Freedoms and Protections

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I. Introduction

The right to sexual expression is not set forth in the United States Constitution or any other man-made law; it derives from our status as natural human beings – imbued with powerful sexual energy, creativity and desire. The freedom to engage in sexual expression is therefore referred to herein as a “human” right, as opposed to a constitutional or legal right. Although governments and religions have attempted to control human sexuality (along with other basic human needs such as food and wealth) for centuries, all such efforts are doomed to failure because they conflict with the natural desire to experience sex and intimacy that is programmed into every human being (and most other creatures) that inhabits the earth.

The United States of America is on the forefront in recognizing the right to privacy in the realm of sexual intimacy, as guaranteed by the Constitution.² Although the contours of that right are just now being explored by the courts, the recognition of this right goes a long way towards redressing a long-standing prejudice against sexual expression and behavior in the United States. While our Constitution arguably provides the strongest protection for individuals in their private sexual affairs of anywhere in the world, this country has a strong puritanical streak imbedded in the culture,³ resulting in a constant battle to maintain a level of universally-guaranteed sexual freedom.

This section of the Report will explore the various means and efforts utilized in current society to influence, control and punish human sexuality – primarily from a legal perspective. Activities such as sexting, exhibitionism, voyeurism, pornography, S&M, and other “fetish” behavior will be discussed in the context of the regulatory efforts designed to control these forms of erotic expression.

II. Sexting, Teen Sex, & Age of Consent Laws

Sexting, a combination of the words “sex” and “texting,” is the term coined to describe the activity of sending nude, seminude, or sexually explicit depictions in electronic messages, most commonly through cellular phones.⁴ The behavior has become so popular that the word “sexting” was a contender for the “Word of the Year” in the *New Oxford Dictionary*.⁵ In fact, 75% of young adults studied by the National Campaign to Prevent Teen and Unplanned Pregnancy revealed that they sent sexting messages to be “fun or flirtatious.”⁶

While this behavior is perfectly legal and accepted among consenting adults, teenagers who similarly experiment with this communicative outlet are often dragged into the judicial system by police officers, prosecutors, and judges, and punished as child pornographers. Often, juveniles prosecuted for this behavior end up being included on the public sex offender registry, alongside with the worst child molesters and pedophiles. The child sex hysteria machine is in full swing when it comes to sexting.

This disturbing trend has generated some of the most notorious cases involving juveniles in recent years.⁷ Young girls and boys have faced the wrath of police, prosecutors, and judges when their private pictures become exposed to the world of adults. Recent statistics suggest that at least 20% of high school teens have sent or received a sexting message.⁸ Given the obvious hesitancy to admit such behavior, the actual percentages are likely to be much higher. To understand the teen sexting phenomena, one must consider that eroticism is just one category of emotion that is communicated electronically by teens. The advent of efficient, powerful digital communication devices has resulted in a generation of teens that prefer to communicate *all* of their thoughts, feelings and emo-

tions electronically: Love, anger, friendship, jealousy, pride, joy – and yes, lust – are all transmitted digitally by teens; more often than via face-to-face interaction.

Seventy-five percent of 17-year-olds carry cell phones these days, as compared to 45% in 2004.⁹ A full 85% of teens use their cell phones to take pictures, and 64% admit to sharing those pictures with others.¹⁰ A frequently-quoted statistic indicates that the average American has 200 friends, as compared to less than twenty-five friends in the previous generation.¹¹ Teens communicate with their large group of friends electronically; through texts, emails and social networking sites.¹² They are more likely to text their friend on the other side of the room using a cell phone, than to walk up and talk to him or her.¹³ Facebook “status updates” have taken the place of in-person social visits and conversation. Since their entire lives are described, captured and uploaded to the digital world, it should perhaps not be surprising that all shades of human emotion – including sexuality – are shared through these communication devices that adults provide to their children. But in the eyes of the law, the exchange of these modern electronic love notes, known as sexting, is viewed (by most states) as vile child pornography, even though the “victim” depicted in the image is often also considered a perpetrator; as a producer of the illegal imagery.

Applying child pornography laws to circumstances involving a willing creator and recipient of a risqué cell phone message seems intrinsically wrong. Child pornography was exempted as a category of First Amendment-protected speech only because it records the criminal abuse of children.¹⁴ The Supreme Court found that images created a “permanent record” of the sexual abuse and therefore criminalizing the child pornography would effectively control the distribution network that is providing this material.¹⁵ However, images which do not record sexual abuse of actual children do not fall within the limited exception created to criminalize child pornography.¹⁶

Therefore, it is incumbent on society to decide whether communications created by teens for viewing by other teens should be swept in with the worst pedophilic material, as far as the law is concerned.

Instead of a pedophile coercing a child to engage in sexual activity on film, sexting usually involves a teenage couple exchanging nude or explicit images of each other, as a means of flirtation or enticement.¹⁷ Sometimes, the images are sent as a joke, or given as “gifts” by one partner seeking the intimate attention of another.¹⁸ The images are rarely, if ever, coerced, but instead involve willing participants.¹⁹ Often, the producer and the recipient are close in age – both in their teens.²⁰ Such circumstances are vastly at odds with the common perception of child pornography production involving a pedophile forcing a young child to perform sex acts on camera. Particularly in the case of self-produced sexting images, there is no “sexual abuse,” and no “victim,” as those terms are commonly understood.

Another method of controlling human sexual expression is the so-called “age of consent” laws. Ancient Greek philosophers or Tibetan monks might well be astonished by the bright lines that current American/European society attempts to draw delineating the age at which a teenager is permitted to legally participate in intimate relationships. The onset of puberty (i.e., 12-14 years) was generally viewed to mark the age of consent to intimate, marital relations in First Century Rome, ancient Europe, and traditional Muslim societies.²¹ The age at which consent may be legally conferred currently varies from state to state. The original age of consent in the early days of Union, adopted from English common law, ranged from 10-12 years of age.²² In modern times, the typical age of consent ranges from 16-18.²³ Despite these variances, age of consent is viewed in the category of a universal truth by many in today’s society; particularly the conservative faction. Engaging in sexual activity with someone below the age of consent is seen as a high crime; and the perpetrator a pedophile – irrespective of the fact that in a neighboring state, the activity might be completely legal.²⁴ Some groups, primarily libertarians and gays, have advocated for a more reasoned approach to the issue where the black and white distinctions created by existing age of consent laws give way in favor a focus on the differing rates of physical maturation from person to person.²⁵ However, those who dare

question the legitimacy of these seemingly-arbitrary classifications are often labeled anarchists or even child molesters.

Current age of consent laws have generated devastating consequences that were not likely intended when the statutes were passed. But both teens and adults have been caught up in ‘misunderstandings’ and outright deceptions based on the often complicated intricacies regarding age of consent. For example, a 21-year-old Georgia man is serving a mandatory 10-year jail sentence for aggravated child molestation for engaging in oral sex with a 15 year old acquaintance when he was 17.²⁶ In Utah, polygamist leader Warren Jeffs was convicted as an accomplice to rape for orchestrating a sexually coercive marriage between a 14-year-old girl and her 19-year-old cousin. In May, 2010, a Tampa-area nude dancing club was sued by a teenage runaway’s mother after the teen allegedly danced at the club, after presenting a fake driver’s license showing that she was of age.²⁷ The mother is now seeking over \$150,000 in damages from the business. Countless similar instances abound.

In addition to the laudable goal of protecting vulnerable teens from adult sexual predators, age of consent laws create traps for the unwary, and harshly punish those who are intentionally or recklessly deceived by older teens taking advantage of their protected status under the law. Importantly, mistake of age is generally not a defense to statutory rape, even where the ‘victim’ initiates the intimate contact, the ‘perpetrator’ is presented with convincing, legal identification documents, and the individual appears to be over the relevant age threshold.²⁸ Underage teen prostitutes have been known to routinely prey on athletes and celebrities, using their protected status under the law as a means of extortion.²⁹ One trick is to use a date rape drug on the men, take pictures of him in compromising positions with the prostitute after he falls asleep, and then use the pictures as blackmail.³⁰

Again, no reasonable person can dispute that children deserve to be protected from pedophiles and sexual predators seeking to take advantage of their youth and lack of sophistication. However, age of consent laws can have unintended consequences.

When they are applied where all parties are underage, or misused by the protected class as a weapon for extortion, the difficulty created by these laws becomes apparent.

Complicating the problem is the fact that teens have at least some degree of constitutional freedom to engage in a certain level of intimacy with other teens, and in some cases, with adults. It cannot be disputed that teens have constitutional rights.³¹ Some courts have found that application of laws prohibiting sex with an unmarried minor is unconstitutional, as applied to teens.³² Teen sex is cast as a social problem, not a criminal one.³³ Part of the problem stems from the fact that most states prohibit sexual activity with juveniles, but those laws do not make accommodations for the fact that that minors do, in fact, have constitutional rights, including privacy rights to engage in intimate relations.³⁴

The combination of laws establishing the age of consent anywhere between 10 and 18,³⁵ along with the rights to privacy, association, and expression enjoyed by minors under the First Amendment,³⁶ support the contention that minors have some degree of constitutional freedom to engage in sexual activity with other minors, and in some cases (depending on state consent laws) with adults. Teens are thus understandably mystified when they are told that they can freely engage in sexual intercourse with an adult at, say, age 16, but they cannot send a nude picture to their juvenile boyfriend under penalty of serious felony charges. Certainly a minor has the right to be nude in a private place. Yet the act of capturing oneself in a state of nudity or engaging sexual activity on cell phone cameras technically triggers application of stringent child pornography penalties, where the subject is a juvenile. Thus, the minor is punished for recording activity that is often legal and constitutionally protected.

The fact that the laws designed to protect children are now being used as weapons against them, in the sexting context, cries out for a reasonable solution. At least 15 states have introduced bills designed to exempt sexting behavior from traditional child pornog-

raphy laws, and 3 states have passed such laws.³⁷ In some cases, the legislation completely decriminalizes the activity.

While parents, lawmakers and reporters initially jumped on the bandwagon decrying the fall of orderly society upon learning that teens were sexting, public opinion has now shifted in favor of crafting a reasonable solution to protect kids from overzealous police and prosecutors treating sexting like a capital felony. In recent times, child protection advocates,³⁸ legal experts,³⁹ media personalities⁴⁰ and politicians⁴¹ across the country have recognized that prosecuting children under child pornography laws for sexting behavior goes too far. Perhaps the movement will result in some positive societal and legal change so that children do not become victims of the laws designed to protect them.

The attempt to control teen sexual behavior through law impinges on the human right of sexual freedom. While society has the right – if not the obligation – to protect teens from sexual exploitation by older adults, it ought not impose criminal restrictions on intimate exploration with other teens. This is particularly true for older teens who can consent to sexual activity – even with adults, but are punished harshly by outdated child pornography laws for sexting. Even before *Romeo & Juliet*, teens had sexual desires. In modern times, society pretends that juveniles are abstinent, virgin creatures that magically become aware of their sexuality only at the moment when they are legally allowed to express it. Of course, this is nonsense. All human beings, regardless of their chronological age, have a degree of human sexual expression that ought not be suppressed by the law.

III Exhibitionism & Voyeurism

In the age where fame is more important than wealth or satisfaction – especially among young people – exhibitionism has become commonplace.⁴² People watch contestants on *Big Brother* become famous just for being themselves.⁴³ The popularity of reality television is a testament to current societal fascination with media fame. *Generation Y* children were raised in an environment where cameras were ever-present, and now these young adults revel in the gratification of being noticed.⁴⁴

One way that people tend to get noticed is by engaging in what used to be private sexual activity, on video, for the world to see.⁴⁵ The number of couples staying at hotels being caught having sex in public areas by security cameras has significantly increased.⁴⁶ The popularity of engaging in nudity or sexual activity for the viewing pleasure of others on the Internet has skyrocketed, with people posing as porn stars on myspace.com, flickr.com and sex blogs everywhere.⁴⁷ In addition to exhibitionism, voyeurism – in the form of viewing the erotic online material – has increased as well. For example, the website voyeurweb.com, a popular destination of online voyeurism and exhibitionism, is now the 398th most popular website on the entire Internet.⁴⁸ This activity provides ‘average’ people the chance to discover their ‘hard core lover’ inside, and an opportunity to escape from life’s routine, difficulties and pressure.⁴⁹ Online exhibitionism is seen by participants as the “pure erotic expression of human desire.”⁵⁰

Interestingly, the ready availability of free, consensually-produced, erotic material on the Internet – particularly on “tube” sites, has put a hurting on the producers of commercial adult materials.⁵¹ DVD sales are plummeting in favor of the “quick fix” provided by free online content posted and often created by individual users.⁵² These producers are at a loss to understand why people would create erotic content for free, when they could be paid handsomely to do so.

Irrespective of the impact on commercial erotica, online exhibitionism and voyeurism has become part of modern culture. Despite its increased acceptance and popularity, a substantial opposition is growing. For example, the group known as the *White Ribbon Against Pornography* (“WRAP”) makes it a mission to encourage individuals to abandon the “everybody’s seeing these things” mindset in favor of controlling the information they put into their minds, since inappropriate erotic images cannot be “erased” from memory once they are seen.⁵³ The publishers of Cyberpath.com, a site devoted to feeding the hysteria about cyber-stalking and online predators, lumps online exhibitionism in with warnings about narcis-

sists, sex abusers and psychopaths.⁵⁴ The prejudice against erotic expression abounds, and voyeurs/exhibitionists bear their share of the brunt.

Nudists and naturists have been the focus of numerous efforts to protect “family values” and shield sensitive eyes from the human body in its natural form. This author has represented numerous naturist groups and individuals in their effort to secure a forum for expressing their message of body acceptance. Often these efforts take the form of criminal prosecutions against nudist sun bathers frolicking on a disputed area of the beach. The Canaveral National Seashore is home to a traditionally nude stretch of seashore called Playalinda Beach.⁵⁵ This was the setting for a lengthy dispute between the naturists who frequented the beach, and local officials responding to pressure from residents (and outside groups) to rid this otherwise deserted beach of nudism. One would have to trek a mile in the sand to reach the area of the beach traditionally reserved for nudists. Moreover, the area in question is actually owned by the federal government, as a buffer for NASA launch pads. The federal government had no interest in prosecuting mere nudity on the beach,⁵⁶ so in the late Nineties, local Brevard County officials rose to the task. They drove their all terrain vehicles over a mile to where the nudists congregated, and began issuing citations or even arresting sunbathers on the beach. Those who spoke out against the harassment were taken to jail instead of receiving a citation. Again, nobody who did not actively seek out this remote area of the Federal Reserve would be exposed to the naked people on the beach. Yet weekend after weekend, Brevard County Sheriffs and local police would make their rounds, hassle a few nudists, and call it a day.

This author was involved in representing several of the victims of this governmental oppression, and ultimately reached a quiet détente with local law enforcement. Eventually, one of the naturist organizations organized a protest during which participants would re-enact the famous Shakespeare tragedy of *Macbeth* – in the buff. The courts had ruled that mere nude sunbathing is not protected speech under the First Amendment,⁵⁷ so the naturists had to up the ante with an indisputably protected performance. The

tactic illustrated the absurdity of the entire enforcement effort, as it educated law enforcement and opponents that nudists could remain on the beach without clothing so long as they were ‘performing’ or ‘protesting.’ While Brevard County ultimately adopted a Public Nudity Ordinance that supposedly applies on the beach, it is rarely enforced.⁵⁸

The prejudice against exhibitionism and body acceptance also reared its head in the battle waged by Liz Book, who engaged in a series of “topless protests” in the City of Daytona Beach, Florida.⁵⁹ Her interest in protesting public nudity laws stemmed from harassment by local police during the city’s annual Bike Week festivities in March, where over 100,000 bikers descend on the area for a week-long bash which predictably includes public flashing of female breasts not unlike the tradition made famous at Mardi Gras in New Orleans. Ms. Book took note that hundreds of young females are arrested each year, fined hundreds of dollars, and leave with a permanent (and embarrassing) criminal record. Her efforts to protest the city’s application of its public nudity laws to common “flashing” behavior began in 2004, when she announced her intentions to conduct a topless protest on the area’s main drag, known as “Main Street.” Local law enforcement, worried about losing their handy cash flow from the multiple arrests each year, pulled out all the stops in the attempt to intimidate Ms. Book from exercising her First Amendment rights to political expression. She was denied a ‘permit’ to conduct the protest by the city, citing various illegal reasons. She was publicly threatened with arrest by law enforcement officials in the local press, who claimed that her protest would not be covered by First Amendment protections. Finally, a police detective came to her house, which happened to be outside the city limits, and personally threatened her with custodial arrest if she went forward with her planned protest. Despite these powerful efforts to silence speech, Ms. Book engaged in her protest, and removed her top on the Main Street Bridge, on March 7, 2004. She was immediately arrested, and taken into custody. This author had the privilege of representing Ms. Book in her lengthy battle with local law enforcement over the protected status of her pro-

test. The charges were thrown out by the trial court on First Amendment grounds, but the city appealed, and appealed again.⁶⁰

After all appeals were resolved in her favor, Ms. Book engaged in a second protest on July 2, 2005, at the feet of two topless Grecian statues outside the city's performing arts center.⁶¹ One would think that City Police would have learned from their repeated losses in court, but they arrested her again – not under the Public Nudity Ordinance, but on “disorderly conduct” charges. As many protestors know, disorderly conduct offenses serve as the “catch all” for any behavior that law enforcement dislikes. Fortunately for Ms. Book, the Florida courts had interpreted the State's disorderly conduct law to not apply to activities protected by the First Amendment, like protests.⁶² However, the prosecutors forced the case to trial, and Ms. Book was acquitted by the court, which found her protests to be protected by the First Amendment.⁶³ Yet the City continued its campaign of harassment by threatening continued criminal charges if future protests were not conducted in such a manner to ensure that no “children” or “passers by” would be exposed to the topless female form. It was not until the city was sued for constitutional violations based on its campaign of harassment that it finally backed down, allowed future protests, and settled the false arrest claims.⁶⁴

The above anecdotes illustrate the lengths that government, and those opposed to even non-sexual nudity, will go to preserve their perceived conservative societal mores. Fortunately, for the survival of the right to human sexual expression, the courts will still protect communicative activity from government censorship, even if it includes an element of public nudity or eroticism.

S&M & Other “Fetish” Behavior

The BDSM⁶⁵ community is routinely the focus legal regulatory efforts and discriminatory laws designed to deter or punish activity that the average person does not comprehend. The focus of recent federal obscenity prosecutions has been on material that can be labeled BDSM or “fetish” in some way.⁶⁶ The government likes to take advantage of the general prejudice against any form of limited-interest, fetish behavior in

selecting material for prosecution under vague “obscenity” laws.⁶⁷ Since obscenity convictions depend on the application of “local community standards,”⁶⁸ prosecutors tend to argue that polite society does not tolerate the consumption of such “bizarre” sexual material, thus warranting prison time for the producers – and sometimes the actors.⁶⁹ Yet the material is not aimed at the general public, but instead, is typically produced for viewing exclusively by consenting adults who are interested in the material. Oddly, the only adults who are forced to view the fetish material against their will are the jurors who serve in obscenity cases. Those who exercise their right to sexual expression by engaging in atypical sexual behavior with other willing participants are vilified and sometimes imprisoned in the United States.⁷⁰

Another way in which the law punishes expression of sexual fetish behavior is through policy judgments as to how certain legal concepts will be applied by the courts. For example, sports like martial arts and boxing typically involve activity that can cause some degree of bodily injury – and in some extreme cases, death. Yet fighters are permitted to release their opponents, promoters, producers, and others involved in presenting the sporting events from any liability associated with the life threatening activity. However, participants in the BDSM lifestyle are not so lucky. The courts have made the policy determination that some activities are socially desirable and should be protected and promoted, while others are not, so the participants should be allowed to sue each other if they get hurt, even if they sign the same kind of release as the sports participants.⁷¹ The courts have determined, from a public policy standpoint, that consent to battery will be recognized only when it involves some socially desirable activity: “On the other hand, assault involving aberrant behavior or conduct with no apparent social utility is often held to be criminal without regard to the consent of the victim if the force used has as its probable result bodily injury.”⁷²

Once again, society and the law have apparently decided that pure violence is ok, but mixing in any sort of sexuality cannot be tolerated.⁷³ Despite the societal and legal prejudice, BDSM material is more popular than ever. The human sensual needs and desires associated with BDSM sex play like surren-

der, control, power, and trust, are slowly beginning to be understood; potentially leading to some eventual level of social tolerance.⁷⁴ According to renowned author and well-respected sex therapist, Dr. Marty Klein, “[m]illions and millions of people engage in these sorts of erotic activities (“erotic powerplay”) on a regular basis. It’s been documented that those practicing SM have, on average, better sexual communication than people who do so-called ‘vanilla’ sex.”⁷⁵ Slowly but surely, BDSM concepts are working themselves into the mainstream, where prime time television viewers do not seem to be phased by a commercial showing a dominatrix in full leather gear cracking a pistachio with a whip.⁷⁶ The human right to sexual expression has a way of overcoming prejudice and suppression.

Pornography

No discussion of sexual expression would be complete without a mention of pornography, or as the material is more appropriately described; erotic media.⁷⁷ Such media captures the act of sexual expression by those brave enough to share their intimacy with the rest of the world. Porn has been around since early caveman drawings and was pervasive in ancient Egypt.⁷⁸ The Egyptians believed that art was potent, and visual images were magic, causing emotional responses in viewers.⁷⁹ Some say that it was the Hindu’s that invented pornography.⁸⁰ Regardless of the origin, erotic imagery has existed since homo sapiens first learned how to scratch symbols in the dirt or carve sculptures from animal bones.⁸¹

Yet many societies, including current U.S. society, have attempted to stifle and censor this basic human freedom to conceptualize, capture and share visions of human sexuality. After much debate and a variety of inconsistent judicial approaches, the U.S. Supreme Court finally settled on a political decision in the *Miller* case,⁸² authorizing the criminalization of erotic media if the subject material meets a certain test for “obscenity” which is based, in part, on application of the “standards” of decency in the particular geographic location where the material is prosecuted.⁸³ If the government can convince a given jury that the material in question ‘crosses the line’ of community standards, the defendant is convicted and will often

spend substantial time in prison for creating the material. Obscenity is about the only crime in America where the accused does not know whether he or she is guilty until the jury returns its verdict. Producers of erotic works are deprived of fair notice of what activity is illegal, as is otherwise guaranteed by the Due Process clause. Yet obscenity laws have been upheld in the face of numerous constitutional challenges, including claims of vagueness and free speech violations.⁸⁴ The U.S. Supreme Court has yet to weigh in on whether obscenity laws remain constitutional, in light of the changes in societal mores and advances in technology – particularly the Internet. Given the Court’s decision in *Lawrence v. Texas*,⁸⁵ invalidating sodomy laws throughout the country, the Justices may be willing to entertain the notion that society has changed, and the law needs to catch up. However, pornography is a political hot potato, and the stakes are huge. Religious and conservative political groups strongly object to the presence of pornography in society, and routinely call upon the government to prosecute the purveyors of erotic media.⁸⁶ Recently, Patrick Trueman, leader of the *War on Illegal Pornography*, and notorious censor, attempted to link child pornography to adult erotica by claiming that mainstream pornography is a “gateway” to consumption of child porn, and thus the producers should be prosecuted under obscenity laws to curb the demand for the material.⁸⁷ Of course people like Trueman make these broad assertions without any empirical support, but they make for compelling political sound-bites. And politicians respond. The Obama Administration has not showed any signs of slowing the obscenity prosecution freight train that geared up during the Bush years. The existing cases continued on after he took office, and new investigations have been launched. Obama has failed to replace the nation’s 93 U.S. Attorneys who were appointed by Bush, as is customary when a new party’s administration takes control of the Justice Department. Instead, zealots like Bruce Taylor, a rabid anti-pornography advocate, have been allowed to retain their positions with the Child Exploitation and Obscenity Section (“CEOS”); and in particular, the Obscenity Enforcement Unit. This remarkable failure to act has led to continuing damage to the human right of sexual expression, as those who dare to exercise that right are subjected to

the threat of serious criminal penalty through obscenity prosecutions. It remains astounding that in 2010, individuals are sentenced to spend years in a cage for producing a movie involving consenting adults, for consenting adults.

VI. Conclusion

The human right of sexual expression will survive in the face of current obstacles. Censors and eroto-phobes⁸⁸ will continue their efforts to suppress sexual expression, but human nature will overcome political speed bumps. While we are far away from a sexual utopia, where all erotic expression is tolerated – or even celebrated – society appears to be evolving in the right direction, and the radical opposition voices are dwindling into obscurity.

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Sexual Expression and Identity: The Other Face of Diversity

Carol Queen, PhD

Sexuality means many different things to different people: pleasure-seeking, reproductive possibility, connection and relationship, identity and community, a creative form of play, a means of forestalling or celebrating solitude, a skill set to barter for needs or wants, a source of curiosity, even a path to spiritual connection. Regardless of the degree to which US culture still pays legal (and sometimes media) lip service to married heterosexual reproductive monogamy, the real face of sexual expression in our culture is diverse, possibly more diverse than even most social scientists generally know. As one of those social scientists, trained in sociology and sexology (the academic study of sexuality), it is clear to me that even within many of these seemingly normative partnerships, diverse desires and expression sometimes find a home. The common concern shared by so many Americans -- "Am I normal?" -- can be affirmed in so many ways that the answer is almost always "Yes," though I, for one, would be happy if people would stop asking that question in favor of others like "Am I happy? Am I treating others with integrity?"

If more people were affirmed in their sexual expression from their very first stirrings of curiosity, it would likely prevent untold amounts of suffering and confusion. Other authors here will address the question of our human right to sex education, but let me just say that a society (like our own) that considers it problematic to include information about pleasure in its sex education sends a profound and negative message to its young people: Your deepest personal feelings and intimate connections aren't meant to be part of that "pursuit of happiness" business you've heard so much about.

At the same time, a lack of sex education means that not only can sexual self-discovery and sexual expression be impaired -- this, of course, is why it is policy to restrict it -- but so is an understanding of diversity and consent. Given no basis for understanding where one falls on the sexual spectrum, identity crisis and

misery can ensue; given no basis to understand that others might wish to do the same things you do, the foundation to understand and embrace consent is (sometimes fatally) undermined.

I always consider it the height of irony to hear concerned conservatives, especially, worry about the role of sexual media, especially online images, and young peoples' wellbeing. These are the same people who rail against information being provided from trusted sources, then are surprised that sexually curious young people want answers to questions that sex ed (as it is currently practiced in most of the US) does not bother to answer.

What Sexual Expression Is

Sexual expression might be defined as the way/s people's sexual feelings and range of behavioral choices intersect with their attractions, desires, partner choices, and partnership preferences. Generally these are experienced through the lens of their gender identity and sexual orientation, although sometimes it can be more complicated than that. There's little or nothing about sexual identity, desire and possibility that does not factor into sexual expression -- even choosing no sexual experience is a form of sexual expression. An individual's sexual expression might be consistent with his/her professed sexual identity (e.g., a gay man seeks out erotic contact with other men), or it might run against the grain of one's professed identity (as when a heterosexually-identified man does the same).

Again, sexual expression is diverse, and not only that, it can be fluid: a person's sexual interests, needs, and choices at one point in the life-span can change over time. Here are some of the many elements that affect sexual expression and the choices associated with it:

Gender: Not only whether someone has male or female sex organs (or is intersexed or transgendered)

and has particular preferences as to their stimulation, but also how gendered sexual socialization and gender identity affect their understanding of their role in seeking/responding to sex.

Sexual orientation: Bisexual, heterosexual, or homosexual orientations do not lead to an understanding of what kind of sexual expression one might choose, but helps us predict with what gender partner a person's other sexual preferences are likely to be expressed (or, if no sexual expression with another person is sought or found, the gender of a fantasized or ideal partner). An asexual orientation predicts either no partnered sex, or no genital sexual expression at all (but may still include an interest in intimate partnering). Objectumsexuality predicts that a person will prefer a non-living object as a partner. We do not have an accepted, well-understood term for those whose preference might be solely for (or include) transgendered partners, but such an orientation certainly exists.

Partner status: One might seek a partner for a transient encounter, a lifetime, or anything in between. Partnership styles that can affect or shape (or be shaped by) sexual expression include polyamory and non-monogamy; serial monogamy; romantic commitments; "friend with benefits" or "fuck-buddy"-style casual yet ongoing connections.

Emotional resonance: Feelings that might affect (or be affected by) sexual choices include love, lust, fear, shame, safety, comfort, a sense of belonging, one's sense of self-esteem (including body image comfort or issues), and many, many more emotional states.

Reproduction (or avoidance of same): Heterosexual coitus is the sole form of sexual expression commonly associated with reproduction, yet more coitus is engaged in that does not result in conception than does, largely because most acts of male-female coitus are engaged in by people who have chosen to avoid or plan any possible pregnancy that may result.

Libido: Erotic drive differs widely from one person to another, within couples, and across the life-span.

It can be experienced in the context of hormonal fluctuations and is affected by stress level, health, exercise, medications, relationship factors, and more.

Stage of life: Desire, knowledge, curiosity, and libido can be affected by youth and age, as well as other factors. The one form of sexual fluidity that affects almost everyone is the change of sexual desire and/or experience across the life-span, affected by hormonal and other changes.

Health/ability status: Sexual expression is frequently affected by dis/ability and health status, sometimes in unpredictable ways.

Reason one is having sex: The reasons a person may express themselves sexually are varied and can include: desire, love, seeking to influence feelings in or to please one's partner, curiosity, pleasure-seeking, attention-seeking, coercion or force, boredom, to alleviate pain, expectation, and many, many others.

Curiosity/access to information: Particularly in a social context in which a person has little access to information about sexuality, sexual experiences themselves may be the most accessible source of knowledge. That this may not be the most sophisticated or complete source of knowledge is, in fact, just one more reason to argue for better and more comprehensive sex education.

Money/barter: Some people routinely (or occasionally) trade money, drugs, or gifts for sex, or trade sexual experiences or entertainment for money or other valuable items. "Survival sex" is sex engaged in by people who may have no other viable economic choices or ways to meet basic needs such as food and shelter.

Power/status: Power differences are often acted out in the sexual realm, in contexts as overt as rape, sexual abuse, or coercion or in much more subtle ways, as when individuals with greater assumed/projected social power might find it easier to access sex and partners than those with less. Power and status are also sometimes looked upon as attractive in themselves. Some BDSM play concerns itself with eroticizing power differences, often exaggerated or roleplayed.

Fetish: For particular garments, materials, objects, body types or physical qualities (red hair, shapely legs, tattoos) -- anything that strongly affects one's sexual experience when it's present, or is required for sexual arousal.

Specific preference for type of erotic play: Regardless of one's orientation, it is common to prefer particular kinds of sex play: one person likes anal more than vaginal, another would rather masturbate with sex toys, yet another wants elements of BDSM to be part of all sexual experiences, and still another would rather give oral sex than receive it.

Belief/cultural context: Particular kinds of sex or identity can be given prominence in some cultural contexts while others can be considered inappropriate, juvenile, or sinful; sex can be considered sacred or profane; any of the above-discussed elements could be considered acceptable and "normal" in some communities, cultures, or sub-cultures, and very much outside the norm in others. In many ways, the beliefs we hold about sex affect the experiences we have of sex.

It is worth noting that these elements only rarely exist alone; mostly some or all of them interweave in an individual's life, generating the palette of diversity we observe in human sexual expression.

While it's true that some of the above is considered widely socially acceptable (i.e. married heterosexual coitus) and some is not (i.e. prostitution), it's notable that both of those examples could consist of identical acts. Heterosexual sex and homosexual sex consists of largely the same sexual activities; what differentiates it is the gender of the partner, not something inherently different about the sex acts involved. While some acts or identities are rarer and others more common, most sexual possibilities are expressed in sufficient numbers that we can call them common in terms of sheer numbers if not in the population percentages that engage in them. Furthermore, the fact that something is common or uncommon doesn't provide sufficient grounds to understand its degree of social acceptability: fewer women remain monogamously married for life than have anal sex, for instance (and of course, some of the former are also the latter).

Another element to be considered when addressing sexual expression is whether people choose to do specific erotic things, or are "hard-wired" to do them: the question of orientation vs. preference, nature vs. nurture, whether someone is "born that way" or chooses the sexual orientation and lifestyle they express. While certainly many individual elements of sex are chosen, when it comes to core elements of arousal and expression like the gender/s of the partner/s desired or some other elements of a person's sexual makeup, most people cannot be said to have mindfully chosen them. We very often discover what arouses us, we do not choose it. And we cannot always choose to substitute something else.

Arousal may be associated with surprising and unexpected experiences or triggers; becoming aroused by something does not, of course, mean that one has to act on that arousal. A variant on arousal's role is absexuality, when a person is aroused by something s/he/ze finds uncomfortable or unacceptable given his/her/hir belief system, yet stays aroused—and connected to that source of arousal—by condemning it publicly and discussing it repeatedly. This differs from those who simply do not approve of another person's sources of arousal but who do not share that arousal, or who are uncomfortable about a source of arousal which they then seek to avoid.

In addition to everything we have discussed so far, sexual expression can also include cultural expression about sexuality: writing, artwork, performance, and so forth. For some, these creations arise directly out of sexual feelings or are a direct expression of sexual desire and experience. For others, sexuality is a topic to be addressed through art and culture, and is not directly experienced as sexual. Regardless, these cultural expressions about sexuality are sexologically significant, as they help scholars (and society as a whole) understand erotic diversity and the way sexual beliefs, preoccupations, expressions, fads, norms, and more shift over time.

Why Sexual Expression is Important

US society has at times struggled with issues of diversity of race and cultural background, religious affiliation, gender, and more. We cannot be said today to be fully accommodating and accepting of these types of diversity, but many elements pertaining to social diversity are written into law, ensuring equal rights, or at least a basis for seeking them. Sexual diversity is comparable to these other diversities: people with differing desires are all part of the larger social fabric and deserve equal rights. This question is playing out today most notably in terms of society's understanding and treatment of homosexuality, though there are many other ways to crosscut the question of sexual diversity.

Because sexual feelings may not be a choice, it is important that we clearly see how diverse people's sexualities in fact are, and come to terms with the degree of variation, sexually speaking, that exists within the population.

Sex is a core element of each person's life. Most of us find sexual feelings, experiences and relationships to confer (at least sometimes, or ideally) pleasure, comfort, connection with partners, as well as, for some of us, a basis for commitment, a way to reproduce, a source of identity, and a font for creativity. Pioneering psychologist Abraham Maslow's Hierarchy of Needs places sex in the most basic level of need, the physiological. But sexual expression can play a role in all the others (Safety, Love/Belonging, and Esteem are all bases for many human relationships, and sex can play a role in each); Self-Actualization can be experienced sexually as well as in other ways.

Sexuality allows some people access to resources, whether via barter, for money, or in the context of relationships. For some, it is their most significant source of access.

When the Founders wrote "pursuit of happiness" into the Declaration of Independence, one wonders whether they might have imagined that two centuries later some US citizens would argue that others don't have the right to their own forms of happiness. Surely sexual expression can be a profound source of hap-

piness, pleasure, and joy, both alone and shared between partners. What part of "pursuit of happiness" do these people not understand?

People with access to pleasure may, overall, have better mental health than those who do not, and sexual expression is a significant source of pleasure. Anhedonia is considered a mental health problem; most forms of pleasure-seeking are not.

Consensual choice—of partners, of activities—should be a basic element in every person's sex education; it is fundamental to positive sexual expression, and far better than the situation that arises when people believe they cannot possibly get their sexual desires met by consenting others. The state can consider and determine who is allowed the power of consent -- children and people who are under 18, for instance, are not granted the ability to legally consent in the US today, so our discussion about sexual expression here is primarily relevant to adults. Ironically, though, while young people are not accorded sexual rights of their own until the age of 18, they are generally also not given enough useful information about sex to make informed decisions, which can undercut their ability to protect themselves and make healthy and consent-based choices. (Of course it is also worth saying that young people can be preyed on by adults who are not themselves given access to full information and permission to have consensual relationships, the most pointed and poignant current example of this being the sexual abuse crisis currently engulfing the Catholic Church.)

Creativity and expression can be part of sexual expression, and access to sexual expression can fuel and shape creativity.

Sexual expression bonds relationships like nothing else (except, often, adding children to a family -- and even when children are present, if the bonds of sexual connection are allowed to break, a family may not successfully stay together). Society claims to deeply value adult pair-bonding, but is not always willing to provide support and resources to facilitate this most common element of such bonding. (It's worth noting too, as is the case in the current same-sex marriage debates, that US society is divided on which adults it will allow to be fully bonded.)

Self-esteem is implicated in mental and social health and well-being, and sexual self-esteem—the ability to accept and value oneself as the sexual person one is—is a crucial part of the whole. A lack of self-acceptance or internalized self-hatred undermines an individual's ability to seek out healthy relationships, to make positive choices, and to seek and accept pleasure and love.

Sexual misery has social consequences, from shame to substance abuse to violence. An individual's inability to accept her/his/hir own sexual self and desires may lead that person to be more easily victimized; to perpetrate; to self-medicate; to develop unhealthy boundaries and make problematic choices; and to lack the ability to engage in stable (much less loving and pleasure-filled) relationships. Unfortunately, a culture which is deeply divided over questions of sexual "morality" and which often has not made room for the real diversity of human sexuality and sexual expression makes this kind of sexual misery, from low-level to acute, all too likely.

What are real sexual ethics? Not moral judgments that do not account for or accept human diversity, certainly. We humans should be able to express ourselves sexually (by ourselves, and/or with others) in a context of education; informed consent; healthy boundaries; honesty; and acceptance of diversity. When I think of the notion of "morality," I am far more likely to consider the things we humans do to each other, non-consensually and in a way that impedes each person's potential pursuit of happiness: judgment, opprobrium, erotophobia (of varying kinds), lack of acceptance and support for each others' consent-based life choices and sources of pleasure, and an inability to grant each other access to the kinds of information that let us seek out this pleasure in a safe and healthy way.

Freedom of Sexual Expression is a Fundamental Human Right

...that is, "a right and freedom to which all human beings are entitled." It's worth wondering whether human dignity can fully be achieved when sexuality and sexual expression are denigrated or demonized, for our sexualities are such a core and important part of who we are, and criticism and disrespect of our selves at such a basic level is so corrosive to self-esteem and the ability to make positive life choices.

The Universal Declaration of Human Rights (Article 29) states:

Everyone has duties to the community in which alone the free and full development of his [sic] personality is possible.

In the exercise of his [sic] rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Our duties to the larger community include exercising respect for the diversity and dignity of each person in it, and without this, we ourselves impede one another's "free and full development of... personality." Failing to allow each person her/his/hir individuality—including sexual individuality-- and freedom to self-expression—including sexual expression-- impairs human dignity and potential, both that of the individual and of the community as a whole.

I Am an Intersex Bisexual Transgender and So Are You

A thought experiment in the development and socialization of gender

Dan Massey

This discussion demonstrates that the social conventions of sex, gender, and normativity are highly simplified and basically very ignorant ideas. It is amazing that they have persisted to the present day. This seems to have resulted from a basic unwillingness to apply rational analysis to the development of appropriate social models and to abandon obviously outmoded models of reality.

The manifold difficulties human society experiences in dealing with matters concerning sexual orientation and gender identity (SO+GI) as a broad class of related medical and social issues stem directly from a failure to apply critical observation and rational thought to evidence at hand. And this problem does not begin with either the SO or the GI issue, but rather with the basic biology of sexual differentiation.

Our human senses provide streams of mysteriously represented information about our environment through our nervous systems to our brains. There, these vast amounts of real-time data are used to build and maintain a detailed computational model of our environment. While we explore the exterior world directly, by touching, viewing, listening, etc., all these data flow into and update our inner computation modeling the outer world.

We have the ability to change our space-time viewpoint within our mental model. We can remember a previous state and, in our mind, recover enough data to reconstruct significant parts of our previous experience. Similarly, we can project by various mental processes how the state we experience might evolve in future time. For example, we can anticipate the path of a moving object, but our ability to achieve a factual prediction based on a true concept (like Newton's three laws of motion) is limited by our ability to incorporate all possible data about intersecting events that may deflect the object from its course.

When a child is born in our society the first two questions asked are "Is it alive?" and "Is it a boy or a girl?" The first question is answered by the baby emitting a loud cry. Unfortunately, the baby is in no position to answer the second question. Consider how the second question is answered.

The attendant humans all take a look at the baby's crotch. What follows is usually pretty simple. Is that a penis? Must be a boy. Are those labia (rather than testicles)? Must be a girl. If there's any doubt, wait a moment until the baby pees and that settles it, right?

Of course, that's where the trouble starts. As the child develops, primary sexual development occurs, secondary sexual characteristics appear, and the maturing person becomes adult-identified as either a "man" or a "woman", corresponding to the boy-girl decision made at birth.

If we now examine the two exclusive sets of people society demands we call men and women, we find that, within each set, there is a considerable range in the expression of primary and secondary sexual characteristics. Within the male set, subjects vary widely in fertility, genital size, genital functionality, sex hormone production, secondary sex hormone conversions, androgen sensitivity, and overall body characteristics, such as muscularity, skeletal proportions, fat distribution, body hair quality and distribution, etc.

It is easy to imagine a metric of masculinity that scores a vast range of such individual dimensions. Appropriate mathematical operations allow a few important independent dimensions to be identified in the mass of data and these can become the basis of a properly defined metric of masculinity. Within this vast body of cases, representing everyone considered to be adult male, it is easy to identify regions or subpopulations that, by conventional social interpretations, would be considered relatively more or less "manly".

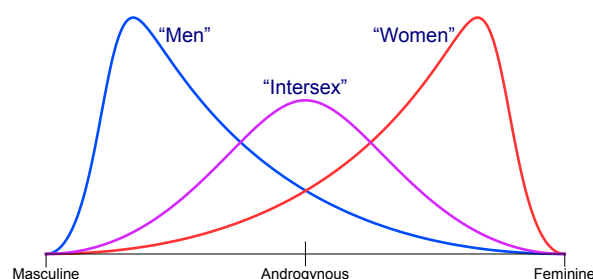
Let us suppose we agree on some mathematical function of these independent dimensions that assigns a single number between -1 and +1 for “maleness” that can be computed from the information known about each individual. We repeat this entire conceptual operation for all the adult female population and, for them, compute a single number for “femaleness”. Unfortunately, this will not necessarily correlate well with the maleness measure; however, if we combine all the male and female dimensions and repeat the analysis for the entire population, we can develop a composite measure of male-female balance, similarly ranging from -1 (extreme masculine) to +1 (extreme feminine)

So imagine a line that spans the range from the most masculine adult man to the most feminine adult woman. Against this line, we plot the number of adults socialized and identified as men and women in the population at that level of the metric and we find that, except at the most extreme ends, there is a substantial crossover in primary and secondary characteristics between the so-called “sexes”.

Along this line there is a region where people are, in physical expression of sexual differentiation, very mixed in male/female characteristics. For example, the person with Klinefelter’s Syndrome (genetic XXY) cannot be said to fall clearly into the “male” category, just as the person with Turner’s Syndrome (genetic X) or Trisomy X (genetic XXX) cannot be said to fall clearly into the “female” category. And, when the total genetics of the somatotype are considered, there arise a host of other “intersex” conditions, such as androgen insensitivity of varying degrees and genetic mosaicism, that defy a sharp definition of what is male and what is female.

If all these intersex conditions were to be clearly lumped in the middle of our masculinity-femininity scale it might be possible to maintain the fiction that “men are men and women are women”; however, not only are the two classes of men and women inter-mixed on the scale, but also the range of intersex factors is so wide that somatotypical and genotypical intersexual individuals occur all over the spectrum with wide variation in conventional sexual characteristics and somatic presentation.

The accompanying figure illustrates these ideas. A person having any particular level of underlying (genetic) balance on the single masculine-feminine scale can be classified as man, woman, or intersex by observation based on somatic presentation.



Most people will examine a set of genitals or other sexual characteristics and apply a single, binary label to the individual—man or woman—and that ends the discussion. In reality, the supposed man may display any combination of characteristics from extreme hypermasculinity very attenuated masculinity of any type. And, plenty of adult women, sans the eternal crotch parts issue, may exist across an almost equal range, as illustrated by the figure.

The foundation of the development of SO+GI begins with the most basic issues of sexual identity. The human erotic personality component elaborates in multiple layers as a product of individual development and self identification. The materially defined foundation is the set of Genetic Components (GC) that have produced a body for which a Sexual Identity (SI) may be assigned. Understand that SI is simply a label applied to the body developed by a set of GCs. The horizontal scale in the figure corresponds to a measure of SI derived from the manifold expressions of the underlying GCs.

From this beginning, SO+GI develops through a series of levels, each one building on abstractions of the previous level. These levels are:

- Genetic Components (GC)
- Sexual Identity (SI)
- Sexual Orientation (SO)
- Gender Affinity (GA)
- Gender Identification (GI)
- Gender Orientation (GO)

Under current social conventions, since everyone is labeled M (man) or W (woman) as a result of applying a very simplified model of SI to a very complex reality, the scale of sexual orientation (SO) is built on a similarly oversimplified model. Since the prevailing social mode of SO defines two categories—gay and straight. The more sophisticated may recognize a third category—bisexual.

In this current social model there are only four possible SOs, corresponding to the cases in which a nominal man or woman is sexually attracted to a nominal man or woman. We could represent these cases as: M→W, M→M, W→W, W→M. In this model, no middle ground exists. An even more naïve viewpoint groups both M→W and W→M into a single heterosexual category, although the actual basis of attraction may be very different for men from Mars and women from Venus.

Pursuing our thought experiment in modeling SI as a scale, rather than a pair of categories, we see that SO is a rich domain in which an individual lying anywhere on the SI scale may experience SO towards a person lying anywhere on the same scale. Thus, SO is rich two-dimensional space of possible pairings, and there is no guarantee that if the SO of A in an A→B relationship is compatible with the SO of B in the complementary B→A relationship. Such asymmetries can lead to the formation of complex polyamorous networks, beginning with the famous “love triangle”, which is the simplest of such relationships.

Another factor that necessarily enters our considerations is the strength of the properly modeled and

represented SO. In effect, we can, for each person, map out the strength of their affinity for persons of varying SI, and such affinities are by no means limited to the broad male or female classes. Clearly, SO alone is a much richer subject than the simple gay/straight dichotomy. Bisexuality is a zone of SO that is more balanced across the SI spectrum than gay male, lesbian, or straight, but obviously a realizable state of sexual orientation.

Applying these ideas to the figure, we could say that SO would run from homo-oriented on the left to hetero-oriented on the right. The curves would then correspond to population distributions for those socially determined to be homosexual, bisexual, and heterosexual. Note that there is no particular correlation of these metrics with the lower level SI assumed.

Next consider how this same approach can be applied to understand the phenomenon of gender identification. Again, to understand the possibilities of something as complex as GI, we begin with something more fundamental, which I will call Gender Affinity (GA).

Just as people vary widely in the somatic expression of their genotype, they also vary widely in their personal behavioral approach to integrating into a social structure and cooperating with others. First through genetics alone, and later through cultural reinforcement of a genetic predisposition, people establish empathic relationships with others in society. These relationships tend to be defined by a few readily identifiable dimensions, although there are surely many more. There is a scale of affinity possible for such factors as aggression, nurturing, selfishness, healing, leading, etc., and each person is drawn to others who intuitively share these ideals. And it is the community of psychic (empathic) identity that defines the varied forms of GA.

When humans view the vast range of personal expression possible for their fellows, they find that the empathic affinity groups in society appear to be associated with specific, narrow ranges of SI, and the labels of the defective social model of SI are

then force-fit to these affinities, resulting in certain areas of GA being simplified down to “community of men, hence male” and “community of women, hence female”. And thus gender labels become assigned based on GA that may be inconsistent with the individual’s SI. And “transgenderism” is thus simply an area where social affinity intuitions are in conflict with the socially perceived SI. But this has nothing to do with the reality of an individual’s experience and only reflects defects in an almost universal model of the world.

GA naturally gives rise to GI. That is, the communities that share a common GA, or individuals within those communities, find their own gender identity. But it need not be male or female. It will almost certainly be androgynous to some degree and is, in the final analysis, just another number between -1 and +1 that represents a much richer, multidimensional reality of all the personal tendencies leading to a personal GA and its assumption as an actual GI. But we should not force the GI into a small set of ignorant categories.

Finally, parallel to the relationship between SI and SO, one expects a similar relationship between GI and GO. There is ample evidence of the human ability to form heterogender and homogender associations independently of SI and SO. Much unnecessary perplexity arises from the desire to identify GO with SO, a relationship which can only be assessed for individuals according to their own developed natures.

Within the multiple levels of abstraction provided by this model, it becomes possible to consider sexual identity separately from gender identity and to understand how sexual orientation and gender orientation can arise independently within a person who is truly free to be their true selves.

Relationships and Family Freedoms and Protections

Introduction: Sexual Choices

Hardy Haberman

I walked into a gay bar in Memphis, Tennessee during the late 1970's with a friend and colleague. Since both of us were gay, going to a gay bar was not that unusual. The place was hard to find. There were no signs, no gay guides to Memphis that we knew of, but word of mouth was that this was the best gay bar in town.

It was on a dark street with no sign save the address. Outside, it looked pretty much like a closed building but as we neared the door we heard music and laughter inside. As my friend opened the door the music and laughter washed over us.

Then something strange happened. It stopped. Music, talking, just about every sign of life abruptly ended as we stepped into the bar.

It looked pretty much like most small gay bars of the time. There were tables, neon beer signs, colored lights, a small dance floor with the mandatory mirror ball and, of course, lots of men. The strange thing was that they were all silent, and watching us like we had just arrived from Mars. We stepped up to the bar and ordered drinks. Murmurs were the only background sounds.

My friend and I stood at the bar and sipped our drinks, not quite knowing what to do in the awkward silence. We stared at each other and without a word we mutually decided to drink up and leave. Just as the door swung closed behind us the music started again.

As we walked back to our rental car, I couldn't contain myself. "Don't they know it's almost the eighties?"

With every fiber of my being I wanted to go back into that bar and let them know they didn't have to be scared of their shadows. Being openly gay was no big deal, at least to me.

In sharp contrast to Memphis that same year I visited New Orleans just a few hundred miles further down the Mississippi River. There, I could don my leather jacket and visit any one of several bars catering to the gay leather crowd. These were well known and visible establishments with not only a bar, but very active backrooms offering a variety of sexual and kinky activities.

Now, over thirty years later, I suspect being LGBT in Memphis is indeed not as big a deal as it was then. Though LGBT Americans still do not have full rights as citizens, the incidents of outright oppression are the exception and not the rule. Currently, in New Orleans, one would be hard pressed to find a leather bar with an active backroom. Some of this can be attributed to the decline of anonymous sex during the AIDS crisis, but more can be laid at the feet of increasingly stringent enforcement of laws for establishments serving liquor and local officials eager to stand up for "family values."

I tell these stories to give an idea of the contrast in freedoms for sexual expression on a regional basis. There have always been areas of our country that are more actively accepting of non-heteronormative sexual expression than others, but in the recent past the discrepancy between regions was more profound than today. From my own experience traveling across this country I am constantly surprised to find active and sometimes thriving communities of not only LGBT people, but leather/fetish/BDSM groups in towns where I would have never expected them to be.

Large urban centers have always had a more outlets for sexual minorities, but today in smaller communities across the country it is possible to find people of like interests with relative ease. A quick search on Google or Craig's List will produce dozens of results for almost any town.

For example, in the Texas town of Wichita Falls, with a population of just over 100,000 I have attended a discussion group of BDSM enthusiasts who meet and hold parties on a monthly basis. In places as conservative as Salt Lake City, Utah, I have attended well advertised and visible weekend long gatherings of gay and straight leatherfolk. That event even included an outdoor street fair with fetish-wear vendors and entertainment.

What was once confined to places like New Orleans, San Francisco, and New York is now available in Wichita Falls, Texas. The variety of sexual expression across the country is somewhat heartening. The choices would seem myriad.

Yet, for all the availability and choices for sexual expression there is still a darker side. Most of the activities outside of the major metropolitan centers exist in a subculture of secrecy. Yes, they can be sought out and found with relative ease through online searches, but members of the groups commonly use “scene names” and guard their identities to one degree or another. Like that secretive gay bar in Memphis long ago, many modern sexual minorities exist in the shadows. Much of this can be attributed to the anonymous world of the Internet. Chat rooms and social networks offer connectivity, yet provide the feeling of anonymity. The backroom and glory hole may be gone, but the web cam and instant message provide much the same service, albeit in a completely virtual environment.

That anonymity and secrecy is a result of a new kind of fear. LGBT people struggled with the internalized and externalized homophobia. That kind of fear and suspicion was evident in that Memphis gay bar so many years ago. Being exposed as gay or lesbian could end a career, a marriage or even a life. Today thankfully that is less common, though one only has to look at sad cases like the Ted Haggard or Larry Craig to find the remnants of it. Homophobia has been replaced with another fear. Fear of anything kinky.

There are numerous stories of couples, predominately heterosexual, who following a nasty breakup use their previously consensual kink as a weapon in the divorce. Houses, community property, and children

have all fallen victim to this newly emerging kink-phobia. It is a barrier to full and open sexual freedom and can be a serious impediment to a happy and fulfilled life.

Harboring the fear of exposure breeds a self-loathing that can be debilitating if not addressed. Acceptance of one’s own sexual identity is something that is vital to mental health and until an individual can embrace their own sexuality, they will be prone to making questionable sexual choices. Just as the closeted gay men of the past sought out clandestine and often dangerous encounters with strangers, kinky folk are using the internet to do much the same thing today.

Though there has always been a certain thrill factor to such encounters there is also a risk and that is amplified when activities involve BDSM and other kinks.

As fetish and kink becomes more mainstream through pop culture and literature, a new generation of Americans are growing up without the automatic aversion to anything beyond vanilla sex, but those attitudes take time and work to change. Until that happens there will always be those who try to suppress their own sexual expression and that of others.

Perhaps today we have more choices than ever for the range of human sexual expression, yet many people chose to deny their true sexual selves. That is a sad choice to make.

Our Human Right to Relationships

Deborah Anapol, Ph.D.

More and more people are finding themselves facing the discovery that lifelong monogamy is more of a mirage than a reality. Surveys report that more than half of all married people have not been sexually exclusive.¹ The demise of monogamous “till death do us part” marriage is resulting in a steep decline in the prevalence of the nuclear family.² Increasingly, people are choosing to stay single rather than risk the emotional and financial trauma of divorce or the discord and monotony of marriage. Single parent families, two career families, bicoastal families, same sex families, blended (step parent) families, and children being raised by grandparents are all family structures that are becoming increasingly common as our society struggles to cope with the challenges of modern life.

Most experts on marriage, family, and sexuality continue to write and speak as if all extramarital sex falls into the category of infidelity. Sometimes it’s acknowledged that an affair may inadvertently have a positive impact on a troubled marriage, but as far as most authorities are concerned, polyamory or consensual inclusive relationships do not exist. Many traditional marriage and family counselors refused to work with a couple until the “affair” is ended, even if it is consensual. Recently, some psychotherapists have begun to acknowledge that “negotiated infidelity” (otherwise known as open relationship) and a functional “new monogamy” that may be socially monogamous but not sexually exclusive (long-defined as one variation on polyamory) are sometimes valid choices for couples.³ These cracks in the campaign to convince Americans that strictly monogamous marriage is their only option are encouraging, but we have a long way go before people are free of social pressure to couple in sexually exclusive heterosexual unions and nuclear family households. Gay men, lesbians, and bisexuals are all less likely than heterosexuals to adhere to sexually exclusive lifestyles, perhaps because having confronted one sexual “should” they are more willing to question other norms. But even

among queers, dyadic marriage remains the holy grail of relationship. We are all understandably confused by unspoken and uncharted shifts in the ways we mate, but trying to deny this is happening will not help us adapt to the changes already under way, nor will it help us evolve new ways of relating that are truly appropriate for the twenty-first century.

It’s often been noted that changes in belief systems frequently lag behind changes in behavior, and nowhere is this more evident than in the realm of erotic love. Meanwhile, people are voting with their search engines. Fueled by the power of the Internet, the concept called polyamory has spread like wildfire. A recent Google search turned up over 1.8 million entries. In less than two decades, the uses of and the meanings attributed to this newly invented word have taken on lives of their own. These days, polyamory has become a bit of a buzzword and often means different things to different people. The *Oxford Dictionary* defines polyamory as “(1) The fact of having simultaneous close emotional relationships with two or more other individuals, viewed as an alternative to monogamy, esp. in regard to matters of sexual fidelity; (2) the custom or practice of engaging in multiple sexual relationships with the knowledge and consent of all partners concerned.” These two alternate definitions are themselves a source of confusion for many. I myself define polyamory as follows: “The freedom of surrendering to love and allowing love—not just social norms and religious strictures, not just emotional reactions and unconscious conditioning—to determine the shape our relationships take is the essence of polyamory. Polyamory is based on a decision to honor the many diverse ways loving relationships can evolve.”⁴

So long as the underlying values of unconditional love and acceptance, honesty, and respect for diversity are overshadowed by a type of polyamory which is mostly about compensating for past sexual repression, some version of monogamy is likely to

dominate the conversation on relationship. Meanwhile, the tendency of some people to over-emphasize sexual freedom at the expense of compassion, cooperation, and committed relationships has many would-be polyamorists scurrying back to monogamy. As one client put it: "I have found depth in my current monogamous relationship that I hadn't found in prior polyamorous relationships. Maybe it has to do with the man, maybe it is simply my age, or where I am at along my journey. I am thoroughly enjoying the freedom of monogamy!"

Another said, "If we come to a point where our own desires/needs/comfort outweigh the desires/needs/comfort zone of our partners, then it just becomes about you and not really about the partnership. In a way I feel it is treating your partner as a possession. To say 'I am poly and these are my needs' and go try to find/create a relationship to suit your leanings has not much to do with love and more to do with self gratification."

Additionally, some people are still confusing *polyamory* with *polygamy*, which technically means to be married to more than one person, regardless of gender, but which has come to imply the patriarchal style of marriage in which a man has more than one wife while the women are monogamous with their shared husband. In the Moslem world and parts of Africa and Asia, this style of relationship continues to be popular, especially among men wealthy enough to support multiple wives and families. A staple of Judeo-Christian history, from the Old Testament patriarchs to 19th Century Mormons who were persuaded to officially abandon polygamy as a condition for Utah's statehood, patriarchal polygamy, or polygyny, has proven its survival value as a family form over centuries. By extending the right to multiple spouses to women, we would overcome one major objection to group marriage. But the fact remains that while multiple adult families, whether they be triads or larger groupings, would seem to be ideal family structures for raising children, there continues to be tremendous legal, social, and emotional resistance to supporting these kinds of relationships. We have no reliable data on the numbers of people living in

(quasi) group marriages or polyfidelitous unions, but we do know that these are a small minority of the entire polyamorous population.

In the interest of objectively considering the biological as well as the cultural factors determining our relationship choices, it's worth taking a look at findings from evolutionary psychology.

The Human Animal and All Our Relations

By the end of the twentieth century, scientific research on animal behavior and brain chemistry was providing strong confirmation of the troubling observation many of us had already made on our own—that lifelong monogamy is not natural for humans, nor is it for most other animals. Much publicity has been given to the sexual free-for-all enjoyed by our nearest genetic relatives: the bonobo chimpanzee. But nowhere in the animal kingdom do we find anything remotely resembling the phenomenon now called polyamory. Polyamory is a uniquely human phenomenon. Perhaps this is why conscious and consensual love-based intimate relating is generally left out of academic conversations on marriage and family.

For much of our evolutionary past, there were no centralized authorities dictating the terms of our sex lives. Rather, a variety of customs that supported local ecosystems gradually arose. In indigenous cultures, pair bonding tends to be the most common structure for intimate relationships. However, these dyads exist within close knit extended families and tribes and they are not generally expected to be sexually exclusive. Sometimes there are ritualized occasions for expanded sexual contact and often same gender and multi-partner unions are acceptable variations on the heterosexual dyad. The tribe's shaman, spiritual adept or healer sometimes remained unmarried.

As Christopher Ryan maintains in *Sex at Dawn* (2010), humans have been non-monogamous throughout our evolution, and continue to have strong tendencies in this direction. He carefully refrains from making any recommendations about how to handle this situation, but it seems clear that our social norms and institutions are less ancient, and more malleable, than our genetics.

In the last couple of millennia, organized religions, the medical establishment, and governments have increasingly taken charge of both sexual prohibitions and family structures. Nevertheless, in much of the world, men are still allowed to have more than one wife (called *polygyny* by anthropologists), and in a few places, women can have multiple husbands who are usually brothers (technically called *polyandry*). In countries where marriages are for couples only, both men and women often have secret extramarital affairs or divorce and marry another. All these patterns of mating and sexual activity can be found in the animal world. Some are more common than others, and while lifelong monogamy is rare, it does exist.

As David Barash and Judith Lipton discuss in their 2001 book *The Myth of Monogamy*, the advent of DNA testing to determine paternity was a major breakthrough in the study of animal mating patterns. Many species previously thought to be monogamous have since been found to be socially monogamous at best. That is, they may mate with a single individual, setting up housekeeping, coparenting, and sharing resources. But DNA testing along with more objective behavioral observation reveals that in many species both males and females have “secret affairs” often with other partnered individuals. Serial monogamy also occurs in the animal kingdom with both males and females “trading up” for a better mate when the opportunity arises.

Barash and Lipton’s analysis of the proven absence of sexual exclusivity, even in most socially monogamous species, revolves around genetic programming. That is, both males and females will behave in ways that increase the likelihood of reproducing and the survival and successful mating of their offspring. Parenting and other social behavior as well as sexual habits are all strongly linked to genetic programming. Barash and Lipton also mention ecological considerations, what deep ecologists call the “carrying capacity of the land,” as secondary influences on reproductive behaviors.

The viewpoint that we could call DNA-driven sexual behavior is by no means new. But twentieth-century male sociobiologists frequently had blinders on when it came to the reproductive advantages accruing

to females when mating with multiple males. It took women scientists¹ such as Dr. Sarah Hrdy, whose observations and interpretations often differed markedly from those made by men, to give us a more accurate picture. Hrdy was one of the first to note that among baboons, males would protect rather than attack the young of any female they had mated with. It’s obvious to any unbiased observer that there are many genetic advantages in multiple matings for females as well as males.

Barash and Lipton, who are a male–female team, provide a more balanced perspective, putting to rest the outdated notion that females are naturally sexually exclusive. Instead, their data reveal that females, like males, are motivated to have more than one partner when doing so improves their access to resources and the quality of genetic material available to them.

Barash and Lipton also pose the fascinating question of why monogamy exists at all in any animals, including humans, and even go so far as to compare the reproductive advantages of monogamy, polygyny, and polyandry. Their new book, *Strange Bedfellows* (2009), focuses on the reproductive advantages of monogamy for humans. The animal behavior studies are illuminating. But while genetic programming dictates much more of our behavior than most of us like to admit, there are at least two serious limitations to animal research—and Barash and Lipton’s analysis—for understanding human sexual behavior.

The first is that there are basically no known precedents either in the animal world or in so-called primitive cultures for mating or family groups that include more than one member of both genders, unless you consider the whole tribe as the group. For example, the concept of two males and two females bonding to reproduce and raise young is conspicuously absent from the literature. And while polyamory does not have to include multiple partners of both genders, it certainly can.

The reason for this, undoubtedly, is that while conflict between same-gender individuals competing to fertilize an egg, control territory, or obtain food and child care is generally present, when one male or female establishes dominance, he or she is able to assert him- or herself over the others more or less perma-

nently, resulting in stable relationships where each individual knows how to behave.

Serial Monogamy and Infidelity

According to the 1999 U.S. Census, almost half of all marriages are remarriages for at least one of the spouses. While divorce rates are higher in the United States than in most other countries, serial monogamy is a worldwide trend. And one of the leading causes of divorce is infidelity. The original meaning of monogamy was to mate and be sexually exclusive for life. Divorcing and remarrying was originally called serial polygamy, not serial monogamy.

We could argue whether all marriages should continue for a lifetime, but that's not the issue I want to raise here. Rather, I am pointing to the false connection many people make between monogamy and fidelity. Monogamy and commitment are often considered synonymous as well. To me, faithfulness has more to do with honesty, respect, and loyalty than sexual exclusivity, and commitment is about keeping agreements. The content of the agreement is irrelevant as far as commitment is concerned. Somehow, we've really gotten confused when relationships that include secret extramarital affairs are considered monogamous and those that end in divorce are considered committed monogamous marriages.

Of course, people who identify as monogamous have no corner on infidelity. Those who attempt to practice polyamory can also find themselves having secret affairs, which is all the more disheartening to partners who imagined that their couple relationship was based on honesty and consensual extramarital relating.

Polyamory and the Law

While many Middle Eastern, Asian, and African nations still permit men to marry more than one woman, Western countries consider a legal marriage to more than one person at a time to constitute the crime of bigamy (although exceptions are made in some countries for immigrants from polygamous cultures.) In North America, most of the twenty-first-century legal action affecting polys seems to be surfacing in

Canada rather than the United States. In 2005, the Canadian government appointed a commission to investigate the status of immigrant women and children who came to Canada as part of polygamous families. Several papers were published, but no legal changes were enacted.

Muslims have long argued that plural marriage provides more protection to women than the Western custom of keeping mistresses. Betsy's story illustrates the veracity of the Muslim position as well as the reality that legal protections can always be circumvented. Betsy, an attractive redhead in her late forties, has been in relationship with Terry, who's in his late fifties, for over ten years. Both are divorced with grown children from their previous marriages. They lived together briefly earlier on, but Terry prefers to maintain separate households although his huge estate is usually half empty. He gives Betsy a monthly allowance and pays for her apartment and their frequent vacations as well as other "extras" that she wouldn't be able to afford on her part-time yoga teacher salary. Betsy, who has identified as bisexual and nonmonogamous since she was a teenager, is challenged by Terry's refusal to openly communicate about his other girlfriends. "I don't know what he expects me to think when I find another woman's lingerie in his closet," she says. "It's obvious there's another woman, but he refuses to discuss it. It annoys me that he won't be honest with me, but otherwise it's not a problem, except when I feel he's neglecting me, which does happen from time to time. Like any relationship, ours ebbs and flows, but because he won't tell me what's going on with him, I never know if it's a new woman or if his family is making more demands on him or he just needs some downtime."

Betsy usually responds to Terry's occasional distancing by deciding to find another partner who will be more consistently available and willing to talk honestly about other love interests, but she's never found anyone she likes better than Terry. Terry objects to her having other lovers, but Betsy always argues that if he can do it, she can too. Once he threatened to cut off her allowance but relented when she refused to give in. Despite these difficulties, Betsy and Terry continue to keep choosing each other. There are no legal obstacles to their getting married, but Terry

prefers to keep Betsy in the mistress role. Betsy worries that without any legal guarantees, she won't be provided for as a wife would be if Terry were to die before her but shrugs and says, "It's about love, not money."

In the United States, renegade Mormons who never relinquished their polygamous customs periodically surface and sometimes face legal action for tax evasion or child abuse and statutory rape when underage wives are involved, but otherwise continue to live undisturbed as they always have. But in British Columbia, Canada, where a case against renegade Mormon polygamists was dismissed on a technicality in 2009, a ruling is being sought as to whether Canadian laws prohibiting polygamy are legal.

The poly community is following this case closely because it could set a precedent one way or the other not only on plural marriage but also on the ability of more than two polyamorous people to live together even if they don't call it a marriage. The same law that prohibits patriarchal polygamy also makes it a crime, punishable by five years in prison, to conduct—or even attend—a ceremony sanctioning a multipartner union even if there is no attempt at a legal marriage. Although parts of this nearly forgotten nineteenth-century law are in violation of Canada's newer Charter of Rights and Freedoms, the desire to punish the allegedly child and woman-abusing Mormon polygamist cult leaders seems to be overriding concerns about freedom—but not in the Canadian polyamory community, where organizers are seeking "intervenors" (polyamorous people willing to swear an affidavit in court) to testify that the nineteenth-century law is unconstitutional and should be struck down.

While it seems unlikely that the law will be used to prosecute polyamorists who are otherwise good citizens, gay activists warn that test cases do matter. There are many outmoded laws still on the books in countries all over the globe. In the United States, as in most places, such laws are rarely enforced, but

their presence can add an additional layer of fear, guilt, and shame that discourages people from coming out.

The Canadian polyamory community recognizes that this high-profile legal case presents an opportunity to educate people about the difference between patriarchal polygamy and polyamory as well as the rather remote possibility of legalizing group marriage in Canada, but in order to do so, they need to find credible intervenors giving details of their loving, committed, consensual live-in relationships involving more than two adults and willing to have their names, addresses, and other information made public and possibly reported on in the newspapers. Perhaps changing an antiquated law is a better reason to come out than entertaining television viewers, but there is no way around the coming-out challenges associated with volunteering for this task.

I don't think the question has ever been posed to the poly community in a systematic way, but, while 72 percent of the poly people surveyed by *Loving More* magazine said that they supported "multiple marriage," in my experience the reality is that the vast majority of polyamorous people don't want to be married—legally or not—to more than one person at a time. Only 3 percent of those surveyed indicated that they were in a group marriage, and more than half were not married at all. This is a reflection primarily of the greater popularity of couple-oriented open marriage within the poly community but also the overall increase in unmarried but cohabiting couples in society at large as well as the sentiment that "the state" has no business involving itself in people's private lives.

However, some people feel that legalizing group marriage would be one way to demonstrate that polyamory has the "social seal of approval" as well as providing legal rights to health care, insurance, housing, tax benefits, child custody, inheritance, and other privileges normally associated with marriage. In a practical sense, all these legal considerations can be addressed without benefit of a marriage contract,

either through a corporate vehicle or by individual contracts. Valerie White, a polyamorous attorney who directs the Sexual Freedom Legal Defense and Education Fund, advises polyamorous partners on how to protect themselves within the existing legal framework. Although the center does provide some pro bono counsel, especially for poly parents with custody issues, leaving it to the individual to draft his or her own customized contracts means that polys who are low income and/or less educated have less access to legal protection.

Seven states in the United States now recognize same-gender marriage, as do some European countries. The recent U.S. District court ruling that Proposition 8, banning same sex unions in California is unconstitutional because it “burdens the exercise of the fundamental right to marry” according to Judge Vaughn Walker, will likely be appealed to the U.S. Supreme Court bringing this conversation, and possibly that of legalizing polyamorous marriage, into the limelight.

Many municipalities have adopted “domestic partners” regulations that allow any two people who share a domicile and income share, for a specified length of time, access to the same benefits given to spouses, but resistance to allowing more than two domestic partners to register together seems just as high as expanding the definition of marriage to include polyamorous as well as same-gender unions. Tampering with the current “one man, one woman” definition of marriage triggers incredibly strong emotional reactions, particularly among conservative Christians, who have demonstrated political clout well beyond their numbers. However, polls show that age is strongly related to people’s positions on marriage, and as the twenty-first century progresses, marriage laws may well come up for review, and some poly activists are preparing for this eventuality.

Sina Pichler is a graduate student at the University of Vienna in Austria, where she is conducting research on polyamory for her thesis. She’s been closely following the ongoing discussion among poly activists concerning legalizing polyamorous marriage. Many feel that new marital legislation should be globalized rather than left to states or nations in keeping with the

spirit of today’s global village. Some of the debate centers on the relative merits of allowing a form of marriage that she calls “all-with-all,” in which three or more people are joined together at the same time within a single marriage, versus “dyadic networks,” in which existing laws against bigamy are revised so that people can be concurrently married more than once, provided that each new marriage is preceded by notification to existing spouse(s) of the pending new marriage.

Pichler favors the “dyad network” version of plural marriage on the grounds that it minimizes changes to the existing system while providing access to marriage for a variety of poly families, including those situations that the all-with-all model doesn’t address. She points out that in most multiple-partner relationships, all partners don’t marry at once, and in the “V” or “N” structures, all the partners may not even be connected to each other. (In a V, Susie may be “married” to Hank and Isaac, but Isaac is not “married” to Hank. In an N, Susie may be “married” to Hank and Isaac, and then Isaac may “marry” Chris.) The dyad network also has advantages in the event of divorce, where one dyad can split up while leaving the rest of the connections intact.

In addition, Pichler argues that the all-with-all model is too limiting since its size cannot exceed the number of individuals who have a “meeting of mind.” The molecular-building-block nature of the dyad network means that its size is virtually unlimited. In theory, “every adult on earth” could be joined together into one enormous dyadic network.

I doubt that the full vision will be implemented anytime soon, but it’s a good example of the creative thinking of polyamorous people. Perhaps legalizing a simple triadic marriage, even if it includes two same-gender partners, would be the conservative way to go.

- 1 Joan Atwood and Limor Schwartz, *Journal of Couple and Relationship Therapy*, 2002.
- 2 Deborah Anapol, *The Truthseeker*, 1992
- 3 Tammy Nelson, *Psychotherapy Networker*, July/August 2010.
- 4 Deborah Anapol, *Polyamory in the 21st Century*, Landham, MD: Rowman & Littlefield, 2010, p. 5.

Sarah Blaffer Hrdy, "The Primate Origins of Human Sexuality," in *The Evolution of Sex*, ed. Robert Bellig and George Stevens (San Francisco: Harper and Row, 1988).

(Portions of this article are excerpted from *Polyamory in the 21st Century* by Deborah Anapol, published by Rowman & Littlefield, by permission of the publisher)

For further information on this topic, please visit www lovewithoutlimits.com and read my blog at <http://www psychologytoday.com/blog/love-without-limits>

Written Testimony of Ricci Joy Levy,

President and Executive Director of The Woodhull Freedom Foundation

To the Committee on Public Safety and
the Judiciary Council of the District of Columbia
October 26, 2009

Chairperson Mendelson, Councilmember Catania,
members of the Committee on Public Safety and the Judiciary:

Thank you for giving us, and so many of our allies and constituents, the opportunity to comment on Bill 18-482, the Religious Freedom and Civil Marriage Equality Amendment Act of 2009.

We strongly support same sex marriage and endorse the bill before you to the extent that it advances same sex marriage. At the same time we are deeply concerned about the elimination of domestic partner rights.

As you consider this proposed piece of legislation, we are asking you to consider it as an equal rights issue not just a same sex marriage initiative. The issue before you is more than an either/or same sex marriage or domestic partnerships matter. Freedom – true freedom – is both the freedom to and the freedom not to –in this case to have the freedom to and not to marry and to still have equal rights.

The Woodhull Freedom Foundation (WFF) is a 501c3 nonprofit organization whose mission is to affirm sexual freedom as a fundamental human right. We define sexual freedom as the fundamental human right of all individuals to develop and express their unique sexuality. Part of this definition includes the right of adults to engage in the relationship of their choice with other consenting adults – with the same equal rights afforded to other relationships..

We are asking this council to grant same sex couples the right to marry and to maintain the rights of everyone to choose not to marry without losing their rights – to uphold one of the strongest domestic partner laws in this country.

When Council Chairman John A. Wilson, for whom this building is named, created the current legislation for both human rights and domestic partnerships, we are certain that he never envisioned a time when that model legislation would be amended to narrow what still stands as one of the most comprehensive human rights law in this country. Wilson was passionate about individual rights and the rights of those “outside” of the system – whatever that system might be – from gun control, rent control, expanded medical coverage for women and children, tough anti-hate crimes laws and DC’s human rights law, which is one of the most comprehensive in this country. We believe it is important to preserve his vision and to affirm every individual’s right to equality in the eyes of the law and society.

We fully support the right of all individuals in relationships to marry, and we also support the right of all individuals in relationships to NOT marry. Marriage is not the only long-term caring relationship option.

President Barak Obama himself said, in his speech delivered on October 10, 2009 at the Human Rights Campaign dinner, “I believe strongly in stopping laws designed to take rights away and passing laws that extend equal rights to gay couples.”

We are here advocating for the extension of equal rights to same sex couples who wish to marry, and I am asking that you not pass a law that will take rights away for those who, gay, straight, lesbian, bisexual, transgender or other identities to chose to partner in a domestic partnership rather than marriage.

According to the U.S. Census Bureau there are nearly 93 million unmarried Americans over age 18, representing roughly 42% of the adult population. Some of this population is unmarried because they don’t wish to be married – even though they live in a domestic partnership of some kind. Further, unmarried Americans head more than 51 million households.

More than 14 million of these unmarried households were headed by single women, another five million by single men, while 36.7 million belonged to a category described as “nonfamily households,” a term that experts said referred primarily to gay or heterosexual couples cohabiting out of formal wedlock.

According to the recent census data, traditional marriage is no longer the “norm” but is now, instead, one option in the choices available to us as consenting adults as we define our relationships and our families in a way that best reflects our wishes. Traditional marriage has ceased to be the preferred living arrangement in the majority of US Households.

We are asking that you grant same sex marriage equality and that you do so without stripping away those same equal rights from those who chose not to marry but, instead to live in a partnered relationship of their choice.

We would like to associate our testimony with the testimony of Lisa-Nicolle Grist and Meaghan Lamarre of the Alternatives to Marriage Project.

Full equality is never achieved by removing the equal rights of one group to secure those of another and so we are asking, today, that this council

live up to President Obama’s call for “...a nation in which no one is a second-class citizen, in which no one is denied their basic rights, in which all of us are free to live and love as we see fit.”

Let there be no question in anyone’s mind that equal rights – in this building where Councilman John A. Wilson ensured equality and human rights – require that we ratify same sex marriage equality and that we maintain the rights already granted to those who chose not to marry to that same equality.

Thank you for your time and consideration.

Commercial Sex and the Human Right to Work

Prosecuting Porn: A Journalist's Perspective

Mark Kernes

"I guess, in a world where no one is afraid of sex, it's a lot different, you know?"

– Dick Private, Private Dick (from "Roller Maidens From Outer Space")

Sexually explicit content—"pornography"—has been around nearly as long as humans have walked the earth. Pictures of people having sex have been found scrawled on the walls of caves inhabited by early *homo sapiens*, and just about every early culture has produced statuary of a sexual nature. Sex toys are nearly as ancient: Recently, a 28,000-year-old rock carved into the shape of a penis was uncovered in Germany, while in early July, a similarly carved antler bone possibly dating back to 6000 B.C. was found in an excavation in Sweden.

Coming a bit further forward in time, every mass communication medium ever invented has quickly been adapted by producers of sexual content: Books, magazines, comic books ("The kind men like!"), photographs, movies, long-playing records, videotapes, CDs and DVDs, the internet all served as conveyances for hardcore depictions, and even radio and television in their respective early days were rife with sexual innuendo. (For example, Paul Krassner, editor of *The Realist*, reported a post-WWII radio exchange where a comedienne asked Bob Hope, "Do you have any meat for my dog?" Hope replied, "No, but I've got a bone for your pussy.") And don't ask the Parents Television Council what's wrong with TV nowadays!

Of course, *all* of those media have suffered at the hands of those who wish to suppress all substantive discussion—and certainly all depictions—of sex except whatever precepts might be gleaned from religious texts like the Bible.

Historical Basis of Obscenity Prosecution

In colonial America, however, the concept of "obscenity"—illegal sexually-explicit material—was almost non-existent. According to attorney Marjorie Heins' excellent study, "Not In Front Of The Children," the first "obscenity" law was passed in Massachusetts in 1711. It criminalized "any filthy, obscene or profane song, pamphlet, libel or mock sermon," but in practice, the law targeted only the "mimicking of preaching, or any other part of divine worship."

After the formation of the United States, legal indifference to sexual material continued. Even before Massachusetts reformed its statute in 1835 to remove the religious underpinnings from its prohibition of "obscene or indecent" speech, it still used the English common law of "obscenity" in 1821 to prosecute the publisher of John Cleland's "Memoirs of a Woman of Pleasure" (better known as "Fanny Hill") for contriving "to debauch and corrupt" both children and suggestive "good citizens" by "creat[ing] in their minds inordinate and lustful desires." Heins also notes that in 1815, Pennsylvania "prosecuted the exhibition of a painting from the Naples Museum that was said to depict 'a man in an obscene, impudent and indecent posture with a woman, to the manifest corruption and subversion of youth, and other citizens of this commonwealth.'" But this too was a "common law" charge; as law professor Eugene Volokh notes in his discussion of the First Amendment in "The Heritage Guide to the Constitution," Massachusetts' statute was the only state law banning sexual material, and despite the proliferation of both erotic novels, pamphlets and "sexual guides" among the citizenry, prosecutions for "obscenity" were exceedingly rare.

There were, of course, no federal crimes related to sexual speech for the first 50 years (roughly one generation) after the Constitution was ratified, since such

“offenses” were clearly prohibited by the First Amendment: “Congress shall make no law ... abridging freedom of speech, or of the press.”

But the proponents of sexual censorship have never let anything as prosaic as the “supreme law of the land” stop their crusades, so Congress passed the Tariff Act of 1842, which prohibited the “importation of all indecent and obscene prints, paintings, lithographs, engravings and transparencies” and authorized the U.S. Customs Service to bring judicial proceedings for the destruction of any such confiscated material—and in a move that set the stage for enacting virtually all such prohibitions, the ban was put into the Tariff Act with little discussion and no debate.

The Tariff Act’s reach was expanded to domestic materials in 1865 when Congress passed a statute banning any “obscene, lewd or lascivious book, pamphlet, picture, print or other publication of vulgar and indecent character” from the U.S. mails, but enforcement of the statutes was largely left to the customs and postal authorities until 1872, when the rising star of the New York Society for the Suppression of Vice, Anthony Comstock, swore out a warrant against *Woodhull and Claflin’s Weekly*, published by sisters (and Wall Street brokers) Victoria Woodhull and Tennessee Claflin. The pair were arrested and over 3,000 copies of the *Weekly* were destroyed, along with the sisters’ printing presses and office equipment, all because the *Weekly* had dared to print the word “virginity” (and, for some reason Heins never makes clear, “token”), although, to be fair, the sisters had also been very active in the “free love” movement. For example, Victoria had written,

“To woman, by nature, belongs the right of sexual determination. When woman rises from sexual slavery to sexual freedom, into the ownership and control of her sexual organs, and man is obliged to respect this freedom, then will this instinct become pure and holy.”

Comstock had personally lobbied Congress for an expanded obscenity law, and in 1873, the newly-enacted Comstock Act banned “any article or thing designed or intended for the prevention of conception

or procuring of abortion,” and “any article or thing intended or adapted for any indecent or immoral use or nature.”

There is scarcely room here to discuss the hundreds of state and federal obscenity cases that have been brought over the past century or so—that topic is exceptionally well covered in both Heins’ book and the masterwork “Girls Lean Back Everywhere” by Edward deGrazia—nor the myriad changes in the law of “obscenity” that has gradually been refined by the courts until the description of the “crime” which, with slight modifications, is currently in use was created in the landmark 1973 Supreme Court decision *Miller v. California*.

Obscenity Comes Of Age With *Miller*

Briefly, Marvin Miller had operated a large, West Coast-based mail order business which specialized in sexually explicit materials, and had mounted an extensive mass-mailing advertising campaign to sell his wares. According to the majority opinion authored by Chief Justice Warren Burger, “While the brochures contain some descriptive printed material, primarily they consist of pictures and drawings very explicitly depicting men and women in groups of two or more engaging in a variety of sexual activities, with genitals often prominently displayed.”

But some folks who received the mailer objected to it and turned it over to the cops, and Miller’s case, after argument and *re-argument* before the Supreme Court, led to what later courts have called a “definition” of “obscenity,” though clearly it is little more than a vague guideline. Quoth Burger, “We are satisfied that these specific prerequisites will provide *fair notice* to a dealer in such materials that his public and commercial activities may bring prosecution.” [Emphasis added]

According to dissenting Justice William O. Douglas’ distillation in *Miller*, in order to be found “obscene,” a three-pronged test must be used: “(a) whether ‘the average person, applying contemporary community standards,’ would find that the work, taken as a whole, appeals to the prurient interest, ... (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the ap-

plicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.”

“Those are the standards we ourselves have written into the Constitution,” Douglas declared immediately after codifying the above “test.” (Take *that*, critics of an “activist judiciary”!) “Yet how under these vague tests can we sustain convictions for the sale of an article prior to the time when some court has declared it to be obscene?”

The idea that the Court’s “definition” provides anything like Burger’s “fair notice” to an adult content producer that his/her work is (not “may be”) obscene is ludicrous.

Take, for instance, “prurient interest,” which judges have generally told juries means a “shameful or morbid” interest in sex—but what does *that* mean? That someone thinks about sex a lot but considers such thoughts sinful and therefore shameful? That describes just about every religious fundamentalist in the country. (Check their websites; they’re all obsessed with the subject.) So anything that appeals to *their* interest in sex is automatically “prurient”?

Pretty much the same holds true for “morbid”: Many people—including, one can’t help but suspect, many members of the conservative caucuses in Congress as well as state and local legislatures—use bondage or domination or sadism or masochism (“BDSM”) as part of their sexual play. Do those folks have a “morbid interest”? Or does one have to be into “swinging” or necrophilia or bestiality or coprophagia to have a “morbid interest”? Watch out, all you “wife swappers” ... and all you farm boys who had your first sexual experience with a heifer, sheep or chicken! And you don’t want to know how many people have seen the YouTube video, “Two Girls One Cup”!

“The “contemporary community standards” concept is at least as troubling. Jurors are supposed to bring their life experiences with them into the jury room, but speaking personally for a moment, when was the last time you talked to your neighbor about his/her sexual preferences—not just whether they’re gay or straight, but what specifically they like to do in the bedroom—much less his/her tastes in pornography? Do you

even know anyone who has? And those are the jurors who are supposed to figure out what most of the one or two or five million residents of their city would find objectionable in a porn movie?

Throw the internet into the mix and the extent of the problem quickly spins out of control. What are the “contemporary community standards” of the internet “community”? It’s not called the “World Wide Web” for nothing! The exact same material that (if you’ll pardon the expression) Joe Blow can access on his home computer in Topeka, Kansas can also be seen by José Blow in Barcelona, Johan Blow in Stockholm, Jafar Blow in Tehran and Ivan Blow in Moscow—so which one(s) will be offended by it? And more importantly, why should a U.S. court care?

Even if we somehow limit the internet “community” to the United States, is it likely that residents of Bonanza, Utah have the same tastes in porn as do the residents of Dinosaur, Colorado just across the border? And to complicate matters, the (pre-internet) Supreme Court in *Miller* specifically rejected a “national standard” in favor of state or local ones, but more recently, the Ninth Circuit approved a national standard for internet content in *U.S. v. Kilbride and Schaeffer*.

Miller’s “average persons” are also called upon to be not only art critics but social scientists and political historians/philosophers in order to tackle *Miller*’s third “prong.” Anyone who has ever observed a jury selection might well have doubts as to whether the majority of them are fully up to the task.

And as for “taken as a whole” ... well, read on.

The Constitution Prohibits Obscenity Laws

But first, it’s worth asking, why are there any obscenity laws in the first place? One would have thought the Supreme Court had already answered that question in its 1969 decision in *Stanley v. Georgia*: “Appellant argues here, and argued below, that the Georgia obscenity statute, insofar as it punishes mere private possession of obscene matter, violates the First Amendment, as made applicable to the States by the Fourteenth Amendment. For reasons set forth

below, we agree that the mere private possession of obscene matter cannot constitutionally be made a crime.”

The high court went on to explain that although *U.S. v. Roth*, the “big” obscenity case before *Miller*, “does declare, seemingly without qualification, that obscenity is not protected by the First Amendment,” in fact, *Roth* and other earlier cases all had a commercial component to them: Someone was selling something obscene. But as the *Stanley* opinion’s author, Justice Thurgood Marshall, noted from *Roth*, “[c]easeless vigilance is the watchword to prevent ... erosion [of First Amendment rights] by Congress or by the States. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.”

Moreover, he continued for his own Court, “The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man’s spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man.”

Clearly that last sentence is correct: Americans have many more rights—including, in this case, the right of privacy—than are specifically set forth in the Constitution. The Ninth Amendment makes that very clear: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” (For an excellent book on that subject, try “Retained By The People” by Daniel A. Farber.) And since the Supreme Court had just upheld the absolute right to *own* obscene material, one might be forgiven for thinking that that might include the right to *buy* such material, since very few people produce their own sexually explicit content, and the right to own something without the right to obtain it seems self-contradictory.

In any case, the rest of Marshall’s musings are complete horseshit. If in fact the Founders “recognized the significance of man’s spiritual nature, of his feelings and of his intellect” and “sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations,” they did their best to keep those “concerns” out of the Constitution itself, since the document contains not one word of any of that.

What is contained in the Constitution are lists of things Congress and the Executive have the power to do, as well as a number of amendments—the Bill of Rights and some of its *sequellae*—setting forth rights of the people which all three branches of the federal government are forbidden to take away or even “abridge” ... like “freedom of speech, and of the press.”

Of course, in discussing obscenity, when anyone brings up this minor “technicality,” supporters of censoring sexual speech invariably bring up the other Court-approved exemptions from the First Amendment such as fraud, defamation, incitement to riot (i.e., shouting “fire” in a crowded theater when there is no fire) and “speech integral to criminal conduct.”

But as much as anyone reading this article might agree that some or all of those “exemptions” are a good idea, they are nowhere contained in the Constitution itself ... and therefore, such “exemptions” are *by definition* unconstitutional.

This isn’t as much of a quandary as some would have us believe. Most people, for instance, would agree that it’s a good idea to prevent people from defaming or defrauding each other—but the proper way to achieve that goal is not to simply declare such practices illegal out of whole cloth; it’s to put such exceptions into the Constitution by the very means the Constitution prescribes to do so: By amendment. After all, what congresspersons or senators and what state legislatures would oppose making fraud, defamation, incitement to riot and criminal conspiracy illegal? Surely the prescribed two-thirds of each entity would not. The harms caused by each of those types of speech are well-documented and uncontested.

Not so, of course, with obscenity. Try as they may, conservative and religious groups have been unable to come up with any falsifiable (that is, reproducible) scientific evidence that watching any type of non-violent sexually explicit conduct adversely affects the viewer in any quantifiable way. Compare, for instance, the laughably anecdotal “study” “The Social Costs of Pornography” from the religious Witherspoon Institute with 2008’s research-based “The Porn Report” prepared by actual scientists from the University of Melbourne, Australia.

Even Justice Marshall in *Stanley* dismisses the idea:

“[I]n the face of these traditional notions of individual liberty, Georgia asserts the right to protect the individual’s mind from the effects of obscenity. We are not certain that this argument amounts to anything more than the assertion that the State has the right to control the moral content of a person’s thoughts. To some, this may be a noble purpose, but it is wholly inconsistent with the philosophy of the First Amendment. ... Whatever the power of the state to control public dissemination of ideas inimical to the public morality, it cannot constitutionally premise legislation on the desirability of controlling a person’s private thoughts. Perhaps recognizing this, Georgia asserts that exposure to obscene materials may lead to deviant sexual behavior or crimes of sexual violence. There appears to be little empirical basis for that assertion.”

Indeed, there is no such basis, much as conservative and religious groups have claimed that there is. Particularly instructive on this subject is “America’s War on Sex,” by Dr. Marty Klein, easily the best book ever written (or ever likely to be written) on its titular subject.

Dueling Pornography Commissions

Justice Marshall was clearly prescient (or may simply have done his research), since his statement comports well with the findings of the President’s Commission on Obscenity and Pornography, which released its final report about 18 months after the *Stanley* decision. After hearing from a wide variety of

scientific and lay witnesses, the Commission recommended, without qualification, the repeal of all federal and state statutes “prohibiting the consensual distribution of ‘obscene’ material to adults,” though it also recommended that laws regarding distribution of the material to children and unwilling adults stay on the books.

Of course, that didn’t happen. The Commission, which had been formed by President Lyndon Johnson in 1968, found its work deplored and rejected by Johnson’s successor, Richard Nixon, who famously said, “So long as I am in the White House, there will be no relaxation of the national effort to control and eliminate smut from our national life.”

The *Miller* decision came three years later, followed by an increasing string of federal obscenity prosecutions ... and then, of course, the Attorney General’s Commission on Pornography (aka the “Meese Commission”), whose conclusions, based on no scientific evidence whatsoever, are still being felt today.

When Attorney General Edwin Meese III first formed his commission in May, 1985 under the direction of President Ronald Reagan, its purpose, according to the report’s introduction, was to “determine the nature, extend, and impact on society of pornography in the United States, and to make specific recommendations to the Attorney General concerning more effective ways in which the spread of pornography could be contained, consistent with constitutional guarantees.” Likely, that would not include the repeal of all state and federal statutes—and sure enough, it didn’t.

Of course, since the commission was stacked with conservatives including chairman Henry Hudson, a Virginia prosecutor (and now a Bush-appointed federal judge); executive director Alan Sears, an assistant U.S. attorney in Kentucky (and currently head of the ultra-right-wing Alliance Defense Fund); Focus on the Family founder Dr. James Dobson; former Nixon speech-writer Harold “Tex” Lezar; and Covenant House founder Father Bruce Ritter, who later resigned his position after having fucked 15 residents and because of “financial improprieties” with the House’s funds, it’s hardly surprising that it recommended, among other things, that the Justice Depart-

ment begin porn prosecutions “without delay.” The controversy over another commission recommendation—that adult producers be required to keep photo IDs on all performers to prove they weren’t minors—is currently the subject of a lawsuit in the Third Circuit.

With few actual researchers on the commission, its conclusions were almost entirely ideologically driven, and after the Report was written, some witnesses complained that their testimony had been substantially or completely misconstrued. Among those were researchers Edward Donnerstein, Daniel Linz and Neil Malamuth, who charged that the Report contained “factual errors, conclusions which are unsupported by the empirical evidence, and a serious error of omission,” namely that depictions of violence, not porn, were “the single most important problem in the media today.” Donnerstein and Linz expounded on this and other points in their book, “The Question of Pornography.”

Modern-Day Obscenity Prosecutions

The commission led to the formation of the National Obscenity Enforcement Unit within the Justice Department in 1987—a unit that still exists today as the “Obscenity Prosecution Task Force,” though it’s rumored to be about to change its name again—one of whose first tasks was to indict adult mail-order companies virtually simultaneously in multiple jurisdictions in an attempt to bankrupt the companies with legal fees. This was supposed to—and in fact did—force seven companies to take plea bargains which included closing down their businesses, until one of them, Adam & Eve, fought back against the scheme and eventually won a restraining order against the practice.

U.S. District Judge Joyce Hens Green, ruling in Adam & Eve’s lawsuit challenging its indictment in Utah, prohibited the NOEU from “causing or permitting indictments to be returned against plaintiffs ... in more than one federal judicial district within the United States, pending determination of this case on its merits or further order of this Court.” An excellent account of the case and the government’s tactic is Adam & Eve owner Philip D. Harvey’s book, “The

Government Vs. Erotica: The Siege of Adam & Eve.”

And the U.S. attorney who eventually lost the Utah case? Brent Ward—the current head of the Obscenity Prosecution Task Force!

Federal obscenity prosecutions all but vanished during Clinton’s presidency—one of the last of the Reagan/Bush years was the appeal of *U.S. v. Investment Enterprises and CPLC*, which resulted in jail time for some defendants, house arrest for others, fines and a forfeiture to the government of ... \$9.90, the wholesale cost of the two charged videos.

But prosecutions of adult book and video stores remained steady in many states, and prosecutors found a new weapon against adult retailers in the form of time, place and manner restrictions targeting alleged “adverse secondary effects” of those businesses under the Supreme Court’s 1986 decision in *City of Renton v. Playtime Theatres, Inc.*

This federal prosecutorial desert remained arid through the first three years of the George W. Bush administration, although Bush’s first attorney general John Ashcroft had promised to target “pornographers.” Ashcroft’s Justice Department finally brought one case in 2003 against video producer Extreme Associates and its principals, Rob “Rob Black” Zicari and Janet “Lizzy Borden” Romano, charging three counts related to interstate transportation of obscene materials and six of posting obscene materials to Extreme’s website. The charges likely were inspired in part by the couple’s appearance in a 2002 PBS “Frontline” documentary which depicted in part the filming of *Forced Entry*, a faux rape video—and Black, when asked about the possibility of his being prosecuted for making the movie, responding on camera, “I’m not out there saying I want to be the test case. But I will be the test case. I would welcome that. I would welcome the publicity.”

Zicari was represented by prominent First Amendment attorneys H. Louis Sirkin and Jennifer Kinsley, who based their initial motion to dismiss on the Supreme Court’s recent ruling in *Lawrence v. Texas*, which not only vacated all state laws regarding consensual sodomy, but also appeared, in the words of dissenting Justice Antonin Scalia, to vacate similar

laws against “bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity ... Every single one of these laws is called into question by today’s decision; the Court makes no effort to cabin the scope of its decision to exclude them from its holding.”

The Pittsburgh, Pa. judge assigned to the Extreme case, Gary L. Lancaster, took Sirkin’s *Lawrence* argument—that the Fourteenth Amendment’s “substantive due process” sexual privacy rights trumped the federal obscenity laws—to heart and dismissed all charges, only to see them reinstated by the Third Circuit Court of Appeals, which essentially ruled that however logical Lancaster’s dismissal opinion might be, the law he based it upon had not yet received Third Circuit or Supreme Court approval, and therefore the dismissal was premature.

The defense team raised other issues in further motions to dismiss, including the aforementioned “community standards” problem with internet content that had formed part of the Child Online Protection Act (COPA) case, but Judge Lancaster, wary of another reversal by the Third Circuit, denied the motions but allowed the defense to raise those and other issues during trial—except that the trial never happened. Indeed, the case languished on the court’s calendar for more than two years until an article in the *Pittsburgh Post-Gazette* in late 2008 chiding U.S. attorney Mary Beth Buchanan for her lack of action in the case apparently inspired her to move to set a trial date.

But by that time, the Extreme defendants were out of money, and Buchanan, clearly worried that Judge Lancaster might throw more monkey wrenches into the government’s case—not the least of which might be that, like Adam & Eve’s case in Utah, the community standards of the Western District of Pennsylvania had changed sufficiently in the five years since the case was originally brought that Lancaster might force her to seek a new indictment—agreed to settlement discussions, which resulted in Zicari and Romano pleading guilty to one count each of conspiracy to distribute obscene material and each receiving a sentence of a year and a day in federal prison. Both have now completed their sentences, and Zicari has returned to work in the adult industry.

The government’s next attempt to prove obscenity charges against an adult producer came in May of 2006, when the Justice Department indicted JM Productions, one of its distributors, Five Star Video, and both companies’ principals for interstate transportation of four DVDs, *American Bukkake 13*, *Gag Factor 15*, *Gag Factor 18* and *Filthy Things 6*. However, in what would be the first of several Justice Department obscenity-related screw-ups, as trial was about to begin in district court in Phoenix, Ariz., Judge Roslyn O. Silver ruled that prosecutors could not force JM owner Jeff Steward to authenticate records indicating that JM had in fact shipped the charged videos to Five Star (which had then allegedly shipped them to an FBI undercover agent in Virginia), thus leaving the prosecution unable to prove JM’s and Steward’s connection to the trafficking charges—and forcing them to drop those two defendants from the case before trial began.

Also of interest prior to the trial was the fact that investigation by Richard Hertzberg, one of Five Star’s attorneys, revealed that even as the government was obtaining its indictments against the company, another adult store chain in Phoenix, Castle Megastores, was selling the exact same videos charged in the JM/Five Star indictment—and that since Castle was at that time undergoing bankruptcy reorganization, it was then under the supervision of the U.S. Trustee’s Office of the Department of Justice, and the United States Bankruptcy Court of the District of Arizona!

In other words, at the very time the government was indicting one Phoenix retailer for selling allegedly obscene videos, another local retailer under the control of another government entity was selling those very same videos! Sadly, however, Hertzberg’s motion to dismiss the indictments for that reason was denied by Judge Silver.

In many ways, the Five Star trial, which this author attended, was a preview of obscenity trials to come. After FBI Special Agent Tod Price described how he had gone on the internet to order the four charged movies—and had avoided ordering them directly from JM because his superiors “didn’t want to prosecute [an obscenity] case in L.A. County”—prosecutor Paul Rood began playing the first of the videos at is-

sue, *Filthy Things 6*, including not only all the scenes in the video, but all of the “extra” features on the DVD as well. The jury was clearly bored by the material, but it wasn’t until the morning of the trial’s third day that their dissatisfaction led to a major trial issue.

As court reconvened on October 18, 2007, Judge Silver announced that she had received a note from one of the jurors, and although its exact contents were not disclosed, it apparently was a plea to the court that the jury not be required to watch the remaining charged DVDs. While the judge eventually instructed the jurors that, yes, they had to fully watch each DVD—remember “taken as a whole”?—she later questioned the attorneys as to how long such viewing would take, and wondered aloud whether there might be some way to shortcut the video viewing?

“We believe it is the obligation of the government to show all the materials on the DVDs,” replied defense attorney Jeffrey Douglas, but the question clearly had an impact on the prosecution, which later dropped one entire video from its case.

Another important aspect of the case was the defense’s request to introduce “comparable” videos for the jury’s consideration, in order to show that material similar to the charged videos was widely available in the Phoenix community, thus providing evidence of the local “community standards” which the jury would have to consider as part of its deliberations. Judge Silver excluded all of the video comparables and most of the printed ones.

In any case, after five days of trial—and the dismissal of one Five Star co-owner from the case due to the prosecution’s inability to prove he had knowledge of the company’s sales of the material—the jury found the company and the remaining co-owner guilty of one obscenity count each, and the judge later sentenced the co-owner to two years’ probation and the company, which had already gone out of business, to a small fine.

Taking It To The Max

“Taken as a whole” became one of the primary issues in the government’s next obscenity prosecution, this time against producer/director/actor Paul “Max Hard-

core” Little and his company Maxworld Entertainment in a federal courtroom in Tampa, Florida. The eight-day trial took place from May 27 to June 6, 2008, and this author attended and reported on it daily at avn.com.

At issue were five DVDs—the “European versions” of *Max Extreme 20*, *Pure Max 19*, *Golden Guzzlers 7*, *Fists of Fury 4*, and *Planet Max 16*—and the five trailers for them which Little had posted on the company’s website ... and it wasn’t long before co-prosecutor Edward McAndrew would argue to Judge Susan C. Bucklew that the government shouldn’t have to play the full DVDs in their entirety because, “The issue is who the jury might blame for having to watch it.”

“The government chose to buy five videos; they could have bought one,” responded Sirkin, here representing Maxworld—and although Judge Bucklew took McAndrew’s motion not to be required to play the full videos under advisement, in the end, with the judge allowing the prosecution to play only selected scenes from each, the defense elected to play whatever portions the government neglected to play—all eight-and-a-half hours of them—this, despite yet another note from a juror asking that the full videos not be played.

The Little case is notable in part because at this point, it was clear that Ward was targeting what he and others would no doubt describe as the most “extreme” material. The DVDs at issue here depicted anal sex, women being slapped in the face, being “forced” to deep-throat Little until they vomited, and Little peeing in the women’s mouths. However, even though the defense brought in Summer Luv, one of the actresses in the videos, to testify that everything she had done on camera was consensual, and that Little had explained beforehand everything that would be done to her, her agreement with the action apparently had little effect.

Also having no apparent effect was the testimony, under a grant of immunity, of Little’s distributor, James F. Komurek of JKG, Inc., that it was his company and not Little or Maxworld that had sent the charged DVDs to Tampa, thereby demolishing the possibility that Little had even committed the crime

charged. In the end, the jury convicted both defendants of all charges, with Little being sentenced to 46 months in federal prison and about \$85,000 in fines. On appeal, the Eleventh Circuit decided in part that there had been nothing wrong with the prosecution playing on selections from the charged videos—nor with the fact that one of the jurors had lost her job during deliberations, a fact not disclosed to either side even though she was clearly in tears as the verdicts were being read. Little remains in prison at this writing.

Finally, Evil Triumphs!

The government's most recent attempt to imprison, bankrupt and otherwise ruin an adult movie producer was the trial of multi-award-winning director John Stagliano and his companies, John Stagliano Inc. (JSI) and Evil Angel Productions Inc. (EAP). The four-day trial took place in Washington, D.C. in mid-July, 2010 before Judge Richard J. Leon, and again, this author attended and reported on it from start to finish.

Stagliano is a successful producer and was therefore able to afford the best legal representation around: First Amendment attorneys Sirkin and Paul Cambria, each with more than 30 years' experience; Allan Gelbard, who'd won over \$5 million for the company in a DVD piracy case; and as "local counsel," Robert Corn-Revere, also a blooded free-speech vet.

This time, Task Force prosecutors Pamela Stever Satterfield and Bonnie Hannan didn't wait for trial to raise the issue of "taken as a whole"; they filed motions early on to avoid being forced to play the charged DVDs *Milk Nymphs* (featuring starlets given milk enemas) and *Storm Squirters 2: Target Practice* (self-explanatory) in their entirety—they did plan to play the entire charged trailer, *Fetish Fanatic 5*—and on the first day of trial, the judge granted their motion.

"Central to the defendants' argument was the premise that jurors cannot properly judge a work as a whole unless they view it in real time from beginning to end," Judge Leon ruled. "Common sense tells us, however, that a juror need not view every frame of a film or, for that matter, every word of a book or every page or

picture in a magazine in order to determine whether a given work, taken as whole, appeals to the prurient interest and lacks serious literary, artistic, political, or scientific value."

But the judge went even further, saying that, "It is no *per se* violation of the defendants' First Amendment and due process rights if the jury deliberates for less than the amount of time it would take to view all three [sic] films from beginning to end in real time."

In other words, to hell with "taken as a whole"—a position that, if the Supreme Court followed its precedents, would likely have led to a reversal and remand if the defendants had been convicted.

Of course, they weren't. After first dismissing all counts against the trailer because even after 18 months of pretrial preparation, the prosecution was unable to get its CD copy to play properly in the courtroom, Judge Leon ruled in response to the defense's "Rule 29 motion" that the government had not only failed to prove that Stagliano had had the requisite knowledge of the contents of the charged videos, but that the prosecution had failed to prove that Stagliano even owned JSI, that JSI or EAP had shipped the DVDs in question to the undercover FBI mailbox—or that EAP was even in existence at the time of the indictments! In other words, it was bench acquittals for all defendants on all charges.

Having already castigated the prosecution for its "woefully insufficient" presentation of the evidence, Judge Leon added, "I trust the government will learn a lesson from its experience in this case. ... Hopefully, the courts and Congress will give greater guidance to the judges in whose courtrooms these cases will be tried" since there were "difficult, challenging and novel questions raised... and there are constitutional interests at stake here."

More extensive accounts of each of the cases discussed here, as well as the aborted obscenity prosecution of producer Ira Isaacs, can be found on avn.com.

Conclusion

“America’s War on Sex,” to borrow a phrase, is hardly limited to adult videos and internet content. In any public or private commercial or social situation that involves any aspect of sexuality—education, lifestyle, family planning, et cetera—there are no shortage of self-appointed “keepers of the faith” who will not hesitate to declare their deity has set some rule or other for the way “moral people” should behave on the topic, and who will not hesitate to enforce such “moral” prescriptions (and proscriptions) by force of law ... and even, in some extreme cases, by force of arms.

There are already several organizations which target politicians, bureaucracies and legislation who/which attempt to limit adults’ access to sexual materials and adults’ sexual lifestyle preferences. Some of these include the Free Speech Coalition, the trade organization for adult video and internet content and adult novelties; the Association of Club Executives, the trade organization of the adult cabaret industry; Association of Sites Advocating Child Protection, which polices the internet for child pornography; the National Coalition Against Censorship; the American Library Association, which has been the plaintiff in many lawsuits regarding suppression of sexually-related materials; the Woodhull Freedom Foundation, whose mission is to affirm sexual freedom as a fundamental human right; and many more—a complete list could easily fill a small book. Sadly, some of these organizations have failed to see the common ground that they all tread: The need to stand firmly against the religio-political anti-sexual insanity that infects almost every aspect of our daily lives.

But what better words can there be with which to leave the reader than those of Justice William O. Douglas from his dissent in *Miller*?:

“The idea that the First Amendment permits government to ban publications that are ‘offensive’ to some people puts an ominous gloss on freedom of the press. That test would make it possible to ban any paper or any journal or magazine in some benighted place. The First Amendment was designed ‘to invite dispute,’ to induce ‘a condition of unrest,’ to ‘create dissatisfaction with conditions as they are,’ and even to stir ‘people to anger.’ The idea that the First Amendment permits punishment for ideas that are ‘offensive’ to the particular judge or jury sitting in judgment is astounding. ... The First Amendment was not fashioned as a vehicle for dispensing tranquilizers to the people. Its prime function was to keep debate open to ‘offensive’ as well as to ‘staid’ people. ... As is intimated by the Court’s opinion, the materials before us may be garbage. But so is much of what is said in political campaigns, in the daily press, on TV, or over the radio. By reason of the First Amendment—and solely because of it—speakers and publishers have not been threatened or subdued because their thoughts and ideas may be ‘offensive’ to some. ... If there are to be restraints on what is obscene, then a constitutional amendment should be the way of achieving the end. There are societies where religion and mathematics are the only free segments. It would be a dark day for America if that were our destiny. But the people can make it such if they choose to write obscenity into the Constitution and define it.”

The State of Sexual Freedom: Prostitution

Melissa Ditmore, Ph. D.

Prostitutes or sex workers?

The term “sex work” was coined to emphasize the income-generating aspects of prostitution rather than sexual activity and its accompanying stigma. According to the UNAIDS terminology guidelines of 2008 commercial sex work means “the sale of sexual services.” Sex workers can be women, men and transgender people. Sex work refers to consensual sex. Sex work refers to more than sexual intercourse for money, and can include strippers, phone sex talkers, professional BDSM, and other services. This chapter focuses on prostitution.

The majority of the US enacted laws against prostitution during World War I and by the end of World War II, prostitution was outlawed nearly everywhere in the country (Ditmore, 2010). Nonetheless, prostitution persists. However, criminalization and discrimination make it difficult to gather accurate information about sex work. This lack of information not only makes it difficult to develop effective policies and programs, but also gives space to assumptions that are based more on prejudices than on knowledge. Sex work, for instance, is often confused with human trafficking and sex workers with victims of human trafficking. Effective programming differentiates between sex work and trafficking, and to approach sex workers and trafficked persons with services tailored to their distinct needs.

Since the 1980s, efforts to prevent HIV/AIDS have included sex workers because sex workers have more sex than most people, and therefore are critical partners in the fight against the pandemic. The empowerment and involvement of sex workers in HIV programmes has proven to be very effective (Crago, 2008). However, the criminalization of sex work is a serious barrier to the involvement of sex workers (Commission on AIDS in Asia, 2007). Governments typically address sex workers as lawbreakers, rather than critical stakeholders that must be involved. The US is one of the most striking examples of a govern-

ment that does not wish to deal with sex workers: US federal funding requires an anti-prostitution pledge of its recipients (*Taking the Pledge*, 2007). This counter-productive approach prevents the US government from effectively working with sex workers to prevent HIV and human trafficking in the sex industry.

General issues

Myriad issues touch upon sex work: epidemiology, medicine, human rights, violence, HIV, STIs, economics, gender issues, drug use, discrimination and trafficking in persons are a few of the most obvious. Many of these topics overlap rather than fan out into neat categories. Recurring and overlapping themes across sex work include self-organisation by sex workers, access to health care, education and access to safe sex materials, sex workers driving the agenda of organisations, promoting safe and good working conditions for sex workers, campaigns to realise the human rights of sex workers, safe environments for the families of sex workers, anti-violence campaigns, and removing sex workers from harm done by police and the military. An additional concern is advocacy to educate people in the US about the effects of specific funding restrictions on HIV prevention and anti-trafficking monies at home and abroad. Advocacy promoting evidence-based, proven-effective policies and programs relies on data and analysis: This requires both capacity building for sex work projects to collect data ethically and without risk to participants and for targeted action research to document the effects of particular programming to demonstrate successes and problems. Furthermore, a great deal of potential information is lost because sex workers are almost uniformly and exclusively examined as sex workers rather than in relation to other facets of their lives, including decision-making, migration, and economics (Agustín, 2005).

Human rights

Sex workers' human rights have been violated in a variety of ways including violence but also by making sex workers invisible and not recognizing their input into issues that affect them, leading to situations in which sex workers' concerns are sacrificed for propriety. Rights-based programming counters the two great pitfalls of programming with sex workers: not admitting that sex workers' have agency and denying sex workers of their agency. Meena Seshu wrote to the UNAIDS Global Reference Group on HIV/AIDS and Human Rights that,

The inability to accept that the movement for prostitutes' rights can be informed by the women-in-prostitution and sex-workers themselves is as much a part of denial of human rights as discrimination of mainstream women on the basis of caste, class, race or religion. There is an immediate need to unravel and reach out and listen to the women in the communities. (Seshu, 2003, p. 4)

Criminalization and its relationship to violence against sex workers

The criminalization of sex work has created environments in which sex work is hidden and HIV prevention has been adversely affected. The 2008 Report on the Global AIDS Epidemic states, "where the activities of some groups are criminalized (e.g. men who have sex with men, drug users, or sex workers) the law and its enforcement can become a major barrier to access and uptake of HIV prevention, treatment, care, and support." (UNAIDS, 2008, p. 77) Indeed, sex workers in the US cite the state and its agents as the prime violators of their human rights, especially in the form of violence (Ahmed & Kelly, 2010; Thukral & Ditmore, 2003; Thukral, Ditmore & Murphy, 2005). Programming and legal systems that bring sex workers into contact with law enforcement exposes sex workers to abuse, bribery and human rights violations. Sex workers are not the only people subject to harassment; outreach workers and HIV-prevention programme personnel are also vulnerable (Ahmed & Kelly, 2010).

Police interfere with HIV-prevention efforts directly, by harassing or arresting peer educators and outreach workers and confiscating condoms for use as evidence, and indirectly, because people hiding from the police are harder to reach (Thukral & Ditmore, 2003). Other examples of law enforcement approaches to sex work being detrimental to HIV-prevention include the use of condoms as evidence against sex workers, sex businesses and clients. Condoms have been used as evidence in cases involving sex work establishments in the US. Sex workers in the US described the use of condoms as justification for abuse or arrest by police officers; there are efforts to change this, with a bill pending in New York State to outlaw the use of condoms as evidence of sex work (Sex Workers Project, 2010). The most urgent and effective structural interventions for sex workers may be those that address sex workers' interactions with the police.

The Report of the Commission on AIDS in Asia calls for the decriminalization of sex work, and counsels governments and other actors to, "Avoid programmes that accentuate AIDS-related stigma and can be counterproductive. Such programmes may include 'crack-downs' on red-light areas and arrest of sex workers." This is good advice for the US, where prostitution is criminalized outside of licensed brothels in rural Nevada, and therefore sex workers are made easy targets for abuses by police and people who know that they may not be able or want to turn to the police when they are harassed or subjected to violence. Regarding HIV, realistic efforts to include affected populations such as sex workers are critical—in fact, sex workers are generally leaders in sexual health when their human rights are respected. Legal situations in which sex work is criminalized (Gruskin et al., 2007; Thukral & Ditmore, 2003; Thukral, Ditmore & Murphy, 2005; Tucker et al., 2005; Zhang, Fujie, Haberera, Yu Wang, Yan Zhao, Ye Ma, et al., 2007) or treated as if it were a criminal activity despite the law (Jayasree, 2002; UNAIDS, UNFPA & the Government of Brazil, 2006, p. 11) create situations in which sex workers are not able to effectively enforce their human rights or protect themselves from HIV.

High levels of violence against sex workers are promoted by the fact that police rarely take reports

from sex workers, and that police violence includes extortion of sex (Ditmore, 2009; Gruskin et al., 2006; Thukral & Ditmore, 2003; Thukral, Ditmore & Murphy, 2005). Sex workers are targeted for violence and robbery by people who know that it may be difficult or impossible for sex workers to report crimes against them to the police (Thukral & Ditmore, 2003; Thukral, Ditmore & Murphy, 2005). This violence is not only a problem in itself but is further compounded by the well-documented escalating relationship between HIV and violence.

Various places in the US have implemented “john schools” for people arrested for attempting to purchase sexual services. The effects of laws criminalizing the purchase of sexual services have been evaluated in a small number of Western countries including Canada and Sweden. Effects reported include displacement, typically to isolated, less safe locations, subsequently increasing vulnerability to violence and exploitation (Scoular & McDonald, 2004; Van Brunschot, 2003).

Many people contacted and all sex workers contacted referred to detrimental effects of a law enforcement approach to sex work. There is universal support among sex workers for opposing the criminalization of sex work.

The US, outside Nevada’s licensed brothels, has laws against third parties (managers) and in some places, the purchase of sex (clients). The fact that sex work and/or aspects of business related to sex work are not permitted in many places creates a climate where sex workers are denied labor rights and employment protection. In contrast, sex worker organisations in Australia (Scarlet Alliance 2000) and New Zealand (Occupational Safety and Health Service of the New Zealand Department of Labour 2004) have drafted occupational health and safety standards, which could also be adapted. The recognition of sex work as work requires understanding the complexities of the sex industry and its economy. Ruth Morgan Thomas said, “Some sex workers do not want to take on all the responsibilities of running their own business. It is an accepted practice that third par-

ties profit from other peoples’ labor in all other work sectors. While coercion should never be accepted or permitted, granting sex workers the same rights as other workers requires the acceptance of third parties. Sex work should not be subject to legal exceptionalism.”

Di Tommaso et al (2009) find that trafficked sex workers in more secluded circumstances measure low on their scale of well being, measured using levels of abuse experienced, freedom of movement and access to health care (p. 155). They link this to the criminalization of sex work and the corresponding increase in clandestine venues and work. Di Tommaso et al found a significant correlation in the case of trafficked persons and the ways they left their situations. Those who were involved in police actions (‘rescues’) had significantly lower well being than those who left their situations on their own or with the assistance of a friend or colleague (self-reported, in their terminology) (p. 156).

Raids

Raids on places where sex work is believed to occur have been justified as anti-vice measures, efforts against human trafficking, and measures against illegal immigration in the US (Ditmore, 2009). In reality, many raids that have been called anti-trafficking raids have lead to the deportation of immigrants who may have been eligible to remain in the US under anti-trafficking laws passed in 2000, and even some US citizens have been deported (Ditmore, 2009). Sex work venues are easy targets for raids because prostitution is illegal and because immigrants in the informal economy may turn to sex work for income. Anti-vice, anti-trafficking and immigration raids often ensnare many more people are the ostensible targets of these raids (Ditmore, 2009). Such indiscriminate actions are not a useful or appropriate response. Their effect is to increase hardship for all those involved, while placing them in more precarious situations where they are at greater risk of violence, exploitation and disease, and where they have less access to programs aiming to help them. The proper response is to promote good working conditions in sex work and to combat coer-

cion and trafficking through community- and rights-based approaches.

Anti-trafficking Programming

The US government funds projects that intended to combat “trafficking in persons”, a term used to describe coercive situations and debt bondage in all sectors. Some of these projects have focused exclusively on sex work, with the intention of moving women out of sex work and into other occupations. Some of these programmes work on the premise that all sex work is coerced, which is not supported by information from sex workers (Ditmore, 2009). However, very few anti-trafficking programmes offer job training, and fewer still offer job training that leads to a living wage. Some anti-trafficking NGOs conduct raids on brothels, in which the women rounded up may be arrested and typically lose the savings and assets that they have stored in their workplaces. Some say that there are minors, people under 18 years of age, working in the brothels. Agencies that believe they are ‘rescuing’ children must not remove the children of sex workers from their parents and must not remove adults from their workplaces. Raids by outsiders have had extremely detrimental effects including the separation of children from their families, adolescents dropping out of school and severe health repercussions (Gupte et al., 2007; VAMP Collective & SANGRAM, 2008). Rehabilitation centres are experienced by youth and sex workers not as places to learn skills and grow but as prisons (Caught Between the Tiger and the Crocodile, 2008; Ditmore, 2007b). Hazera Bagum, of Durjoy Nari Shongho in Bangladesh, spent two years in a remand home and when asked about it says, “I never want to be rescued again.” (Ditmore, 2007b) Additionally, raids may lead to the deportation of migrant sex workers, many of whom will return to sex work, and travel again to do so.

Campbell (2000, p. 479) described the former, neglecting the fact that sex workers exercise agency at work and outside work, saying that, “the interviews suggest that the tendency to speak of women’s ‘powerlessness’ (as is the case in many studies of African women in the context of the HIV epidemic) is unduly simplistic and fails to take account of the range of coping strategies and social support networks that

women have constructed to deal with their day to day life challenges. These strategies and networks could serve as potentially strong resources for community-based sexual health promotion programmes.” This could easily have been said of anti-trafficking programs that seek to rescue women, a perspective often held by people who perceive sex workers as powerless and without agency. Sex workers, clients and trafficked persons are untapped resources for anti-trafficking programming.

Direct service programmes that address trafficking and have documented their assistance to significant numbers of people include Europe’s TAMPEP network, Durbar Mahila Samanwaya Committee (DMSC) in Kolkata, India, and the Sex Workers Project in New York, USA. Each of these projects uses a rights-based model to assist people to leave coercive situations, including trafficking, and to assist both people who want to leave sex work and who want to stay in sex work. Efforts to distinguish genuine coercion are complicated by everyone’s desire for social acceptability: A founder of the Durbar Mahila Samanwaya Committee, Dr. Smarajit Jana, described his experience arriving in the red light areas of Kolkata, when every sex worker told him that she was there under duress. When he had spent more time there, everyone’s stories changed and he understood that everyone knew what they were getting into. He asked why they told him otherwise, and they said that they did not want him to think that they were “bad” women (Ditmore, 2007a, p. 180). People from all over the Indian subcontinent travel to work in Kolkata’s 13 red light areas.

Durbar Mahila Samanwaya Committee (DMSC) of Kolkata has been successful at removing children from the red light areas. This was undertaken as part of their anti-trafficking work, with self-regulatory boards that investigate the arrivals of newcomers to the red light areas in order to ensure that no one is present under duress and that no minors are employed. It is important to keep in mind that this was undertaken as part of a rights-based programme to prevent police harassment and abuse, committed under the pretext of removing minors from the brothels; it is even more impressive that numbers of people assisted by DMSC in Kolkata have kept pace with the

numbers of people assisted at far greater expense in the entire US (Ditmore, 2007a).

Money, transitions and morality

Sex work is foremost an income-generating activity. Sex work puts money directly into people's hands very quickly (Weldon, 2010) in ways that other work cannot. The perception of sex work as a problem – instead of the way sex workers see their work, as a source of income – has led to a number of programmes that aim to move sex workers into other work. The most successful programmes focus on the self-determination of participants and supporting the desires of sex workers rather than pushing sex workers into other work.

Poverty is not the only indicator for sex work and sex work is not always a way out of poverty. Many sex workers are indeed impoverished (Thukral, Ditmore & Murphy 2005; Ditmore, 2006) and some are unable to generate an income adequate to their needs. Others are unable to manage money, even when they can generate a significant income, because immediate expenses paid day-to-day, as in a hotel, are more expensive than other living arrangements that may require a capital investment to acquire, even if they are less costly in the long run (Leggett, 1999; Stadler & Delany, 2006). Transgender sex workers and men who sell sex also cite financial motivation for entering sex work, just like cisgender women (Thukral & Ditmore, 2003; Thukral, Ditmore & Murphy, 2005).

Many migrants to the US, including sex workers, send money to their family members in their countries of origin. The literature shows that while many people expect anti-poverty initiatives to reduce sex work, this is not always or even typically the case. For example, sex work is often undertaken to accumulate capital for an investment in another business or in farmland or for accessories of modern life (Gysels et al., 2002; Leclerc-Madlala, 2004; Lee, 2004). Karandikar (2007) and Agustín (2006) demonstrate that income generated by sex work is linked to development in the form of remittances and individual income.

PEPFAR

The United States affects others including sex workers around the world through its foreign policy. The

US provides funding for HIV programming, including funds for care and treatment to many thousands of people around the world, via the President's Emergency Plan for AIDS Relief (PEPFAR). PEPFAR focuses on specific countries with severe epidemics but aid is not limited to these nations. Since December 2002, the US government has imposed restrictions upon anti-trafficking and HIV/AIDS funding including PEPFAR (Ditmore, 2008). Secretary of State Colin Powell sent a cable to USAID country offices, partners and grantees, December 22, 2002, saying, "Organizations advocating prostitution as an employment choice or which advocate or support the legalization of prostitution are not appropriate partners for USAID anti-trafficking grants and contracts." (on file with the author) Later legislation required partner organisations to have an explicit policy opposing prostitution (US Global AIDS Act 2003). This restriction, referred to as the 'anti-prostitution pledge' (APP), has led to a decrease in services for sex workers despite the urgent need to scale up HIV-prevention services. For example, the effects of these restrictions have included the denial of services to male, female and transgender sex workers in a variety of venues and the closing of some services dedicated to sex workers (Taking the Pledge, 2007). Stigma and discrimination against sex workers increased in health care settings after the imposition of this requirement. For example, sex workers in Cambodia reported experiencing greater stigmatization, even in a research situation in which sex workers were sought (Forbes & Mudaliar, 2009, p. 16). Bendavid & Bhattacharya (2009) reported that the US President's Emergency Plan for AIDS Relief (PEPFAR) (US Global AIDS Act) has prevented deaths by increasing availability of treatment and care but has not prevented HIV infection; this is an indictment of the policy that has directly contributed to a decrease in sex workers' access to HIV-prevention programmes. There is a non-discrimination clause that specifies that no one may be denied care or services because of APP, but this is enforced irregularly.

Enforcement of these restrictions is inconsistent but the restrictions are not pro forma. There is a lack of clarity about what the pledge means in the field. For this reason, some organisations restrict their programming to interventions that are not geared

toward sex workers or even by excluding sex workers (Taking the Pledge 2007). There has been confusion over which organisations are required to comply, and so more organisations than were required to do so and even nations and UN agencies were asked to sign the policy. For example, Migrants Assistance Programme in Thailand was a subgrantee and not required to sign, but was asked to do so anyway (Taking the Pledge 2007) by the direct grantee because of a lack of clarity over whom should be asked to sign.

Brazil rejected US\$40 million because of this restriction, highlighting both Brazilian sovereignty and the role that sex workers play in HIV prevention. Some organisations have rejected this restricted funding. Two US-based lawsuits have been filed to challenge the pledge. Some organisations have responded by changing the language used in programming, obscuring which interventions reach sex workers by using less specific terms, such as, for example, 'vulnerable women'. This contributes to difficulties evaluating HIV-programming for sex workers, because involvement with sex workers is obscured in response to being discouraged, despite sex workers being disproportionately affected by HIV in many places. Some recipients of US funds have worked to

include sex workers in their programming with effective, evidence-based and rights-based programming. In many cases, these are significant grants within which small amounts have been dedicated to working with sex workers (for whom even small amounts are significant) in ways that are constructive. However, fear of losing funding has meant that people consulted with such projects have asked not to be identified and for their projects to be obscured in this report. The reasonable fear of losing funding and thereby being forced to stop operations contributes to a lack of documentation of strong rights-based programming and interventions for sex workers, further obscuring the efficacy of some programmes.

It remains to be seen how the new US administration will implement PEPFAR. However, the emphasis on evidence may bode well for improving programming with sex workers. APP was nearly struck from PEPFAR in 2008. A US-based campaign cultivating legislative support and grassroots support in the home communities of legislators who work toward the repeal of APP could herald a return to evidence-based programming with sex workers.



*This chapter is excerpted and adapted from the report *State of the Art HIV Prevention, Treatment, Care and Support for Sex Workers*, written by Melissa Ditmore and published by Aid Fonds Netherlands in 2009. The full report is available from http://www.aidsfonds.nl/documenten/AID011-01%20Rapport%20AF_SOTA_web

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The Human Right to Sexual Education

Abstinence-Only-Until-Marriage Programs Censor Vital Health Care Information, Jeopardizing Teens' Health*

By Lorraine Kenny, American Civil Liberties Union

Since 1996, Congress has allocated more than a billion dollars for programs that focus exclusively on abstinence-until-marriage and censor other information that can help young people make responsible, healthy, and safe decisions about sexual activity. There is no conclusive evidence that these programs reduce the rate of unintended pregnancy or sexually transmitted diseases (STDs). And to make matters worse, there is evidence that they deter sexually active teens from using condoms and other contraceptives.

To receive federal funds, abstinence-only-until-marriage programs must offer curricula that have as their "exclusive purpose" teaching the benefits of abstinence. In addition, recipients of federal abstinence-only dollars may not advocate contraceptive use or teach contraceptive methods except to emphasize their failure rates. Thus, grantees are forced either to omit any mention of topics such as contraception, abortion, homosexuality, and AIDS or to present these subjects in an incomplete and inaccurate manner.

Pushing misinformation about sex flies in the face of reality and fails to address young people's health needs. Engaging in sex before marriage is the cultural norm and has been for decades. Nearly two-thirds of all high school seniors have had sex, and considering the high rate of teen pregnancy and STD transmission in the United States, the need for accurate information couldn't be greater.

Abstinence-only-until-marriage programs don't stop at disseminating harmful misinformation about sex. They are also often rife with gender stereotypes and can have harmful effects on lesbian and gay teens. Many curricula dangerously stigmatize homosexuality. In a society that generally prohibits gays and lesbians from marrying, singling out marriage as the sole relationship in which sex is appropriate rejects

the idea of same-sex sexual intimacy. Furthermore, many of the leading curricula address same-sex behavior only within the context of promiscuity and disease. All of this adds up to create a hostile environment for lesbian and gay students as well

as for teens growing up with lesbian, gay, and/or single parents.

Ultimately, parents, teachers, and major medical groups, including the American Medical Association, the American Academy of Pediatrics, and the American College of Obstetrics and Gynecology, support comprehensive sexuality education that stresses both abstinence and also provides students with complete and accurate information about how to protect themselves from unintended pregnancy and STDs. There is ample evidence that programs that include complete and accurate information about sex reduce sexual risk-taking and pregnancy among teens.

Take Issue, Take Charge campaign - <http://www.takeissuetakecharge.org>

SIECUS State Profiles - <http://www.siecus.org/policy/states/index.html>

Guttmacher Institute - Facts on Sex Education in the United States - http://www.guttmacher.org/pubs/fb_sexEd2006.html

*Reprinted with permission from the "Reproductive Justice Briefing Book, A Primer on Reproductive Justice and Social Change"

Youth And Adults Changing Sex Education

By Yessenia Cervantes, Illinois Caucus for Adolescent Health Youth Leader

Three years ago, students from a Chicago high school joined forces with the Illinois Caucus for Adolescent Health (ICAH) in order to press the Chicago Public Schools (CPS) to provide comprehensive sex education. Unfortunately, Chicago Public Schools had inconsistent standards regarding sex education, including a very ambiguous definition of what information teachers could provide.

A group of students at Curie High School, along with their history teacher, Michael Smith, created an activist leadership class called Forefront—which in life’s mysterious ways, ended up partnering with ICAH. Later these students and ICAH reached out to other schools and organizations to join in the struggle to implement a realistic, reliable and responsible sexual education curriculum. Students themselves were clear about the need for such a curriculum. They reported that a majority of their health instructors presented either abstinence-only programs or no sexual education at all! Plus, there was inadequate funding for comprehensive curricula and no real training available for teachers who would be responsible of these classes.

The first step at Curie High School was to meet directly with the principal and physical education teachers, the ones responsible for teaching sexual education to the freshman class, the only grade where these topics were discussed at all. Unfortunately, the teachers did not welcome the concerns that the students voiced. Nevertheless, Forefront, with advice, training and guidance from ICAH, continued with a series of meetings with the local school council and principal. After a year, Curie’s local school council provided a bit of money that the students used to purchase materials so that they could take on the role of sexual educators themselves, and so that they could continue to pursue this issue outside of their school. The principal also implemented a comprehensive sex education curriculum in a particular class.

In the second year of “the struggle,” ICAH convened other youth working across the city to advocate for similar changes in their schools. The coalition took its concerns to the streets, organizing two rallies downtown at the CPS headquarters. One was held in a summer downpour and the other during a winter freeze.

Finally, the students got a seat at the table with top officials within CPS to shape a new policy. The coalition mobilized other organizations, parents, teachers, doctors, legislators, and even clergy to show up at the school board meeting in support of a comprehensive curriculum. On a beautiful spring day in April of 2006, the Chicago Board of Education unanimously passed the Family Life and Comprehensive Sexual Health Education policy mandating the teaching of comprehensive sex education in grades 6-12 and training for all teachers providing this education, and seating a student representative on the panel that approves all curricula used in CPS.

There is still much work to be done to implement this policy, to pass policies in other communities throughout the state, and to redirect our federal and state tax dollars to programs that really serve the needs of Illinois youth. However, we know that with a collaborative effort between youth and adults and with commitment to see our efforts through to real change, we can make sexual education a reality in this state and in our country.

Illinois Caucus for Adolescent Health - <http://www.cah.org> www.icaah.org

Illinois Campaign for Responsible Sex Education - <http://www.responsiblesexed.org>
www.responsiblesexed.org

Advocates for Youth - <http://www.advocatesforyouth.org> www.advocatesforyouth.org

Sex, etc. <http://www.sexetc.org> www.sexetc.org

My Sistahs - <http://www.mysistahs.org> www.mysistahs.org



SIECUS

Fact Sheet

Support REAL SEX EDUCATION

THE RESPONSIBLE EDUCATION ABOUT LIFE (REAL) ACT (S. 611, H.R. 1551)

- Senator Frank Lautenberg (D-NJ) and Representative Barbara Lee (D-CA-9) introduced the REAL Act which **would provide young people with the tools necessary to make informed decisions, build healthy relationships, and have the information to protect themselves against unintended pregnancy and sexually transmitted diseases (STDs), including HIV/AIDS.**
- The REAL Act would set up a dedicated federal funding stream (\$50 million) to provide federal grants to states for the purpose of conducting comprehensive sexuality education programs.
- This education would be evidence-based, medically accurate, age-appropriate, and provide full information about both abstinence and contraception, among other topics.

REAL SEX EDUCATION IS NEEDED TO PROTECT YOUNG PEOPLE'S HEALTH

- The United States has one of the highest teen pregnancy rates in the developed world. For the first time in more than a decade, the nation's teen pregnancy rate rose 3% in 2006, at the same time that teens were receiving less information about contraception in schools and their use of contraceptives was declining.¹
- While young people in the U.S., aged 15–25, make up only one-quarter of the sexually active population, they contract about half of the 19 million STDs annually.²
- Young people aged 13–24 account for nearly one-sixth of the estimated 56,300 new HIV infections each year. One young person every hour is infected with HIV.³
- Teens need accurate, complete information to help them both postpone sexual activity and protect themselves if they become sexually active.

WHAT IS COMPREHENSIVE SEX EDUCATION?

- Comprehensive sex education includes age-appropriate, medically accurate information on a broad set of topics related to sexuality including human development, relationships, decision making, abstinence, contraception, and disease prevention.
- Comprehensive sex education funded under the REAL Act would:
 - provide young people with the tools to make informed decisions and build healthy relationships;
 - stress the value of abstinence while also preparing young people for when they become sexually active;
 - provide medically accurate information about the health benefits and side effects of all contraceptives, including condoms, as a means to prevent pregnancy and reduce the risk of contracting STIs, including HIV/AIDS;
 - encourage family communication about sexuality between parent and child;
 - teach young people the skills to make responsible decisions about sexuality, including how to avoid unwanted verbal, physical, and sexual advances; and
 - teach young people how alcohol and drug use can effect responsible decision making

COMPREHENSIVE SEX EDUCATION WORKS

- Comprehensive programs about sexuality—medically accurate, age-appropriate education that includes information about both abstinence **and** contraception—have been found to be **effective** in delaying the onset of sexual intercourse, reducing the number of sexual partners, and increasing contraception and condom use among teens.

- Teens who receive sex education that includes abstinence **and** contraception are more likely than those who receive abstinence-only-until-marriage messages to **delay** sexual activity and **use** contraception when they do become sexually active.
- In November 2007, *Emerging Answers 2007*, an authoritative and comprehensive review of research findings on the effectiveness of HIV and sex education programs, was released. This review of rigorously evaluated programs showed many positive results, including:⁴
 - “Two-thirds of the 48 comprehensive programs that supported both abstinence and the use of condoms and contraceptives for sexually active teens had positive behavioral effects.” Many either delayed or reduced sexual activity, reduced the number of sexual partners, or increased condom or contraceptive use.
 - None of the comprehensive programs hastened the initiation of sex or increased the frequency of sex.

LEADING MEDICAL PROFESSIONAL GROUPS SUPPORT COMPREHENSIVE SEX EDUCATION

- Leading public health and medical professional organizations all stress the need for sexuality education that includes messages about abstinence and provides young people with information about contraception for the prevention of teen pregnancy, HIV/AIDS, and other STIs. Some of these supporters include:

American Medical Association
American Psychological Association
The Institute of Medicine
American Nurses Association

American Academy of Pediatrics
American College of Obstetricians and Gynecologists
Society of Adolescent Medicine
American Public Health Association

- For example, the American Medical Association “urges schools to implement comprehensive, developmentally appropriate sexuality education programs” and “supports federal funding of comprehensive sex education programs that stress the importance of abstinence in preventing unwanted teenage pregnancy and sexually transmitted infections, and also teach about contraceptive choices and safer sex.”⁵

COMPREHENSIVE SEX EDUCATION IS SUPPORTED BY THE VAST MAJORITY OF AMERICANS

- The overwhelming majority of Americans, including parents, want the federal government to fund programs that are medically accurate and age-appropriate, educate youth about both abstinence and contraception, and are based on evidence.
- According to the results of a 2005-2006 nationally representative survey of U.S. adults published in the *Archives of Pediatric and Adolescent Medicine*, more than eight in 10 of those polled support comprehensive sex education.⁶
- A survey conducted by Kennedy School of Government, Kaiser Family Foundation, and National Public Radio found that over 90% of parents of middle school and high school students believe it is very or somewhat important to have sexuality education as part of the school curriculum. The vast majority polled think the federal government should fund more “comprehensive sex education programs that include information on how to obtain and use condoms and other contraceptives” instead of programs that have “abstaining from sexual activity” as their only purpose.⁷
- A majority of voters in nearly every demographic category, including Democrats, Republicans, and independents, as well as Catholics and evangelical Christians, support comprehensive sex education.⁸

¹ Kathryn Kost, Stanley Henshaw and Liz Carlin, *U.S. Teenage Pregnancies, Births and Abortions: National and State Trends and Trends by Race and Ethnicity*, (Washington, DC: Guttmacher Institute, 2010)

² Hillard Weinstock et al., Sexually transmitted diseases among American youth: incidence and prevalence estimates, 2000, *Perspectives on Sexual and Reproductive Health*, 2004, 36(1):6–10.

³ *HIV/AIDS Surveillance Report*, 2006. (Atlanta: US Department of Health and Human Services, Centers for Disease Control and Prevention; 2008):18:11.

⁴ Doug Kirby, *Emerging Answers 2007: Research Findings on Programs to Reduce Teen Pregnancy and Sexually Transmitted Diseases*, (Washington, DC: The National Campaign to Prevent Teen and Unplanned Pregnancy, 2007).

⁵ Policy Statement, *H-170.968 Sexuality Education, Abstinence, and Distribution of Condoms in Schools*, American Medical Association, accessed 04 January 2007, <http://www.ama-assn.org/apps/pf_new/pf_online?f_n=browse&doc=policyfiles/HnE/H-170.968.HTM>; See SIECUS Fact Sheet *In Good Company* for more examples and complete citations: <http://siecus.org/_data/global/images/In%20Good%20Company-SIECUS-%2010.07.pdf>.

⁶ Amy Bleakley, PhD, MPH; Michael Hennessy, PhD, MPH; Martin Fishbein, PhD, Public Opinion on Sex Education in US Schools, *Archives of Pediatric & Adolescent Medicine*, 2006;160:1151-1156.

⁷ *Sex Education in America: General Public/Parents Survey* (Washington, DC: National Public Radio, Kaiser Family Foundation, Kennedy School of Government, 2004).

⁸ Peter D. Hart Research Associates, Inc., “Memorandum: Application of Research Findings,” (Washington, DC: Planned Parenthood Federation of America and National Women’s Law Center, 12 July 2007), accessed 2 October 2007, <<http://www.nwlc.org/pdf/7-12-07interestedpartiesmemo.pdf>>.

The Human Right to Reproductive Justice

What Is Reproductive Justice?

By Loretta Ross, SisterSong Women of Color Reproductive Health Collective

Reproductive Justice is the complete physical, mental, spiritual, political, social, and economic well-being of women and girls, based on the full achievement and protection of women's human rights. This definition as outlined by Asian Communities for Reproductive Justice (ACRJ) offers a new perspective on reproductive issues advocacy, pointing out that for Indigenous women and women of color it is important to fight equally for (1) the right to have a child; (2) the right not to have a child; and (3) the right to parent the children we have, as well as to control our birthing options, such as midwifery. We also fight for the necessary enabling conditions to realize these rights. This is in contrast to the singular focus on abortion by the pro-choice movement that excludes other social justice movements.

The Reproductive Justice framework analyzes how the ability of any woman to determine her own reproductive destiny is linked directly to the conditions in her community—and these conditions are not just a matter of individual choice and access. Reproductive Justice addresses the social reality of inequality, specifically, the inequality of opportunities that we have to control our reproductive destiny. Moving beyond a demand for privacy and respect for individual decision making to include the social supports necessary for our individual decisions to be optimally realized, this framework also includes obligations from our government for protecting women's human rights. Our options for making choices have to be safe, affordable and accessible, three minimal cornerstones of government support for all individual life decisions.

One of the key problems addressed by Reproductive Justice is the isolation of abortion from other social justice issues that concern communities of color: issues of economic justice, the environment, immigrants' rights, disability rights, discrimination based on race and sexual orientation, and a host of other community-centered concerns. These issues directly affect an individual woman's decision-making

process. By shifting the focus to reproductive oppression—the control and exploitation of women, girls, and individuals through our bodies, sexuality, labor, and reproduction—rather than a narrow focus on protecting the legal right to abortion, SisterSong Women of Color Reproductive Health Collective is developing a more inclusive vision of how to build a new movement.

Because reproductive oppression affects women's lives in multiple ways, a multi-pronged approach is needed to fight this exploitation and advance the well-being of women and girls. There are three main frameworks for fighting reproductive oppression defined by ACRJ:

Reproductive Health, which deals with service delivery Reproductive Rights, which addresses legal issues, and Reproductive Justice, which focuses on movement building.

Although these frameworks are distinct in their approaches, they work together to provide a comprehensive solution. Ultimately, as in any movement, all three components—service, advocacy and organizing—are crucial.

The Reproductive Justice analysis offers a framework for empowering women and girls relevant to every family. Instead of focusing on the means—a divisive debate on abortion and birth control that neglects the real-life experiences of women and girls—the Reproductive Justice analysis focuses on the ends: better lives for women, healthier families, and sustainable communities. This is a clear and consistent message for all social justice movements. Using this analysis, we can integrate multiple issues and bring together constituencies that are multi-racial, multi-generational, and multi-class in order to build a more powerful and relevant grassroots movement.

Reproductive Justice focuses on organizing women, girls and their communities to challenge structural power inequalities in a comprehensive and transfor-

mative process of empowerment that is based on SisterSong's self-help practices that link the personal to the political.

Reproductive Justice can be used as a theory for thinking about how to connect the dots in our lives. It is also a strategy for bringing together social justice movements. But also, it is a practice – a way of analyzing our lives through the art of telling our stories to realize our visions and bring fresh passion to our work.

The key strategies for achieving this vision include supporting the leadership and power of the most excluded groups of women, girls and individuals within a culturally relevant context. This will require holding ourselves and our allies accountable to the integrity of this vision. We have to address directly the inequitable distribution of power and resources within the movement, holding our allies and ourselves responsible for constructing principled, collaborative relationships that end the exploitation and competition within our movement. We also have to build the social, political and economic power of low-income women, Indigenous women, women of color, and their communities so that they are full participating partners in building this new movement. This requires integrating grassroots issues and constituencies that are multi-racial, multi-generational and multi-class into the national policy arena, as well as into the organizations that represent the movement.

SisterSong is building a network of allied social justice and human rights organizations that integrate the reproductive justice analysis into their work. We are using strategies of self-help and empowerment so that women who receive our services understand they are vital emerging leaders in determining the scope and direction of the Reproductive Justice and social justice movements.

Resources

In order to find out more about Reproductive Justice, please visit the following websites:

www.sistersong.net

www.reproductivejustice.org

Disabled Women And Reproductive Justice

By Mia Mingus, SPARK Reproductive Justice NOW

In the United States, a culture of ableism, which maintains that able-bodied people are superior and most valuable, prevails. In this culture, disability is feared, hated, and typically regarded as a condition that reduces the value of disabled people. The reproductive justice framework helps us understand how eugenic “science” is still a vibrant part of U.S. culture that interacts with and shapes the reproductive lives of disabled women in many ways.

Right to Parent

Women with disabilities (WWD) have a long history of forced sterilization, are often seen as “unfit” mothers and are discouraged from having children, or not allowed to adopt children.

Authorities press disabled women to feel guilty for their decisions to be parents, pointing out that their decision will take a “toll” on their children, families, communities and on themselves.

Sexuality

Society typically defines disabled women as asexual and as dependent on able-bodied people, undermining these women’s access to reproductive health. Disabled women and girls often do not receive sex and reproductive health education. Health care providers may fail to ask WWD about their sexual lives, conduct full pelvic exams or screen WWD for STD/HIV, because it is assumed that these women do not have sex, or that they should not have sex. Because disabled women are seen as possessing less than “valuable” or “functional” wombs to carry children, their reproductive health may go unchecked and uncared for. WWD, a group with pathologized bodies, have the right to receive care and also the right to refuse it.

Access to Services

Women with disabilities have limited access to health care services and information. WWD may not have access to suitable transportation (mass transit, use of

a wheelchair- accessible automobile). Clinic facilities may be inaccessible (lacking ramps, Braille, sign language interpreters, equipment). Reproductive health information may not be accessible to WWD due to issues surrounding language and interpretation, isolation due to the level of stigma still associated with most forms of disabilities, dependency on care givers, and limited access to other WWD. Disability and class also may limit WWD’s access to computers, communication devices, or mobility equipment. Women with mental disabilities also encounter barriers when it comes to accessing reproductive health services: they may be institutionalized, vilified as drug users and addicts. These women may not be allowed to have a role in decisions regarding their reproductive health and their bodies.

Sexual Violence

Violence against disabled women and girls is very common. Power imbalance and isolation can create special vulnerability (domestic violence, sexual assault, abuse) for disabled women dependent on caregivers. Caregivers (partners, nurses, family members, doctors) may withhold medication, medical care and information, or transportation as an expression of power and control.

Eugenics/Population Control

The continuing power of eugenic thought in the U.S. justifies population control measures for WWD and disabled children. The medical establishment pathologizes “disabling traits,” associates these traits with “social problems,” and defines them as targets to “cure” and “conquer.” Disabled women have been routinely sterilized or maintained on birth control, such as Depo-Provera which stops periods and prevents conception. These practices have been convenient for care givers and institutions. While traditionally the project of wiping out disability has centered on eliminating disabled bodies, today, In-

heritable Genetic Modification (IGM), aims to modify the human gene pool to exclude genes that cause (or might cause) various disabilities.

The use of Prenatal Diagnostics (ultrasounds and amniocentesis) to deselect and abort fetuses with disabilities (down syndrome, spina bifida, muscular dystrophy, sickle cell anemia and many more), illustrates the deeply entrenched ableism among women and the culture-at-large. While many pro-choice TAB feminists argue for the right to abortion, many disabled feminists question the inherent ableism that surrounds the decisions to abort.

The framework of reproductive justice provides an analysis grounded in human rights and collective social justice. “Justice,” rather than “right to privacy,” allows for a broader analysis and more complicated approach to the politics and challenges surrounding WWD and reproductive justice. For many WWD, the right to privacy is not a privileged experience in relation to one’s body. Disabled women and girl’s bodies have long been invaded and seen as the property of the medical industry, doctors, the state, family members, and care givers. The goal should not be to “cure the world of disabilities” or to do away with disabled people. The goal should be to work for communities that provide accessible opportunities and resources, human rights, and reproductive justice for WWD.

Resources

www.genetics-and-society.org

www.worldenable.net/women/default.htm

<http://disabilitystudies.syr.edu/resources/motherhood.aspx>

www.crlp.org/pdf/pub_bp_disabilities.pdf

www.disabilityhistory.org/dwa/edge/curriculum

<http://hrw.org/women/disabled.html>

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FACT SHEET

WOMEN'S HEALTH POLICY FACTS

August 2010

Emergency Contraception

Emergency contraception (EC), sometimes referred to as "the morning-after pill," is a form of backup birth control that can be taken up to a few days after unprotected intercourse and still prevent a pregnancy. In 1999, Plan B® was the first product approved for use in the U.S. as an EC by the Food and Drug Administration (FDA). In August 2010, the FDA approved a newer form of EC, known as ella® that is more effective and gives women a longer window of time to prevent unintended pregnancy than Plan B.^{1,2} This fact sheet reviews current national and state policies around EC, including new methods, patient education, access and availability, and sexual assault.

WHAT IS EC?

Emergency contraception is used as a back-up birth control method to prevent unintended pregnancy in the event of unprotected sex, sexual assault, or a contraceptive failure, such as a condom breaking. It is not intended for use as a regular contraceptive method.

- There are several methods of EC (Table 1), but only two forms are authorized by the FDA to be used as EC in the U.S. The first form of EC to be made available in the U.S. is a pre-packaged dose of pills containing the hormone progestin, the same hormone found in daily oral contraceptives, and is marketed under the name Plan B or Next Choice® (generic). Plan B is the most widely used form of EC. Most recently, the FDA approved ulipristal acetate, marketed as ella, for sale and use in the U.S. and in the class of drugs known as selective progesterone-receptor modulators.^{1,2}
- Originally, the Plan B regimen required two pills, taken 12 hours apart. More recently, Plan B One-Step® became available and only requires one pill. Both types are available, but the two-pill regimen is gradually being replaced by the more convenient Plan B One-Step.³
- The first dose of progestin-based EC is to be taken within 72 hours of unprotected sex in order to be most effective.² Plan B reduces the likelihood of pregnancy by 81 to 90% when taken within 72 hours of intercourse and is available to men and women 17 and older for sale without a prescription (women under 17 need a prescription).⁴
- Progestin-based EC pills do not affect an established pregnancy, nor are they medical abortion drugs like mifepristone or methotrexate that end an established pregnancy. Plan B prevents pregnancy by inhibiting or delaying ovulation, or by preventing implantation of a fertilized egg in the uterus.^{5,6} Studies of women who inadvertently continued to take their daily birth control pills (the same hormones as EC) during the early weeks of pregnancy have shown no evidence of negative effects on the fetus.⁷ No study has yet examined the long-term effects of EC on established pregnancies.
- Ella is a single-dose ulipristal acetate pill that is effective in preventing pregnancy up to five days after unprotected intercourse, giving women a longer timeframe to prevent unintended pregnancy than Plan B.⁸ Already approved in 2009 and marketed throughout Europe as ella or ellaOne®, ella is expected to become available in the U.S. by late 2010.

- There are no known serious side effects associated with progestin-based EC; 50% of women experience nausea and 20% vomiting.^{2,9} Study findings show that side effects for ella are comparable to those for Plan B.¹⁰
- Studies have shown that other products, such as Mifeprex® and copper intrauterine devices (IUD), can also prevent pregnancy after intercourse but they are not approved for sale or marketing as EC in the U.S.¹¹

WOMEN'S KNOWLEDGE AND USE OF EC

Although health care providers have known about EC for several decades, awareness and use of this option among women are still lagging.

- Despite numerous public health and education interventions to increase awareness of EC, significant knowledge gaps exist. A survey of postpartum women in the U.S. showed that 25% were not aware of EC at the beginning of their pregnancies.¹²
- In June 2010, the federal Emergency Contraception Education Act of 2010 (S. 3504/HR 5561) was introduced to fund national campaigns to educate women and health care providers about EC.¹³

Table 1
**Major Methods of Emergency Contraception,
Availability and Policy in the U.S.**

Brand Name	Efficacy ^a	Timing after intercourse	Availability in the U.S.
Approved and available for EC use			
Plan B® (two pills) Plan B One-Step® Next Choice®	81 - 90% reduced pregnancy risk	Within 72 hours	Available without prescription to men and women 17+, women younger than 17 need prescription
ella®	2.1% failure rate	Within 120 hours	Prescription only ^c
Available but not approved for EC use			
Combined pills (estrogen and progestin): 19 brands ^b	1.3 - 1.5% failure rate ^d	Within 72 hours	Prescription only, not marketed as EC
Mifeprex® Early Option®	75% reduced pregnancy risk	Within 120 hours	Prescription, not authorized for EC use
Paragard®, Copper intrauterine device (IUD)	99% reduced pregnancy risk	Within 120 hours after ovulation	Requires clinician visit, not marketed as EC

a. All percentages presented are approximations.
b. For a complete listing, go to <http://ec.princeton.edu/questions/dose.html>.
c. Approved by the FDA in August 2010. Expected to be available for sale by end of 2010.
d. Estimates vary between research studies.
Sources: Planned Parenthood, IUD, available at <http://www.plannedparenthood.org/health-topics/erh-contra-dual-4245.htm>; Trussell J, Raymond E. Emergency Contraception: A Last Chance to Prevent Unintended Pregnancy. Office of Population Research at Princeton University; U.S. Food and Drug Administration, FDA Briefing Information, Ulipristal Acetate, for the June 17, 2010 Meeting of the Advisory Committee for Reproductive Health Drugs, June 2010; Wertheimer RE. Emergency Postcoital Contraception. *American Family Physician* 2000;62:2287-92.

- Ten percent of women ages 15 to 44 (5.1 million) reported ever using EC at least once between 2006 and 2008, an increase from 4% in 2002.¹⁴
- Providing EC to women before it is required is one strategy to promote its timely use. Yet a 2005 study found that among women who had been provided with EC and had unprotected sex, 45% did not use the EC they had available.¹⁵
- However, research also suggests that advance provision of EC has the potential to be cost-saving and cost-effective in averting unintended pregnancies.¹⁶
- Research has found that women who have an advance prescription or supply of EC are not more likely than women without an advance prescription to have unprotected sex or to use EC repeatedly.^{15,17}

ACCESS AND AVAILABILITY

At least one form of EC has been available in the U.S. for several years now and there have been a number of efforts to broaden women's access to and awareness of EC, particularly since its effectiveness is time-limited.

Cost and Coverage

Because EC is meant to be taken after every event of unprotected intercourse, affordability is an important factor.

- Progestin-based EC pills sell for between \$35 to \$60.¹⁸ While over-the-counter status facilitates availability, affordability can still be a problem. Many health plans do not cover the cost of non-prescription drugs, requiring women to pay out-of-pocket for EC.
- Health insurers in 25 states are mandated to cover all FDA-approved prescription contraceptive drugs and devices, including EC. Insurers in two states (AR, NC) specifically exclude EC from the mandated coverage.¹⁹
- Medicaid programs in at least 26 states cover over-the-counter EC.²⁰ In many states, Medicaid policy requires women to present a doctor's prescription for Medicaid to pay for EC. Given the limited time window of effectiveness, waiting to get a doctor's prescription may not be an option for women on Medicaid.²¹
- For teens, structural barriers (e.g. lack of a driver's license, car, or personal income) may limit their ability to confidentially get to a doctor's office or clinic.

Health Care Settings

- Several major medical organizations, such as the American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American Medical Association, American Nurses Association, and the American Public Health Association, endorse the use of EC and advocate for broader access to EC.²²
- Despite efforts to improve and standardize EC prescribing practices, EC is still rarely discussed with women in the clinical setting. Only 4% of women ages 15 to 44 reported that their healthcare provider discussed EC during the last routine visit, and only 4% were counseled about EC by their gynecologists.²³
- Timely counseling about and access to EC are critical for teens since a greater proportion of their pregnancies are unintended.²⁴ One study found that only 26% of pediatric residents counseled teens on EC during routine visits while 56% counseled during contraception visits.²⁵
- There have been efforts to make EC more readily available to survivors of sexual assault. Currently, 17 states and the District of Columbia require that emergency room staff offer EC to women after sexual assault (Figure 1).²⁶

Still, some local studies have documented that a sizable share of hospitals do not routinely offer counseling, referral, or dispensation of EC to sexual assault survivors.^{27,28}

Pharmacists

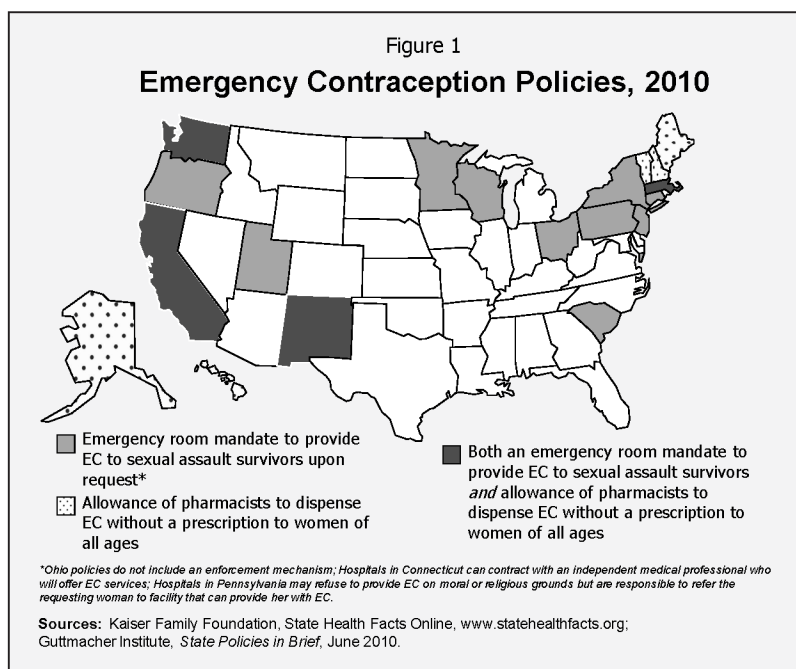
Pharmacies are a critical point of access for EC. Regardless of whoever seeks to obtain EC, it is kept behind the pharmacy counter, requiring all women and men to request EC from a clerk or pharmacist.

- Nine states – AK, CA, HI, MA, ME, NH, NM, VT, and WA – allow women of all ages, including those under age 17, to obtain EC directly from a pharmacist without obtaining a physician's prescription (Figure 1).^{26,29} Similar legislation has been introduced in at least eleven other states.^{30,31}
- At least five states – CA, IL, NJ, WA, WI – have measures that require pharmacists to fill all valid prescriptions.³⁰ These policies have been enacted in part to responses to reports of pharmacists refusing to fill prescriptions for EC because they oppose its use on moral or religious grounds.³² Some studies have found that many pharmacists did not understand how EC worked nor the time frame for its effectiveness.^{31,33,34}
- Five states – AR, GA, ID, MS, SD – have laws allowing pharmacists to refuse to dispense EC on the basis of moral or ethical objections. Similar legislation has been introduced in at least eleven other states.²⁹

EC on the Global Market

Outside the U.S., access to, availability, knowledge, and use of EC vary by country. While some governments have recognized the importance of EC and taken proactive measures towards increasing provision, others have either banned or restricted EC use.

- Internationally, all five methods of EC (combined pills, progestin-only pills, ulipristal acetate, mifepristone, copper IUD) are available depending on specific statutes by the country's government or the donor organization's leadership.³⁵ 100 countries have registered an EC product.³⁶
- Awareness of EC is a challenge in other countries. Among married women ages 15 to 44 in 35 developing countries, EC is the least known and used contraceptive method.³⁷



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The Human Right to Sexual Health

Sexual Health

Patti Britton, PhD, MPH, ACSE,
ACS, ABS, FAACS, MSC

I have always believed that sexual rights are fundamental human rights. Our sexuality is part of the essential fabric of who we are and our sexuality has an effect on our “self” lifelong, whether we act on it or not. It is in my own DNA to promote the premise that sexual freedom is the birthright of every human being, regardless of status, age, gender identity, sexual orientation, erotic or sexual preferences, or anything else. As I work with my own clients, teach my graduate students, and train colleagues into the depth of understanding about the complexities of human sexuality, I talk about sexual health as wholeness, the route to becoming whole. Our role as sexuality advocates is to promote the possibility for every person to experience the full richness of sexual self-acceptance and the tolerance of others however and with whom they express their sexualities. Plain and simple, sexual health is about the right to be you and to be fully human.

I have had the privilege of being a leader in sexual health for many years:

- As Associate Director of Education for Planned Parenthood Federation of America managing a national clearinghouse on sexuality-related materials and leading training workshops for over 800 Planned Parenthood educators at national and regional meetings, along with a monthly magazine on sexual health issues;
- As the first recipient of CDC-funds at ETR Associates to conduct the first national teacher training program and write the very first manual on HIV/AIDS prevention for school-based youth from a sex-positive perspective;
- As Deputy Director of S.I.E.C.U.S overseeing the release of the first edition of the Guidelines for Comprehensive Sexuality Education K-12 and leading trainings around the U.S. in sexuality education and HIV/AIDS prevention strategies;
- As a leader at SSSS and AASECT, including serving as elected AASECT President 2006-2008,
- As a workshop leader and U.S. representative at

the World Congress of Sexology/Sexual Health for several years.;

- And as faculty for the Institute for the Advanced Study of Human Sexuality and The Chicago School of Professional Psychology, where I am able to teach positive sexuality and sexual health as a human right to my students.

As a child of the 1960's in America my own life was flooded with the movements toward human freedom. During those days of the “Love Generation” and “Make Love Not War” it was fashionable to have as much sex as possible. In fact, at 19 years of age, it was shameful to still bear the scarlet V (virgin) at that late stage. Flash forward to the repression of today's cultural and political climate, and you see a shift toward the shutting down of sexual freedom at every turn. Today's youth have been fed propaganda through the recent years of federally funded sexuality education programs, beyond Nancy Regan's influence of “Just Say No”, purporting that abstinence before marriage is the only option that young persons should be taught. As some of my sexology colleagues and I like to cite, the take-away message of the G.W. Bush years for young people has been “Sex is bad, dirty, shameful, and disgusting: Save it for the one you love and marry.” Furthermore, given the promulgation of MIS-information including on government websites, (such as misstatements about condom efficacy at www.CDC.gov) under the reign of terror of George W. Bush during his two Presidential terms that attempted to thwart any sexual freedom that did not fit within the tight pseudo-moralistic rhetoric of a conservative fundamentalist Christian ethic, it is a miracle that we survived.

Yet the collateral damage is palpable. We still are fighting for comprehensive and sane sexuality education in the nation's schools, as funding for abstinence-only programs sneaks in as add-on's to federal legislation, even under the hopeful new era of Obama. The erosion of sexual rights of women, such as the persistent attempts to remove the legal right to

abortion, guaranteed under Roe Vs. Wade, along with a push toward states' right to limit access to sexual health care for youth and women, and the battle over gays' and lesbians' right to legal marriage, are some of the challenges that remain. Thanks to the restoration of some of the sexual health and therefore human rights associated with this new more sane approach, we now have gays in the military allowed to be "out" and a seemingly greater tolerance of diversity.

But the aspect of sexual health is one near and dear to my life. First, my own mother fought for sexual health by driving young women seeking illegal first trimester abortions in states just freshly legalizing this safe procedure. In those early days of the feminist movement and sexual revolution, a woman's right to a safe, legal abortion was absent. I personally sat in living rooms listening to the stories from friends who nearly died at the hands of back-alley butchers, where these criminals posed as physicians with unsterile knives in sordid basements or pushing in tubing filled with lye to empty the uterus, all real stories prior to the Supreme Court's wise decision to let a woman decide her own sexual destiny. In my early days in family planning, I saw the damages to women without proper knowledge, information or access to care, and as victims of violence against them through rape and abusive sexual mates. Reliable, accessible birth control and accurate timely assistance in coping with the prevention of unwanted pregnancy, STDs (now known as STIs) and having the empowerment to determine one's own sexual destiny changed the course for many.

Today in 2010, we remain ambivalent about pleasure. It is the "P" word of our times. Not being able to claim the right to experience pleasure, many of my clients are erotically dead, sexually bankrupt, and lack orgasmic or relationship joys. I still meet with bright powerful female clients in their 30's who are waiting for their own Prince Charming to rescue them from themselves or need to fall in love in order to be sexual. I still witness homophobia in the classroom, the clinical settings, the training rooms, and in the media. And, of course much of our clinical work with clients whose sexual orientation doesn't meet with the acculturated perception of "normal, aka heterosexual", results in internalized homo/trans/pleasure-

phobia, many with debilitating signs of poor health, with damaging effects on their wellness choices and impulses.

Perhaps most dear to me is the prevention of HIV/ AIDS. I lost my daughter Holliday to the ravages of this horrible journey. As a teen of 16 years she became infected through an unprotected sexual encounter with a millionaire's son who happened to be an IVU. I spent twenty years watching her suffer, experimenting with new drugs, the hideous side effects, the isolation from social stigma, and the sheer horrors of the medical system, which abandoned her in the end, until the very last gasp of her life. Thankfully at the end of her tumultuous ride she did marry and I now have a granddaughter through whom Holliday lives. As a safer sex educator and advocate, I cannot say strongly enough: we need more not less erotic education in order to be sexually safe and erotically healthy. Not just the promotion of the medical facts, but just as my own training in leading "Eroticizing Safer Sex" workshops at the Gay Men's Health Crisis in the 1980's allowed me to see and implement, providing sexy, sex-affirming, and erotically awakening, explicit messages about how to embrace a sexual life with protection, such as condoms or topical microbicides, now stemming the spread of HIV in Africa among women taking control of their sexual health.

As the mother of a child that sex brought into this world, and that sex took out, please let's work together to assure that future generations will thrive as healthy sexual beings.

FOURTEEN YEARS LATER — A MOTHER'S STORY REVISITED

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Fourteen years ago, in Vol. 20 of the SIECUS Report, I wrote an anonymous story about discovering my daughter was HIV+ and the tragic family issues that ensued. That story received a lot of attention at a time when learning you had HIV was akin to a death sentence. This update, after the death of my daughter last fall, is my story now with full disclosure for others who may feel the need to hide behind their shame and secrecy. It's time for us all to speak up and speak out.

Mothers' Day Questions

"Happy Mothers' Day"...the words shatter like giant glass snowflakes down into a long, dark, hollow well.

"Thanks, honey," I quietly sputter out the words to my partner. "But, I don't know if I'm still eligible. Can you still be a mother when your only child is gone?"

Gone: a tidy word for death. The D word was banned by my Mothers' group in New York City in the 80s, during one of the many crisis times on this journey now complete. "No D spoken here" was their motto, hiding nicely inside their cocoon of denial, hoping that it never would be a word spoken about *their* child living with AIDS. Waiting and wondering were my constant companions then. My daughter, a white heterosexual, non-IV drug user, became infected with HIV as a confused teenager experimenting with sex in Mnahattan, the epicenter of the early AIDS epidemic, maybe 20 years ago.

A lot has happened since then: since the early 1980s, 20 million lives have been taken by HIV/AIDS, "a figure that surpasses any single cause of death in modern history."¹ 42 million people today have AIDS², 19.2 million of them women,³ and for the very first time the United States has just passed the one-millionth mark in cases of HIV/AIDS. Sadly, as the mothers of every person with HIV/AIDS, I am among the many of us who no longer have living children. If we were to look at the statistics from Uganda and AIDS⁴, we would see that more than one half (56%) of the population of women ages 25-29 and 29% of those 15-19 are infected with HIV and will die of AIDS. We live in an illusion that we in the U.S. are safe and free from such harm. Unless we address the growing numbers of women who can-

not use the new "magic bullet" approach in medications, for one or more reasons, such as my daughter's inability to stay on a maintenance program of drugs, we will see more women in this country become these staggering statistics as well.

As their mothers, we are the remainders, the unsung victims of the post-sexual revolution, an era escalated by the spread of this disease first noted among gay men, then bisexual men, then heterosexuals, then women. Now my daughter, a survivor of HIV/AIDS for almost 20 years, is a memory in 158 photographs pasted across the poster boards that sat in front of her memorial funeral service as a reminder of her life, while I question if I, her mother, am still eligible to wear the mom mantle.

Maybe we need another word. How about AIDS "*madow*" (pronounced like play-doh)? Half maternal, half widow, we face a loss so great it's hard to bear or describe. But I have a personal quest: to tell you what it's like to ride the horrific roller coaster of living with AIDS as the mother of a Person Living With AIDS (PWA), to tell you what it's like to live to see your child die of this horrible disease, up close and personal, to the cellular level of intimate connection. It's almost unimaginable how a mother could end up watching a grown 30-something woman, her only child, shrivel up to a whisper of a wracked, wretched body and not recognize her for the 90-year-old skeletal self she resembles as she gasps through her last weeks of life or what it's like to be sitting by the side of her dying grown child, holding her fragile hand until her last human breath.

Each of those 42 million people with AIDS and the millions yet to be counted, had or has a mother, it is for those mothers that I tell my story of grief and recovery. This is also my daughter's story and the story of how we as AIDS "*mad-ows*" cope and thrive, despite our hideous loss. And, perhaps just as important, it is my prayer to help others recognize that this is a worldwide tsunami that's taking victims in the millions, especially women, and that this is the moment to care and do something about it before it's really too late.

PUTTING A FACE ON AIDS

On August 25, 1968, my daughter Holliday was born to me, a single mother in New England. At that time, it was not fashionable to bear a child and not be married. Those were the days of "illegitimate children" and scorned unmarried

moms. But, being a rather unconventional woman of my times, I wore my Scarlet Letter with pride, knowing that a revolution was brewing, giving single women the right to be single moms, without the shame.

We lived for a year with my parents in a suburban town and shortly after that, with great support from them to care for a newborn infant, I decided to return to college and moved to Johnson, Vermont. At age two, Holliday began day care and early schooling. She was a clown, a perfect mimic, and a consummate comedian. People loved her lightness and silly ways. She was a typical kid, wearing her white undies on her head for hats and slurping spaghetti from the bowl until the strands filled the small kitchen we shared with one of my four sisters while we both attended college.

I loved those years, taking care of my daughter, watching her grow and thrive, and getting my own ducks in a row to be a good provider. Her early years would never have been so easy without the constant love and assistance (babysitting, a little cash now and then) from my loving parents, her “grams.” She had funny names for everyone and the uncanny gift of being able to imitate anyone to a tee. She was a born performer. In fact, she began to play an instrument at an early age, following in the footsteps of her aunt, who was a mere 18 months older and who to this day is a virtuoso violinist. Those two were a born pair, more like sisters, and spent hours together in shared fun.

Holliday attended private alternative schools in kindergarten and elementary-level grades, with this non-traditional single mother dedicated to the finest education. She played the trumpet in school bands, which was a coup for a girl at that time. Always, she remained jolly, a light spirited girl, eager to grow and learn.

After college, I worked for the Vermont Planned Parenthood statewide affiliate for several years and kept an open dialogue with Holliday at every step along the way. I remember times when she would be in our VW bus, filled to the brim in the back with condoms and books for my rural family planning outreach travels. Once I hit the brakes too hard and all the condoms tumbled out at an intersection, which gave us red faces and afterwards hysterical laughs at how so-o-o many cars stopped to gape at what was in the road. Another time, I recall her helping us at the PP office to pop the expired pills out of their cases. Over the years, she played many other roles as an eager participant in the world of sexology.

As she was blooming into a pre-teen, we moved from the comfort of family and friends, a small world of being known, to the borough of Queens, New York. Her humor and gentle approach to everything was contagious. We had a wonderful time adjusting to our new lives and thanks to an aunt in Manhattan who allowed us both to enjoy a cultured

life, we began to enjoy our new times together in the city. That was short-lived.

We lived far from the office of National Planned Parenthood and from the cultural and social events, and commuting into the city became a strain. A good friend gave us a tip on an affordable rental on the Upper West Side of Manhattan, a residential hotel which we dubbed “Greystone Manor.” We joked repeatedly about how we should write a sitcom script about its people and dramas that we watched taking place there. We had a good time, and she began to play her trumpet in a competitive junior high school band. It was a joy to watch her attend that school. She thrived, doing well in her academic classes, keeping up with her trumpet practice, and blossoming into a beautiful young woman. When high school came around, she competed for the performing arts high school, and out of 3,000 was one of the 300 picked. I was so proud. I had high hopes for her to develop herself and perhaps apply to one of the musical conservatories in Manhattan, such as Julliard. She was that good!

New Patterns

Then one day at age 16 a new pattern began to emerge. There were nights when she would not come home until late. She began to change and gravitate to what I called and discussed with her as “the lowest common denominator” of life on the streets. And New York can be a very dangerous place, especially for a young teen who was trying to find herself. The signs continued to show when we moved to a larger, more comfortable apartment nearer to her high school. I thought this would make her happier, as she could avail herself of the many after-school options at this training ground for fine musicians, but that never happened. Over time I began to read the signs. She was not doing well in school and things were not as they seemed. She was getting up late, coming home late, and never talked about her class work, which I pushed her to do. Eventually the trumpet was abandoned and she showed signs of confusion while distancing herself from me.

One day it happened: She ran away. I found out from one of my sisters that Holliday had made her way to my sister’s house in Vermont; having had such a strong tie with her grandmother (my mom), it wasn’t surprising that she went back there. Perhaps this was some adolescent crisis that would pass with some time in a more familiar and safe environment. That wasn’t the case. Within two days she had what we would call a “pre-psychotic break” and was rushed back to a residential treatment facility, where she spent nine months outside of New York City in treatment for what was diagnosed as bi-polar disease.

Every weekend I took three trains to visit her in the hospital which was renown as the best adolescent mental health treatment facility in the U.S. and which looked more

like a gorgeous country club than a lock-up for the insane. She got stable, regained her sweetness and sense of humor, and eventually was placed in a group facility back in Manhattan with many open privileges. She got herself employment and took classes to get her GED. At last, I thought, she was going to be fine. But, I had no idea what was really brewing behind the smiling façade and apparent compliance with the rules at the group home. I went there weekly to meet with her and the clinical staff, all in attempts to normalize her to medications that would maintain her for life, establish a path back to finishing school, and perhaps restarting the trumpet, though it was clear that a career in music was not her destiny.

Changing Plans

I took a job in California at the urging of the residential clinical staff and with Holliday's permission, ready to escape the years of disappointment with her situation in NYC and ready to pursue greater horizons for my own career. I had the great fortune of being selected to run the first teacher training project in HIV prevention at ETR Associates, funded totally by the Centers for Disease Control and Prevention (CDC) as a showcase program. I loved it. I co-wrote four major training programs and began to travel and deliver them around the country. Meanwhile, I was in close contact with Holliday and her caregivers.

I was shocked one day, two months after my arrival in Santa Cruz, CA., to get a crisis call that Holliday had gone AWOL and had spiked a manic episode. She was in the emergency area of Bellevue hospital, along with a roomful of homeless persons and victims of violent street crimes. Was this MY daughter? My mother and sister flew to NYC and rescued her. I flew in shortly after and discussions began to unfold about her need for further care. Two more manic episodes later it was crystal clear that NYC without me wasn't working and that a new plan had to be made. The residence in NYC was not the answer, but perhaps living with my parents and attending day treatment in Vermont would be the cure.

One month later, as plans were being made for her transfer to Vermont, my mother dropped dead from a heart attack and the family experienced a major earthquake. Holliday was not going to Vermont, after all. After my mother's funeral and witnessing my father's weak state, I arranged for Holliday to be discharged to live in Santa Cruz near me. I had a tiny studio apartment at that time, but knew we could find her suitable housing. Soon after she landed on my doorstep, I moved to a larger apartment to accommodate this new paradigm. It wasn't long before she stopped taking her bipolar medications. Weeks later, another major manic phase occurred.

When she was manic, she was classical: grandiose, free spending with money, sexually irresponsible, and out of con-

trol. I could handle the depressive phases of her personality, although that was never pleasant, but the mania changed her into someone else, a personality that I abhorred. It took about a nanosecond to realize that living with me, bringing home strangers she met at bars, and not working or doing much of anything wasn't going to work for me.

Bingo, Infected

Holliday went on a road trip with one of her cronies and I was fortunately able to focus on my wonderful new job and dig into its demands. One day, I was sitting at my desk preparing for the first round of trainings, when a man's voice (an Army Medical Director) unexpectedly left a message on the phone, urging me to contact him about my daughter's health status. Did I know that she was trying to get into the U.S. Army? And did I know she was being rejected because she was HIV-positive? What?

Here I was, a national leader designing trainings and writing the first teacher training manual for HIV prevention and my own daughter has turned up HIV+. Impossible. There must be some mistake. But there wasn't. It seemed that during that phase in NYC before her "break" and the trip to Vermont, she had had unprotected sex with a young man in her GED program (whom the teacher had warned me was "not a good influence on Holliday") and who happened to be an IV drug user. Bingo. Infected.

This was the beginning of the long journey with HIV/AIDS. By the time she was assessed in the local clinics, her HIV had become full AIDS. She was to live many years with herpes, skin disorders, never-caught PCP, and to be on the edge of being diagnosed with some other opportunistic infection many times. Life was never going to be the same again.

THE JOURNEY OF HIV

Holliday had a journey that few young women her age may have endured. At times I had to show my own capacity for "tough love" and draw the healthy boundaries about what I would and wouldn't accept—bringing home strangers into our apartment, running astray, not working, spending months at a time in deep depressive limbo while not taking the anti-bipolar nor the HIV drugs. These patterns went on for the many years of the term of her disease.

Ups

In the early 90's I moved back to the east coast. This big step for me, was in part made possible by her progress in finding a wonderful support system, two steadfast AIDS buddies who remained a part of her life to the end, the Santa Cruz AIDS Project, friends, and a newfound spiritual path of Buddhist chanting that really gave her life a new blush of hope and community.

At that time, her housing was good, her health remained intact, and she was even well enough for one of the few periods in the course of her HIV/AIDS to hold a job as a full-time temporary postal worker, her all-time favorite career. There she was, in uniform, driving around the hills and valleys of beachside Santa Cruz county in a white-painted USPS jeep-like vehicle and living with her horrible secret of AIDS. I remember our joking about the terms they used (like “going postal!”) and how happy being a part of the postal team made her feel. That, too, was short-lived.

Around that time, she met the love of her life which was perhaps the best thing that ever happened in her life. That man (whom we’ll call Sam) became her partner, she got pregnant through unprotected sex which never infected him, and they were married in the midst of a huge crowd of thrilled and rather surprised friends. The news of her pregnancy sent chills up my spine, when I feared that could cause such a strain on Holliday’s physical health that she might die.

When the announcement of her pregnancy hit home, members of a support group that I had joined helped me realize the positives about the new drug protocols. Holliday got involved in an experimental, landmark San Francisco peri-natal program and thrived. Her baby was born HIV negative and healthy. Our miracle baby! I was instantly in love with her, of course. Grandmothers bond with their grandchildren, just as Holliday did with my mom. I was so pleased to see such a good marriage that was so compatible, and watched Holliday become a great mother. Things were working well for them except for constant economic challenges, for which I helped as much as I could.

The pull to be with my daughter and grandchild deepened and I wanted to be closer to them, so I moved from Manhattan to San Francisco. Suddenly though, much to my great chagrin, Sam’s mother wanted them to live near her in Florida. I gave them my blessings and managed to visit them and their adorable infant-toddler. I saw that Holliday seemed to be doing the best in her whole life, working in a spa resort with her husband, taking her AIDS medications, feeling happy, and being a great mother.

But problems began to emerge. There was rather poor health care for HIV/AIDS in that region, and their financial struggles grew. After two years, I convinced them to move back to California.

And Downs

After a couple of months her husband found a good job, but I noticed that Holliday was waning. A *madow* can read the signs: her health was not good even though she was a client of AIDS Project of Los Angeles, and I could sense her struggle in being a full-time mom. Perhaps more

importantly, her mental health was on the slide. She seemed so unhappy in the tiny, disheveled house, which was a 50-minute ride from mine. She’d call me up and cry, “Mom, I feel so isolated, and it’s so hard, taking care of the little one. I miss you, can I come over?” The answer was always “Sure, honey, whatever you need.” But I began to doubt that things were going to get better. Something inside of me told me, “Keep a good lookout, Patti, things are getting worse.”

One day, she called me, and in a quiet voice, filled with tentativeness and shock, she said, “Mom, I have some news. I think you’re not going to like it...Sam got a new job.” She paused...“It’s in Santa Cruz and we’re leaving next week.” Then she sobbed. I couldn’t stop him. He was determined to move back to an area where he felt he could thrive. He knew that things weren’t good with Holliday where they lived. So he took a good job, and I rallied to their support once more.

The truth? This was the beginning of the dive downward. The financial pressures persisted, and they moved in with friends to what I can only say was an unhealthy hovel. I was appalled and scared for Holliday’s mental and physical health. Quickly, Holliday’s health declined. A few months later, when I could make it up there, I learned that she had gone off all of her HIV-related medications. There she was, lying in bed for hours, letting her little girl be babysat by a television screen, in a house that was bad for her health, with the demands of motherhood taking their toll and not much hope of change in sight. Sam, God bless him, did his best, struggling with many hours of hard work and trying to be a good dad and husband. Finally, after she had a total emotional breakdown during one of my visits and then attempted suicide by slashing her wrists in a hospital parking lot, she got into mental health treatment. And she got back on a chemical soup of anti-depressants, mood stabilizers, and of course, more drug cocktails to treat the HIV/AIDS.

She did get better and was more optimistic. From a distance, I attempted to help her get back into community college, where she had been a part-time student years before. Her voice changed and got faster, and her words were grandiose. I had to wonder if this was the new meds or if it was the return of the loathsome mania.

The Last Straw

Her manic symptoms worsened, and after a rapid escalation, one day she simply left home. To me this was full mania, once again, running the show and destroying everything in its path. It was also the combination of drugs that tipped the scales. Days later and thousands of dollars of debt, she somehow managed to find strangers, all men, to take her in. Until the final curtain she lived with a man whom I’ve never met, but who helped her survive. She never returned home to be

a mother again. I knew she was getting sicker when she began avoiding her daughter. I decided to help her husband get his divorce so he could escape the enormous debts she had created. Despite having joint custody, Holliday just couldn't handle having her child around. She cried on the phone telling me she couldn't control her, the house was too chaotic, and she didn't have the energy.

Holliday always told me, during those horrible two years of being absent from her child and me, that she was taking her medications from the AIDS project there. I wondered. In the summer of 2003 we visited her daughter together in Santa Cruz, thinking that if I were there she might reconnect and find the strength to be with an active five-year-old who longed to be with her mommy. But, I noticed that Holliday was not tracking conversations very well and that she had a visible and hideously ugly moluscum growth over her eye, which troubled me. She seemed weak, disconnected, and very unhappy. I assumed it was because of her living far away and feeling guilty about not seeing her daughter, and I began to work hard to encourage her to consider using her Social Security income and Medicaid options to move back to Santa Cruz to be nearer to her daughter and friends. She never took action, even when I pleaded and recited lists of action steps to what seemed like deaf ears.

A MOTHER'S TALE TO THE END

That is Holliday's story. Now it's my turn. The story is not yet over. This is what happened to me as a result of Holliday's decline and demise due to HIV/AIDS and bipolar disease—along with an inadequate, reluctant, and resistant medical system, and a world that doesn't fully acknowledge or address the real range of needs of people living with HIV/AIDS or what their families require to make it through.

June 10, 2004. She visits me in LA. She is not right. She is out of touch, standing and staring with a vacant gaze; she's making strange sounds, is hardly speaking, and looks terribly thin. We go up to the country and a gay friend (who is all too familiar HIV/AIDS) notices something is not right.

Later June, 2004. I begin to push her to get assessed at her AIDS program in Northern California, and to get on new meds. She admits to me, in a teary talk, that she hasn't been taking any medications for months. She is declining.

July, 2004. She goes to Santa Cruz to get into services, with both Santa Cruz AIDS Project and county health department services, both reputedly good projects for PWAs. She lives with an older couple who try to get her into proper care and back on track.

August 12, 2004. I drive up to see her with the plan to help her get new housing, arriving late and staying at my son-in-law's house. Fatigued and anxious, I arrive at the home of our friends to see Holliday. When I open the door I nearly fall down: I see a wizened, weak, and ill person sitting hollow-checked on the couch, with a horrid smell of death on her breath, "Who is this?" I nearly burst into tears and am in shock when I realize it's Holliday, who is very ill, dehydrated, wasted, and confused; they tell me she's been silent, not taking in fluids or food and lately has had bouts of sudden diarrhea. The next day I take her to emergency care where I then try to get her into a hospital/nursing facility; they say she's technically not sick enough. The caregivers insist on asking the patient, someone who cannot decide anything, what she wants. She can hardly stand up or speak.

August 12–17, 2004. I push the system; I try everything I can think of to make someone help us. I meet with social workers, public health nurses, medical doctors, and Santa Cruz AIDS Project staff, who alone are going to get her into an independent living home in town. I still feel she needs more supervised care and the county social worker balks at my insisting on this. I get her a mental health assessment but they cannot serve her. We have one final MD appointment at which time I cry out to the doctor, "Don't you see what I am seeing? I think she's dying. She is not going to make it." He is moved enough to test her mental faculties while I leave the room. When I return he whispers to me, "Patti, she has AIDS dementia." Finally, someone else sees what I see. A possible *mad* knows.

What can be done? They tell me, "Well, she can be in an Independent Care Facility and if things get worse, then she can get into more intensive care. Of course, she'll have to make her own meals." I think to myself, "Make her own meals? She cannot even track how to get herself a glass of water. She stands for hours gazing into space in one place. She's NOT going to make it that way."

I am told that I must wait for two weeks for her room to be ready. Our friends cannot keep her. I decide, with the loving support of my own partner, Robert, that I have no choice other than to bring her home with me to wait it out. She's given bottles of anti-depressants and threatened that if she doesn't curb the depression she'll never be compliant with the AIDS medications that are next. In our drive down to Los Angeles, she is barely able to drink, eat, or keep a focus. In her stupor, she manages to swallow the pills for me.

August 17–27, 2004. We return to LA and then drive up to the country home, where she can have a lovely room to herself with us in the next room and be nurtured by the beauty of nature in the summer. I notice she's waning, that she's failing. I try everything in my power to get her to

drink and eat; I try to get her to take anti-depressants. She tries. She is dying. She cannot drink, she cannot eat, she cannot sleep. The severity of her waning and confusion, along with not taking in anything to eat or drink, begins to frighten us. We take her to the local hospital emergency room. I am crying. It's her birthday, must we? A doctor tells us she's dehydrated, then judgmentally and coldly quips, "Why didn't they force her to take HIV medications? That's her problem. Here, get these pills and make her take them," handing me a prescription note I cannot see from the blur of my tears welling up in my eyes. Don't they see what a possible *madow* sees? We get her the medications and for two days she tries to force them down her dry throat, drinking two ounces of water and barely swallowing ¼ cup of soft food a day. This can't continue. She's going to die right here in our living room.

The Sunday before Labor Day Weekend, 2004. I have a video project meeting at in my house. I can't believe it's happening this way. She stays with Robert. Oddly enough, they are watching Emmy nominated comedy shows in his living room and guessing at the winners, all of whom she has picked correctly. That comedian self is still alive. At 5 pm he calls over to me and says, "It's time. We have to take her to emergency. Patti, we can't keep doing this. I think she's dying." Her lips are cracked and bloody, she's breathing with difficulty, eyes glazed over, and she hasn't drunk or eaten or taken any pills today. She must go with us. We drive back to the ER in our country town and I pray for a miracle. I pray for a doctor who sees what I see. We wait, then we are given unspeakable privileges by a divine power, with nursing staff who are incarnate angels. They arrange for tubal feeding and hydration for her while we wait, and then we meet her, the doctor we've been hoping for. "You are right," she says, "You can't handle this. She needs to be in a hospital. Let's see what I can do." After five hours in the ER lounge, they dismiss us to go home for rest. All that night I lie awake in bed, poised for the phone to ring while she tests Holliday to find a reason to admit her to hospital care. "It's spinal meningitis, Patti, but not the contagious kind. I can send her to a fine hospital down the hill. You can see her in about four hours there." I am so relieved. Finally, she is going to be helped.

The next day. We arrive only to wait some more. A young man introduces himself as our intern and begins asking a thousand questions, while my mind is spinning, longing to see her. She's lying on a gurney in the hall outside her room, with bags on bags on a pole and tubes in her like roadmaps. I have to keep my hand in motion to sign all the paperwork, especially to get control of decisions now. Words like advanced directives, living wills, power of attorney, all

become a familiar part of my new vocabulary.

She recognizes Robert and me with a half-baked smile, and we begin the hospital visitations—11 days running, with two hour, one-way drives and five to eight hour visits in her room, and never once does she not know it's us. But oh, does she seem psychotic. She says things to me like, "Why are you floating over my head, mom?" or "Watch out, there are huge green lizards crawling up the walls." And there is always, always, the paranoia, "They want me out of here. I have to get out of here. I think they need this bed, I've got to go." That is to become her final mental state for the duration: constant fear and anxiety. It is so painful to watch; it makes me weep in silence. She won't drink or eat, so she remains on tubes to hydrate, feed, and take in the drugs.

Of course, being modern medicine, she is forced to take the AIDS medications. Always with the goal of a cure, these heroic measures bother me and her. I have horror-like memories of her pulling out her feeding tubes, of wrist restraints, of fighting with the night staff to take her off the tubing, of an unending battleground for her survival. The doctors with decision-making powers have Asian names and I never meet them. The social workers with their phones always on hold try to help, but their failed attempts are never enough. The lovely and warm nursing care staff provides the only solace I feel at the hospital.

I'll never forget the day I hit my wall. It is the third day and I've had it: no word from any MD yet. Finally, I corner the young intern, the only contact I'm allowed, and I say to him, pinning his body against the wall outside her room beside the 24-hour nursing police stationed there to make sure Holliday doesn't pull the plug, "Doctor, I need an answer today. I cannot wait another day. Neither can she. I need to know. Should we proceed with placing her in hospice?" His breath stops, he pauses, he makes a cellular call, and dashes down the hall. Minutes later he finds me to initiate the process. I weep a sigh of relief when he agrees with this almost-*madow's* prognosis. She is not going to make it out of here cured.

Labor Day Weekend, 2004. The medical team has changed and I have a smart new female resident, who's calling all the shots. At first, after the hospice diagnosis is made, they seem reasonable about the paper chase to get her into the hospice I have found and that I insist on for her placement, the Carl Bean House in LA, ten minutes from our city home. But Western medicine is governed by bed counts and curing patients. Now that the Do Not Resuscitate and the "do not administer any more medications" orders are in place, the pressures on me mount to get her out of there. I hate it. No social workers can resolve the paper needs; the doctor keeps pressuring me to get her out of the bed and into her choice of nursing home for the final ride. I resist and fight them all

tooth and nail. They all fear she might die this weekend while we all wait for paperwork to determine her destiny, and keep up the constant phone calls pressuring me to let them send her away.

Tuesday, after Labor Day, 2004. Finally, I get through the bureaucracy and the word is “GO”—she’s getting out of the hospital. The endless wait is over. My baby’s going to the hospice to die.

The last 16 days in Carl Bean House. Now there are questions about if she can make the two-hour ambulance trip. She does. When I can get in, hours later, there are big black wrought iron gates in front of the hospice that remind me of the gates to heaven. I wince as they screech open for my visitation: heavy, dark, sinister, yet inevitably welcoming. It’s destiny.

My sister, her youngest aunt, visits. We laugh and smile. I see Holliday light up, with intermittent clarity. She complies with eating and drinking without forcing—the care is stupendous. These are the living angels, those caregivers. No pushing, no heroic measures, no making anyone live. This hospice is about letting someone die—with grace, dignity, and comfort. Palliative care. What a gentle term. It’s the only way to die—no more tubes; let her enjoy the last weeks or months.

It’s ups and downs. At first it’s ups; for ten days she seems better. Robert and I visit her every day, taking her in the wheelchair out to the atrium to watch the fish in the aquarium. The other patients are like seeing a concentration camp studies, but the care and love by the staff are always there, palpable, and the beauty of the place is healing. Holliday is increasingly paranoid, “Hey, mom,” she whispers to me one day, “I have to get out of this bed now. I just heard them, they need the bed.” Her crazy mind saddens me but she always knows Robert and me. One time, in the beginning of her stay there, one of the staff asks, “Is this your husband?” pointing to my partner Robert. She grins the most luminous grin, “No,” she laughs in a half-conscious way. We then laugh as a team about her “husband, Robert” and it’s part of the sweetness we all get to share for her time there.

Most of the time it’s lucidity on vacation. Our friend, the nurse, is always there as a peaceful presence and all the staff are present to answer any question, including the Big Question: Will you know when she is about to die? The answer to that is yes, and I am floored that most normal people are not told the big secret, that the nurses know the bodily signs and symptoms of death—the change in breathing, the change in body temperature and blood pressure. The final performance of the human journey is calculated in signs. It’s the final weekend. Robert and I notice that things have changed. And, the huge moloscum over her left eye has now closed the eye, which almost makes me throw up with griev-

ing, and now it’s spreading to the right one. If she lives much longer she’ll be blind. I don’t know if I can bear that turn.

A few days before she dies. I write this in my journal: *38 days and X hours later I calculate the length on my watch. I watch over her, Mother Bird over her chick caught in the barbed wire nest and failing fast. Time feels so precious and fleeting. I try to edit my new manuscript, but my thinking’s a sieve with bats in the belfry. A million butterflies take flight in my skull, all on a wind heading her way. I can’t focus. I can’t think of anything but my Little Bird. How many hours are left? How many hours do I have to clutch a delicate swinging hand or plant loving kisses on a sunken swallow cheek or speak “I’m sorry’s” and “I love you’s” or yet another chorus-full of assurances to pack in her bags before the long train ride somewhere. Somewhere beyond. Somewhere unknowable. Somewhere where I hope angels play hopscotch and she can grow gossamer wings. Somewhere to be held in another mother’s arms, one who waits at the gates for her e-ticket to heaven. How many hours are left? How can I shift the attention away from her—this vortex running on empty—and reboot my life towards me? I can’t now. I count the days of a deathwatch. Was Nurse Dee on target or another false alarm today? How do we keep vigil on the dying and plant an arrow on the bullseye for the moment called Death?*

I linger naked on the couch, shuddering at the thought of seeing her again, trembling with worry I won’t stay composed, startled at the rapid decline. My black kitty feels my angst. He lies in a cat-wad, paws turned under, whiskers flared, nostrils open and eyes half-watching me. Waiting for me to return. Me. To return from the vortex. How many more hours?

The Monday after the weekend. But turn she does. She becomes listless, takes no more tastes or bites of the melon that Robert has convinced her to nibble on for him. No more drinks of the Ensure to keep her energized. No more getting out of that bed.

The day before she dies, something miraculous happens. Up until this point her mental state is so fragile and unclear that she hasn’t been told she is going to die. Would that matter? Doesn’t the self know? A *madaw* wonders. A chaplain visits with her, along with his little fluffy dog, props her head up so that she can turn with her good eye to see him and they talk about death. They talk about how she is so loved by her mother and Robert, so much that the hospice talks about us all the time as the single most loving couple they’ve ever seen visit here at the hospice each day. And he tells her that the end is near, while his soothing voice and beaming smile comforts and guides her. I know in my soul that he is the instrument that allows her to begin to let go of her wracked body and let death take her to her peace.

Thursday, September 23, 2004, 8:47 AM. “Patti, it’s Margo, from Carl Bean. Her deep wise voice trails off, “I think you

LESSONS LEARNED

1. That the pain for a mother is to not be able to fix it for their child (We can't always "make the boo-boo go away").
2. That a mother knows when her child is dying.
3. That we as the *madows* must learn to accept, let them go, and live our own lives to the best we can.
4. That we must do something to right the wrongs of losing a child to HIV/AIDS, or any other preventable disease.
5. That dying is a graceful and holy process.
6. That to be the angel at the side of a child that you birth and that you death is an honor and a blessed event.
7. That death is not to be feared; it's suffering we fear.
8. That death is not final; there are memories that carry the person into the future even without a body.
9. That it takes courage, great strength, and conviction to fight against a bureaucratic system that is not geared toward letting patients die.
10. That dying is not failure. It is inevitable and often it IS the only option.
11. That dying from this horrible disease may be the pathway for peace.
12. That being fully present, relinquishing control, accepting the process of her dying whatever form it may take, is the pathway to our own salvation as *madows*.
13. That we the *madows* must speak up and speak out. We must tell the world what is like to watch a young, able-bodied, and able-minded adult wither, become mentally deranged, and to behold their wretched diseased body. That we the *madows* must help as a united voice to stop the spread of HIV, a fully preventable disease. And if we cannot stop its spread through prevention, we must scream loudly to advocate for our children's necessary care, including ample social and mental health care services, especially for people who suffer the dual burden of both HIV/AIDS and a mental health condition as my daughter did.
14. That with both full AIDS and an incurable bipolar condition (that in the end joined forces to kill my own daughter Holliday), we must have more openness and acceptance of the scourge these diseases bring forth.
15. Finally, as a sexologist it is my duty to report that it was sex that brought her into this life and sex that took her out. Please, don't become a *madow* if you don't need to. I sense that this was part of my own evolution and personal journey, but it's not an easy path to walk. Be careful with sex. Be sexually responsible: use safer sex and stay away from drugs. If you can save the life of your own child, regardless of his/her age right now, you will never have to share my enormous grief.

need to come." It's "the call," the one every mother on the planet dreads receiving. The day she dies, the big wrought iron gates at Carl Bean House are being repaired and do not open. At 2:20 pm she is gone.

THE TALE CONTINUES, AFTER

The next day I wrote in my journal.

I am sobbing oceans, torrents, tsunamis of saltwater, gut-wrenched tears. Bobbing on a huge sea of so much sorrow, I plunge, into the breakers, drowning, will I ever come up? On top of the ocean and ride-a-wave, the crashes against the shore, picking up, shaking it off, talking some more to caring, loving friends and family who never can know this grief the way I spit it back out like a baleen expiration. Grief. Will it ever stop? Twenty years of sorrow—grief—waiting—of sludge now pouring out like water through a sieve of a life ended too soon. A mother's sorrow too huge, too heavy, too deep to pass over lightly. I feel so many urges—to cry, to run away, to hide, to shout, to claw at the air like those flail-

ing tiny bones-for-arms she conducted with in her hospital beds. Will Holliday show up, a broken spirit or as a whole angel, to say, "It's okay, Mom. I'm here. It's true. It's not really over but the struggle..." I hope so. I miss her. I cherish those Little Bird handholds that measured the past two weeks in hospice care. I miss having such a huge to-do at the top of my daily list. I miss her half-eyes-open glances and half-made smiles. This was my child. She was my only baby, my own, from my flesh and blood and bone. Now a cement slab is her home. "Welcome home, angel, Mommy's here."

The next night I pray for a sign from her.

I set up the shrine I now make portable to carry images and artifacts from the closet in tow where I set it up right after her death. An altar to my child, a respectful corner to honor her, her life. I found photos, though few, of the last few years and sprinkled them like diamonds across my dresser, parked like toy cars in front of photos of my gurus looking down at her. I pack up all the photos and beautiful albums and insert the Earth geodes a friend brought to her in hospice as a reminder

of her origins. I hold her watch and glasses, clotted with the DNA of her living body that she shed each day. The three dead red roses from the small plant that graced her hospice room the entire 16 days until they both died that Thursday, gave her and me something to see for its beauty. Now, me, lying in bed without her here, in the ethers, in the unknown, among the missing, I anchor myself in hope. I read aloud from a friend's book on Goddesses and find solace. I'm calming, centering, peace is on its way, at least for an instant. I pray that she'll reveal herself to me. That night an angel appears, sprinkles her fairy dust on my fingers that I have placed into the air, sensing a presence, and giving me the "knowing" that life doesn't end. She was there. She visited me that night. I fall asleep for a while.

After a few days pass, I write my awareness.

Everyone dies. No one says the D word. We need to have a map. We deserve to know how it all ends, don't we? I ache with a lesser pain today. Maybe it was from going to my country house where she last slept before the hospital care and feeling that contact with her spirit. There is no pain left, just peace now. I am back to the present again. I tune into women in the café where I write, grateful for the beauty all around me—the grand fountain wakes up gushing and whooshing its soothing sparkling waters. The sound feels so comforting and a flash of panic grabs me by the throat, worried maybe I'll think of it as great cascades of tears, like mine gone quiet now.

MY INVITATION TO YOU

After Holliday's death I was overwhelmed by the outpouring of love, care, and support from literally hundreds of friends and a rejoining of my estranged siblings. That was the best gift of all. We all enjoyed a beautiful memorial service, and oddly enough, she had more people present for her funeral than it seemed for her life. She was deeply loved and adored by many, especially her Buddhist friends, her family, and my circle of dear friends who knew her and me over the many years. This memorial was a real testament to her wonderful spirit, her gentle way in the world, her humor, and her miracle of having such a beautiful daughter who is vibrant, bright, pretty, healthy and alive, and living happily with her dad in Santa Cruz in the home I helped him buy.

Without the expression of care, love, and support for me and my family, my *madow* recovery process wouldn't have been possible. Without a caring life partner by my side,

this journey would have been far more agonizing. For that I am eternally grateful to Robert. Along with that, the expressing of all of the deep feelings along the way is part of how we as *madows* cope: feeling our way back into the light; honoring the dark spots and times are part of the journey we walk. We must let ourselves feel the loss, feel the grief, and move on. It is in the moving on, reconnecting with the power of life itself, perhaps, and doing something about this hideous disease and its ripple effects that lets me go on.

I hope you will join me in honoring the women with AIDS who have died, their mothers, and helping me to advocate for a world in which we all learn to cope.

AFTERTHOUGHTS

I don't regret the amazing experiences that this journey has given me—some of which make me a better person, a wiser soul, and a more giving being. I hope my story helps you and yours.

At Holliday's memorial service, I read a quote from her birthday gift to me a couple of years ago, a little golden book called "Love Is a Beautiful Thing." On one of the ornate pages is written a quote from Henry David Thoreau: "Do what you love; know your own bone; gnaw at it, bury it, unearth it and gnaw it still."

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SIECUS Report readers are invited to tell her their stories as AIDS *madows* or the stories of those they know. Write to PO Box 411, Lake Arrowhead, CA 92352-0411 or askthesexcoach@aol.com.

AIDS Stigma and the Creation of a Viral Underclass

Sean Strub - Center for HIV Law & Policy

Since the earliest days of the HIV/AIDS epidemic, social stigma has been a major obstacle to accessing care and implementing effective HIV prevention policies.¹ Even as fear of contagion from casual contact has lessened, profound stigma persists.² People with HIV face pre-judgment, marginalization, discrimination and severe misunderstanding about the means and actual risks of transmission.^{3,4}

Many people with HIV internalize and accept this judgment, and the perception of those with HIV as toxic, highly infectious, or dangerous to be around is perpetuated. This has serious adverse ramifications for those individuals, as well as on the broader effort to combat the current HIV epidemic and protect sexual freedom. In short, HIV-related stigma is a serious public health and civil liberties issue. Stigma discourages people at risk from accessing care⁵—including testing for HIV—and it discourages people who know they have HIV from disclosing that fact to potential sexual partners and others. Much of this stigma is based in racism and homo/sexophobia.⁶

Nothing drives stigma more powerfully than when government sanctions it through the enshrinement of discriminatory practices in the law or its application. That is what has happened with HIV, resulting in the creation of a viral underclass of persons with rights inferior to others, especially in regard to their sexual expression. After nearly 30 years of the epidemic, people who have tested positive for HIV continue to experience punishment, exclusion from services and a presumption of guilt or wrongdoing in a host of settings and for a host of practices that are, for those who have not tested positive for HIV, unremarkable.

This is reflected perhaps most dramatically (but not solely) in the criminal prosecutions of people with HIV who are unable to prove they disclosed their HIV positive status to partners prior to sexual contact.⁷ The ostensible purpose of these statutes is to deter HIV-positive people from putting others at risk. The

inherent problem with these laws is that they focus primarily on the existence or lack of *proof of disclosure* (and on the health status of the person who has been tested for HIV), not on the nature of the exposure, the actual level of risk present, or whether HIV was transmitted. Consequently, and as studies of the impact of these laws have demonstrated, they do nothing to advance their intended purpose.

The legal obligation to disclose is, in significant part, a function of the original Ryan White Care Act, passed in 1990. That legislation required states, in order to be eligible for Ryan White funding, to demonstrate an ability to prosecute potential HIV exposure and transmission, which was a recommendation from President Regan's AIDS commission's report. This requirement was dropped from the 2000 renewal of the Ryan White Care Act, but the criminalization statutes it initially prompted remain in force.⁹

Many states (including New York) considered their existing assault and public health statutes adequate to meet what the Ryan White Care Act then required, but thirty-two states have added HIV-specific laws to their criminal codes. These vary widely from state to state, both in terms of what they punish as well as the sentencing provisions. However, even in states without HIV-specific statutes, criminal law (and in one recent case, an anti-terrorism statute) has been used to prosecute and incarcerate people with HIV for behavior that posed little risk of transmission. In these cases, HIV, or the blood, semen or saliva of a person with HIV, often is characterized as a "deadly weapon."

The actual risk of HIV transmission is rarely, if ever, a factor in these prosecutions; the use of condoms or other prevention measures does not necessarily preclude prosecution. Heterosexual men of color are the most likely to be prosecuted under HIV criminalization statutes. Typically, sentencing is vastly disproportionate to the harm caused or the level of

risk present in the sexual encounter. For example, in Iowa, a person convicted for failing to disclose his HIV positive status was required to register as a sex offender for the rest of his life. This may be the first time someone has been required to register as a sex offender for having engaged in a consensual sexual act with another adult.

The ethical obligation of people with HIV to disclose health factors that put sexual partners at risk was codified in the Denver Principles¹⁰, the historic 1983 manifesto that launched the people with HIV/AIDS empowerment movement. The Denver Principles also recognize sexual freedom as a fundamental human right, noting that people with HIV have a right “to as full and satisfying sexual and emotional lives as anyone else.” Fully integrating people with HIV into society, in part by allowing them to have fulfilling sexual lives without the risk of incarceration, is critical to combating the stubborn stigma that remains an enormous obstacle to preventing new HIV infections.

Criminalizing the sexual conduct of those living with HIV is justified only when there is evidence that an individual intended to harm another person. Existing state and federal criminal laws are adequate to deal with these extremely rare cases. Prosecutions in these instances should focus on the proof of intent to harm and the resulting injury. HIV-specific criminal laws perpetuate the persistent public perception that those with HIV, solely by virtue of their infection with HIV, are inherently dangerous and pose a unique and significant risk to the community.

The fact that HIV is so associated with homosexuality and communities of color has made it easier to “punish” people with HIV, an example of how a person’s race, sexuality or sexual expression is used to form policies that isolate individuals and limit their freedoms.

Examples of Prosecutions

The most publicized HIV criminalization cases are often driven by politically ambitious prosecutors and inflammatory or hysterical media coverage. These prosecutions feed into the public’s ignorance and anxiety about HIV, reinforce negative stereotypes about people with HIV, and send conflicting mes-

sages about the real risks of HIV transmission in a given circumstance.¹¹ They depict people with HIV as dangerous potential infectors who must be controlled and regulated, making it more difficult to create a safe environment for people at risk to get tested and people with HIV to disclose their status.

The Iowa case¹² provides a sobering illustration of the problem. The person with HIV who was charged with failing to disclose his status to a sexual partner was a 34-year old gay man who had been a volunteer AIDS educator with his local AIDS service organization. He met a male partner through an online hook-up site and went to his house. The person with HIV was on anti-retroviral therapy, had an undetectable viral load and used a condom when anally penetrating his partner. He posed little or no risk of transmitting the virus to his partner.

When the partner heard at the local gay bar that the man he had been intimate with had HIV, he went to the county prosecutor and pressed charges. The person with HIV was convicted under Iowa’s extreme statute and was sentenced to 25 years in prison. Fortunately, advocates were successful in getting the sentencing reviewed and after serving eleven months, he was released on five years’ probation. However, he must register as a sex offender for the rest of his life, is subject to wearing an ankle monitoring bracelet and cannot leave his home county without permission from the court.

Iowa’s statute is particularly broad—in theory, it could cause a person with HIV who kissed another person without disclosing their HIV positive status to be sentenced to as much as 25 years in prison—but other state’s statutes and sentencing are equally as absurd. Texas convicted Willie Campbell, an HIV positive man, for “assault with a deadly weapon” and sentenced him to 35 years in prison after he spat on a police officer who was arresting him for public intoxication.

Gregory Smith was within a year of his release from a New Jersey prison (after serving time for burglary) when he was charged with attempted murder, assault and terroristic threats following an incident in which he allegedly bit and spat on a guard at the county jail where he was held (Smith denied the charges). An

additional 25 years was added to his sentence; he subsequently died of AIDS while incarcerated.

In late 2009, Michigan charged Daniel Allen, who has HIV and was involved in an altercation with a neighbor, under laws designed to combat terrorism, including “possession of a harmful biological agent”. Prosecutors equated his HIV infection with “possession or use of a harmful device.”¹³ A man in Ohio is serving 40 years for failing to disclose to a girlfriend that he was HIV positive. He claims she knew he was positive and only went to a prosecutor after he stopped dating her and moved in with another woman.

An interesting note about the cases described above: none of them resulted in anyone actually acquiring HIV.

A New Strategic Approach

Historically, the discussion among advocates and policy leaders concerning criminalization statutes has most often been focused on the civil liberties concerns involved in such extreme prosecution and sentencing of consenting adults for sexual acts, including those that present no risk of HIV transmission.

Yet a growing realization by advocates and health policy leaders that HIV criminalization is also a serious public health challenge has helped propel the issue to the forefront. An important step was the recognition of the need for changing HIV criminalization statutes in President Obama’s National HIV/AIDS Strategy, released this past July:

“... Since it is now clear that spitting and biting do not pose significant risks for HIV transmission, many believe that it is unfair to single out people with HIV for engaging in these behaviors and (they) should be dealt with in a consistent manner without consideration of HIV status. Some laws criminalize consensual sexual activity between adults on the basis that one of the individuals is a person with HIV who failed to disclose their status to their partner. CDC data and other studies, however, tell us that intentional HIV transmission is atypical and uncommon...(these laws) may not have the desired effect and they may make people less

willing to disclose their status by making people feel at even greater risk of discrimination... In many instances, the continued existence and enforcement of these types of laws run counter to scientific evidence about routes of HIV transmission and may undermine the public health goals of promoting HIV screening and treatment.”¹⁴

Advocates who focus on the serious public health ramifications of HIV criminalization can help repeal or end reliance on criminalization statutes and other criminal laws that persecute and stigmatize people with HIV. They can also help educate law enforcement, prosecutors and the media, ultimately lessening HIV-related stigma and discrimination. This is no way involves abandonment of civil liberties principles, but rather broadens and recalibrates the focus of advocacy to the public health consequences of ignoring them.

HIV Criminalization is Bad Public Health Policy

HIV criminalization statutes are terrible public health policy because they discourage persons at risk from getting tested.¹⁵ Those with HIV who are aware of their HIV positive status are more responsible in their sexual behaviors than those who are unaware they have HIV; testing is a basic tool of HIV prevention as well as an essential gateway to care. Criminalization statutes also make it more difficult for persons with HIV to disclose their HIV status. Those who know they have HIV already suffer significant discrimination and stigma. Disclosing one’s HIV status can be emotionally difficult, risking rejection from family and friends, sometimes with great insult or abuse, and often jeopardizes one’s employment, housing, relationships or personal safety.^{18 19}

Criminalization of HIV legitimizes the ignorance, homophobia, racism and sexophobia that fuels inflated fears of HIV and those who have HIV. Criminalization undermines efforts to prevent new HIV infections and provide access to care in multiple ways:

- Ignorance of one's HIV status is the best defense against a "failure to disclose" prosecution, which creates a powerful disincentive to getting tested and learning one's HIV status.
- Young African American men who have sex with men are among those at highest risk of acquiring HIV, yet also among the most difficult to get tested. The prospect of prosecution for failing to disclose—especially since these prosecutions often boil down to a "he said, he said" or "he said, she said" situation—is a powerful and likely growing disincentive to taking an HIV test.
- Most new infections are caused by sexual contact with persons who have not been tested and are unaware that they have HIV, yet only those who have taken responsibility and gotten tested are subject to prosecution.
- Prosecuting the failure to disclose one's HIV status undercuts the most basic HIV and STD prevention message: that every person must take responsibility for his or her own sexual health.
- Prosecuting the failure to disclose values the "right" to an illusion of safety, for those who are HIV negative or who do not know their HIV status, over the privacy rights of those who have HIV.
- A legal obligation to disclose one's viral status prior to intimate contact creates a particular inequity for those who were born with HIV. If we are all born equal, why is it that this group must carry throughout their lives a legal obligation to disclose their viral status prior to engaging in intimate contact?

Unconscious Racism, Homophobia and Sexophobia in HIV Criminalization

Prosecuting the failure to disclose HIV, while not prosecuting the failure to disclose other sexually-transmitted diseases, also reflects unconscious racism, homophobia and sexophobia:

The treatment of Human Papilloma Virus (HPV) provides a useful contrast. HPV causes a number of cancers, including almost all of the cervical, rectal and anal-genital cancers. Cervical cancer alone killed 4,000 women in the U.S. in 2009; every year hundreds of thousands of other women in the U.S. are diagnosed with cervical dysplasia, which is caused

by HPV and is a precursor to cervical cancer.

According to the Centers for Disease Control, by the age of 50 more than 80% of American women will have contracted at least one strain of genital HPV²⁰ (although many or most may not know it). Yet unlike HIV, HPV is not specifically associated with marginalized groups. Because HIV is associated with anal intercourse, gay men, African Americans and injection drug users,²¹ racism, homophobia and sexophobia are inextricably linked with HIV-related stigma, discrimination and criminalization.

The disproportionate prosecution and punishment of potential HIV exposure or transmission is somewhat analogous to the disproportionate prosecution and sentencing of those convicted of possession of "crack" cocaine versus those charged with possession of powder cocaine. Until recently, the possession of one hundred times as much powder cocaine—the most prevalent form of the drug among Caucasians—is required to trigger the comparably harsh sentences mandated for possession of tiny amounts of crack cocaine, which is more prevalent among African Americans. The result is much longer sentences for African-Americans convicted of cocaine offenses.

Beyond a Failure to Disclose: AIDSphobia in the Criminal Justice

System In the U.S. there have been more than 200 "failure to disclose" convictions and they have gotten the bulk of media and community attention. But HIV criminalization is more than just "failure to disclose" prosecutions. It also includes prosecutions for non-sexual behaviors.

Spitting poses no risk of HIV transmission.²⁴ Yet in the past two years, there have been at least six criminal convictions of people with HIV in the U.S. for spitting. Theoretically, biting can transmit HIV, but the handful of such cases recorded by the Centers for Disease Control all involved "extensive tissue tearing and damage and presence of blood". Saliva and tears sometimes contain a low level of virus, yet no cases of transmission by saliva or tears have ever been

reported. As a practical matter, it is the person biting, rather than the person bitten, who is at the greatest risk of acquiring the virus.

Criminalization is also reflected in “pile-on” charges and more aggressive prosecution or sentencing of persons with HIV charged with other crimes. In 2009, a woman with HIV in Maine who was eligible for release from a federal prison for an offense unrelated to HIV was sentenced to continued confinement when the judge learned that she was HIV positive and pregnant. He sought to “protect” the fetus from potential infection by having the jail supervise the woman’s treatment. Although legal advocates (including the Center for HIV Law and Policy) secured her release shortly thereafter, the inclination of a federal judge to confine a woman with HIV to prison, despite testimony that she was engaged in appropriate prenatal care, reveals ignorance and an inclination to criminalize illness by even the most educated and privileged members of our society.

Stigma driven by HIV criminalization promotes many manifestations of illegal discrimination against people with HIV, including prohibitions on certain occupations and licensing.²⁵ Implementation of a strategy to challenge and defeat this stigma head-on, in partnership with organizations combating HIV/AIDS, racism, homophobia and sexism, as well as those fighting to protect sexual freedoms, is critically needed and long overdue.

Positive Justice Project

The Center for HIV Law & Policy (CHLP) has been a primary resource for public health and political leaders, attorneys and advocates interested in HIV-related discrimination and criminalization. Their Resource Bank, at www.hivlawandpolicy.org/resource_categories/index, is a comprehensive database of quality memoranda, research, reports, legal guides, court and agency decisions, pleadings and briefs, policy analyses and recommendations and other materials of importance to people living with HIV and their advocates.

Now CHLP has launched the *Positive Justice* project, a community-driven, multidisciplinary collaboration to end government reliance on an individual’s positive HIV test result as proof of intent to harm, and the basis for irrationally severe treatment in the criminal justice system. The Positive Justice Project has several important objectives:

- Broader public understanding of the stigmatizing impact and other negative public health consequences of criminalization and other forms of discrimination against people with HIV that occur under the guise of addressing HIV transmission.
- Community consensus on the appropriate use of criminal and civil law in the context of the HIV epidemic.
- Clear statements from lead government officials on the causes and relative risks of HIV transmission and the dangers of a criminal enforcement response to HIV exposure and the epidemic.
- A broader, more effective community-level response to the ongoing problem of HIV-related arrests and prosecutions.
- Reduction and eventual elimination of the inappropriate use of criminal and civil punishments against people with HIV.

Since the earliest days of the epidemic, stigma has encumbered an effective response to the HIV epidemic. Stigma sanctioned in the law is its most extreme manifestation. A significant and important contribution to reducing the spread of HIV can be achieved by combating HIV criminalization and the stigma it engenders. Persons interested in getting involved with or supporting the Positive Justice Project can email fightcrim@hivlawandpolicy.org for further information.

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Moving Forward Affirming Sexual Freedom as a Fundamental Human Right

Moving Forward

RJ Thompson

We are living in an exciting time of possibility despite the worst economic crisis in most of our lifetimes and the worst human-made environmental crisis in history. Real opportunities for meaningful and sustainable social change are at hand, and it is the responsibility of social justice activists to seize those opportunities. As I write, the United States government has just submitted its first report on the state of human rights in the U.S. to the United Nations as part of the Universal Periodic Review (UPR) process. Rather than focusing on only one aspect of human rights, the UPR process shines a spotlight on nation states that illuminates that state's overall human rights situation in totality. In this way, the UPR process is an important complement to existing human rights treaty monitoring bodies and processes. Through the UPR process, we as domestic human rights advocates will have opportunities to highlight sexual human rights issues and educate our government, the United Nations, our movement partners and the broader society about sexual freedom and human rights.

Other opportunities for human rights activists that are currently presenting themselves include the re-establishment of an Inter-Agency Working Group on Human Rights at the federal level, local implementation campaigns in New York City and other locales, the creation of an independent national human rights monitoring institution, and new issues, including issues of gender and sexuality, being brought before the Inter-American Commission on Human Rights (IACHR).

As this *State of Sexual Freedom* report has clearly indicated, sexual rights are human rights and sexual freedom is a fundamental human right. Sexual rights are no less legitimate or important than civil rights, economic rights or environmental rights. All human rights are interdependent, making the realization of only certain subsets of rights while ignoring or undermining other rights, counterproductive for human rights activists. Human rights only have true power and meaning in the lives of real human beings, when

the full spectrum of economic, political, social, environmental, developmental, cultural, sexual and civil rights are respected, protected and promoted.

Human beings are sexual beings. We are also spiritual, political, and social beings who are inherently interconnected with and interdependent upon our environment. Our sexuality is not disconnected from our environment, our economy, our spirituality or any other aspect of our humanity. Raising sexual rights to their appropriate status as equal to all other human rights brings discomfort to many because of the unhealthy relationship our society, and many societies around the world, have with sex and sexuality. Many cultures, including "mainstream," i.e. white supremacist patriarchal capitalist, U.S. culture seem to only be able to deal with human sexuality by suppressing it while simultaneously being hypersexual. Our society is deeply puritanical about sex, while pop culture is hypersexual at the same time. We can see many contradictions and double standards around sex and sexuality all around us, most of which have clear roots in patriarchy. Several of our authors in this report have named these sexist and heterosexist double standards, such as marriage inequality and laws dictating who can and cannot be topless in public.

Sexual rights intersect with all other rights just as our sexuality intersects with every other aspect of our lives. This means that undermining the importance of sexual freedom and violations of sexual rights impacts housing, employment, migration, physical and mental health, political participation, religious and spiritual practice and expression, family relationships, education, cultural expression, and every other issue. Simply put, until all human beings can freely nurture, determine, and express their sexual identity and expression, and make informed choices about their own bodies and sexualities, we cannot experience our full humanity.

Human Rights Education and Anti-Oppression Education

Those concerned with human rights and social justice have much to do as we collectively move forward. Human rights education at every level is critical. The majority of people in the United States have a vague understanding of human rights at best, even if they believe people do have inherent rights. There is very little institutionalized human rights education in this country. Education advocates, particularly at the local level, can play an important role in pushing for human rights education in schools. We must engage people outside of our social justice movement circles – people in our families, religious and spiritual organizations, on the bus, etc. – in conversations about human rights and what they mean in people's daily lives.

Sexual rights and sexual freedom advocates must integrate our understanding of sexual rights into the broader human rights movement, ensuring meaningful inclusion of sex, gender and sexuality in discourse, research and action. We must repeat over and over if necessary, that all people have sexual rights, not just those on the queerer end of the spectrum. Sexual rights and sexual liberation is not the exclusive domain of lesbian, gay, bisexual and/or transgender organizations. Sexual human rights issues are everyone's issues, not only the issues of sex workers, queer people and other sexual "out-laws." We must educate policy makers, our allies, families, friends, health care providers and ourselves about this point. Many people have internalized the notion that they do not have any rights, let alone sexual rights; and many others have repressed their sexuality so deeply that they do not even understand themselves as sexual beings.

Anti-oppression educators have a responsibility to understand human rights and human rights education must be grounded in anti-oppression principles. These are not mutually exclusive frameworks. Human rights cannot be fully realized while systemic oppression permeates societal institutions. Nor can white supremacy, patriarchy and capitalism be undermined without individuals and communities enjoying the full spectrum of their human rights. Systems

of oppression are intersectional, as are human rights. Upholding human rights standards chips away at walls of oppression and speaking out against systems of oppression makes the realization of human rights possible. These two frameworks and strategies go hand in hand. A people-centered vision of human rights, as espoused by the Woodhull Freedom Foundation and the other members of the US Human Rights Network, is inherently an anti-oppression vision that challenges white supremacist patriarchal capitalism in all of its manifestations and institutions (e.g. ableism, the Military Industrial complex, the Prison Industrial Complex, heterosexism, ageism, etc.).

Human Rights Funding

Funding sources for domestic human rights work in the United States increased from the 1990s until this recession began. Even at the height of foundation funding however, resources for this work has been minimal compared to other social justice funding, creating sometimes fierce competition among organizations that otherwise should be allies and partners. Now, the situation is even worse. Many foundations have stopped accepting proposals for new funding altogether, and others are restricting the grant period to one year, or giving much smaller grants to fewer organizations.

Foundation funding for domestic sexual human rights advocacy in the United States is almost nonexistent. LGBT funders often do not understand the importance or utility of working within a human rights frame using domestic human rights tools and strategies. Foundations funding reproductive justice work have had a much better record on supporting human rights-based work. Yet those resources are extremely limited at the moment as well, and are often limited to small circle of reproductive rights and reproductive justice organizations.

Moving forward, I believe it is imperative that we as activists seek funding with an innovative comprehensive approach that does not solely rely on foundations. We must cultivate our individual donor bases, understanding that small gifts matter and must be welcomed and appropriately acknowledged and appreciated. Organizations must learn to share

resources in ways that undermine the competitive nature of the 501(c)(3) structure that most of us are working within. Large organizations with multiple offices, dozens or hundreds of staff members, and large budgets need to support local grassroots community-based organizations in meaningful ways so that power is shared, oppression within our movements is challenged, and a diversity of perspectives and experiences have a place at the collective table as we all move forward.

We must educate foundations and corporate giving divisions about the human rights framework, and in particular, a people-centered vision of human rights that is democratic and anti-oppressive. Advocates and organizers need to begin seeing foundations as movement-building partners, who are not separate from and outside of “activism.” This, however, is a two-way street, which demands funders treat grantees with respect and appropriate deference and trust and an understanding that local organizers working within the communities they are a part of are the foremost experts on their issues.

With regard to funding sexual rights work, foundations need to take sexual rights seriously, just as governments need to do. This will require human rights education and sexuality education for funders on the part of organizers and advocates. There can no longer be a hierarchy of funding domestic human rights work if we are to actualize the full spectrum of human rights in this country. Just as economic and social rights organizations have had to educate and struggle for funding when only civil and political rights were prioritized, organizations working on environmental human rights and sexual human rights now must educate as many funders and decision-makers as possible so these rights do not remain marginalized or seen as “luxury” issues. In order to make this case, we must speak from our own lived experiences and present our stories and the stories of our communities who are experiencing gross violations of their human rights based on gender and sexual identity and expression.

Nonprofit 501(c)(3) Culture

In order for us to build a human rights culture in the United States, the nonprofit organizations many of

us work for must walk the walk internally in terms of human rights. Workers must be respected and protected, whether they are engaged in intellectual or manual labor. Organizations cannot claim to support human rights while exhibiting animosity towards unionization of their employees. Our movements need greater transparency between staffs, boards, donors/funders, volunteers and other community members. Organizations need to demonstrate accountability and honesty, particularly in these extremely difficult financial circumstances. Leadership roles and senior management within organizations large and small need to be reflective of our diverse humanity in terms of race, gender, age, ability, language, faith, ethnicity, culture and sexuality. Organizations should implement permanent human rights continuing education for their staff, volunteers and board members.

Advocates and “professional activists” need to understand their role within a movement, whether they are lawyers, social workers, researchers, media professionals or educators, respecting the skills and expertise of grassroots organizers and community members who may or may not have access to, or a desire to engage in, paid activist work. This requires an understanding of relative privilege and an ability to check that relative privilege when those most directly impacted are speaking or taking action based upon their lived experience with their human rights being denigrated or denied.

Advocacy

Moving forward, advocates must understand that their work is human rights work, whether or not they call it that. This work is not liberal or conservative, progressive or radical right work. This work is about our fundamental human right to sexual freedom, an issue that transcends traditional divisions and intersects with all ideologies and groups. We must intentionally seek those intersections and focus on identifying the areas on which we can agree and where we can remove the “divisions” that cripple forward progress. We must remember mostly forgotten levels of advocacy in domestic social justice work – the regional and global level. There are mechanisms in place waiting for U.S. social justice advocates to take

advantage of them within the United Nations human rights system and the Inter-American human rights system. The Inter-American Commission on Human Rights sits in our own backyard in Washington, D.C., and we have opportunities for UN advocacy not only in Geneva, but right here in New York City. One thing I have learned doing domestic human rights advocacy is that most of our organizations are not present in these forums, yet our opponents are present – and vocal. They speak for us and our lives at the United Nations, but too often there is no voice countering their homophobia, heterosexism, and sexism. As I often say, the domestic human rights train has already left the station - it's just a matter of whether or not your communities and issues are on board. Domestic sexual rights and sexual freedom organizations have largely not been on board up to this point. I believe the human rights movement will continue to grow in this country whether we are engaged or not, because a dynamic cross-movement U.S. Human Rights Network exists and is growing. Yet it is the responsibility of those of us who understand the importance of gender and sexuality to make sure we have a seat at the table time and time again.

I have already mentioned the Universal Periodic Review (UPR) as one opportunity for domestic human rights advocates to shine a spotlight on human rights violations domestically. Advocates should also familiarize themselves with ongoing treaty ratification campaigns, such as those for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD); as well as treaty monitoring bodies and shadow reporting processes for the treaties the U.S. has ratified such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT). There are sexual rights intersections within each of these treaties and their meaningful implementation and enforcement in domestic law would result in a greater level of sexual freedom for all of us.

Sexual rights advocates have abundant opportunities to use an almost untouched forum for highlight-

ing sexuality and gender issues – the Inter-American Commission on Human Rights (IACHR) in Washington, D.C. The Commission holds thematic hearings that are issue and country specific and also hears petitions regarding human rights violations occurring at the hands of the U.S. government as well as those in which the government has failed to protect and promote human rights. While the Commission has focused mostly on criminal punishment issues in the U.S. context because those are the petitions advocates have brought before it, it is very open to U.S. advocates engaging it more and would welcome sexual rights advocacy from U.S. activists. It is important to note that one does not need to be an attorney to petition the IACHR.

At the federal level, advocacy is not limited to the treaty ratification campaigns, but also includes the Human Rights at Home Campaign to establish an Inter-Agency Working Group on Human Rights, ensuring a point person on human rights in each Executive agency; as well as an independent national human rights institution that would make domestic implementation and enforcement of human rights standards much more feasible. Finally, U.S. advocates must incorporate human rights language and standards into all of their state and federal advocacy, whether in court or in the legislatures. The Opportunity Agenda has many great resources on how to do this effectively, as well as public opinion resources and communications toolkits on human rights at www.opportunityagenda.org

Organizing

Human rights organizing is already happening at the local level all around the United States. To move forward and elevate sexual rights issues to the level of human rights, organizations that care about sexual freedom would do well to join a local implementation campaign if one exists in their area or to create a local implementation if one does not. New York City has an active campaign, the New York City Human Rights Initiative (NYCHRI) that is always eager to have new organizations including organizations working on sexuality issues. Organizers moving forward need to remain relevant by integrating old school organizing tools with new media, social networking

and Web 2.0 strategies. These are powerful tools to expand our base of support and to educate about sexual rights and human rights more broadly.

As mentioned previously, human rights education is key. I believe we must integrate human rights education into everything we do as organizers. Guiding principles now exist on international human rights standards, sexuality and gender, the Yogyakarta Principles (www.yogyakartaprinciples.org). Very few people in the U.S. are aware of these principles and social justice organizers need to change that lack of awareness because they provide an empowering view of sexual human rights for all people.

Through education, organizing and advocacy, those who care about social justice can change the landscape of this country in terms of human rights. To do so, we must first educate ourselves about our own inherent rights and those of others. Many do not want us to have this empowering information. We cannot let them win, for all of our sake and for the sake of the planet.

Using International Human Rights Law to Advance Reproductive Justice

By Katrina Anderson, Center For Reproductive Rights

What are human rights?

The human rights framework rests on the simple but powerful moral proposition that people's rights derive from our inherent dignity—not from the benevolence of governments or the will of legislative majorities. This notion has, in turn, given birth to an umbrella of rights and to an international legal system charged with ensuring governments' compliance with their obligations. Women's reproductive rights under human rights law are a composite of a number of separate rights, including:

- the right to health, reproductive health and family planning
- the right to equal access to and non-discriminatory treatment in health care the right to decide the number and spacing of one's children
- the right to marry and to found a family
- the right to be free from gender discrimination of all kinds the right to privacy

These universally applicable rights are enshrined in human rights treaties, which are legally binding among nation states, and international consensus documents, which are not binding but reflect international agreement on human rights norms.

Why is the human rights framework useful for reproductive justice advocates?

The reproductive justice movement urges policy makers to take into account how forces such as racism, sexism, and classism intersect to deprive certain groups of people of their rights. Human rights law also integrates this approach by obligating governments not just to respect rights, but also to fulfill the economic and social conditions that enable people to exercise their rights.

Using the human rights framework, reproductive justice advocates can expand the U.S. legal system's limited constitutional interpretation of reproductive rights as negative rights (proscribing government interference at certain points), arguing instead that the government has a positive obligation to provide the resources necessary for women and men to make meaningful reproductive decisions. How can reproductive justice advocates use the international human rights framework?

The United States has ratified two important international human rights instruments: the International Convention on the Elimination of Racial Discrimination (ICERD) and the International Convention on Civil and Political Rights (ICCPR). As a State Party, the U.S. is obligated to periodically report on its progress in implementing each treaty to the U.N. committee responsible for monitoring state compliance. Non-governmental organizations can submit "shadow reports" to provide the committee with crucial information to establish a more complete record for state accountability and help it formulate recommendations to the government. They can also serve as public education tools and be used in lobbying work for legislative reform at the national, state, and local levels. In 2006, the Center for Reproductive Rights (CRR) submitted a shadow report to the Human Rights Committee, which monitors compliance with the ICCPR, detailing the U.S. government's failure to promote reproductive

Some How-tos on Using Media as a Reproductive Justice Organizing Tool

By Ariel Dougherty

Showing films (video, DVD) can be both entertaining and educational. While many women have been organizing around a broad array of reproductive justice issues, others of us have been organizing around media justice issues.

Empowerment

We define film --- its screening before audiences, as well as its creation --- as an empowerment tool. Just as everyone has the right to full and comprehensive health services for herself and family, each of us also possesses the right “to seek, receive and impart information and ideas through any media” (Article 19, Universal Declaration of Human Rights). Many of us teach media skills so that more and more people have the ability to tell their own stories, using their own voices and images. Especially now with the costs of production drastically reduced, new digital technology, and self-distribution a real possibility, film can become a vehicle for people-to- people communication and for strengthening culture within and among communities.

Some Types of Screenings

Is your screening a one-time occasion? Or might it be more on-going? You want a friendly and comfortable place --- large enough to hold the crowd you anticipate, but not so large that it will overwhelm the crowd that comes. Building an audience – like everything – takes time and work. Community centers and churches are good sites. But think outside the box, too. In fair weather outside screenings are fun! Neighborhood parks are excellent sites, and so are rooftops. There are times, too, when you need to be more aggressive and take the screening to your audience.

This is best with short films like *Becky’s Story*. At 15 this girl took an abstinence pledge. Ill- informed, she became pregnant and a mom at 20. This experience turned Becky into an advocate for comprehensive

sex education. You know your community, and what is the best strategy for doing outreach. The point is to be imaginative and strategic.

Equipment

Today, all new material is coming out in DVD format. Some distributors have not converted all older, VHS media to digital. Most new computers can play a DVD, but you need a “projector” to blow up the image, and you WILL NEED speakers to amplify the sound. Someone in your group may have (some of) this equipment. Or, check around with other community organizations. Some youth techie may be able to assist here. Encourage your techie to teach others ---both boys and girls (men and women)--- to set up and strike all the equipment. Just as boys and girls both need to be condom friendly, they all need to know media tech skills, too. One other wise thing to do prior to the screening is to test that the DVD operates well on the equipment you will be using. There can be glitches between making DVDs on Macs and PCs, and you want to solve all these matters prior to the screening. With a very small crowd, it is okay to show a VHS tape on a TV monitor, but for large groups it is best to project this too. Dual playback machines set up for both VHS and DVD can be purchased fairly cheaply. Last year after running a youth film program the local arts council in my town (population 10,000) bought a whole presentation system so we could have more community screenings. Groups can borrow the set-up. Maybe there is such a resource in your community. Occasionally 16mm film is the format. Maybe schools still have an old projector in the closet. Or try the Salvation Army? And there may even be a time when a 35MM film is useful in your work, maybe as a fund raiser. In this case, make arrangements with your local movie house.

Resources

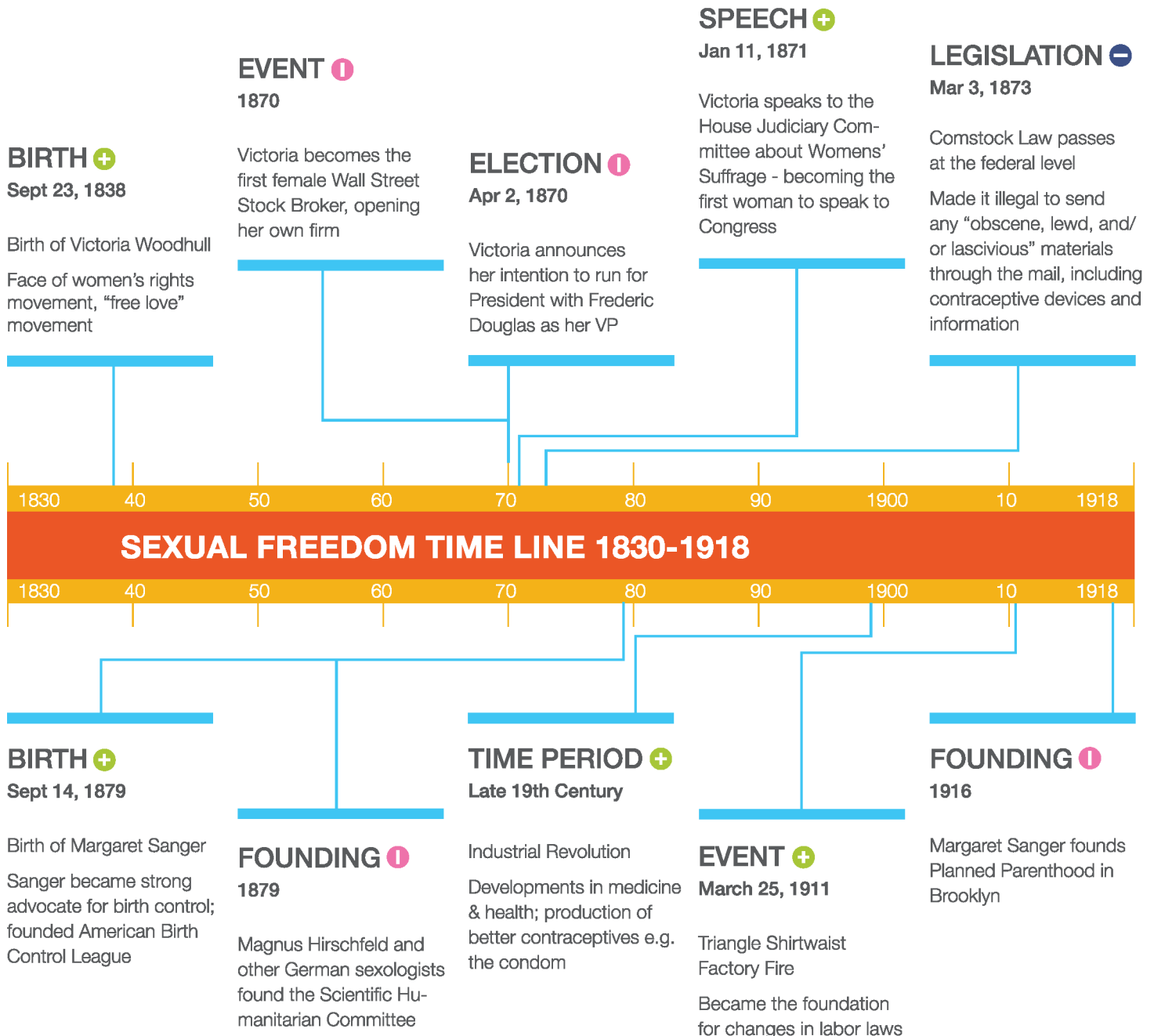
Especially check out MediaRights.org. They have lots of tools for activist use of social change media. They provide a vehicle for potential collaborations between your organization's activities and filmmakers. The resources section is extensive. PLUS---they have close to 7,000 social change films listed that can be searched by issues. The descriptions are directed to activist use.

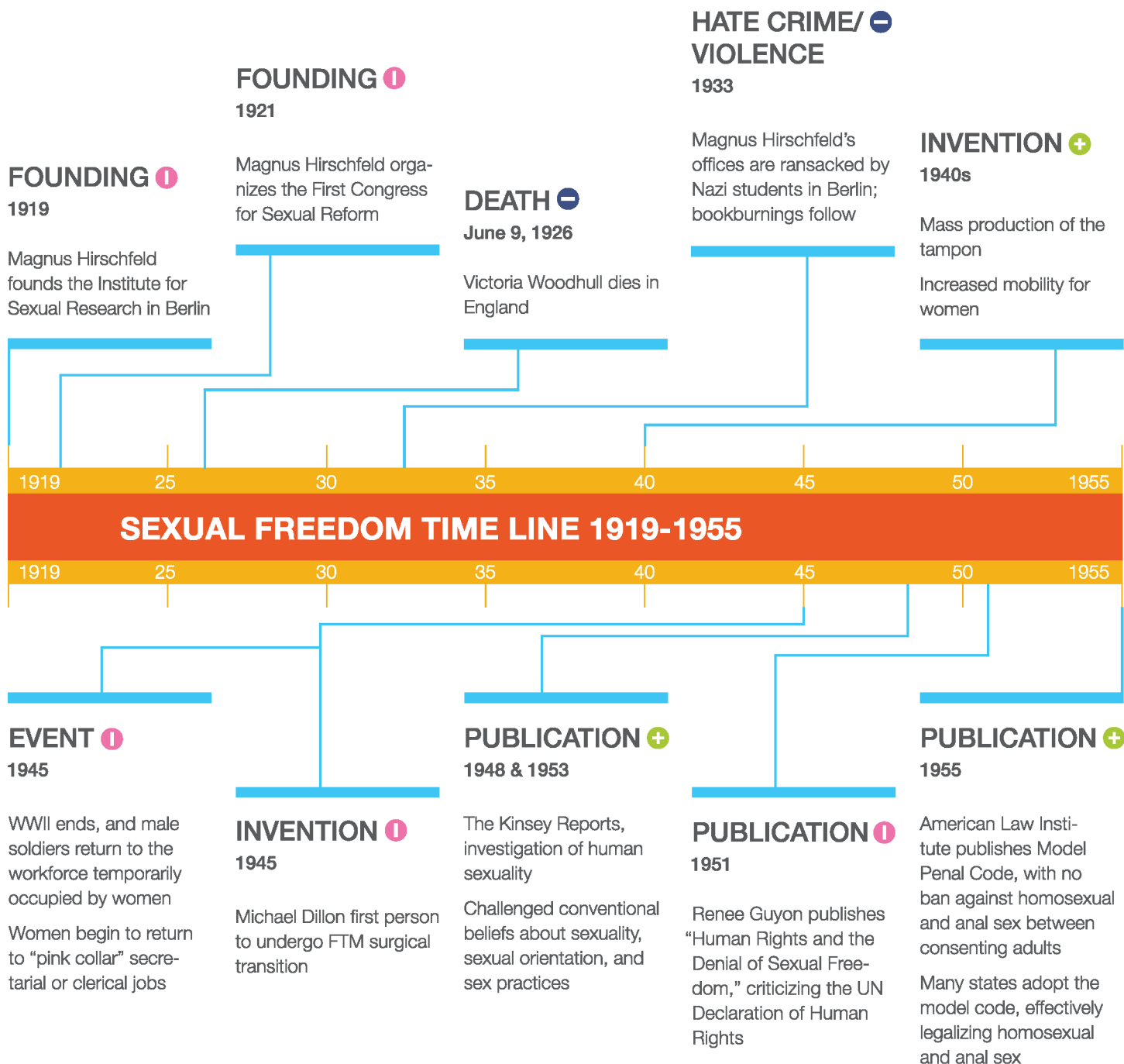
And in most cases there is a direct link to the distributors.

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Sexual Freedom Time Line

Sexual Freedom Time Line





workplace discrimination” that issue would receive the code “1c1.” If a respondent listed “Ending discrimination” that issue would receive the code “1c” and so on. This enabled us to collapse the data and look at all issues that fell into a broad category while still being able to examine the issues in their most specific groupings. Of the 859 issues provided, 88 (10.2%) could not be categorized. Table 2 lists each broad topic area and the percentage of issues reported that fell into that area.

Table 2 Percentage of self-reported issues falling into each of the seven broad sexual freedom topic areas listed above.

Sexual Freedom Topic Area	Percentage of self-reported issues falling into this area (n=859)
Individual Freedoms	267 (31.1%)
Family and Relationship Freedoms	128 (14.9%)
Obscenity	7 (0.8%)
Commercial Sex	51 (5.9%)
Sexual Education and Information	149 (17.4%)
Sexual Health	77 (9.0%)
Reproductive Freedom	92 (10.7%)
Uncategorized	88 (10.2%)

Section 3 of the questionnaire asked respondents to think about each of the issues they listed and evaluate how they thought the situation in relation to that issue had changed in the US over the past five years, and within the past year. Response categories included “Much worse,” “Somewhat worse,” “Roughly stayed the same,” “Somewhat better,” and “Much better.” Table 3 combines data in the two “worse” categories and also in the two “better” categories for our seven broad categories so that you can see what percentage of respondents who identified an issue in one of those categories thought that things were either generally worse, roughly the same, or generally better.

Table 3 Respondents’ evaluation of whether the status of a sexual freedom concern had gotten generally worse, remained the same, or generally improved over the past five years, and then over the past one year.

COURT CASE +**March 23, 1972**

Eisenstadt v. Baird strikes down Massachusetts law prohibiting the sale of contraceptives to unmarried women.

Ruled that a state cannot stand in the way of distribution of birth control to a single person

FOUNDING ⓘ**1972**

National Bisexual Liberation group founded in New York City

COURT CASE -**1973**

US Supreme Court finds that first amendment rights do not extend to obscenity in Miller v. California

Legal exception to the First Amendment in cases of "obscenity"

COURT CASE ⓘ**1973**

US Supreme Court finds that the right to privacy extends to abortions in Roe v. Wade

LEGISLATION +**1973**

End of the military draft (which was exclusive to men)

Women were able to serve in the military; currently serve in 91% of all military occupations and 14% of the active Armed Services

SEXUAL FREEDOM TIME LINE 1971-1981**PUBLICATION ⓘ****1973**

American Psychological Association de-pathologizes homosexuality

HATE CRIME/ VIOLENCE -**Nov 27, 1978**

Assassination of Harvey Milk

PUBLICATION ⓘ**1976**

American Humanist Association publishes "Sexual Rights - a New Bill of Sexual Rights and Responsibilities"

EVENT ⓘ**October 14, 1979**

First National March on Washington for Lesbian and Gay Rights

EVENT -**May 1981**

First cases of AIDS reported in San Francisco, CA
The beginning of the AIDS epidemic; the end of the Sexual Revolution

LEGISLATION **1981**

Congress passes the Adolescent Family Life program as Title XX of the Public Health Service Act

Encourages adolescents to postpone sexual activity until marriage, emphasizing "chastity" and "self-discipline," as well as providing support for pregnant or parenting teens and their families.

COURT CASE **1986**

US Supreme Court upholds constitutionality of Georgia sodomy law in *Bowers v. Hardwick*

EVENT **October 11, 1987**

Second National March on Washington for Lesbian and Gay Rights

EVENT **April 25, 1993**

March on Washington for Lesbian, Gay, and Bi Equal Rights Liberation

HATE CRIME/ **Dec 31, 1993**

Rape and murder of Brandon Teena, a trans man living in Nebraska
Increased public awareness of GID

SEXUAL FREEDOM TIME LINE 1981-1998**LEGISLATION** **1994**

DADT forbids openly LGBT individuals from serving in the military

PUBLICATION **1995**

International Planned Parenthood Federation publishes Charter on Sexual and Reproductive Rights

HATE CRIME/ **1996-1998**

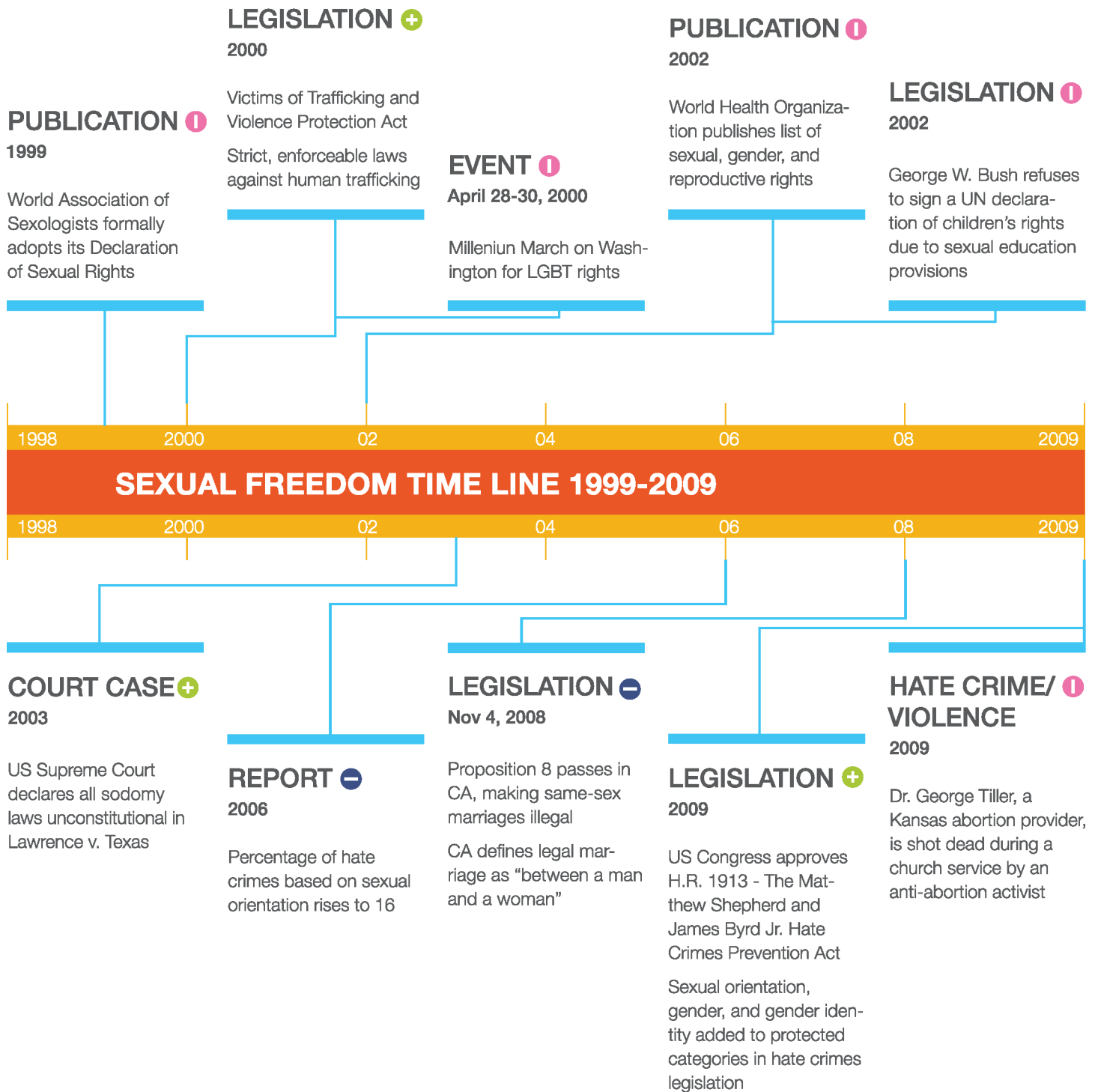
Eric Rudolph carries out a series of bombings, targeting abortion clinics & lesbian bars

INVENTION **1998**

FDA approves Viagra, the first prescription drug for the treatment of erectile dysfunction

HATE CRIME/ **Oct 12, 1998**

Murder of Matthew Shepard
Identifiable face of LGBT hate crimes



LEGISLATION +

2009

President Obama reduces federal funding for abstinence-only programs

Increases funding for programs that have been proven effective through "rigorous evaluation" to delay sexual activity, increase contraceptive use (without increasing sexual activity) or to reduce teen pregnancy

LEGISLATION ⓘ

2009

Aided by American evangelicals, the Ugandan parliament drafts the Anti-Homosexuality Bill

EVENT ⓘ

October 11, 2009

National Equality March on Washington

LEGISLATION +

2010

Family and Medical Leave Act officially interpreted to include same-sex couples

Same-sex couples receive federal recognition, paid family leave

COURT CASE ⓘ

2010

Federal District Court overturns California's Proposition 8 in Perry v. Schwarzenegger

2009

2010

SEXUAL FREEDOM TIME LINE 2009-2010

2009

2010

LEGISLATION +

2010

All 50 states allow some form of no-fault divorce

Spouse does not need to show adultery, cruelty, imprisonment, or abandonment to be granted a divorce

LEGISLATION ⓘ

2010

LGBT advocacy groups granted consultative status at United Nations

Survey Results and Methodology

Survey Results and Methodology

State of Sexual Freedom in the U.S., 2010

Steve Aurand

Elizabeth Anne Wood

This report was prepared by experts in a range of fields related to sexuality. These authors were asked to share their assessments of the state of sexual freedom in the United States today as it applied to their particular area of expertise.

In addition to these expert assessments, we include stories and statistics generated by an exploratory survey conducted by Woodhull Freedom Foundation between December 2009 and February 2010. It is important to acknowledge at the outset that this was not a scientific survey but was, instead, an exploratory project intended to provide a starting point for future research and to collect stories that could be used to illustrate this report. Respondents were approached online in a snowball sampling fashion. We began with people we identified as “thought leaders” in the sexual freedom movement. Those are people already established as advocates, activists and academics working on issues of sexuality and sexual freedom. Those individuals then circulated the questionnaire through their online social networks and email lists. The questionnaire is provided in Appendix 1.

We received responses from 298 people. Six responses were eliminated because they were too incomplete to be useful. Our final sample included 292 usable responses. Because we do not know how many people received the questionnaire we cannot calculate a response rate.

The questionnaire was broken into 6 sections. Section 1 asked respondents to check any or all of seven broad topic areas that they believe are “most important” in terms of sexual freedom. Those broad topic areas and the percentage of respondents who identified that area as “most important” are reported in Table 1.

Table 1 - Percentage of respondents indicating that a broad topic area was most important in terms of sexual freedom

Topic	Respondents who identified this area as a “most important” area (n=292)
Individual Freedoms (age of consent, non-discrimination, hate crimes, military service, sex offender registries, public	245 (83.9%)

nudity, adult entertainment access, BDSM, fetishes, etc.	
Relationship and Family Freedoms (marriage, divorce, parenting, adoption, polyamory, swinging, etc.)	201 (68.8%)
Obscenity (freedom of sexual speech and expression, censorship, etc.)	149 (51.0%)
Commercial Sex (sex-related business establishments, sex work, making adult videos, internet and phone services, etc.)	147 (50.3%)
Sexual Education and Information (comprehensive sexuality education, abstinence-only sex education, etc.)	225 (77.0%)
Sexual Health (AIDS/HIV, medicine/vaccine/treatment access, insurance coverage, transgender health services, etc.)	200 (68.5%)
Reproductive Freedom (abortion, contraception, etc.)	218 (74.7%)

*Note: Does not total 100% because respondents could indicate that more than one thing was “most important” to them.

Most of the respondents who answered the survey found all of these broad areas of concern to be of great importance in terms of their concerns about sexual freedom. To get more detailed information about our respondents sexual freedom concerns, in Section 2 respondents were asked to list up to three (3) specific issues that they considered to be of great importance in the movement toward realizing sexual freedom as a fundamental human right. All 292 respondents listed between one and three issues, for a total of 859 issues listed. The vast majority of respondents (95.2%) listed three issues. The questionnaire made clear that the order in which issues were listed would not be interpreted as an ordering by priority.

Issues were coded so that they could be matched with the most precise subcategories of the broad topic areas listed above. The coding scheme is outlined in Appendix 2. Codes for broad topic areas were single-character codes. Subtopic areas received 2-character codes. Categories within subtopic areas received 3-character codes. For example, by looking at Appendix 2 we can see that if a respondent listed “Freedom from

workplace discrimination” that issue would receive the code “1c1.” If a respondent listed “Ending discrimination” that issue would receive the code “1c” and so on. This enabled us to collapse the data and look at all issues that fell into a broad category while still being able to examine the issues in their most specific groupings. Of the 859 issues provided, 88 (10.2%) could not be categorized. Table 2 lists each broad topic area and the percentage of issues reported that fell into that area.

Table 2 Percentage of self-reported issues falling into each of the seven broad sexual freedom topic areas listed above.

Sexual Freedom Topic Area	Percentage of self-reported issues falling into this area (n=859)
Individual Freedoms	267 (31.1%)
Family and Relationship Freedoms	128 (14.9%)
Obscenity	7 (0.8%)
Commercial Sex	51 (5.9%)
Sexual Education and Information	149 (17.4%)
Sexual Health	77 (9.0%)
Reproductive Freedom	92 (10.7%)
Uncategorized	88 (10.2%)

Section 3 of the questionnaire asked respondents to think about each of the issues they listed and evaluate how they thought the situation in relation to that issue had changed in the US over the past five years, and within the past year. Response categories included “Much worse,” “Somewhat worse,” “Roughly stayed the same,” “Somewhat better,” and “Much better.” Table 3 combines data in the two “worse” categories and also in the two “better” categories for our seven broad categories so that you can see what percentage of respondents who identified an issue in one of those categories thought that things were either generally worse, roughly the same, or generally better.

Table 3 Respondents’ evaluation of whether the status of a sexual freedom concern had gotten generally worse, remained the same, or generally improved over the past five years, and then over the past one year.

Sexual Freedom Topic Area (total cases with status data = 821)	5-year status			1-year status		
	Worse	Same	Better	Worse	Same	Better
Individual Freedoms (n=255)	35.5%	34.4%	30.2%	30.2%	41.6%	28.2%
Family and Relationship Freedoms (n=124)	25.0%	29.7%	45.3%	25.0%	39.5%	35.5%
Obscenity (n=7)	71.4%	14.3%	14.3%	57.1%	14.3%	28.6%
Commercial Sex (n=49)	38.0%	52.0%	10.0%	30.6%	65.3%	4.1%
Sexual Education and Information (n=142)	56.6%	29.7%	13.8%	20.4%	48.6%	31.0%
Sexual Health (n=88)	70.0%	25.6%	4.4%	48.9%	39.8%	11.4%
Reproductive Freedom (n=75)	50.0%	32.9%	17.1%	26.7%	54.7%	18.7%
Uncategorized (n=81)	42.7%	29.3%	28.0%	37.0%	35.8%	27.2%

It is interesting to note that people with concerns about sexual education show the most optimism about recent changes: While 56.6% of those sharing concerns in this area thought that things were generally worse over the past five years, only 20% felt that things were generally worse over the past year. In addition, respondents sharing concerns about relationship and family freedoms were most likely to say that things had gotten better over the past five years, while those sharing sexual health concerns were most likely to say they had gotten worse over the past five years. (While the “obscenity” numbers are more dramatic, we are leaving them out of this discussion because only 7 responses fit this category.)

Sections 4 and 5 of the questionnaire asked respondents to discuss remedies they thought were most important in addressing their sexual freedom issues and gave them an opportunities to share stories or anecdotes related to their concerns about the sexual freedom issues they listed. Those stories and anecdotes are used as illustrations and examples throughout this report.

Section 6 invited respondents to identify themselves according to basic demographic categories and to indicate whether they were active in sexual freedom advocacy organizations. Our sample was disappointingly homogeneous and this is no doubt because of the way it was constructed (snowball sampling among online activists). For

example, respondents overwhelmingly self-identified as over 40 (59%) and White/Caucasian only (81%). That said, we did give respondents the opportunity to name their own racial, ethnic, gender, and sexuality categories, and the range of labels was indicative that many find demographic categorization too boxed-in to describe themselves.

Because this sample of respondents was not demographically or politically representative of any particular population, care should be taken in interpreting these results. In addition, future research should be undertaken so that we can accurately answer questions about the priorities of different population groups. For example, are there priorities that are unique to young people? How does class status, or race/ethnic identity affect sexual freedom priorities? We will be much more successful in gaining recognition of sexual freedom as a fundamental human right when we know systematically what that means in a society as diverse as ours.

Appendix 1

Woodhull Freedom Foundation - Sexual Freedom Questionnaire

Woodhull Freedom Foundation plans to publish regular reports on the sexual freedom movement, designed to help identify the social changes taking place, or that must take place for progress to be made, on the diverse issues on which we work. We are interested in recognizing opportunities for already-established sexual freedom issue groups to work together. We would like to know what you think are the most pressing sexual freedom issues this country is facing. We would be grateful if you would share your knowledge with us. We are seeking your response as an individual, not as a representative of any group or organization. If you want to share ideas on behalf of a group or organization, we welcome you to do so. We will keep all individual responses confidential unless you specifically give us permission to quote them. Please skip questions that don't apply in your situation. All questions are voluntary. NOTE: Please DO NOT use the RETURN/ENTER key unless you are ready to submit your survey.

* Required

Sexual Freedom issues - Section 1 of 7 (contains 6 items)

Please list UP TO 3 issues related to sexual freedom that you think are of great importance in the movement toward realizing sexual freedom as a fundamental human right.

1st important issue related to sexual freedom

2nd important issue related to sexual freedom

3rd important issue related to sexual freedom

Consider adding up to 3 more issues

Now that you have responded with the sexual freedom issues that come to mind, we would like to share with you some topics that could fall under the umbrella of sexual freedom. After looking over the 7 topic areas below, consider adding UP TO 3 additional issues that you consider to be of great importance in the movement toward realizing sexual freedom as a fundamental human right.

(1) INDIVIDUAL FREEDOM (age of consent, non-discrimination, hate crimes, military service, sex offender registries, public nudity, adult entertainment access, BDSM, fetishes, etc.).

(2) RELATIONSHIP AND FAMILY FREEDOM (marriage, divorce, parenting, adoption, polyamory, swinging, etc.).

(3) OBSCENITY--FREEDOM OF SEXUAL SPEECH AND EXPRESSION.

(4) COMMERCIAL SEXUAL EXPRESSION (sex-related business establishments, sex work, making adult videos, internet and phone services, etc.).

(5) SEXUAL EDUCATION AND INFORMATION (comprehensive sexuality education, etc.).

(6) REPRODUCTIVE FREEDOM (abortion, contraception, etc.).

(7) SEXUAL HEALTH (AIDS/HIV, medicine/vaccine/treatment access, insurance coverage, etc.).

4th important issue related to sexual freedom

5th important issue related to sexual freedom

6th important issue related to sexual freedom

Now that you have provided up to 6 import issues related to sexual freedom, we will ask a series of questions about those issues. You might want to jot down a few-word reminder about each issue on a sheet of paper. That way, you can refer to your sheet as you answer the subsequent questions, rather than having to scroll back up through the form.

Issue remedies - Section 2 of 7 (contains 6 items)

For the issues that are most important to you, please let us know what concrete steps or remedies you think are most needed. You may decide all your issues are important enough to discuss the steps and remedies you think are important, or you may choose only to address a few.

Issue 1 remedies For the first issue you listed above, what steps or remedies are needed to address the issue?

Issue 2 remedies For the second issue you listed above, what steps or remedies are needed to address the issue?

Issue 3 remedies For the third issue you listed above, what steps or remedies are needed to address the issue?

Issue 4 remedies For the fourth issue you listed above, what steps or remedies are needed to address the issue?

Issue 5 remedies For the fifth issue you listed above, what steps or remedies are needed to address the issue?

Issue 6 remedies For the sixth issue you listed above, what steps or remedies are needed to address the issue?

Issue status - Section 3 of 7 (contains 6 items)

Issue 1 status For the first issue you listed above, how has the situation changed in the US over the past five years and the past year?

Much worse	Somewhat worse	Roughly stayed the same	Somewhat better	Much better
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Past five years

Past one year

Issue 2 status For the second issue you listed above, how has the situation changed in the US over the past five years and the past year?

Much worse	Somewhat worse	Roughly stayed the same	Somewhat better	Much better
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Past five years

Past one year

Issue 3 status For the third issue you listed above, how has the situation changed in the US over the past five years and the past year?

Much worse	Somewhat worse	Roughly stayed the same	Somewhat better	Much better
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Past five years

Past one year

Issue 4 status For the fourth issue you listed above, how has the situation changed in the US over the past five years and the past year?

Much worse	Somewhat worse	Roughly stayed the same	Somewhat better	Much better
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Past five years

Past one year

Issue 5 status For the fifth issue you listed above, how has the situation changed in the US over the past five years and the past year?

Much worse	Somewhat worse	Roughly stayed the same	Somewhat better	Much better
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Past
five
years

Past
one
year

Issue 6 status For the sixth issue you listed above, how has the situation changed in the US over the past five years and the past year?

Much worse	Somewhat worse	Roughly stayed the same	Somewhat better	Much better
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Past
five
years

Past
one
year

Stories and illustrations - Section 4 of 7 (contains 1 item)

To make the report more tangible to readers, we would like to include stories that help to illustrate specific sexual freedom issues and challenges. If you can think of any incidents, events, narratives or stories that could help to illustrate the issues that you mentioned above, please share them here.

Issue ranking - Section 5 of 7 (contains 6 items)

If you can rank any of your issues in terms of how important you think they are to the movement toward gaining recognition of sexual freedom as a fundamental human right, please use the items below to indicate your rankings. If you believe that certain issues are of equal importance, give them the same ranking.

Issue 1 ranking

Issue 2 ranking

Issue 3 ranking

Issue 4 ranking

Issue 5 ranking

Issue 6 ranking

Questions about you and your work - Section 6 of 7 (contains 11 items)

Age

Racial identity part 1 Please choose all that apply

- White/caucasian
- Black/African American
- Asian
- American Indian or Alaska Native
- Native Hawaiian or other Pacific Islander
- A race not listed here (please enter it below)

Racial identity part 2 If you answered "A race not listed here" please tell us how you name your race:

Hispanic or Latino - any race Do you identify as Hispanic or Latino?

- Yes
- No

Transgender Do you consider yourself transgender or gender nonconforming?

- Yes
- No

Gender Identity part 1 What is your primary gender identity?

- Man/male
- Woman/female
- I don't have a primary gender
- A gender not listed here (please enter it below)

Gender identity part 2 If you answered "A gender not listed here" please tell us how you name your gender:

Sexual orientation Which best describes your sexual orientation?

- Gay/lesbian/same-gender attraction
- Bisexual
- Queer
- Heterosexual

- Asexual

Organization If you work for an organization working on sexual freedom or human rights, please let us know which one. (Remember, we assume you are speaking as an individual of course).

Organization Focus If you named an organization above, how would you describe the focus of that organization's work?

Individual focus If you named an organization above, how would you describe the focus of your own work within that organization?

Permissions - The LAST section (contains 4 items)

We will keep all information confidential and assume individuals are responding on their own and not on behalf of organizations. If you would like to give us permission to quote your responses or you would like to speak for your organization please let us know. IF YOU ARE WILLING TO BE CONTACTED for follow up about your responses, please include your contact information.

Permissions * Please only check those things to which you agree.

- Yes, I am willing to be contacted for follow up about my responses
- Yes, you may quote from my responses in compiling your report
- Yes I am authorized to speak for my organization and am speaking as their representative
- Please keep my responses confidential. I do not want to be quoted or identified.

Name

Email address

Best phone number (please indicate the best times to reach you by phone)

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Appendix 2

Issue Code	Issue Category
?	Unknown
1	1) Personal Freedoms and Protections
1a	a. Age of Consent
1b	b. Sodomy/Masturbation
1c	c. Non-discrimination
1c1	1. Employment
1c2	2. Housing
1c3	3. Public Accommodations
1d	d. Hate Crime Laws
1e	e. Immigration
1f	f. Military Service and Veterans Affairs
1g	g. Privacy Protections

- 1h h. Sex Offender Registries
- 1i i. Public Nudity
- 1j j. Access to Adult Entertainment, Sex Toys, etc.
- 1k k. Sexual Choices
 - 1k1 1. BDSM
 - 1k2 2. Leather
 - 1k3 3. Paraphilias
 - 1k4 4. Fetishes
 - 1k5 5. Swinging
 - 1k6 6. Other
- 2 2) Relationship and Family Freedoms and Protections
 - 2a a. Relationships
 - 2a1 1. Marriage
 - 2a2 2. Divorce
 - 2a3 3. Domestic Partnerships
 - 2a4 4. Cohabitation
 - 2a5 5. Monogamy
 - 2a6 6. Polyamory
 - 2a7 7. Swinging
 - 2a8 8. Other
 - 2b b. Family
 - 2b1 1. Parenting
 - 2b2 2. Adoption
 - 2b3 3. Foster Care
 - 2c c. Government Recognition of Relationships and Family Structures
 - 2c1 1. Census Bureau
- 3 3) Censorship
- 4 4) Commercial Sex
 - 4a a. Producing Adult Videos
 - 4b b. Sex Business Establishments (Bars, Clubs, Bookstores, Movie Theaters, Bathhouses, Sex Toy Stores, etc.)
 - 4b1 1. Bans and Regulation
 - 4b2 2. Zoning
 - 4c c. Sex Work
 - 4c1 1. Prostitution
 - 4c2 2. Adult Entertainers (Exotic dancers, strippers, etc.)
 - 4c3 3. Escorts

- 4d d. Internet and Telephone Services (Distributing Adult Videos, Sex/Dating Services)
- 5 5) Comprehensive, Sex-Positive Sexuality Education
- 6 6) Reproductive Freedoms
 - 6a a. Abortion
 - 6b b. Contraception
- 7 7) Sexual Health
 - 7a a. AIDS/HIV Issues
 - 7b b. Medicine/Vaccine/Treatment Access
 - 7c c. Insurance Coverage
 - 7d d. Sexual Diseases and Testing
 - 7e e. Transgender Health Issues
 - 7f f. Appropriate Sexual Health Services throughout the Lifespan

Author Bios

Author Bios



Deborah Taj Anapol, Ph.D., is a clinical psychologist, author of *Polyamory in the 21st Century* (2010), *Polyamory: The New Love Without Limits* (1997) and *The Seven Natural Laws of Love* (2005,) and cofounder of *Loving More Magazine*. In the past three decades she has worked with groups, partners, and individuals who are exploring conscious relationships and sexual healing. She attended Barnard College, graduated Phi Beta Kappa from the University of California at Berkeley in 1975 and received her Ph.D. in Clinical Psychology from the University of Washington in 1981.



Steven K. Aurand is an author, long-time activist for the GLBT community and has served on the Boards and Commissions of multiple GLBT organizations and government commissions. Authoring several studies of violence and discrimination against lesbian and gay people, Steve also served as the statistical consultant to the Task Force (NGLTF), co-authoring their first study of violence against lesbian and gay people. Steve is the Director of the Woodhull Research Institute.



Barnaby Barratt, Ph.D., DHS, is Provost and Professor of Psychology at Northcentral University, present member of the Woodhull Advisory Council, former Co-Chair of the Woodhull Freedom Foundation and past President of the American Association of Sexuality Educators, Counselors, and Therapists. Among other books he is author of *Sexual Health and Erotic Freedom* and *Liberating Eros*.



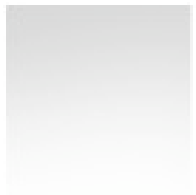
Patti Britton, Pd.D., is a nationally board-certified clinical sexologist, sex coach, writer, and media commentator. She has been featured in programming on the History Channel, CNBC, and CBS News, and is a regular contributor to *Cosmopolitan*, *Men's Health*, *Women's Health*, and *Penthouse Forum* magazines. She has a private practice in Los Angeles and leads couples' workshops at resorts in Las Vegas and California. Dr. Britton is co-founder of Sex Coach U, the world's premier credentialing and training institute on sex coaching.



Melissa Ditmore, Ph.D., is an author on all reports issued by the Sex Workers Project. She was the inaugural Chair of the Advisory Board of that organization, and is currently on the board of the Global Network of Sex Work Projects. She has published extensively in the areas of sex work, migration, and trafficking, and is the editor of the *Encyclopedia of Prostitution and Sex Work* (Greenwood Press, 2006). Dr. Ditmore has spoken about prostitution, migration rights, and research ethics at the United Nations, the International Conference on HIV/AIDS, Columbia University, Cornell University, Hong Kong City University and numerous other academic and political conferences.



Hardy Haberman is a member of the Woodhull Advisory Council and the current recipient of the National Gay and Lesbian Task Force's Leather Leadership Award. He has been involved in the leather community as an activist, author, speaker, and filmmaker since the mid-70s. He is a member of many BDSM/Fetish organizations including National Leather Association-Dallas and Discipline Corps, and is a founding member of Inquisition-Dallas. His blog, *Dungeon Diary* (<http://dungeondiary.blogspot.com>) focuses on progressive politics and occasional forays into alternative sexuality and spirituality.



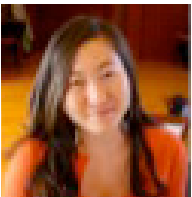
Mark Kernes is the Senior Editor and Chief Legal Analyst for AVN Media Network, which publishes *Adult Video News* (AVN), the primary trade magazine of the adult entertainment industry, and avn.com, which reports daily on news and events that affect that industry. In the course of his employment, Kernes has attended and reported on a number of obscenity and other free-speech-related court hearings, and has gone "undercover" to report on various conservative political events such as the Values Voter Summits and the Conservative Political Action Conferences.



Ricci Levy has been engaged in sexual freedom activism for more than a decade. After a successful career in corporate America, serving as Senior VP, Director of Operations of CAP Index, Inc. and as President of R. J. Levy Consulting Inc., Ms. Levy formally entered the world of non-profit advocacy work as Director of Operations for a national non-profit. In 2002, she helped found The Woodhull Freedom Foundation and Federation, an organization whose mission is to affirm sexual freedom as a fundamental human right. As the President and CEO of both the Foundation and the Federation, she has been instrumental in Woodhull's growing leadership in the sexual freedom movement.



Dan Massey, with his partner of 35 years, Alison Gardner, is co-founder of CO-LUMBIA, whose vision he describes as “the future development of human society as it embraces new insights into the essential spiritual value of erotic pleasure.” With an academic background in computer science from Harvard and MIT, he has published books on artificial intelligence, probability and statistics, and managing computers in business. He served for over 20 years on the Executive Committee of The Urantia Book Fellowship as chairman of committees, addressing faith outreach, publications, education, and judicial & legal affairs before retiring from this apprenticeship to devote his life to the cause of freedom and equality.



Mia Mingus is a queer, physically disabled woman of color whose work has focused on disability justice, race, reproductive justice, gender, queer liberation, and transracial and transnational adoption. She was named one the Advocate's “40 LGBT Leaders Under 40” in 2010, and one the 30 Most Influential Asian Americans under 30 by the blog Angry Asian Man. Until January 2010 Mia was a Co-Executive Director of SPARK Reproductive Justice Now, and is presently a member of the Disability Justice Collective, the Sins Invalid Advisory Committee, and the Atlanta Transformative Justice Collaborative.



Gaylen Moore has a Master's degree in philosophy from Kent State University, with special interests in philosophy of mind, philosophy of science, metaphysics, psychology, spirituality, and sexuality. He has written numerous articles relating to alternative lifestyles for Examiner.com, most of which explore the philosophical, psychological, and spiritual dimensions of sex and sexuality. He also occasionally writes fiction, and is planning a novel.



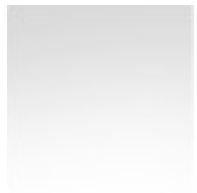
Carol Queen, Ph.D., is Board Chair of the Woodhull Freedom Foundation, and Staff Sexologist and Chief Cultural Officer of Good Vibrations, Inc. A cultural sexologist with an academic background in sociology, her overarching interest is in cultural issues of gender, shame, and access to education. She is founding director of the Center for Sex and Culture, and has received such accolades as the Lambda Literary Award for her published work. Her blogs and regular columns can be read at Good Vibes Magazine, CarnalNation.com, and at SFGate's City Brights bloggers page.



Loretta Ross is a member of the Woodhull Advisory Council and founding member and national coordinator of SisterSong. In 2004 she co-directed the million-person March for Women's Lives in D.C. Her career in women's rights advocacy has involved work with the National Center for Human Rights Education, the National Organization for Women, and the Center for Democratic Renewal. She is an expert on human rights, women's issues, diversity issues, hate groups and right-wing organizations. Ms. Ross is presently writing a book on reproductive rights entitled *Black Abortion*.



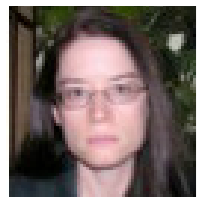
Sean Strub is the founder of POZ magazine. He has co-authored two books on corporate social responsibility, and presently serves as Senior Advisor to the Center for HIV Law & Policy's Positive Justice Project), combating HIV criminalization. He also is a member of the board of directors of the North American regional network of Global Network of People With HIV/AIDS. In the late 1980s, Strub was involved with ACT UP/New York, co-chaired its fundraising committee and participated in the organization and execution of high-profile demonstrations and civil disobedience actions. In 1990, Strub was the first openly HIV+ person to run for a seat in the U.S. Congress in New York's 22nd district.



RJ Thompson is a queer, southern human rights lawyer, organizer, educator, and director of the Woodhull Freedom Foundation's Human Rights program. Previously, RJ worked as the Causes in Common Program Coordinator and the National Campaign & Advocacy Manager at the Lesbian, Gay, Bisexual & Transgender Community Center in New York City and as a consultant with various human rights organizations including the US Human Rights Network. His career in sexual freedom advocacy has also i the US Human Rights Network. His career in sexual freedom advocacy has also involved work for the National Gay and Lesbian Task Force, Equality Florida, and Amnesty International.



Lawrence G. Walters, Esq., heads up Walters Law Group, which represents clients across the country in cases involving free speech and erotic expression. He presently serves as General Counsel for the Woodhull Freedom Foundation, and is a member of the Advisory Council. He regularly comments in the national media on issues relating to censorship of erotic expression, and has appeared on numerous television news programs including Dateline, The View, 20/20, the O'Reilly Factor, Dr. Phil, Good Morning America, The Today Show, and the Oprah Winfrey Show.



Elizabeth Wood is Assistant Professor of Sociology at Nassau Community College, co-founder of the blog, "Sex in the Public Square," and member of the Advisory Council and Research Institute of the Woodhull Freedom Foundation. She received her Ph.D. in Sociology from Brandeis University in 1999 for a study of gender, interaction and power in strip clubs. Her research interests include sex work and women's sexual expression on the internet. She serves on the editorial boards of the journals *Sexuality & Culture* and *Women's Studies Quarterly*, and is the book review editor for *Symbolic Interaction*.