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SIECUS

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Contents

ARTICLES

4

CENSORSHIP AND THE INTERNET: NO EASY ANSWERS
Christopher J. Portelli, J.D., SIECUS Director of Information
Coralie W. Meade, M.A., SIECUS Online Technologies Coordinator

9

WHEN *THE PUBLIC EYE* MET A PRIVATE INSTITUTION'S PROGRAM:
TAKING SEXUALITY EDUCATION OUT OF CONTEXT
Sarah Gibb, Outreach Coordinator
Sexuality Education Task Force, Unitarian Universalist Association and
United Church Board for Homeland Ministries
Boston MA

11

DO TEENAGE GIRL MAGAZINES BELONG
ON MIDDLE SCHOOL LIBRARY SHELVES?
Joan E. Bertin, Executive Director
National Coalition Against Censorship
New York, NY

13

CONDOM AVAILABILITY PROGRAMS IN
THE PUBLIC SCHOOLS: APPROVED IN THE COURTS
Catherine Weiss, J.D., Director
Sherrill Cohen, Ph.D., Public Education Coordinator
Reproductive Freedom Project, American Civil Liberties Union
New York, NY

17

THE GENDER GAP IN INSURANCE COVERAGE
FOR WOMEN'S REPRODUCTIVE HEALTH
Elizabeth Arndorfer, Senior Staff Attorney
National Abortion and Reproductive Rights Action League (NARAL)
Washington, DC

ALSO IN THIS ISSUE...

FROM THE EDITOR THE RIGHT TO SEXUALITY INFORMATION AND SERVICES By Mac Edwards	2
FROM THE PRESIDENT LESSONS FROM THE WHITE HOUSE By Debra W. Haffner, M.P.H.	3
FACT SHEET THE TRUTH ABOUT LATEX CONDOMS	21

THE RIGHT TO SEXUALITY
INFORMATION AND SERVICES

Mac Edwards

I live in a small town an hour from New York City that has had a reputation since the early 1900s as a place where artists—painters, writers, actors, and playwrights—live together in an open and creative environment.

Soon after moving there a decade ago, I was shocked to learn that the local school board had banned Pulitzer Prize winning author Toni Morrison's book *The Bluest Eye* from the high school's English curriculum because it was too sexually explicit.

How can this happen here of all places, I thought. I had always admired Morrison (long before she became famous on Oprah Winfrey's television book club) and felt that she was one of the greatest thinkers and writers of this century.

It turned out that several parents in my community had expressed dismay when they discovered that their teenagers were reading about sexual relationships in the book. They had evidently overlooked the fact that the book was a poignant story about self-value and self-worth.

In *The Bluest Eye*, Morrison tells the story of a little African-American girl who thinks that if she can live up to the image of the blue-eyed Shirley Temple and "Dick and Jane" that she will have the perfect life they have. Morrison shows how a racist system wears down the minds and souls of people and how dominant images of white heroes and heroines (with blue eyes) cause young black children to hate their African-American heritage.

Here we are ten years after this incident, and we are still working to make certain that people do not stop the free flow of information and censor materials.

CENSORSHIP

This issue of the *SIECUS Report* starts with "Censorship and the Internet: No Easy Answers" where SIECUS staff Christopher Portelli and Coralie Meade discuss the Internet as a valuable information source. They urge people to consider censorship cautiously.

Next, Sarah Gibb, outreach coordinator for the Sexuality Education Task Force of the Unitarian Universalist Association and the United Church Board for Homeland Ministries, tells in "When *The Public Eye* Met a Private Institution's Program: Taking Sexuality Education Out of Context" that the television show *The Public Eye with Bryant*

Gumbel did a great disservice to the organization's sexuality education program when it focused on its most explicit aspects and played to the fears of parents and teachers.

Then Joan Bertin, the executive director of the National Coalition Against Censorship, recounts a situation in Hauppauge, NY, where the community's school superintendent removed such magazines as *Seventeen*, *Teen*, and *YM* from the middle school library. "Why should one parent's preferences control what all young people can read in the library?" she asks. "If everyone was able to exclude their personal *un-favorites*, not much would be left."

THE LAW

This issue also includes two articles on controversial issues in sexuality and the law. Catherine Weiss, the director, and Sherrill Cohen, the public education coordinator, of the Reproductive Freedom Project of the American Civil Liberties Union, review in "Condom Availability Programs in the Public Schools: Approved in the Courts" that recent court decisions have made it clear that school districts need not subordinate students' health and privacy to a minority of critics of condom availability programs.

Then, Elizabeth Arndorfer, senior staff attorney at the National Abortion and Reproductive Rights Action League (NARAL), discusses in "The Gender Gap in Insurance Coverage for Women's Reproductive Health" the need for legislation to require equitable treatment of prescription contraception to eliminate the gender gap in insurance. Refusal of insurance companies to provide coverage, falls heavily on women and contributes to the high rates of unintended pregnancies, she says.

MORE INFORMATION

Also in this issue, SIECUS President Debra Haffner talks about the current controversy surrounding President Clinton. It has made clear, she says, that both adults and children need sexuality education and that we all must learn how to handle difficult situations involving sexual choices.

Finally, an updated *Fact Sheet* on "The Truth About Latex Condoms" is included in this issue. It is part of SIECUS' effort to provide current and comprehensive information on sexuality issues.

LESSONS FROM THE WHITE HOUSE

Debra W. Haffner, M.P.H.

When I first joined SIECUS, I received a call from a professor who had filmed students having sex under the guise of research. He asked for SIECUS' support in the lawsuit filed against him. Of course, we said no. A few weeks later, I learned he had committed suicide. I was stunned and upset. I have never forgotten what Bob Selverstone, then president of the SIECUS Board, said to me, "Debra, it is amazing how many people ruin their lives for sex." People in power have often abused their sexuality. And all of us who work in the sexuality field have known clients or students who have taken great risks for sexual relationships.

LET DOWN

I felt incredibly saddened as I watched the Starr Report delivered to the Congress. I feel angry and let down by the President. I am furious at what I see as the abuse of the independent counsel's office. I am also angry at the media circus surrounding the allegations. In past months, the media has asked me to comment on such things as whether the President is a sex addict, whether Chelsea Clinton needs therapy, and why the President likes women with big hair. I have, obviously, refused these interviews. At the same time, I have been horrified by how many so-called "experts" have been willing to diagnose the President and his family.

I have been willing to talk about how this situation reflects America's confusion about sexuality and how it demonstrates how poorly we model adult sexual health to our children. It is hard, for example, to imagine this situation spiraling out of control in, say, France or The Netherlands. A sexually healthy adult understands that there is a difference between having sexual feelings and acting upon them. In other words, we say to ourselves, "cute intern" and then we forget about it. A sexually healthy adult differentiates between sexual behaviors that are life enhancing and those that are potentially harmful to oneself and others.

SIECUS defines a moral, ethical relationship as having five criteria: it is consensual, non-exploitive, honest, mutually pleasurable, and protected. Based on my reading of the Starr Report, the Clinton/Lewinsky relationship seems to fail on four of these. Non-exploitive? It is hard to think of a better example of people using each other. Honest? Not according

to Ms. Lewinsky. Mutually pleasurable? Not according to Mr. Clinton. Protected? Not according to the dress.

TEACHABLE MOMENT

At times during the last nine months, I have thought there might be a silver lining. Surely, this was an opportunity for a new national dialogue on healthy adult sexuality. It was clearly a teachable moment for parents to talk with children about sexuality. It was an almost daily reminder for couples to talk openly about their commitments.

But, I am no longer so sure. I've talked with people who had carefully put their marriages back together after an affair who are now nursing old wounds. I was willing to talk to my 13-year-old daughter about oral sex and even the dress. But the cigar opens up issues that stump me.

And more important, the media and some of the public apparently have forgotten that this is no longer, if it ever was, about sex. It's about trust, deceit, tax dollars, politics, and character. I do not believe it is, nor should it be, about the President having an affair with an intern. It is about the months of lying, of using government employees to lie, of having the President allow his colleagues spend tens of thousands of dollars to protect him.

WHAT'S NEXT

And so, like most Americans, I am angry with the President. I am profoundly saddened that my daughter said to me, "Mom, I've lost all respect for the Presidency." I am furious because the White House has just become impotent in dealing with many of the public policy issues that concern SIECUS: reproductive health care, the sexual rights of adolescents, international family planning, HIV prevention, and more. I am angry that Bill Clinton has hurt so many people during the past nine months. And I am appalled that we may actually impeach this President because of his initial inability to make healthy sexual decisions.

Who knows how this will end—or where it will lead. But one thing is certain. It has made clear that both adults and children need sexuality education. Sex is wonderful, but it should never result in actions that jeopardize your marriage, your job, your career, or your reputation.

CENSORSHIP AND THE INTERNET: NO EASY ANSWERS

Christopher J. Portelli, J.D.
SIECUS Director of Information

Coralie W. Meade, M.A.
SIECUS Online Technologies Coordinator

With the growing understanding that the Internet has become both a popular communications and entertainment tool and an almost indispensable educational resource, many issues have surfaced regarding the access that the Internet provides to certain kinds of information, pictures, graphics, videos, animation, and interactive experiences.

These problems include everything from when and how to share personal information (social security numbers, phone numbers, credit card numbers, addresses) to who should have unrestricted access to all the Internet has to offer.

The most controversial area, of course, is the variety of available material online that contains sexual content, including sexuality information of an educational and health-related nature (HIV prevention, safer sex, pregnancy prevention, STD treatment, support for people of different sexual orientations), explicit adult entertainment, and material containing violent or exploitative sexual imagery involving children and minors.

Still, with over 100 million Web pages on the Internet and tens of thousands added every day, experts estimate that only 1 percent of these sites contain any material objectionable even by conservative standards.¹ So why all the furor? What is the World Wide Web? Why is it so popular? Why are people intent on censoring it? What dangers does it pose to children? What kind of activities should parents and teachers look for? Are child abductions via the Internet a real and growing problem? Should libraries and schools use blocking mechanisms to keep students from accessing certain kinds of information online? How can people effectively use these mechanisms while at the same time protecting free speech.

These are the kinds of questions SIECUS hopes to address in this article.

DEFINITIONS

When individuals access the Internet, they enter the world of "cyberspace." Science fiction author William Gibson coined the term *cyberspace* to describe his vision of a global computer network linking all people, machines, and sources of information in the world and through which they could move or "navigate" as through a virtual space.²

Author Michael Benedikt, who wrote *Introduction to Cyberspace: First Steps* for the millions of Americans interested in exploring this new world, describes the Internet and cyberspace as "a new universe, a parallel universe created and sustained by the world's computers and communication lines. A world in which the global traffic of knowledge, secrets, measurements, indicators, entertainment, and alter-human agency takes on form, sights, sounds, presence never seen on the face of the earth blossoming in a vast electronic night."³

The World Wide Web (or "the Web"), which is another name for an area of the Internet and a part of cyberspace, was described by its inventor Tim Berners-Lee as a "wide-area hypermedia information retrieval initiative aiming to give universal access to a large universe of documents."⁴

These definitions will help readers understand the complexities involved in this form of global communication as they read about cyberspace, the Internet, the Web, and the potential for censorship.

POPULARITY

In 1997, over 60 percent of public schools in the United States provided some type of Internet access to their students. The amount and type of access ranged from desktops in homerooms to media and computer laboratories assigned by class period to a single terminal housed in a school library.⁵

Public libraries throughout the United States, which number about 9,000, also recently experienced a dramatic increase in Internet access for library users. From 1996 to 1997, a 30 percent increase brought 60 percent of all public libraries into the online services arena.⁶ According to a recent Nielsen survey, 45 percent of Internet users go to public libraries for access.⁷

In late 1995, only 18 million homes had modem-equipped computers.⁸ As of spring 1998, 62 million American adults 18 years old and over had home access to the Internet, up from 46 million in 1997 (a 240 percent increase over four years).⁹ Home computer sales remain strong and steady.¹⁰ Twenty per cent of Americans go online for news at least once a week, up from only 6 percent in 1996.¹¹ In May 1998, 4.5 million users over 12 years of age visited the Internal Revenue Service's Web site and 1.75

million users over 12 years of age visited *The Wall Street Journal* online that same month.¹² As for daily use of the Internet, over a million users are in chat rooms every day on the Internet Service Provider (ISP) America Online (AOL) alone. That's a staggering figure considering the growing number of ISPs that give their customers chat room access.¹³

Experts estimate that in 1996, 4 million children (out of an estimated general population of 70 million American children or 6 percent) accessed the Internet from home, double the number from the year before. Recently, this number reportedly increased to 10 million and is expected to exceed 20 million by the year 2002.¹⁴

CENSORSHIP

Representatives of the computer technology industry, together with several federal agencies and the White House, held a summit in early 1998 to discuss whether regulations and restrictions on Internet use and content were necessary to protect minors from pornography, child abuse, abduction, and other threats to their safety and well-being.¹⁵ Noticeably absent from this gathering were child safety experts, mental health professionals, behavioral scientists, sexuality educators, and free speech advocates.¹⁶

Despite the fact that reported cases of child abuse and abduction involving the Internet are few and far between,¹⁷ Vice President Al Gore called upon industry leaders to self-regulate the Internet through blocking software, rating systems, and voluntary use of these systems wherever possible.

Serious questions surface, however, when these devices are employed in public libraries, public agencies, research institutions, and public schools. Government censorship, academic freedom, First Amendment protected speech, child safety concerns, public health dilemmas, and a variety of other troublesome issues collide at the intersection of the Internet and free speech.

In response to these issues and the call to action that resulted from the online summit, several advocacy organizations have created a coalition to educate policymakers and the public about the complexities of Internet regulation and the dangers inherent in government censorship, including the loss of access to vital public health information (especially on reproduction, HIV prevention, and sexual health), and the loss of academic freedom.¹⁸

LEGAL CHALLENGES

Laws governing obscenity and child pornography already exist and are, for the most part, applicable to cases involving the Internet to sufficiently provide enforcement and protection for minors. For example, the distribution of *obscene* material is not protected by the First Amendment, and the Supreme Court's ruling in the 1973 case *Miller v. California*, and subsequent cases, established that something is obscene if "[a judge

or jury] finds that the average person, applying adult community standards, would find that the material, taken as a whole, appeals to a prurient interest in sex, depicts or describes, in a patently offensive way, offensive sexual conduct, and lacks serious literary, artistic, political, or scientific value."¹⁹

Child pornography is not subject to community standards, but, instead, has been found to be outside the zone of protected free speech. In the 1982 Supreme Court case *New York v. Ferber*, the Supreme Court held that the use of children in pornography is "harmful to the physiological, emotional, and mental health" of children. Since *Ferber*, depicting children in pornography and distributing child pornography is criminalized, highly policed, zealously enforced, and severely punished at the federal level.²⁰

Congress and state legislatures have, however, struggled to block the online publication and distribution of what it has called *indecent* or *objectionable* materials on the Internet, categories far broader than *obscenity* or *pornography*, that may include any or all material any group deems *offensive*. In fact, any discussion of sexuality education, safer sex, contraception, lesbian and gay topics, or even sexual harassment case law may be *indecent* to some, and this is precisely the kind of material that is most often blocked by software developed to filter the Internet.

In a landmark case in 1997 called *Reno v. ACLU*, the Supreme Court held in a unanimous opinion that sweeping government censorship of the Internet could not be tolerated under the First Amendment of the U.S. Constitution. In that case, also known as *the CDA case*, the Supreme Court held unanimously that the Internet is a free speech zone, deserving of at least as much First Amendment protection as that afforded to books, papers, and magazines. It struck down as unconstitutional the Communications Decency Act (CDA), passed by Congress in 1996, which sought to criminalize the posting, sending, and viewing online of materials with *indecent* content.²¹

The Internet, the Court concluded, is "the most participatory form of mass speech yet developed." The Court held that the Internet was like "a vast library including millions of readily available and indexed publications," the content of which "is as varied as human thought."²²

In striking down the CDA, the Court commented that Internet blocking software is a "reasonably effective method by which *parents* can prevent their children from accessing material which the *parents* believe is inappropriate." (Emphasis in original). The rest of the decision firmly holds that government censorship of the Internet violates the First Amendment, and that holding applies to government use of blocking software just as it applied when the court struck down the CDA's criminal ban.²³

Since the CDA case, however, an increasing number of city and county library boards and school districts have

forced libraries and schools to install blocking software. Ignoring the Supreme Court's holding in CDA, these government bodies are supported by Far Right advocacy groups seeking to force legal challenges on a local level while pressuring Congress to craft new legislation that may circumvent the Supreme Court's ruling.

It is ironic that the same Congress that introduced legislation to block sexually explicit information on the Internet has released the Starr Report on its Web site.²⁴ Given the Report's sexually explicit content, these legislators would have violated their own law if the Supreme Court had upheld the CDA. One has to wonder about legislators who turn around and willingly, if not enthusiastically, violate the spirit of the law for which they voted just two short years ago.

Most recently, several local challenges to government attempts to impose blocking software in public access areas were successful in light of the Supreme Court's decision in the CDA case. In Loudoun County, VA, a judge upheld a challenge to a library board's attempt to impose filtering devices in all the branches of the county's library system.²⁵ Judges in the Ninth Circuit Court of Appeals in California were surprised to learn that they could no longer access the court's travel agent online when filtering software blocked the agent's site because it promised vacations to *exotic* locales. The filter blocked the site because of the word *exotic*. The judges immediately called for the removal of all filtering devices from courthouse computers, some calling the filter device "an outrage."²⁶

In January 1998, the Kern County, CA, Board of Supervisors, under threat of a lawsuit by the American Civil Liberties Union (ACLU), withdrew its order imposing Internet filter software on the county's 18 branch libraries.²⁷

PARENTAL SUPERVISION

It is clear, however, that parents do have a responsibility to their children to know and understand the Internet and what it has to offer.

Because a majority of children are exposed to computers and the Internet as soon as they start school, they are often more familiar and comfortable with their operation than their parents. It is, therefore, important that parents seize every opportunity to learn about this technology. Parents who are knowledgeable will more likely create a home environment where their children will learn and enjoy rather than one where they will feel controlled and censored.

At a minimum, parents should:

- Attend school orientations to see how their children are using the computer/Internet.
- Ask teachers to create a sheet for their children to bring home to explain what they are doing/learning on the computer/Internet.

- Participate with their children on Internet activities at home or at the local library.
- Discuss with their children what they may encounter on the Internet.
- Create a list of safe, approved Web sites for their children to explore.
- Create a list of educational Web sites that cover sensitive subjects.
- Develop Internet guidelines and post them near all computers that tell their children, among other things: (1) not to divulge personal information (social security numbers, telephone numbers, credit card numbers, addresses); (2) not to meet an Internet friend without an adult present; and (3) the times during which they can use the Internet.
- Share experiences with other parents and teachers.

Above all, children should not use the Internet at home until they have received explicit instructions and parameters from their parents or guardians. Just as with television, children should follow rules, know what they should expect when they surf the Web, and ask questions when they have a problem.

Two child welfare organizations—the National Center for Missing and Exploited Children and the Interactive Services Association—have published a guide titled *Child Safety on the Information Highway*.²⁸

The guide outlines the benefits of online services, describes the major risks to children, addresses ways parents can reduce these risks, and explains ways parents can educate themselves about key issues. It is free and is available at public libraries.

The guide also contains a tear-off page which parents may want to post next to the computer to remind their children of what to do—and what not to do—to protect themselves while online. It says:

- I will not give out personal information such as address, phone number, parents' work address, phone number, or the name and location of my school without my parents' permission.
- I will tell my parents right away if I come across any information that makes me feel uncomfortable.
- I will never agree to get together with someone I meet online without first checking with my parents. If my parents agree to the meeting, I will be sure that it is in a public place and bring my mother and father along.
- I will never send a person my picture or anything else without first checking with my parents.
- I will not respond to any messages that are mean or in any way make me feel uncomfortable. It is not my fault if I get a message like that. If I do, I will tell my parents right away so that they can contact the online service.

- I will talk with my parents so that we can set up rules for going online. We will decide upon the time of day that I can be online, the length of time I can be online, and appropriate areas for me to visit. I will not access other areas or break these rules without their permission.²⁹

Other recommendations for parents of young children include placing the home computer in the family room where a child's use can be monitored and the future possibility of increased private access to the Internet acts as an incentive for older children who demonstrate adherence to agreed upon parameters.

One parent SIECUS knows tells her computer-savvy 13-year-old that she can have her own computer in her room when she turns 17, provided that she continues to observe the rules of the family computer. These rules include no more than one hour in chat rooms a night after her homework is done.

CENSORSHIP TECHNOLOGIES

Parents should learn as much as possible about the current technologies that block or allow access to Internet information. Children may encounter these technologies at school, at the public library, and at community-based organizations. Parents may also have purchased or subscribed to these products or services when purchasing bundled software packages or pre-loaded software on personal computers. These include:

- **sender-centered controls** where the *source* restricts or allows access to information
- **recipient-centered controls** where the *user* restricts or allows access to information
- **filters** that block Web sites by using key words
- **labels** that provide technical information about a Web page regarding content (which filters can read and, ultimately, block or allow access)
- **rating systems** that provide parents with Web site information they can use to make viewing decisions.

Parents should also use customer guidelines developed by the Electronic Frontier Foundation when purchasing the above technologies. They indicate that parents need to (1) understand the values or principles upon which the filters or ratings are based; (2) find out the extent to which the filters or ratings block sites through the use of topics, keywords, and/or other distinctions; (3) get background information on the funders or backers of the filters or ratings; and (4) know the limitations of the software or service.

"A mature, measured approach to the problem of explicit online speech would involve parental supervision and local screening, not wide-ranging censorship" say Jonathan Wallace and Mark Mangan, authors of *Sex, Laws, and Cyberspace*.³⁰

Examples of products now on the market include:

Cyber Patrol, which suggests and blocks Web sites. Parents can choose from a list of 35,000 sites in 12 categories that it defines as either appropriate or inappropriate for children. Parents can also use the software to determine the amount of time their children spend on a site. Parents can appeal the rating of a site to the Cyber Patrol Oversight Committee. A potential problem is that one of the CyberNOT categories is "sexual education." As a result, it blocks all sexuality education sites, including HIV/AIDS education. The software works on personal computers, local area networks, and proxy servers.

CYBERSitter, which blocks and monitors sites that parents choose from a list of 44,000 Web sites that are termed inappropriate based on labels and ratings. Parents can add names and phrases to the filter file. They can also use the software to determine the amount of time their children spend on the Internet as well as attempts they make to access blocked sites. A problem is that the software is discriminatory toward the lesbian and gay community because it blocks such words and phrases as "the gay community," "gay rights," "homosexual," "lesbian," and "bisexual." Another problem is that the software's monitoring system could inadvertently "out" young people when parents follow the trail of connections to gay and lesbian information sites online. This could cause parental confrontations regarding sexual orientation and, thus, strain family relations and intensify gay and lesbian adolescents' feelings of isolation. The software works on personal computers.

Net Nanny, which blocks and monitors sites that parents choose from a list of 21,000 sites that are termed either appropriate or inappropriate for children. It also uses words and phrases that block access to inappropriate Web sites. Unfortunately, parents will block information on sexuality education and sexual orientation simply by selecting the word *sex*. Parents have full control over the use of the lists, words, and phrases. A problem is that this software's monitoring system could also inadvertently "out" young gay and lesbian people in the same way that Cybersitter (above) does. The software works on personal computers.

Net Shepherd, which searches and blocks sites selected from opinion rating services. Children can make a filtered search to find information using the World Opinion Ratings service which has community-based ratings. These ratings are developed in consultation with members of various community groups across the country. Parents can use override features to unblock particular sites from the ratings services. A problem is that this product's blocking features could change as different communities become involved in the ratings process. Different views on accessibility may result in choices with which everyone would not agree. Net Shepherd works on Internet Service Providers (ISPs) with

their own label bureau, personal computers, or proxy servers connected to a label bureau.

SurfWatch, which blocks sites using filters and context-based pattern matching. Parents have the flexibility to determine what they want to block or allow. They can also limit searches that use popular search engines. SurfWatch regularly consults with experts in various fields to maintain and update its list of inappropriate sites. The software works on personal computers, servers, proxy servers, firewalls, and local area networks.

CONCLUSION

The Internet is providing valuable information to individuals of all ages worldwide. It is an important education tool for students in school as well as for adults at work. It is also an important information tool for individuals everywhere at every age. Parents, librarians, teachers, and students need to educate themselves about the Internet, its content, and its uses. They should consider censorship and restrictions cautiously and only in the most extreme circumstances—such as protecting young children from inappropriate materials or situations.

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WHEN THE PUBLIC EYE MET A PRIVATE INSTITUTION'S PROGRAM: TAKING SEXUALITY EDUCATION OUT OF CONTEXT

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Unitarian Universalists across the United States were outraged when a national news program criticized the Unitarian Universalist Association's 26-year-old sexuality education program for junior high youth, *About Your Sexuality (AYS)*.

"Filmstrips that go all they way and then some," said a promotional spot for the October 8, 1997, episode of CBS television's *The Public Eye with Bryant Gumbel*. "And you won't believe where—in a church!"

The Public Eye attacked the Unitarian Universalist Association's (UUA's) AYS curriculum, which several hundred of their 1,000 congregations have used since 1971 in both secular and religious settings.

The Public Eye report, which focused on a local controversy stemming from an incomplete parent orientation for a spring 1997 AYS course, questioned the validity of the Unitarian Universalist Association's use of AYS' visual components, and, thus, took advantage of the public's general discomfort with sexuality to tell a "shocking" tale.

The UUA and its Religious Education Department was not prepared for the attack. In reality, the curriculum was nearing its sunset after 26 years. A new comprehensive sexuality education program called *Our Whole Lives (OWL)* is nearing completion as a result of six years of work with the United Church Board for Homeland Ministries (of the United Church of Christ). It is scheduled for release in 1999.

The attack from *The Public Eye* grew out of a local controversy in Concord, MA. The parents of the children enrolled in AYS that year had not received adequate orientation regarding the content of the filmstrips in the program. After the class had viewed filmstrips about masturbation, two families complained to the congregation's religious education director that they were upset. Leaders of the Concord congregation realized their mistake and sought to remedy the problem by showing all parents the program's visual materials. After viewing the filmstrips, the two families were still upset even though 17 other families with children enrolled in the program felt the filmstrips were appropriate.

The upset parents claimed that the showing of explicit visual material constituted sexual abuse. Their concerns attracted the attention of *The Public Eye*. Its reporters and producers contacted the UUA in Boston in August 1997 to verify the parents' claims. Early on, the UUA realized that *The Public Eye* assumed that the visual materials in the AYS program were inappropriate, pornographic, and harmful, and that the controversy was national news.

In reality, the reporters examined the AYS visuals in a context totally removed from the context in which students saw them. The filmstrips in question were a small part of an extensive sexuality education program that consists of units on 12 subjects. The curriculum consists primarily of discussion-centered exercises, role-playing activities, and imaginative games that convey accurate information about sexuality (including birth control and STD prevention) and fosters the development of values and decision-making skills.

The AYS program was pioneering in its respect of a young person's right to honest answers about sexuality and in its requirement that male/female teams of facilitators receive special training. It encourages participants to make informed, conscious, responsible decisions about sexuality. It is also designed to reach participants at an age when most of them have not yet become sexually active and to provide them with a framework to develop healthy attitudes about sexuality and to make good sexuality-related decisions in the future.

Perhaps the most controversial aspect of AYS has always been its affirmation of the positive aspects of sexuality. It addresses issues that have long been taboo—masturbation, homosexuality and bisexuality—and validates them along with heterosexuality, celebrating them as natural and healthy.

AYS includes still photographs arranged in the form of filmstrips of masturbation (both male and female) and love-making (heterosexual, lesbian, and gay male) to underscore the main message of the course: that there are a number of healthy, life-affirming ways to express sexuality alone or with a partner.

"The Public Eye
used the visuals
for their
shock value."

AYS also takes participants' questions seriously. The filmstrips address questions that many young people have. They wonder what's natural or what's normal. This curiosity too often leads them to explore pornography as a source of explicit visual information about sexuality. *AYS* offers an alternative where they see loving relationships, respect, mutual pleasure, and safety. The images are then discussed with trained facilitators in a classroom environment of trust and confidentiality.

The Public Eye failed to make clear that students are never required to participate in any part of the course that makes them uncomfortable. Orientation is required for parents of all students during which they are told about the explicit nature of the visuals and are given the option to review the curriculum as well as the filmstrips.

The Public Eye did not present an appropriate context for viewers to regard these images. Selected filmstrip frames were shown, and others were described. Viewers were left to imagine the content, thus creating the possibility that they would imagine events that were more titillating than the actual image itself. The only appropriate way to view the *AYS* visuals is within the course itself, within the parent orientations, and within *AYS* teacher trainings. Visuals are often misunderstood when they are viewed apart from the curriculum.

The Public Eye used the visuals for their shock value. They juxtaposed the public's image of churches as sexually conservative with images of implied sexual permissiveness to frame the story with a false tension and sense of impropriety.

Reporter Steve Hartman's words set up this framework early in the segment: "Of course, a lot of kids see pictures like this at one time or another, and parents typically don't approve. So, in that sense, this story is not uncommon and wouldn't normally even be newsworthy. But what is unusual is where Erin saw those pictures. It happened on a Sunday and it happened at church. And what's perhaps even more interesting is that the church thought it was just what Erin needed."

The story's shock element took advantage of the very factors that *AYS* works to overcome: the American culture's discomfort with sexuality, and the failure of many religious institutions to address sexuality in affirming, effective ways.

The words *sexuality* and *church* shouldn't sound strange when spoken together. Throughout history, religious organizations have consistently engaged in sexuality education, whether formally or informally. A number of religious denominations take seriously the need to educate young people about sexuality.

A religious community can be the ideal place to learn about sexuality. Religious communities are intergenerational and have shared values. Faith communities can support families as the primary sexuality educators of children. Sexuality education in a religious community ministers to

the spirit, mind, and body, nurturing wholeness in an area where so many of us have learned broken-ness.

When I was a seventh grader at the Unitarian Universalist Church of Boulder, CO, I participated in *AYS* in the same Sunday School where I learned about the words and deeds of great women and men, respect for all people (regardless of gender, ethnicity, or religious beliefs), respect for nature, the wonder and mystery of life, and ideas of the sacred. I learned about sexuality in an environment embedded with the same religious values that had been present throughout my entire religious education. Within that context, the images are not outrageous. They are not titillating. They are educational and they reinforce positive values.

The shock value of *The Public Eye* did a great disservice to sexuality education as a whole. Not only did the producers miss a great opportunity to highlight the efforts of religious denominations that are committed to sexuality education, they also missed an opportunity to cover the real story in sexuality education: that an alarmingly high percentage of young people receive inadequate, if any, formal sexuality education, and that schools are facing increasing pressure to adopt "abstinence-only" programs, often in the name of religion. By focusing on the most shocking aspect of an admittedly frank sexuality education program, *The Public Eye* played to the fears of parents and teachers who are confused about sexuality education, and gave opponents of sexuality education fuel for their arguments.

Today, when the trend in the government and schools is to reduce the amount of information young people receive in formal sexuality education, it is too bad that *The Public Eye* chose instead to attack a successful, comprehensive, church-based sexuality education program during its last years in use.

Fortunately, the negative coverage had some positive outcomes. Among Unitarian Universalists, this controversy provided an opportunity for clergy and laypersons alike to examine their support for *AYS* and sexuality education in general. Former *AYS* participants, parents of participants, and *AYS* teachers were given the opportunity to articulate their experience of and support for the program. Ministers preached to their congregations on *AYS* and on sexuality in general. Thousands of Unitarian Universalists talked to their friends and neighbors and wrote letters of support. That discussion and education has increased members' knowledge of their sexuality education program and has mobilized members' support for comprehensive sexuality education.

Unitarian Universalists eagerly await next year's release of their new sexuality education program, *Our Whole Lives*, and look forward to their next opportunity to advocate on behalf of comprehensive sexuality education.

DO TEENAGE GIRL MAGAZINES BELONG ON MIDDLE SCHOOL LIBRARY SHELVES?

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Most Americans—93 percent according to a recent Freedom Forum poll—say they believe in the First Amendment. A recent incident in Hauppauge, NY, illustrates something else the poll revealed: many Americans really don't understand it.

Against the advice of a committee of parents, teachers, and librarians, Hauppauge school superintendent Paul Lochner decided to remove *Seventeen*, *Teen*, and *YM* magazines from the middle school library. Like most school censorship debates, this one began with a parent's complaint. The cause was then advanced by a local priest who said the magazines contain "information that goes against what we believe is the truth about sex as Catholic Christians."

Since when have the rights of *public* school students to read perfectly legal materials become subject to one religious view about "the truth about sex"? That's what the separation of church and state (also part of the First Amendment) is supposed to prevent.

Some say these magazines are not "age appropriate." But millions of teens and pre-teens read and enjoy them, and any kid can buy them. Besides, what is "appropriate" for one 12-year-old may be over the head of another. "'Appropriateness,' while suitable to describe behavior, may not accurately describe literature," according to an article in *The English Journal*, a magazine for teachers, because the world is "not always appropriate."¹

Even if the complaint came from a parent who simply doesn't like the magazines, there would still be a problem. Why should one parent's preferences control what all young people can read in the library? If everyone was able to exclude their personal *un*-favorites, not much would be left. Is the message sent by the annual "swimsuit" issue of *Sports Illustrated* better or worse than what's in *Seventeen*? Does *People* extol a "decadent" lifestyle? Given the state of current events, perhaps libraries would have to get rid of newspapers, too.

MONITORING CENSORSHIP

Incidents like this are regularly monitored by the National Coalition Against Censorship (NCAC), an alliance of 48 national noncommercial organizations, including religious, educational, professional, artistic, labor, and civil liberties

groups that are united by the conviction that freedom of thought, inquiry, and expression must be defended.²

For 25 years, NCAC has been on the front lines against censorship by educating the public and policymakers about threats to freedom of expression, mobilizing them to take action to oppose censorship and assisting in those efforts, facilitating communication between local activists and national organizations, and devising new educational, advocacy, and media strategies to create a more hospitable environment for laws and decisions protective of free speech and artistic freedom.

THE RIGHT TO INFORMATION

Minors do not enjoy precisely the same rights as adults with regard to access to material with sexual content but that does not mean they have no rights. Material deemed "harmful to minors" (under 17 years old) is subject to restrictions, but there is much uncertainty about what is included in that term. The Supreme Court has said that material may be deemed "harmful to minors" if it appeals to the "prurient, shameful or morbid" interest of minors, lacks serious social value for minors, and is "patently offensive," based on adult views of what is fit for minors.³ Under this definition, fact-based information about human sexuality would hardly seem to qualify for restrictions.

In school, additional considerations apply because of the discretion granted school officials.⁴ As a result, for example, courts have allowed schools to curtail student speech containing profanity and sexual innuendo, and have permitted censorship of student publications that are part of the curriculum. This discretion is not unbounded, however. As with other public officials, the First Amendment limits censorship aimed at specific ideas or messages. These determinations are likely to depend on the nature of the material and the age of the student, but it would appear to be difficult to justify an effort to suppress fact-based information about sexuality at least where teenagers are concerned. In the library, the discretion of school officials is even more limited, and students enjoy more First Amendment protections.⁵

Last year, in *Reno v. ACLU*, also known as the CDA case, the Supreme Court struck down the Communications

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Decency Act which targeted “indecent” speech online. Granting cyberspace the highest level of First Amendment protection, the Court also took the occasion to comment on the positive social value of sexually explicit speech, declaring that terms like “indecent” and “patently offensive” are so broad and vague as to threaten “serious discussion about birth control practices,” homosexuality, prison rape, or safer sex in addition to “artistic images that include nude subjects” and “arguably the card catalogue of the Carnegie Library.”⁶ Perhaps this represents a turning point in the Court’s willingness to scrutinize more closely claims about “harm to minors” and to evaluate more seriously their independent need for access to materials with sexual content.

THE HAUPPAUGE CASE

Lost in the shuffle of the Hauppauge case regarding the removal of teen magazines is what the First Amendment stands for—that we are each free to decide for ourselves what to read and think. No matter how convinced some may be of the rightness of their own views, they simply are not entitled to impose them on others. We all have the right to try to persuade others of our views, but that doesn’t imply a right to blindfold or silence others in the process.

It’s tempting to try to protect children from the perceived evils in modern society. For example, the Governor of Virginia warned in 1671:

I thank God we have not free schools nor printing.... For learning has brought disobedience and heresy, and sects into the world; and printing has divulged them and libels against the government. God keep us from both.⁷

Parents who try to keep adolescents from knowledge about sexuality are fighting an uphill battle. Sexuality is part of life and kids are naturally curious about it. Across time and cultures, differing attitudes have prevailed about the age at which children should learn about sexuality and sexual relations. Some parents think it is inappropriate at the age of 12 or 14, while others discuss it freely with much younger children. Parents may strongly disapprove of teen sexual activity and still not censor their children’s reading, on the theory that it won’t keep them from finding out about sexuality and may make them more secretive.

Teenage magazines provide accurate information about sexuality that some kids want to know but won’t ask. Since children are bombarded with misleading messages about sexuality, it’s ironic that parents would object to factual articles about things like visiting a gynecologist, pregnancy prevention, and safer sex. Personally, the messages to girls about

makeup, dating, and clothes bother me more. Of course, that’s my opinion. No one else has to live with it, except my children—who can read what they want, but have to listen to my views.

Judy Blume, author of best-selling books for children and young adults that have been frequent targets of censorship efforts, observes that “children are inexperienced, but they are not innocent.... Part of our responsibility as parents is to give them the tools [that] will enable them to make wise decisions and become responsible, caring adults.” Middle school students are approaching an age when they will make many of their own decisions, and schools can and should help with this process. But removing magazines or books that someone doesn’t like sends the wrong message. Instead of teaching how to evaluate material critically—consistent with their own and their family’s values—it instructs students to accept unquestioningly the judgment of others; instead of teaching tolerance, it encourages disdain for the views of others; instead of promoting respect for law, it teaches indifference to the rights of others.

CONCLUSION

NCAC urges parents, teachers, and school officials to respect and foster minors’ intellectual curiosity, and to support their right to obtain all the information they need to prepare for life as adults. Knowledge of sexuality is essential, and NCAC therefore supports young people’s right to access to information about human sexuality that will help them make appropriate and responsible decisions and live fuller lives.

This article is based on an op-ed piece which Ms. Bertin wrote for Newsday, a newspaper based in Long Island, NY.

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CONDOM AVAILABILITY PROGRAMS IN THE PUBLIC SCHOOLS: APPROVED IN THE COURTS

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Seventy percent of our teenagers have sexual intercourse before they graduate from high school. I wish that weren't so, but it is so. I think condom availability and explicit education about sex and pregnancy have contributed to the decline in teenage birth rates.

David Mulligan,
Massachusetts Public Health Commissioner¹

From the late 1980s onward, a growing number of public schools have been making condoms available to students as part of multipronged efforts to reduce the risk of unintended pregnancy and sexually transmitted diseases (STDs), including AIDS. By 1995, condom availability programs were operating in at least 431 public schools,² generally in conjunction with comprehensive sexuality education. The programs have varied formats. Students in some schools may obtain condoms from a health counselor or a basket; students in other schools may buy condoms from vending machines. Some schools impose no barriers to students' access to condoms; others limit access by requiring parental consent or by offering an "opt-out" that allows parents to veto their children's participation.³

Schools that have adopted condom availability programs did so primarily in response to the alarming rates of HIV infection among teenagers. HIV infection has been increasing most rapidly among the young, with one of every four new infections occurring among people younger than 22.⁴ By June 1997, more than 85,000 AIDS cases had been reported in the 25–29-year age group; because the median incubation period is 10 years between infection and an AIDS diagnosis, most of these people probably became infected as teens.⁵ School communities are also concerned about other dangers that teenagers face. Three million teens per year contract some type of STD. One STD, chlamydia, is actually more prevalent among adolescents than among adults.⁶ In addition, every year, nearly 1 million teenage girls become preg-

nant, and approximately 80 percent of those pregnancies are unintended.⁷

To address this epidemic of disease and unplanned pregnancy, school officials, health professionals, parents, and teenagers themselves have joined forces in communities around the country to bring health and educational services to teenagers where they are—in school. Thirty-five states and the District of Columbia have enacted laws requiring schools to provide education about STDs overall or HIV/AIDS in particular.⁸ National organizations, including the American College of Obstetricians and Gynecologists, the American School Health Association, and the National Medical Association, have urged schools to make condoms available to adolescents within the context of comprehensive school health programs.⁹

Since the condom availability programs first began to operate, researchers have been assessing their impact. The results demonstrate the importance of these programs for teenagers' health. Several studies have now shown that the programs increase the rate of condom use during intercourse—and the likelihood that teens will be protected from infection and pregnancy—without increasing rates of sexual activity. For example, a study that compared New York City students who had access to condoms in their schools with Chicago students who did not revealed that 60.8 percent of the New York students used a condom at last intercourse, while 55.5 percent of the Chicago students did so. The same proportion of sampled students were sexually active (about 60 percent) in both the schools with the programs and those without them. This study also found that 69 percent of parents, 76 percent of teachers, and 89 percent of students supported the condom programs in New York City schools.¹⁰

Despite the favorable research results and strong public support for condom availability programs in the schools, some conservative parents and organizations have nevertheless challenged the programs in court. To date, there have been three reported cases. In two of the three cases, the courts have rejected the challenges and affirmed the legality

*“School districts
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and privacy”*

of the programs. These decisions, *Curtis v. School Committee of Falmouth* and *Parents United for Better Schools, Inc. v. School District of Philadelphia Board of Education* (hereafter *PUBS*) put condom availability programs on solid legal footing.

On July 17, 1995, the Supreme Judicial Court of Massachusetts—the state’s highest court—issued its decision in *Curtis* upholding the constitutionality of a program that made condoms available to junior and senior high school students in Falmouth.¹¹ In 1991, alarmed that Massachusetts ranked ninth among the states in its number of AIDS cases, the state Board of Education recommended that every school district “in consultation with superintendents, administrators, faculty, parents and students consider making condoms available in their secondary schools.”¹² That same year, after numerous public meetings, the Falmouth School Committee instituted a condom availability program for grades 7 through 12.

The Falmouth condom program operated as part of a broader sexuality education curriculum that stressed abstinence as the only certain way of avoiding STDs and pregnancy. Under the provisions of the program, junior high students who requested free condoms from the school nurse would receive counseling and informational materials about STDs along with the condoms. High school students could get condoms by the same method or purchase them for 75 cents from restroom vending machines. The schools did not require parental consent or provide another mechanism through which parents could bar their children’s access to condoms.¹³

Four months after the program began, a group of parents challenged it. On appeal to the Supreme Judicial Court, after their loss in a lower court, the parents argued that the program violated their federal constitutional rights. They claimed that the program interfered with their free exercise of religion and their liberty as parents to control the education and upbringing of their children. They asked the court to stop the school district from making condoms available unless it would permit parents to opt their children out of the program and notify parents when their child requested a condom.¹⁴

The state high court rejected the parents’ claims. It concluded that the program “is in all respects voluntary and in no way intrudes into the realm of constitutionally protected rights.”¹⁵ The court found no element of governmental coercion present to support the parents’ claims:

Although exposure to condom vending machines and to the program itself may offend the moral and religious sensibilities of the plaintiffs, mere exposure to programs offered at school does not amount to unconstitutional interference with parental liberties without the existence of some compulsory aspect to the program.¹⁶

The court’s opinion went on to explain that this mere exposure did not violate the parents’ right to free exercise of their

religious beliefs either. It concluded: “Parents have no right to tailor public school programs to meet their individual religious or moral preferences.”¹⁷ Although the plaintiffs tried to take their case to the United States Supreme Court, it declined to review the Massachusetts court’s decision.

In the similarly reasoned *PUBS* decision three years later, the United States Court of Appeals for the Third Circuit also rejected a challenge to a condom availability program operating in nine public high schools.¹⁸ Just as in Falmouth, the Philadelphia condom program was initiated only after multiple public hearings. The Board of Education then adopted Policy 123 on “Adolescent Sexuality.” In addition to authorizing the condom program, Policy 123 required the accompanying health curricula to “convey the message that abstinence is the most effective way of preventing pregnancy, sexually transmitted diseases and HIV infection.”¹⁹

Upon a student’s entry into any of the schools with a condom program, the school sends a letter to the parents or guardians instructing them to return an opt-out form if they do not want their child to have access to condoms. At each participating school, condoms are available in a health resource center staffed by a counselor or social worker. When a student visits a health resource center, the counselor checks to see if an opt-out form is on file. If no form is on file, the counselor discusses the benefits of abstinence with the student, and only after doing so, gives the student a condom and advice on how to use it, if the student still wants one.²⁰ During the 1995–96 school year, 5,400 students visited the health resource centers. The benefits to their health went beyond their receipt of condoms: counselors made 686 referrals to health care providers for the testing or treatment of STDs and HIV infection, and 984 referrals for pregnancy or birth control needs.²¹

As in *Curtis*, the *PUBS* court held that the condom program did not infringe on parental rights under the federal Constitution:

We recognize the strong parental interest in deciding what is proper for the preservation of their children’s health. But we do not believe the Board’s policy intrudes on this right. Participation in the program is voluntary. The program specifically reserves to parents the option of refusing their child’s participation. . . . We find the policy coerces neither parents nor students.²²

Because the condom availability program “did not offend parental rights regarding the custody and care of their children,”²³ the court rejected the parental rights claim.

Nor did the court find any merit in the only other issue presented on appeal. Parents United for Better Schools argued that the school district lacked the legal authority to implement the condom availability program. The court dis-

agreed: "An examination of considerable statutory and regulatory authority granted to the Board [of Education] by the [Pennsylvania legislature] supports the conclusion that the Board acted within its broad discretionary powers . . ."24 Because the Board's legal duties included instructing students in health in general and in HIV/AIDS prevention in particular,25 the court concluded that "the Board fulfills its educational mandate by attempting to promote health services designed to prevent disease."26

The favorable decision on appeal in *PUBS* tells only half the story, however. When the case was in the trial court, the plaintiffs made additional claims that they later abandoned on appeal. Among other things, the plaintiffs argued at the trial level that Pennsylvania case law and statutes required parental consent before minors could receive medical or health services, including contraceptives such as condoms. This is simply false. If such a requirement existed in Pennsylvania law, the requirement would apply in doctors' offices, clinics, pharmacies, and all settings, not just in schools. But such a statewide requirement would conflict with both the federal Constitution and federal statutes, which override state law.

A long line of federal cases supports minors' constitutional right to privacy in obtaining contraceptives. In a 1977 decision in *Carey v. Population Services International*, for example, the United States Supreme Court relied on minors' privacy rights to invalidate a New York law that prohibited the sale of condoms to minors under 16.27 The court reasoned that the state has even less interest in regulating teens' access to contraception than in regulating their access to abortion:

Since the State may not impose a blanket prohibition, or even a blanket requirement of parental consent, on the choice of a minor to terminate her pregnancy, the constitutionality of a blanket prohibition of the distribution of contraceptives to minors is . . . foreclosed.28

Following *Carey*, other federal courts have struck laws requiring parental consent or notification as a condition to teens' access to contraception.29 Relying on these legal precedents, the trial court in *PUBS* concluded that "the Constitution forecloses an interpretation of Pennsylvania law that would compel parental consent whenever a minor seeks contraceptives. . . . Such a rule would heavily burden minors' privacy rights by severely limiting their access to condoms."30

Furthermore, as the trial court in *PUBS* recognized, four of the nine health resource centers received funds from the federal family planning program established by Title X of the Public Health Service Act, which mandates confidentiality for all recipients of contraceptives, including minors. These centers would have violated federal law if they had required parental consent before dispensing condoms.31

These trial court holdings, although not addressed on appeal, offer careful analyses of the kinds of issues that may be presented in legal challenges to condom availability programs, and the court resolves those issues by upholding the program. Having lost again in the federal appellate court, Parents United for Better Schools must now decide whether to seek review in the United States Supreme Court. It is extremely unlikely, however, that the Supreme Court would accept the case.

The one other reported case, *Alfonso v. Fernandez*, is out of sync with the other two decisions.32 An intermediate state court in New York voted 3–2 that New York City's condom availability program was unconstitutional because it lacked a parental opt-out or consent provision. But the majority opinion is irrational and should not carry weight with other courts. Its holding that the program was coercive and therefore an infringement on parents' constitutional right to control the upbringing of their children33 contradicted its holding that the program was *not* coercive and thus did not violate the parents' right to the free exercise of their religion.34 The finding that the program was not coercive should have disposed of both claims because parental rights are afforded no greater protection than free exercise rights under the Constitution.35

In deciding *Curtis* and *PUBS*, the Supreme Judicial Court of Massachusetts and the Third Circuit either rejected or distinguished the *Alfonso* court's flawed reasoning. The opinions in *Curtis* and *PUBS* affirm the legality and acknowledge the benefits of condom availability programs in the public schools. In the long run, the *Alfonso* decision is likely to be viewed as an aberration in the case law about such programs.

Two prominent courts have now made clear that school districts need not subordinate students' health and privacy to a minority of critics of condom availability programs. The schools that adopt these programs and the health educators and professionals who participate in them can feel secure in continuing to promote the best interests of teenagers by offering them ready access to the means to protect themselves from pregnancy, HIV, and other STDs.

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CALL FOR SUBMISSIONS

The *SIECUS Report* welcomes articles, reviews, or critical analyses from interested individuals. Detailed instructions for authors appear on the inside back cover of this issue.

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THE GENDER GAP IN INSURANCE COVERAGE FOR WOMEN'S REPRODUCTIVE HEALTH

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Is covering contraception in an insurance policy like subsidizing a Florida vacation?¹ Or is covering contraception a medical necessity? State legislators across the country have been debating such questions.

Indeed, one of the most positive state legislative trends in 1998 regarding reproductive health is the growing effort to ensure equitable insurance coverage of prescription contraception. Typically, this legislation, often referred to as "contraceptive coverage" or "contraceptive equity," prohibits insurers that provide coverage for general prescription drugs, devices, and outpatient services from excluding coverage of FDA-approved prescription contraceptive drugs, devices, and services.

Twenty states and Congress considered such legislation in 1998—more than twice as many as considered such legislation in 1997. One state, Maryland, succeeded in enacting a statute that requires parity for prescription contraceptives and services. This article will explore the need for the legislation and discuss some of the hurdles that advocates and legislators have encountered in trying to pass such legislation.

DISPARITY IN COVERAGE

Two-thirds of U.S. women of childbearing age rely on private, employer-related plans for their health coverage.² Although most health insurance plans provide coverage for prescription drugs, many plans exclude coverage for prescription contraceptives—critical components of women's health care. For example, 49 percent of all typical large group insurance plans (insured indemnity plans written for 100 or more employees) do not routinely cover any contraceptive method at all.³ Only 15 percent of large group plans cover all five primary reversible contraceptive methods: oral contraception, IUD insertion, diaphragm fitting, Norplant insertion and Depo-Provera injection.⁴ Also, only 33 percent of large group plans routinely cover oral contraception, the most commonly used reversible contraceptive method, whereas 97 percent of these same plans typically include coverage for other prescription drugs.⁵

Managed care plans provide better coverage of contraception than traditional indemnity plans, but coverage is still

inadequate. For instance, 82 percent of Preferred Provider Organizations (PPOs), 67 percent of Point of Service (POS) networks and 61 percent of Health Maintenance Organizations (HMOs) do not routinely cover the five most commonly used methods.⁶

INEQUITIES AFFECT WOMEN

The lack of equity in coverage of prescription contraception falls heavily on women. Women of reproductive age spend 68 percent more than men on out-of-pocket health care costs, with reproductive health care services accounting for much of the difference.⁷ This inequity is exacerbated by the fact that the most effective forms of contraception are used by women and are generally also the most expensive—at least up front—often costing hundred of dollars at the outset of patient use.⁸ Women who must pay out of pocket may opt for less expensive and sometimes less effective methods, thus increasing the number of unintended pregnancies.

The media's recent focus on Viagra, a prescription drug to treat male impotency, has highlighted the disparity in coverage. The initial evidence indicates that most plans offered through insurance firms or HMOs have decided to cover Viagra or are leaning in that direction, with typical benefits being six to 12 pills a month. Each pill costs about \$10.⁹ Ironically, the discussion about coverage has largely focused how many pills per month to cover, not the threshold question of whether to cover it at all.

Whether or not Viagra ends up being covered, the publicity over its possible coverage has highlighted the gender gap in insurance and insurers' refusal to cover contraceptives. Many women perceive the willingness of insurers to cover Viagra but not contraceptives as a manifestation of traditional and long-standing bias against women's health needs.¹⁰

COVERAGE WILL IMPROVE HEALTH

The lack of adequate private insurance coverage for contraceptive services makes it more difficult for women to prevent unintended pregnancy and increases the number of abortions. Almost 50 percent of all pregnancies in the United States are unintended, and over half of unintended

"Contraception would save insurers money by preventing unintended pregnancies."

pregnancies end in abortion.¹¹ The United States differs from countries with lower rates of unplanned pregnancy in that contraceptive care in the United States is neither widely available nor easily accessible.¹²

Unintended pregnancy carries appreciable health risks for women and children. Research shows that women with unintended pregnancies are less likely to obtain timely or adequate prenatal care. Moreover, unintended pregnancy increases the likelihood of low birthweight babies and infant mortality.¹³ Estimates show that effective family planning could reduce the rates of low birth weight and infant mortality by 12 percent and 10 percent, respectively.¹⁴

PUBLIC SUPPORTS COVERAGE

Three recent polls indicate overwhelming support for requiring insurance companies to cover contraception. A national survey by the Kaiser Family Foundation found that 75 percent of those surveyed favored legislation requiring insurers to provide coverage for the full range of contraceptives. Support for insurance coverage of contraception remained high (73 percent) even when participants were told that the coverage could increase insurance premiums by \$1 to \$5. Interestingly, the survey also found that the public is more likely to support insurance coverage of contraceptives (75 percent) than the new male impotency drug Viagra (49 percent).¹⁵

Two state polls found similar support. In Connecticut, a poll conducted this Spring found that 76 percent of those polled support legislation requiring insurance companies to cover contraceptives.¹⁶ In New York, a poll by Family Planning Advocates found that almost 70 percent of registered New York voters believe that health insurance prescription drug plans should be required to include birth control.¹⁷

EXISTING STATE REQUIREMENTS

This year, Maryland became the first state to enact a law requiring equity in insurance coverage of contraception. At least six other states have laws or regulations concerning such coverage.

Maryland. In 1998, Maryland became the first and only state to enact a comprehensive law to address the imbalance in prescription drug coverage. This law requires health service plans and health maintenance organizations (HMOs) that cover prescription drugs to provide coverage for FDA-approved prescription contraceptive drugs and devices and medically necessary examinations associated with the use of such contraceptives, including insertions and removals. The law also provides an exception for religious employers that have a bona fide religious belief that conflicts with the requirement as long as the organization provides employees with a reasonable and timely notice of the exception.¹⁸

Texas. A Texas Department of Insurance regulation provides that no insurer may exclude oral contraceptives from

prescription drug benefits when all other prescription drugs are covered.¹⁹ This law has been on the books since 1978 but has only recently been enforced. Earlier this year, the Texas Department of Insurance and Prudential Insurance Company reached agreement on a consent order in which Prudential agreed to pay a \$150,000 administrative penalty and to reimburse Texas women who were denied payment for oral contraceptives under group health insurance plans.²⁰

Hawaii and Virginia. These states have laws requiring that health insurers offer coverage for contraception. They do not, however, mandate coverage. In Hawaii, for example, employer group health policies that provide coverage for pregnancy-related services must provide, as an employer option, coverage for prescription contraceptive drugs, devices and services.²¹ In Virginia, individual or group health insurers and HMOs that provide coverage for prescription drugs must offer coverage for prescription contraceptive drugs and devices.²²

Montana and West Virginia. These two states have laws requiring health maintenance organizations (HMOs) to provide, as a part of preventative services, voluntary family planning.²³ However, it is unclear whether either state enforces the requirement.

New Mexico. In 1997, New Mexico adopted regulations requiring managed care plans to offer a preventative package of benefits that includes voluntary family planning. The preventative package is available to an enrollee only when the enrollee's primary care physician and the managed care plan determine that such services are medically necessary.²⁴

LEGISLATIVE ROADBLOCKS

Despite the clear need for legislation that will remedy the long-standing gender gap in prescription drug coverage, such legislation has faced significant roadblocks in state legislatures.

Cost. Opponents of legislation that would require equitable coverage of contraception argue that it would be prohibitively expensive to include such coverage and, as a result, would increase insurance premiums. The evidence indicates, however, that improved access to and use of contraception would save insurers money by preventing unintended pregnancies.²⁵ Insurers generally pay the medical costs of unintended pregnancy including ectopic pregnancy (\$4,994), induced abortion (\$416), spontaneous abortion (\$1,038), and term pregnancy (\$8,619).²⁶ Therefore, access to contraception actually prevents other, more expensive medical conditions associated with unintended pregnancy that are usually covered by health plans and, thereby, saves health plans money.

Moreover, a recent cost analysis conducted for the Alan Guttmacher Institute (AGI) indicates that the cost of covering contraception is not significant. The average total cost (including administrative costs) of adding coverage to a full range of reversible prescription contraceptives to health plans that do not currently cover them is \$21.40 per employee per year—

\$17.12 of employers' cost and \$4.28 of employees' cost. This means that the added cost for employers to provide coverage of the full range of reversible contraceptives is approximately \$1.43 per employee per month. The cost is significantly lower for health plans that currently cover at least some contraceptives.²⁷ A recent survey by the Kaiser Family Foundation (KFF) found that Americans support requiring contraceptive coverage, even if it increases insurance premiums.²⁸

Religious Employer Exemptions. Traditionally, a conscience clause is a provision that permits an individual or medical facilities to decline to provide procedures such as abortion and sterilization to which they have religious or moral objections. In the context of legislation that would require equitable coverage of contraception, religious employers have asserted their right to be excluded from such requirements.

Indeed, earlier this year, Governor Pete Wilson of California vetoed a bill that would have required contraceptive coverage because it did not contain an exemption for religious employers. A new version of the bill was introduced with a provision allowing non-profit religious organizations and controlled religious subsidiaries of religious organizations to exclude contraceptive coverage if such coverage is inconsistent with their religious beliefs. The provision, however, protects women in plans that do not cover contraceptives by providing state vouchers for prescription contraceptive benefits through California's family planning program.²⁹ The approach taken by the California legislature balances the interests of bona fide religious employers with the rights of women to access needed contraceptive services. More importantly, it limits the class of eligible employers, thereby preventing the exemption from being used by secular employers to avoid covering contraception.

In addition to the protections contained in the California conscience clause, such exemptions should protect women's access to information about contraceptive options and referrals for such services even if the employer chooses not to pay for the drug or service. Moreover, these exemptions should provide access to contraception when a woman's life or health is at risk. Debates over the need for and scope of conscience clauses have occurred in other states including Alaska, Connecticut, Florida, and Maryland.

Abortion. In several states considering contraceptive equity legislation, opponents of the legislation have stalled or prevented enactment by bringing up abortion. Ironically, many legislators who oppose a woman's right to decide whether or not to terminate a pregnancy also oppose contraceptive equity bills by attaching abortion restrictions. For instance, in the waning hours of the Connecticut legislative session, anti-choice legislators introduced a series of non-germane abortion amendments. House leaders decided not

to bring the bill up for a vote even though the bill had passed overwhelmingly in the Senate (33-3) and even though a poll showed overwhelming support for the legislation (76 percent overall; 81 percent among women).³⁰ Likewise, in Florida, Indiana, and Maryland, legislators introduced or threatened to introduce abortion amendments to contraceptive coverage bills.

It is ironic that those who oppose all abortion would subvert legislation that would reduce the need for abortion. Indeed, such opposition unmasks a more general hostility to giving women real choices over their reproductive lives.

LEGAL ALTERNATIVES

In addition to pursuing legislative remedies, advocates are exploring legal strategies. The most promising theory is that excluding contraception from policies that cover prescription drugs constitutes discrimination against women.³¹

Title VII, as amended by the Pregnancy Discrimination Act (PDA) of 1978, prohibits covered employers from discriminating "on the basis of pregnancy, childbirth, or related medical conditions," and requires that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefits programs, as other persons not so affected but similar in their ability or inability to work."³²

The PDA has been interpreted to prohibit discrimination of pregnant women as well as discrimination against women on the basis of their potential for pregnancy. In *International Union, UAW v. Johnson Controls, Inc.*, the Court held that the employer's policy of excluding all women with childbearing capacity—whether pregnant or not, or even intending to become pregnant—from certain jobs because of concern for the health of the employee's potential fetus violated Title VII.³³ The Court recognized in this case that the PDA protects women from discrimination on the basis of their capacity to become pregnant.³⁴ Excluding contraception from employer-based health insurance programs could constitute unlawful discrimination because such policies discriminate against women on the basis of their *potential* to become pregnant.

If this legal theory is pursued it would likely result in a victory for women. However, litigation is costly and time-consuming and may not result in a definitive decision for many years. For this reason, advocates and lawmakers must pursue both legislative and legal strategies.

CONCLUSION

Legislation to require equitable treatment of prescription contraception is needed to eliminate the gender gap in insurance. Refusal of insurers to provide coverage of prescription contraception falls heavily on women, who spend significantly more than men on out-of-pocket health care expenses and

contributes to the high rates of unintended pregnancy. This year many states have worked to remedy contraceptive inequities. Although only one state has succeeded in enacting a comprehensive contraceptive equity bill, advocates and legislators have made great strides in educating legislators, insurers, and the general public about the need for contraceptive equity. The trend is likely to continue next year, with more states reaching the goal of providing equity in insurance.

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THE TRUTH ABOUT LATEX CONDOMS

Sexually involved individuals owe it to themselves to get accurate, unbiased information about condoms and the part they play in preventing unwanted pregnancies and sexually transmitted diseases.

SIECUS has updated this Fact Sheet—*The Truth About Latex Condoms*—for this purpose. It includes information on both their reliability and their effective use.

It also includes resources used in compiling the Fact Sheet so that people will know where to look for more information.

EFFECTIVENESS

- Condoms are only effective when used consistently and correctly.¹
- Using a condom during intercourse is more than 10,000 times safer than not using a condom.²
- Condoms are 98 percent effective in preventing pregnancy when used correctly³—and up to 99.9 percent effective in reducing the risk of STD transmission when combined with spermicide.⁴
- The first-year pregnancy failure rate among typical condom users averages about 12 percent and includes pregnancies resulting from errors in condom use.⁵
- Studies of hundreds of couples show that consistent condom use is possible when sexual partners have the skills and motivation.⁶

REGULATIONS AND TESTS

- In the United States, manufacturers follow the voluntary performance standards for condoms established by the American Society for Testing and Materials and recommended by the Food and Drug Administration (FDA).⁷
- Before packaging, every condom is tested electronically for defects. In addition, the FDA tests samples from every batch using water-leak and air-burst tests.⁸
- The average batch of condoms tests better than 99.7 percent defect free.⁹
- During the water-leak test, if there is a leak in more than four per 1,000 condoms, the entire lot is discarded.¹⁰

- Laboratory studies show that sperm and disease-causing organisms (including HIV) cannot pass through intact latex condoms.¹¹

HIV TRANSMISSION

- Condom use substantially reduces the risk of HIV transmission.¹²
- A study published in *The New England Journal of Medicine* observed heterosexual couples where one partner was HIV-positive and the other was HIV-negative (sero-discordant couples), for an average of 20 months. Findings included¹³:
 - No seroconversion occurred among the 124 couples who used condoms consistently and correctly for vaginal or anal intercourse.¹⁴
 - 10 percent of the HIV-negative partners (12 of 121) couples became infected when condoms were used inconsistently for vaginal or anal intercourse.¹⁵
 - Of the 121 couples who used condoms inconsistently, 61 used condoms for at least half of their sexual contacts and 60 rarely or never used condoms. The rate of seroconversion was 10.3 percent for the couples using condoms inconsistently and 15 percent for couples not using condoms.¹⁶
- A study published in *The Journal of Acquired Immune Deficiency Syndromes* observed sero-discordant heterosexual couples and showed that only three out of 171 who consistently and correctly used condoms became HIV infected; eight out of 55 who used condoms inconsistently became HIV infected; and eight out of 79 who never used condoms became HIV infected.¹⁷

CONSISTENT AND CORRECT USE*

Individuals who use condoms to prevent unwanted pregnancies and STDs must understand the meaning of *consistent* and *correct* condom use.

Consistent Use

- Use a condom with every act of sexual intercourse, from start to finish, including penile vaginal intercourse, oral, and anal intercourse.

Correct Use

- Store condoms in a cool place out of direct sunlight (not in wallets or glove compartments). Latex will become brittle from changes in temperature, rough handling or age. Don't use damaged, discolored, brittle, or sticky condoms.
- Check the expiration date.
- Carefully open the condom package—teeth or fingernails can tear the condom.
- Use a new condom every time a person has sexual intercourse.
- Put on the condom after the penis is erect and before it touches any part of a partner's body. If a penis is uncircumcised, the person must pull back the foreskin before putting on the condom.
- Put on the condom by pinching the reservoir tip and unrolling it all the way down the shaft of the penis from head to base. If the condom does not have a reservoir tip, pinch it to leave a half-inch space at the head of the penis for semen to collect after ejaculation.
- Withdraw the penis immediately if the condom breaks during sexual intercourse and put on a new condom before resuming intercourse. When a condom breaks, use spermicidal foam or jelly and speak to a health-care provider about emergency contraception.
- Use only water-based lubrication. Do not use oil-based lubricants such as cooking/vegetable oil, baby oil, hand lotion, or petroleum jelly—these will cause the condom to deteriorate and break.
- Withdraw the penis immediately after ejaculation, while the penis is still erect, grasp the rim of the condom between the fingers and slowly withdraw the penis (with the condom still on) so that no semen is spilled.

*Items under the heading "Consistent and Correct Use" are from the U.S. Centers for Disease Control and Prevention (CDC), "Questions and Answers About Male Latex Condoms to Prevent Sexual Transmission of HIV," *CDC Update* (U.S. Centers for Disease Control: Atlanta, GA: April 1997).

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