

# THE “COSMO GIRL” INVADES MIDDLE SCHOOLS: GROOMING GIRLS FOR DISEASE AND DEPRESSION

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## I. INTRODUCTION

Popular culture has largely displaced parents’ guidance of youth’s sexual behavior.<sup>2</sup> While parents typically had educated youth with factual information about the responsibilities and consequences of unmarried sexual activity, commercialized culture portrays sex as harmless fun, essential to being popular with your peers.<sup>3</sup>

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<sup>2</sup> See The 2012 Princeton Lectures on Youth, Church and Culture, PRINCETON THEOLOGICAL SEMINARY (2012), *available at* <http://www.ptsem.edu/lectures/?action=tei&id=youth-2012-04>.

<sup>3</sup> Dr. Leonard Sax, *GIRLS ON THE EDGE: THE FOUR FACTORS DRIVING THE NEW CRISIS FOR GIRLS—SEXUAL IDENTITY, THE CYBERBUBBLE, OBSESSIONS, ENVIRONMENTAL TOXINS* (2011); Dr. Leonard Sax, *BOYS ADRIFT: THE FIVE FACTORS DRIVING THE GROWING EPIDEMIC OF UNMOTIVATED BOYS AND UNDERACHIEVING YOUNG MEN* (2016).

Media presentations that glorify casual sex for preteen, teen, and young adult women proclaim to be empowering them, but in fact are prematurely sexualizing them and instilling a perspective of women as sex objects.<sup>4</sup> Foremost among the outlets pushing this cavalier attitude about sex onto young girls is *Cosmopolitan* magazine.<sup>5</sup>

Originally published as a literary magazine more than 100 years ago, under the management of Helen Gurley Brown (1965-1997), *Cosmopolitan*<sup>6</sup> (“*Cosmo*”) became for women what *Playboy*<sup>7</sup> was for men. Brown was hired after the release of her book, *Sex and the Single Girl*, in 1963, which introduced young women to the idea of sex as recreation—untethered from love or procreation.<sup>8</sup> Just as Hugh Hefner unleashed the sexual revolution into the hearts and minds of Joe College

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<sup>4</sup> See Sax, *GIRLS ON THE EDGE*; Dr. Elayne Bennett, *DAUGHTERS IN DANGER: HELPING OUR GIRLS THRIVE IN TODAY’S CULTURE* (2014).

<sup>5</sup> See Sax, *GIRLS ON THE EDGE* at 25.

<sup>6</sup> *COSMOPOLITAN* magazine, available at <http://www.hearst.com/magazines/cosmopolitan>.

<sup>7</sup> *PLAYBOY*, published by Playboy Enterprises, available at [www.playboy.com](http://www.playboy.com).

<sup>8</sup> Sue Ellen Browder, *SUBVERTED HOW I HELPED THE SEXUAL REVOLUTION HIJACK THE WOMEN’S MOVEMENT*, 11 (2015).

with *Playboy* in December 1953,<sup>9</sup> Brown unleashed the sexual revolution into the minds and hearts of American women with her remake of *Cosmopolitan* in 1965.<sup>10</sup>

Those “sexual revolution[s]” were triggered by the fraudulent sexual “science” of Alfred Kinsey,<sup>11</sup> which both Hefner<sup>12</sup> and Brown<sup>13</sup> fully embraced. Kinsey’s books, *Sexual Behavior in the Human Male* and *Sexual Behavior in the Human Female*, burst onto the scene in 1948 and 1953, respectively, amid a costly media frenzy that proclaimed a new era of sexual freedom without consequences.<sup>14</sup> Hefner, Brown, and hundreds of newspapers and magazines touted Kinsey as an objective, married “scientist.”<sup>15</sup> However, forty years later, Kinsey’s biographers revealed that, in fact, he was a bi/homosexual, sadomasochist, pedophilic,

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<sup>9</sup> See Judith A. Reisman, “SOFT PORN” PLAYS HARDBALL, 24-46 (1991).

<sup>10</sup> *Id.* at 10-11.

<sup>11</sup> Alfred Kinsey, *et. al.*, SEXUAL BEHAVIOR IN THE HUMAN MALE (1948); Alfred Kinsey, *et. al.*, SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953).

<sup>12</sup> Reisman, “SOFT PORN” PLAYS HARDBALL, at 25.

<sup>13</sup> Helen Gurley Brown, SEX AND THE SINGLE GIRL, 68 (2003).

<sup>14</sup> See, Reisman, “SOFT PORN” PLAYS HARDBALL, at 36-37.

<sup>15</sup> Judith Reisman, SEXUAL SABOTAGE, 68 (2010).

pornography and masturbation addict.<sup>16</sup> What neither Hefner nor Brown acknowledged, although it was hidden in plain sight in Kinsey's books, was that Kinsey's "research" was based upon the sexual abuse of hundreds of infants and children.<sup>17</sup>

This abuse was documented in five detailed tables, listing subjects as young as two months old with records of the frequency of "orgasms" over various periods of time, including several 24-hour on-going tests.<sup>18</sup> Based upon this "data," Kinsey and his colleagues penned the mantra that "children are sexual from birth."<sup>19</sup> Coupled with Kinsey's claims that his interviews with 4,441 women found none harmed by sexual assault,<sup>20</sup> the "children are sexual from birth" meme became the rallying cry for fundamental transformation of society, echoed

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<sup>16</sup> James H. Jones, ALFRED KINSEY: A PUBLIC PRIVATE LIFE 603-610 (1997); Jonathan Gathorne-Hardy, SEX, THE MEASURE OF ALL THINGS A LIFE OF ALFRED C. KINSEY, 87-88 (1998).

<sup>17</sup> Kinsey, SEXUAL BEHAVIOR IN THE HUMAN MALE, at 171-180, tables 30-35.

<sup>18</sup> *Id.*

<sup>19</sup> Judith Reisman, STOLEN HONOR, STOLEN INNOCENCE 136-39 (2013) (quoting Kinsey's co-author Paul Gebhard).

<sup>20</sup> *Id.* at 230.

by media, laws, and public policy.<sup>21</sup> Hefner and Brown led the media, becoming, in Hefner's words, "Kinsey's pamphleteer[s]."<sup>22</sup>

This Article focuses on Brown's public campaign, her pamphleteering activities, beginning with the birth of the "fun, fearless, female" known as the "*Cosmo* girl," and documents its dangerous, even deadly consequences for girls and young women. This Article then outlines how *Cosmo* has effectively used targeted marketing to lure tweens and teens (ages ten to seventeen) to the magazine, and its toxic consequences. Finally, the Article offers strategies for protecting tweens and teens from *Cosmo*'s toxic effects.

## II. THE BIRTH OF THE COSMO GIRL

Notably, in the pre-Helen Gurley Brown days, *Cosmopolitan* was skeptical of Kinsey's claims.<sup>23</sup>

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<sup>21</sup> See generally *id.* at 187-261.

<sup>22</sup> Reisman, *SEXUAL SABOTAGE*, at 162; Browder, *SUBVERTED*, at 13.

<sup>23</sup> Cristen Conger, *Cosmo to Kinsey: You're a Hack*, STUFF MOM NEVER TOLD YOU, January 19, 2011, available at <http://www.stuffmomnevertoldyou.com/blog/cosmo-to-kinsey-youre-a-hack>.

*Cosmopolitan* featured Kinsey's *Female* report on its cover in September 1953, but the review inside revealed that even *Cosmo* did not buy into the proclamation of harmless sexual freedom for women.<sup>24</sup> Social scientist Amram Scheinfeld attended a "sneak peek" of the *Female* volume for *Cosmo*, and was skeptical of its scientific bona fides:

It boldly attacks many of our existing sex standards with blistering arguments plainly slanted against chastity and in favor of what used to be called free love. But for the most part, it is a technical treatise offering little that is startlingly new and much that is doubtful. It definitely does not measure up to the expectations of a shattering blast that was to upset all our sex thinking and change the whole pattern of our lives.<sup>25</sup>

Scheinfeld was also critical of the underlying assumptions apparent in the report:

Kinsey's most biting comments are reserved for the 'frigid spinsters'

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, citing the *Cosmopolitan* story.

who, not understanding what sex is, attempt to restrict the sex behavior of others. Referring to the more than a quarter of the unmarried older Kinsey females including many teachers, directors of youth organizations, club leaders, physicians, and political figures who never had climax, the report warns of the damage that may be done by such ‘sexually unresponsive, frustrated females’ in the ‘guidance of our youth’ and the dictation of public policies and legislation governing sex. An implication is that the better mentors of sex might be ‘the other half to two-thirds’ of the unmarried Kinsey females ‘who did understand the significance of sex and were not living the blank or sexually frustrated lives which our culture, paradoxically, had expected them to live.’<sup>26</sup>

However, less than a decade later, *Cosmopolitan* hired Brown and joined the Kinsey club.<sup>27</sup> Brown promptly refashioned what had been a literary magazine into a no-holds-barred Kinseyan sexual adventure magazine for women, recognized as the

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<sup>26</sup> *Id.*

<sup>27</sup> Browder, *SUBVERTED*, at 11.

hottest women's magazine in the country in the late 1960s and early 1970s.<sup>28</sup>

Key to its success was Brown's "Cosmo Girl," who she touted as a role model for young single women, a "persona that a single girl [would] turn herself into [to become] the object of men's sexual fantasies."<sup>29</sup> Like *Playboy*, *Cosmopolitan's* writers were urged to fake "experts" to invent hot anecdotes about ordinary single women, which were then quoted as true-life stories to readers.<sup>30</sup> Young women believed and mimicked those tall tales, eager to become sexual adventurers "having sex like barnyard animals," all in the name of what Brown called true womanhood.<sup>31</sup> By 2009, *Cosmopolitan* had a readership of more than 100 million in more than 100 countries in 36 languages.<sup>32</sup>

*Cosmopolitan* not only exposes young girls to explicit sexual stimuli, discussed *infra*, but presents

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<sup>28</sup> *Id.*, at 10.

<sup>29</sup> *Id.* at 37.

<sup>30</sup> *Id.* at 37-40.

<sup>31</sup> *Id.* at 44-45.

<sup>32</sup> *Id.* at 44.



what they present as factual information that is itself dangerously false, pushing sexual experimentation to the detriment of health and safety. For example, in the January 1988 issue, *Cosmopolitan* claimed sexually adventurous women had little reason to worry about contracting HIV.<sup>33</sup> The author asserted that unprotected sex with an HIV-positive man did not put women at risk of infection.<sup>34</sup> It also stated that “most heterosexuals are not at risk,” and that it is impossible to transmit HIV in the missionary position.<sup>35</sup> The information was blatantly, dangerously false, lulling women into a false sense of security that they were not at risk of HIV if they had intercourse with HIV-positive men when medical research had not determined that to be the case.

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<sup>33</sup> Jeff Cohen & Norman Solomon, *Cosmo's Deadly Advice to Women About AIDS*, SEATTLE TIMES, July 31, 1993, <http://community.seattletimes.nwsources.com/archive/?date=19930731&slug=1713646>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

### III. THE *COSMO* GIRL LIFESTYLE IS MARKETED TO TWEENS AND TEENS

In keeping with Kinsey's mantra that children are "sexual from birth,"<sup>36</sup> *Cosmopolitan* began targeting and marketing to young girls, offering them the chance to be "fun, fearless, females."<sup>37</sup> From 1999 to 2008, tweens and teens were awarded their own version of *Cosmopolitan* called *CosmoGirl!*<sup>38</sup> While not as obviously salacious as *Cosmopolitan*, it nevertheless groomed minors to be "fun and fearless" females ready for sexual adventures, as documented by child development experts writing about the dangers of early sexualization.<sup>39</sup> For example, at an eight year-old's birthday party, a mother overheard the girls talking

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<sup>36</sup> Judith Reisman, *STOLEN HONOR, STOLEN INNOCENCE* 136-39 (quoting Kinsey co-author Paul Gebhard).

<sup>37</sup> "Fun fearless females" is *COSMOPOLITAN*'s slogan and the name that the magazine has given to annual awards it gives to women it believes exemplifies the slogan. *See*, <http://www.hearst.com/magazines/cosmopolitan>.

<sup>38</sup> Nat Ives, *Hearst Closes CosmoGirl*, *ADVERTISING AGE*, October 10, 2008 <http://adage.com/article/media/hearst-closes-cosmogirl/131628/>.

<sup>39</sup> Diane E. Levin, Ph.D & Jean Kilbourne, Ed.D., *SO SEXY SO SOON, THE NEW SEXUALIZED CHILDHOOD AND WHAT PARENTS CAN DO TO PROTECT THEIR KIDS*, 25 (2008).

about how boys liked a girl wearing a midriff-bearing top that most girls are not allowed to wear.

[One girl] boasted ‘that she had seen a copy of the magazine *CosmoGIRL!* at her teenage cousin’s house. It showed really skinny models wearing really short, bellybutton shirts that were ‘soooo cool.’ There was even an article on dieting. This led Tessa [the eight year-old birthday girl] to pipe up, proudly announcing that she was on a diet and that she was going to be really skinny. The other girls said they were going to go on diets too.’<sup>40</sup>

*CosmoGirl!* ceased publication in 2008—its content was absorbed by *Seventeen*<sup>41</sup>—but the “*Cosmo Girl*” seduction of tweens and teens continues as sex-centric *Cosmopolitan* targets youngsters. When announcing that it was ceasing publication of *CosmoGirl!*, the publisher stated explicitly that she expected teens would gravitate to

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<sup>40</sup> *Id.*

<sup>41</sup> Ives, *Hearst Closes CosmoGirl.*

*Cosmopolitan*.<sup>42</sup> “Teenagers, she said, are either going to the Web, or ‘they’re turning toward books that are not so teen-oriented, so they’ll turn to a *Cosmopolitan* or a *Glamour* or a *Vogue*.”<sup>43</sup>

What do tweens and teens see when they view *Cosmopolitan*? Covers featuring favorite Disney, film, and television stars juxtaposed with “*21 Mind Blowing Sex Moves*,” “*Best Sex Ever*,” “*23 Sweet & Sexy Moves Orgasm Guaranteed*,” and “*63 Secrets to Better Orgasm*.”

This *Cosmopolitan* headline slapped me in the face as I stood innocently in line at Food Lion....Are things now really so ridiculous?...But this headline is so wrong on so many levels....

First, how freaking inappropriate is this? (Yes, I catch the irony that I am also talking about it.) Isn't this a personal topic? Pity the poor parent who must answer their child who wants to know why there are '63 secrets to better organisms.' Does

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<sup>42</sup> Stephanie Clifford, *Hearst to Close CosmoGirl*, NEW YORK TIMES, October 10, 2008, B2, available at <http://www.nytimes.com/2008/10/11/business/media/11cosmo.html>.

<sup>43</sup> *Id.*

one correct the child? ‘No, sweetie, that’s ‘orgasm,’ not ‘organism.’” Certainly children deserve the truth on healthy bodily functions. But really, is the checkout line at the grocery store the place to discuss it?

The media have already dumped a mountain of garbage on young girls. They must be pretty, stylish and SKINNY. Do they really need to grow up wondering if their orgasm is as good as it could be? Do any of us? Who grades them? Do we teach for the test?

If you feel the need to explore this issue, as an adult, seek a professional. Just don’t give females another reason to question themselves or be competitive. ‘My orgasm is better than yours!’ ‘Is not!’ ‘Is too! Na na na na na!’

And just what does this lovely headline say about our society? While women all over the world work tirelessly just to survive, we are so privileged we get to worry about the quality of our orgasms?! Forget starvation, death and destruction, let’s go for multiple orgasms, baby!...

Is there a trophy for the woman who sees the most fireworks and hears trumpets blaring and would swear the earth moved? Why does anyone need a better orgasm? What's wrong with the ones you have now? Who the heck came up with 63 ways to improve it? Doesn't that seem like an awfully large number? (No, I will not buy the magazine to find out.)

Don't misunderstand me. Everyone is entitled to enjoy sex. (That is if you are married and your sexual partner is your spouse.) I'm sure Adam and Eve enjoyed some fun romping around the Garden of Eden. And we may presume their sons and their wives...oops. Never mind. Anyway, sex is normal and there is nothing sinful about orgasms. It's the 63 ways to a better one that has me tickled and miffed.<sup>44</sup>

In other words, rather than encouraging young girls to seek empowerment through education, vocation, and social justice, *Cosmopolitan* is encouraging them to seek empowerment through sexual prowess

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<sup>44</sup> Carol Bradfield, *Orgasms in the Checkout Line*, Davidsonnews.net, March 16, 2015, available at <http://corneliusnews.net/blog/2015/03/16/orgasms-in-the-checkout-line>.

and experimentation. This is hardly the kind of empowerment that the founders of the feminism movement were seeking.<sup>45</sup>

As parents and child development experts have documented, tweens and teens, who see these teasers in the checkout line, not only pick up the magazine to “read all about it,” but they turn to *Cosmopolitan*, not their parents, as a trusted resource to answer questions about sexuality.<sup>46</sup>

A 13-year-old girl, “Lizzie, was lying on her bed reading *Cosmopolitan*. She was learning about how to give a great blow job. Her best friend, Rachel, had gone to a party on Saturday night and told Lizzie all about it. The most popular girl in their class had gone down on three of the football players. Lizzie thought it sounded gross, but Rachel said it was cool. Lizzie didn’t think she’d know how to do it and she didn’t want to ask Rachel, but she’d found the answer in *Cosmo*. It did sound gross, though.”<sup>47</sup>

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<sup>45</sup> Browder, *SUBVERTED*, at 59-80.

<sup>46</sup> Levin, *SO SEXY SO SOON*, at 139.

<sup>47</sup> *Id.*

What other advice do tweens and teens receive from *Cosmopolitan*? The May 2013 print edition, featuring CW “Hart of Dixie” star, Rachel Bilson, on the cover with teasers such as “23 Sweet and Sexy Moves Orgasm Guaranteed” and ”Stuff You Think He Wants in Bed but Really Doesn’t,” offered children the following information:

- *Break out of the Orgasm Rut*
- *What Finally Did It for Me: Six Women Share the Moves That ‘Got Their Toes to Curl’*
- *When You Want More Sex Than He Does*
- A feature story on a male-to-female transgender rock star and his life with his biologically female wife and their biological daughter.

In the August 2013 edition, with Disney star and X Factor judge Demi Lovato on the cover with teasers including, “Best Sex Ever: 42 New Tips,” tweens and teens learned:

- “I want to try anal sex, but I’m scared. Be honest...will it hurt?” featuring two wooden males and female dolls explicitly posed with one partner bent over at the waist. *Cosmopolitan* recommended using



good silicone lube and working up to it; but, informed readers that “You may just have a back door that you prefer not to use for guests.”

- Tips on how to talk dirty; what to do long distance, such as watching each other “do their thing” on Skype; bath sex; and vibrating undies.

In the September 2013 edition, with CW “Vampire Diaries” star, Nina Dobrew, on the cover and the teaser “21 Mind Blowing Sex Moves, Crazy Sex Obsessions,” tweens and teens also learned:

- “Your Passport to Hotter Sex,” starring a nude male covered by an ill-placed globe; and another picture with a strategically placed beer stein amid a list of “naughty” foreign phrases
- “Sex Abroad Confessions” and “Kinkiest Trends around the World”

They also learned the answers to the following questions from their fellow tweens and teens:

- What positions will make my boyfriend’s smallish penis feel larger?
- Why does my boyfriend sometimes lose his erection during sex?

- Sex with my boyfriend has become meh. How can I talk to him about improving it?

Cosmo's answer? Cosmo's Kinky Sex.

In the April 2015 edition, with former Disney star Hillary Duff ("Lizzy McGuire") on the cover with the teasers, "63 Secrets to Better Orgasms, Go over the Edge," & "I Like High-End Sex Parties, and I'm Not a Weirdo," tween and teens were taught:

- All about sex positions that can be used despite lack of energy, including explicit illustrations. At the bottom of the page is a story about the rise in anal and colon cancers among young people, attributing it to obesity, poor diet, and inactivity. The lifestyle magazine deliberately hid the fact that anal sex, HPV, or other sexually transmitted diseases (STDs) may result from sexual experimentation.
- Excerpts, "Cosmo Kama Sutra the Sex Deck: 99 Sex Positions That'll Blow Your Mind" and "69 Shades of Cosmo Kinky Sex Games Edition," which includes a bondage-discipline-sadomasochism (BDSM) cord, teased with "Why Settle for 50 When

## You Can Get 69 Shades of COSMO!”

In addition, tweens and teens viewing the online version on April 7, 2015 saw the article, “10 Disney Songs to Have Sex to, Reviewed,” which recounted one incident involving “Colors of the Wind” (from *Pocahontas*). ““This is so messed up,” he mumbled. ‘Can we at least have butt sex?’ ‘No.’ ‘Can you go down on me?’ ‘OK, yeah.’ Conclusion: Unless you have a Disney fetish, not recommended, would not do again. If anyone has suggestions for nice things to do for boyfriends, hit me up.”<sup>48</sup>

Tweens and teens, who follow *Cosmopolitan* on Facebook and Twitter, receive regular, similar seduction lines throughout the day, in school, on the bus, and even on their portable devices. A recent example is a tweet that directs viewers to a story about a “great new feature” from Porn Hub that “finally” permits them to use animated “emojis” to

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<sup>48</sup> Jenny Brett, *10 Disney Songs to Have Sex to, Reviewed*, COSMOPOLITAN.COM April 7, 2015, available at <http://www.cosmopolitan.com/sex-love/news/a38776/disney-songs-to-have-sex-to-reviewed/>.

order pornography.<sup>49</sup> Considering the appeal of these animated images, as with other cartoon figures, to children, the new feature is likely to attract a lot of attention in the middle school and high school hallways.<sup>50</sup>

What happens to the tweens and teens who pick up *Cosmopolitan* or click on the tweets to follow the story? As described in the next section, they do not enter into a sexual utopia.

#### IV. THE *COSMO* GIRL LIFESTYLE HAS DESTRUCTIVE AND DEADLY CONSEQUENCES FOR TWEENS AND TEENS

Contrary to the messages portrayed in the onslaught of information provided to tweens and teens, the *Cosmo* Girl lifestyle is not the freeing

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<sup>49</sup> Lane Moore, *Now You Can Finally Use Emojis To Order Porn, The Future is Now*, COSMOPOLITAN.COM April 20, 2016, available at <http://www.cosmopolitan.com/sex-love/news/a57180/pornhub-emoji-order/>.

<sup>50</sup> In fact, courts have recognized the power of cartoon images by finding that cartoons can be included in the definition of obscene material in federal law, including the PROTECT Act. See Carmen M. Cusack, *Busting Patriarchal Booby Traps: Why Feminists Fear Minor Distinctions in Child Porn Cases, An Analysis of Social Deviance within Gender, Family, or the Home (Etudes 4)*, 39 S. U. L. REV. 43, 52-53 (2011).

sexual adventure paradise that they portray. This is particularly true for children; they are still physically, mentally, and emotionally immature; and traumatically process sexually explicit messages.<sup>51</sup> For its child consumers, *Cosmo's* emphasis on frequent recreational sex is anything but harmless fun.

#### A. Traumatic sexual images and activity endanger physical and mental health

Pediatrician Meg Meeker documents the devastating consequences that the *Cosmo* Girl lifestyle has had on a whole generation of young women.<sup>52</sup> In 2002, she reported startling statistics regarding tweens and teens and sexually transmitted diseases:

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<sup>51</sup> Sarah Spink, *The Teenage Brain Is aWork in Progress*, Interview with Dr. Jay Giedd *Frontline: Inside the Teenage Brain*, Boston, WGBH January 31, 2002, *available at* <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/giedd.html>.

<sup>52</sup> Meg Meeker, M.D., *EPIDEMIC: HOW TEEN SEX IS KILLING OUR KIDS*, 11-13 (2002).

- Two to four million teenagers have STDs, with many having more than one<sup>53</sup>
- Teenagers account for 25 percent of newly reported STD infections<sup>54</sup>
- Nearly 50 percent of African-American teens have genital herpes<sup>55</sup>
- One in ten teenage girls has chlamydia, with one-half of all new cases occurring in girls from 15 to 19 years old<sup>56</sup>
- One in five children over the age of 12 tests positive for herpes type two
- 50 percent of ninth to 12<sup>th</sup> graders have had sexual intercourse, with many more having engaged in oral or anal sodomy or mutual masturbation, which they do not regard as “having sex.”<sup>57</sup>

The Centers for Disease Control and Prevention (CDC) has released its data for 2014, which is even more startling. CDC reports 1.4 million cases of chlamydia in 2014, the highest number of annual

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

cases of any condition ever reported to the CDC.<sup>58</sup> The highest rates of infection from chlamydia and other STDs are young women from ages 15 to 24 (i.e., the target audience for *Cosmo*).<sup>59</sup>

- In 2014, there were 948,102 reported cases of chlamydial infection among persons 15 to 24 years old, representing 66 percent of all reported chlamydia cases.
- In 2014, women from 20 to 24 years old had the highest rate of chlamydia (3,651.1 cases per 100,000 females) compared with any other age and sex group.
- In 2014, women ages 15 to 19 years old had the second highest rate of gonorrhea (430.5 cases per 100,000 females), compared with other females.
- In 2014, women ages 20 to 24 years old had the highest rate of gonorrhea (533.7 cases per 100,000 females), compared with any other age or sex group.

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<sup>58</sup> National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, CDC FACT SHEET *Reported STDs in the United States 2014 National Data for Chlamydia, Gonorrhea, and Syphilis*, 1 (November 2015).

<sup>59</sup> Centers for Disease Control and Prevention. *Sexually Transmitted Disease Surveillance 2014*. U.S. Department of Health and Human Services (November 2015), available at <http://www.cdc.gov/std/stats>.

- The rate of reported primary and secondary syphilis cases among women ages 15 to 19 years old increased from 2013 to 2014 by 31.6 percent, to two and one-half cases per 100,000 females.
- In 2014, women ages 20 to 24 years old had the highest rate of primary and secondary syphilis (four and one-half cases per 100,000 females), compared with other female age groups during the 2013–2014 period, and the rate for women in this age group increased 15.4 percent.

In the 1960s, there were two known STDs, gonorrhea and syphilis, and they were commonly curable with penicillin.<sup>60</sup> Today, there are as many as 80 to 100 types of STDs, many incurable and some with therapies that are much more complex than a shot of penicillin.<sup>61</sup> In many cases, STDs go undetected for years and lead to pelvic inflammatory disease, which can require a radical hysterectomy or cause death.<sup>62</sup> Human papilloma virus (HPV) has gone from being rare in the 1980s

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<sup>60</sup> Meeker, at 11-13, 32.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 32, 51-61.



to, as of 2002, becoming the most prevalent STD, affecting at least 20 million people.<sup>63</sup> HPV is a leading cause of cervical cancer, which in a 20-year period, has gone from being a disease primarily affecting post-menopausal women, to one that is most prevalent in young women under 25 years old.<sup>64</sup> HPV can also cause vaginal, vulvar, uterine, and penile cancers.<sup>65</sup> Because many children have been encouraged to engage in oral and anal sex to avoid getting pregnant, HPV also now causes anal cancer, and cancers in the throat, head, and neck.<sup>66</sup>

Dr. Meeker states that young women are at greater risk of developing cancer from HPV infections than are older women, due to the relative immaturity of their immune systems.<sup>67</sup> Also, tween and teen bodies are more susceptible to infections due to their immaturity.<sup>68</sup> In particular, teen vaginas contain mucosae that hold a virus more than older

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<sup>63</sup> *Id.* at 32.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 32-33.

<sup>66</sup> Meeker, at 37.

<sup>67</sup> *Id.* at 34-37.

<sup>68</sup> *Id.*

women.<sup>69</sup> The child's immature cervical cells are, therefore, more receptive to viral infections.<sup>70</sup> A young girl's cervix develops slowly and differs physiologically from the mature women's cervix. Thus, young girls are more susceptible to STDs.<sup>71</sup> A girl's cervix is attractive to viruses, bacteria, and other pathogens, which results in a higher risk for pelvic inflammatory diseases than experienced by adult women.<sup>72</sup>

The physical ravages of STDs are not the only consequences of early experimental sex. Dr. Meeker calls the alarming increase in teen depression and suicides “[e]motional STDs,” likely more devastating than HPV, chlamydia, or other STDs.<sup>73</sup> Her years of treating youth have shown that early sexual activity creates trauma, emotional turmoil, and psychological distress during a developmental stage when minors are already experiencing intense

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Meeker, at 175-76.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 63-73.

and confusing emotions and hormonal changes.<sup>74</sup> Over one-third of the adolescent population has thought about killing themselves.<sup>75</sup> One in eight teenagers is clinically depressed.<sup>76</sup> The rate of suicide increased 200 percent between 1992 and 2002.<sup>77</sup> “Sexual freedom causes most [teenagers] tremendous pain.”<sup>78</sup>

Dr. Meeker’s observations are supported by the brain sciences, which have tracked the development of the human brain from infancy to adulthood. National Institute of Mental Health neuroscientist Dr. Jay Giedd has studied the development of the adolescent brain using magnetic resonance imaging for more than 20 years.<sup>79</sup> These decades of imaging work have led to “remarkable insight and a more than a few surprises.”<sup>80</sup> Among the insights are revelations that the portion of the brain that controls

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Meeker.

<sup>78</sup> *Id.* at 65.

<sup>79</sup> National Institute of Mental Health, National Institutes of Health, *Development of the Young Brain*, May 2, 2011, available at <http://www.nimh.nih.gov/news/media/2011/giedd.shtml>.

<sup>80</sup> *Id.*

risk-taking, curbs inhibitions, and permits the processing of complex emotions does not fully develop until the early 20s.<sup>81</sup> Until a young person is about 25 years old, he or she is subject to “continuous neurological developments[,] increased preferences for risky behavior[,] and novelty seeking,” which promotes the development of addictive behaviors, be it nicotine, alcohol, drugs or sex.<sup>82</sup> Dr. Giedd explains:

At different ages of life[,] certain parts of the brain have much more dynamic growth than at other times....[V]ery early in life[,] we have our five senses where our visual system and audio system [are] getting established and optimized for the world around us. In adolescents, the key changes are in the frontal part of the brain involved in controlling our impulses, long range planning, judgment, [and] decision making.

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<sup>81</sup> Mary Beckman, *Crime, Culpability, and the Adolescent Brain*, 305 SCIENCE 596 (July 30, 2004).

<sup>82</sup> Sarah Spink, *The Teenage Brain Is a Work in Progress*, Interview with Dr. Jay Giedd Frontline: Inside the Teenage Brain, Boston, WGBH January 31, 2002, *available at* <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/giedd.html>.

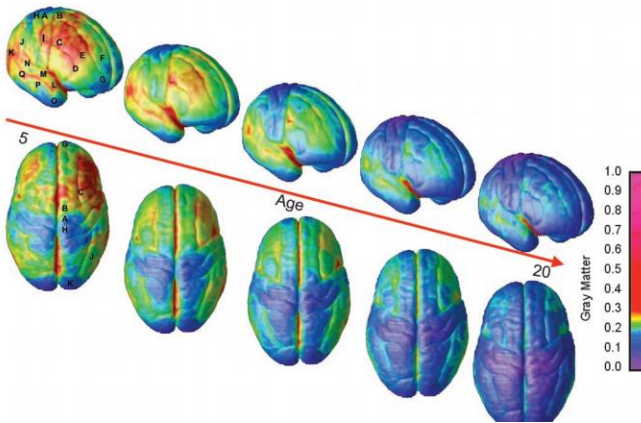
The most surprising thing has been how much the teen brain is changing. By age six, the brain is already 95 percent of its adult size. But the gray matter, or thinking part of the brain, continues to thicken throughout childhood....[T]his process of thickening of the gray matter peaks at about age 11 in girls and age 12 in boys, roughly about the same time as puberty.

[A]nother part of the brain--the cerebellum, in the back of the brain--is not very genetically controlled....is very susceptible to the environment....[I]nterestingly, it's a part of the brain that changes most during the teen years. This part of the brain has not finished growing well into the early 20s, even.<sup>83</sup>

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<sup>83</sup> Sarah Spink, *The Teenage Brain Is a Work in Progress*, Interview with Dr. Jay Giedd *Frontline: Inside the Teenage Brain*, Boston, WGBH January 31, 2002, *available at* <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/giedd.html>.

The maturation of the brain from ages five to 20 is seen below in images taken from Dr. Jay Giedd’s MRI studies of adolescent brain development.<sup>84</sup>



Consequently, prior to their early 20s, young people, and even adults, are unable to process sexual stimuli received while reading or viewing sexually explicit words and images, let alone the emotions accompanying sexual activity.<sup>85</sup> For this

<sup>84</sup> Nitin Gogtay, et. al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS OF THE NAT’L ACADEMY OF SCIENCES 8174, fig. 3 (May 25, 2004).

<sup>85</sup> Sarah Spink, *The Teenage Brain Is a Work in Progress*, Interview with Dr. Jay Giedd *Frontline: Inside the Teenage Brain*, Boston, WGBH January 31, 2002, available at

reason, sexually explicit images and language were illegal in the United States until the late 1950s.<sup>86</sup> The human brain, especially the immaturely or undeveloped brain, is traumatized, overwhelmed by the imagery, causing long-term damage to mental and emotional development.<sup>87</sup> As Dr. Meeker found, if the teens act on what they read and find that it does not lead to the kind of freedom and joy promised, then the trauma is increased and can lead to Post Traumatic Stress Disorder (PTSD) as well as depression and suicidal ideation.<sup>88</sup>

### B. What They Don't Know Can Hurt or Kill Them

Even more dangerous than what is contained in the *Cosmo* girl message to children (i.e., tweens and teens) is what is omitted. As discussed above, in the January 1988 *Cosmo*, girls were falsely told that they could not get HIV from the old-fashioned

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<http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/giedd.html>.

<sup>86</sup> Judith Reisman, *STOLEN HONOR, STOLEN INNOCENCE*, 2013.

<sup>87</sup> *Id.*

<sup>88</sup> Meeker, at 68-78. See Carmen M. Cusack, *PORNOGRAPHY AND THE CRIMINAL JUSTICE SYSTEM* (2014).

missionary position for heterosexual sex, even if they did not use a condom.<sup>89</sup> From that time to the present, *Cosmo* girls have been told that if they insist that their male sexual partners use condoms, then they will be protected from STDs during their sexual adventures.<sup>90</sup> However, as with the HIV tall-tales, these representations are dangerously false.

First, our analysis found that no condom has ever been Food and Drug Administration (FDA)-approved for anything other than vaginal sex.<sup>91</sup> Therefore, the years of talking about “safe sex,” and of anal sex being a good alternative since it will not lead to pregnancy, has lured unsuspecting young girls and boys into sodomy that, as discussed *supra*,

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<sup>89</sup> Jeff Cohen & Norman Solomon, *Cosmo's Deadly Advice To Women About Aids*, SEATTLE TIMES, July 31, 1993, <http://community.seattletimes.nwsourc.com/archive/?date=19930731&slug=1713646>.

<sup>90</sup> See e.g., Paisley Gilmour, *How to Put a Condom on the “Right” Way*, COSMOPOLITAN.COM, August 8, 2017, available at <http://www.cosmopolitan.com/uk/love-sex/sex/a11647453/how-to-put-a-condom-on/>; Paisley Gilmour, *9 Common Condom Mistakes You're Probably Making*, COSMOPOLITAN.COM, July 22, 2017, available at <http://www.cosmopolitan.com/uk/love-sex/sex/a10333593/condom-mistakes-youre-probably-making/>.

<sup>91</sup> Judith Reisman, *Condoms Never FDA Approved for Sodomy*, WND March 14, 2014, available at <http://www.wnd.com/2014/03/condoms-never-fda-approved-for-sodomy/#hfIEk05xkbZStU9d.99>.



has resulted in epidemic oral and rectal STDs among adolescents and young adults.<sup>92</sup>

Second, even with vaginal intercourse, condoms are not effective against many STDs.<sup>93</sup> Condoms have been shown to reduce the risk of sexually transmitted HIV infections in men and women.<sup>94</sup> Studies regarding condom use and gonorrhea reviewed by the National Institutes of Health showed a reduction in infection in men of up to 87 percent with inconclusive results for women.<sup>95</sup> Other studies showed a reduction of only about 50 percent for both men and women.<sup>96</sup> However, these figures are applicable only if condoms are used properly 100 percent of the time, which is not realistic, particularly for teens.<sup>97</sup> A study of teens

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<sup>92</sup> Meeker, at 61.

<sup>93</sup> National Institute of Allergy and Infectious Diseases, National Institutes of Health, Department of Health and Human Services, *Workshop Summary: Scientific Evidence on Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention*, July 20, 2001, available at <https://chastityproject.com/wp/wp-content/uploads/2013/05/NIH-Condom-Report.pdf>

<sup>94</sup> Meeker, at 105-06.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Larry K. Brown, et. al, *Condom Use Among High-Risk Adolescents: Anticipation of Partner Disapproval and Less Pleasure*

and condom use found that nearly two-thirds of adolescents did not use condoms at the time of last intercourse and adolescents reported a mean of 15.5 unprotected intercourse occasions in the past 90 days.<sup>98</sup> The reasons given included the perception that condoms reduce sexual pleasure; perception that partners will not approve of condom use; and less discussion with partners about condoms.<sup>99</sup>

Third, there appear to be no publicized, controlled condom tests using girls and boys (i.e., minors)—since such experimentation would be ethically prohibited. There is insufficient evidence regarding whether condoms are effective in preventing other STDs,<sup>100</sup> although the epidemic rates of infection strongly suggest either failure of condoms or nonuse.<sup>101</sup> This is particularly troubling because some STDs, including HPV and herpes, are transmitted from one person to another through skin contact, not merely through transmission of bodily

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*Associated with Not Using Condoms*, 123 PUB. HEALTH REPORTS 601-607 (September/October 2008).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

fluids.<sup>102</sup> Therefore, wearing a condom may only avoid transmission from contact with some bodily fluids and the skin of the genitals.<sup>103</sup> However, if tweens and teens engage in oral sex or mutual masturbation, then there is no protection from certain STDs, confirmed by the skyrocketing rates of HPV, herpes infections, and cancers in the throat and mouth.<sup>104</sup> These statistics have never been reported in mainstream news outlets, let alone in sodomy promotions such as *Cosmo*, which leave *Cosmo* Girls of all ages at risk. However, the risk is greater for tweens and teens, who are more likely to engage in “safe” risky behavior and more likely to engage in non-vaginal intercourse because of pleas from partners for sexual contact and also fear of pregnancy.<sup>105</sup>

Fourth, a danger posed by many of the activities promoted by *Cosmo* is leaving youth prey for sexual predators. The Federal Bureau of Investigation (FBI) and other law enforcement agencies

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<sup>102</sup> Meeker at 105-112.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 143-60.

determined that predators engage in grooming of their victims by introducing them to various types of contacts and lowering their inhibitions until they are primed for sexual assault.<sup>106</sup> Many of the predators use social media to pose as desirable young men, lure the girls, and then force them to engage in acts via video conferencing or Skype.<sup>107</sup> If tweens and teens have already read in *Cosmo* about using social media to have long-distance sex with boyfriends, then they are already on the fast track to victimization via grooming.<sup>108</sup>

## V. *COSMO* USES ALCOHOL, TOBACCO, AND JUNK FOOD STRATEGIES TO MARKET SEX TO CHILDREN

*Cosmopolitan's* use of celebrities from Disney and other media outlets frequented by tweens and

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<sup>106</sup> Ken Lanning, FBI, "Child Molesters: A Behavioral Analysis," The Office of Juvenile Justice and Delinquency Prevention, at 26-28 (2010), available at [http://www.missingkids.com/en\\_US/publications/NC70.pdf](http://www.missingkids.com/en_US/publications/NC70.pdf).

<sup>107</sup> Angela Hatcher, *Navy Fighter Pilot Accused of Online Sex Crimes with Bedford Co. Girl Now Faces Federal Charges*, WSET-TV April 30, 2014, available at <http://www.wset.com/story/25395727/navy-fighter-pilot-accused-of-online-sex-crimes-with-bedford-co-girl-now-faces-federal-charges>.

<sup>108</sup> CUSACK (2014).

teens, along with emojis and cartoons (described *infra*), echoes the marketing and advertising strategies of other industries to lure tweens and teens to their products. Manufacturers of junk food, alcohol, tobacco, and others have used child-centric advertising for years, in some cases so blatantly that it led to the banning of their advertisements from certain media frequented by children.<sup>109</sup> While “mainstream” pornography such as *Playboy*, *Penthouse*, and *Hustler* have been removed from the sight of children and their sale restricted to those over 18 years old,<sup>110</sup> *Cosmopolitan* can be purchased by all ages at the checkout stands, despite having content that rivals *Playboy*.

For many years, marketers claimed that they did not target children because all of our customers are

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<sup>109</sup> William A. Ramsey, *Rethinking Regulation of Advertising Aimed at Children*, 58 FED. COMM. L.J. 361 (2006)

<sup>110</sup> Some of these restrictions were put in place after the release of Dr. Judith Reisman’s report, *Images of Children, Crime & Violence in Playboy, Penthouse & Hustler*, U.S. Department of Justice, Juvenile Justice and Delinquency Prevention, Grant No. 84-JN-AX-K007, 1989, available at [www.drjudithreisman.com/archives/2013/05/images\\_of\\_child\\_2.html](http://www.drjudithreisman.com/archives/2013/05/images_of_child_2.html).

adults.<sup>111</sup> However, researchers have dispelled that myth and shown that, in fact, children are increasingly the target of marketing efforts because “the firm must have a secret source of new customers only it knows about.”<sup>112</sup> In the late 1990s, children influenced about \$187 billion of the \$932 billion in sales of consumer products, and their influence was climbing at a rate of 15 percent per year.<sup>113</sup> The 2004 Harris Interactive/Kid Power Poll of Youth Marketers revealed that professionals, who work in youth-related fields, believe it is appropriate to begin marketing to children at age seven.<sup>114</sup> That is more than two years before the professionals believe that most young people can view advertising critically (average age nine), or can effectively separate fantasy from reality in

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<sup>111</sup> James U. McNeal, Ph.D., *THE KIDS MARKET: MYTHS AND REALITIES*, 99 (1999).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 93-94.

<sup>114</sup> PR Newswire, *Youth Marketers Feel It Is Appropriate to Begin Marketing to Kids at Age Seven*, April 20, 2004, available at <http://www.prnewswire.com/news-releases/youth-marketers-feel-it-is-appropriate-to-begin-marketing-to-kids-at-age-seven-72559802.html>.

media and advertising (average age nine).<sup>115</sup> Youth marketers believe it is appropriate to target marketing to children almost five years before most young people can allegedly make intelligent choices as consumers (average age 11.7).<sup>116</sup> This poll shows that youth marketers are pressured by a sense of urgency to reach kids early so that brands will be familiar to them when they do reach an age where they make or influence purchase decisions, said John Geraci, Vice President of Youth Research at Harris Interactive.<sup>117</sup>

The youth-directed marketing includes not only direct advertising, but also indirect marketing in the form of celebrity endorsements and stories, cartoons, and young models. This is particularly true for alcohol, tobacco, and pornography, which cannot be sold or directly advertised to children, but which is stealthily marketed by cartoon characters in advertisements.<sup>118</sup> Indeed, many companies

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> William A. Ramsey, *Rethinking Regulation of Advertising Aimed at Children*, 58 FED. COMM. L.J. 361 (2006)

currently use characters from popular children's television in their ads.<sup>119</sup> This widespread use of these characters in advertising indicates that companies realize the persuasive effect that these characters have over children.<sup>120</sup> Studies also show that the use of cartoon characters or celebrities increases commercials' influence over children.<sup>121</sup> Children recognize and retain images of cartoon characters—even those that do not appear in children's shows—used in advertisements.<sup>122</sup> A 1996 study revealed that nine- and ten-year-olds could identify the Budweiser frogs nearly as often as they were able to identify Bugs Bunny.<sup>123</sup> This fact is even more significant when one considers that these frogs do not even appear in commercials aimed at children. Thus, at least in theory, children should not have significant exposure to these commercials. Similarly, a 1991 study showed that as many six-year-olds could identify Joe Camel, the

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<sup>119</sup> *Id.* at 387.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 387.



cartoon camel formerly used by Camel cigarettes, as could identify the Disney Channel logo.<sup>124</sup> Considering the evidence of the influence that cartoons and celebrities hold over children, several British broadcasters have banned such advertising in food commercials aimed at children to fight that country's problem with childhood obesity.<sup>125</sup>

Cartoons have a pull beyond commercials, often drawing children into stealth content not meant for them. [C]hildren who view television without parental supervision may view significant amounts of television not aimed at them. Cartoons such as Fox's 'The Family Guy,' Comedy Central's 'South Park,' or cartoons that are part of The Cartoon Network's 'Adult Swim,' are not aimed at children. However, children may simply come across these shows and watch them because they are cartoons.<sup>126</sup>

Likewise, tweens and teens, who pick up *Cosmo*, will come across cartoons such as the "9 Hilarious, Completely Spot-on Feminist Sex

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 386-87.

<sup>126</sup> *Id.* at 379.

Positions,”<sup>127</sup> and be attracted to them because they are cartoons.<sup>128</sup> Children picking up a copy at the newsstand or seeing it on the computer screen would be attracted to the colorful graphics. Moreover, at *Cosmo*’s explicit urging, they will want to try what is presented as fun, fearless, and empowering.<sup>129</sup> Unfortunately, as described *supra*, what they will find instead is a life-threatening infection, infertility, or an early death.<sup>130</sup> Scores of scientific studies confirm the obvious, that cartoons and celebrities attract and seduce children’s attention, and thus, their brains, minds, memories, and behaviors. Children affectionately embrace the cartoons that adults put in their way, from Mickey Mouse to Joe Camel and the *Playboy* bunny. As one

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<sup>127</sup> Liz Miele, *9 Hilarious, Completely Spot-on Feminist Sex Positions Click through to See How You Can Be a Boss in the Bedroom. Get it Girl*, COSMOPOLITAN.COM, April 15, 2015, available at <http://www.cosmopolitan.com/sex-love/positions/news/g4712/feminist-sex-positions/>

<sup>128</sup> Ramsey, at 379.

<sup>129</sup> *Id.* Note the subhead encourages viewers to click through and “get it girl.”

<sup>130</sup> Meeker, at 32, 51-61 *See also*, Michelle Cretella, M.D., *Why Cosmopolitan, Youth, and Sexual Health Don’t Mix*, BREITBART.COM, April 18, 2015, available at <http://www.breitbart.com/big-journalism/2015/04/18/why-cosmopolitan-youth-and-sexual-health-dont-mix/>.

British commentator remarked on the *Playboy* invasion of the toddler market, “[R]aunch culture and its bed partner, a sexualised consumerism [are] apparently determined to turn tots into spendthrift tarts...[H]ow many *Playboy* pencil cases; pole dancing classes[;] and push-up bras does a girl, small, medium or large, actually need?”<sup>131</sup> *Cosmopolitan* is perpetuating this phenomenon with its Disney star cover models, cartoons, and countless ads selling multiple name brands of sexy make-up, perfumes, shampoos, hair dyes, clothing, nail polish, shoes, stockings, bras and panties, and creams and lotions amid stories about celebrities, orgasms, and orgies.

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<sup>131</sup> Yvonne Roberts, *Raunch-elegy on a G-string?*, THE GUARDIAN, June 22, 2006, available at <http://www.guardian.co.uk/commentisfree/2006/jun/22/raunchelegyonagstring>.

## VI. SOCIETY ACTED TO PROTECT CHILDREN FROM DANGEROUS, ADDICTIVE MATERIALS AND SHOULD DO SO AGAIN WITH *COSMO*

Society has frequently acted to protect children from the dangerous effects of toxic substances, including tobacco and alcohol that have been consciously or intuitively marketed to such children.<sup>132</sup> This has been extended to unhealthy foods such as sugary sodas and cereals with some governments calling for bans of advertisements or placement of such unhealthy products in ways or places that are attractive to children.<sup>133</sup> Similar action should be taken to protect children, tweens and teens from toxic, early exposure to the sexually explicit messages and images in *Cosmo*.

In 2000, a one-year study of 700 12- and 13-year-olds found that decades of nicotine addiction

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<sup>132</sup> See, e.g., U.S. Department of Health and Human Services, Be Tobacco Free, available at <http://betobaccofree.hhs.gov/campaigns/>.

<sup>133</sup> Jon Leibowitz, *Childhood Obesity and the Obligations of Food Marketers or Whether or Not You Are Part of the Problem, You Need to Be Part of the Solution*, FTC–HHS Forum on Childhood Obesity “Weighing in: A Check-Up on Marketing, Self-Regulation & Childhood Obesity,” July 18, 2007, available at [http://www.ftc.gov/speeches/leibowitz/070718Child\\_Obesity\\_Speech.pdf](http://www.ftc.gov/speeches/leibowitz/070718Child_Obesity_Speech.pdf).

could begin within days of inhaling a first cigarette.<sup>134</sup> The study director, Dr. Joseph R. DiFranza, reported that children, who start that young, “have an extremely hard time quitting compared to 18-year-olds” for there is “no safe level of use with tobacco,” even if use starts at an older age.<sup>135</sup> “You’re never old enough to smoke.”<sup>136</sup> Nicotine exposure “can modify crucial brain development during the teen years.”<sup>137</sup> Such modification occurs “particularly in areas like decision-making abilities.”<sup>138</sup> Based on these studies, federal regulators significantly curtailed cigarette advertising and instituted widespread campaigns to stop smoking, and in particular, to

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<sup>134</sup> Dulcie Leimbach, *For Teenagers, a Tweak on ‘Just Say No.’* NY TIMES, June 20, 2005, available at [http://www.nytimes.com/2005/06/20/health/menshealth/20leimbach.html?\\_r=1&pagewanted=print&oref=slogin](http://www.nytimes.com/2005/06/20/health/menshealth/20leimbach.html?_r=1&pagewanted=print&oref=slogin). See also <https://www.nicotinedependenceclinic.com/English/teach/SiteAssets/Pages/Smoking-Fact-Sheets2/Adolescent%20Brain%20Development%20and%20Smoking%20Fact%20Sheet%20for%20Healthcare%20Providers.pdf>

<sup>135</sup> Leimbach (2005).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

stop smoking in the vicinity of children.<sup>139</sup> Cigarettes cannot be sold to anyone under 18 years old; smoking is becoming less accepted in public places; and smoking is taught to be harmful in schools because of its toxic effects.<sup>140</sup>

Studies regarding alcohol consumption have similarly led to campaigns to prevent under-age drinking.<sup>141</sup> A national survey of 43,093 adults found that 47 percent who “begin drinking alcohol before the age of 14 become alcohol dependent at some time in their lives, compared with nine percent of those who wait at least until age 21.”<sup>142</sup> One of the authors of the study said: “We definitely didn’t know five or ten years ago that alcohol affected the teen brain differently....Now there’s a

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<sup>139</sup> See, e.g., U.S. Department of Health and Human Services, Be Tobacco Free, available at <http://betobaccofree.hhs.gov/campaigns/>.

<sup>140</sup> Salim Surani, et. al., *Ill Effects of Smoking: Baseline Knowledge among School Children and Implementation of the “AntE Tobacco” Project*, 2011 INTERNATIONAL JOURNAL OF PEDIATRICS, 1 (January 19, 2011).

<sup>141</sup> See, e.g., Substance Abuse and Mental Health Services Administration (SAMHSA), Talk, They Hear You, Underage Drinking Prevention, available at <http://www.samhsa.gov/underage-drinking>.

<sup>142</sup> Katy Butler, *Alcohol Harder on Teen Brains Than Thought/ Studies Note Neurological Degradation*, SFGATE, July 9, 2006, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/07/09/BAGVBJPHHM1.DTL>.

sense of urgency. It's the same place we were in when everyone realized what a bad thing it was for pregnant women to drink alcohol."<sup>143</sup> Alcohol also appears to damage more severely the frontal areas of the adolescent brain crucial for controlling impulses and thinking through consequences of intended actions—capacities many addicts and alcoholics of all ages lack.<sup>144</sup> These brain areas directing control, motivation and goal setting are “heavily remolded and rewired, as teenagers learn . . . how to exercise adult decision-making skills, like the ability to focus, to discriminate, to predict and to ponder questions of right and wrong.”<sup>145</sup> “Alcohol creates disruption in parts of the brain essential for self-control, motivation and goal setting, and can compound existing genetic and psychological vulnerabilities . . . . Early drinking is affecting a sensitive brain in a way that promotes the progression to addiction.”<sup>146</sup>

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<sup>143</sup> *Id.*

<sup>144</sup> *See supra* Sections IV and V.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

Sugar-laden foods have also caught the attention of those trying to protect children from unhealthful, life-shortening substances.<sup>147</sup> “The proportion of overweight children ages six to 11 years old has increased almost fivefold in a generation, growing from four percent in the early 1970s to 19 percent by 2004.”<sup>148</sup> Federal regulators stated that childhood obesity threatens to overwhelm the healthcare system, potentially producing “the first generation of American children with shorter life spans than their parents.”<sup>149</sup> Regulators warned that marketing junk food to children is a public health hazard to the point that should obesity rates continue, government intervention might be necessary.<sup>150</sup> Researchers reported that one study

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<sup>147</sup> Jon Leibowitz, *Childhood Obesity and the Obligations of Food Marketers or Whether or Not You Are Part of the Problem, You Need to Be Part of the Solution*, FTC–HHS Forum on Childhood Obesity “Weighing in: A Check-Up on Marketing, Self-Regulation & Childhood Obesity,” July 18, 2007, available at [http://www.ftc.gov/speeches/leibowitz/070718Child\\_Obesity\\_Speech.pdf](http://www.ftc.gov/speeches/leibowitz/070718Child_Obesity_Speech.pdf).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*



found a daily sugar drink increased obesity by 60 percent for that child.<sup>151</sup>

If placing tobacco, alcohol, or even junk food in the hands of children is a public health hazard,<sup>152</sup> then how much more dangerous is marketing experimental sex in *Cosmopolitan*? The Utah Legislature has declared that “pornography is a public health hazard leading to a broad spectrum of individual and public health impacts and societal harms.”<sup>153</sup> Among the statements made in the concurrent resolution signed by Utah’s governor was a recognition that “pornography is contributing to the hyper-sexualization of teens, and even prepubescent children, in our society.”<sup>154</sup> *Cosmo*’s targeted marketing is a stark example of deliberate teen and prepubescent hyper-sexualization currently allowed by society. The public health consequences

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<sup>151</sup> Jess Alderman, et. al, *Application of Law to the Childhood Obesity Epidemic*. Northeastern University Public Law & Legal Theory Research Paper No. 17-2007, J. L., MED. & ETHICS, May 2007, available at <http://ssrn.com/abstract=972136>.

<sup>152</sup> *Id.*

<sup>153</sup> Utah S.C.R. 9 Concurrent Resolution on the Public Health Crisis, available at <https://le.utah.gov/~2016/bills/static/SCR009.html>. March 29, 2016.

<sup>154</sup> *Id.*

of the *Cosmo* Girl lifestyle pose an even greater potential public health risk than smoking, drinking alcoholic beverages, or eating junk food. Unlike cigarettes, liquor, or junk food, which can require multiple exposures to affect health, it only takes one instance of trying out the *Cosmo* Girl lifestyle (i.e., “fun, fearless” sex) to infect a child with a traumatic, life-threatening disease.<sup>155</sup>

In recognition of the harmful effects that sexually explicit materials have on children’s mental, physical, and emotional health, state legislatures have enacted laws prohibiting the dissemination of materials deemed “harmful to minors.”<sup>156</sup> These laws establish criminal sanctions

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<sup>155</sup> Meeker at 12, Cretella, *Why Cosmopolitan, Youth, and Sexual Health Don’t Mix*, BREITBART.COM, April 18, 2015.

<sup>156</sup> Alaska Stat. §11.61.128; Ariz. Rev. Stat. §13-3506; Cal. Penal Code §§313.1; Colo. Rev. Stat. § 18-7-502; Del. Code §1362; D.C. Code §22-2201; Fla. Stat. §847.012; Ga. Code, §16-12-103; Hawaii Rev. Stat. §§ 712-1215; Idaho Code §§18-1515; Ind. Code §§35-49-2-1, 35-49-3-1-35-49-3-3; Iowa Code §728.2; Kan. Stat. §21-6401; Kentucky Rev. Stat. §531.030; La. Rev. Stat. §14:106; 17 Maine Rev. Stat. §2911; Maryland Code, Criminal Law, §11-203; Minn. Stat. §617.293; Mo. Ann. Stat. §573.040; Mont. Code §45-8-201; N.H. Rev. Stat. §650:2; N.J. Stat. 2C:34-3; N.M. Stat.1978, §30-37-2; N.Y. Penal Law §235.15; N.C. Gen. Stat. §14-190.15; N.D. Century Code §12.1-27.1-03.1; Oklahoma. Stat. §1040.76; Ore. Rev. Stat. §167.080; 18 Penn. Consolidated Stat. §5903; R.I. Gen. Laws §11-31-10; S.C. Code §16-15-385; S.D. Codified Laws §22-24-28; Tenn.

for exposing children to material that, while perhaps not obscene or indecent for adults under contemporary community standards, is obscene or indecent, and therefore harmful to children.<sup>157</sup> Materials that are “harmful to minors” are described, *inter alia*, as “[p]ictures, photographs, drawings, sculptures or other visual representations,” and “books, magazines, paperbacks, pamphlets or other written or printed matter” that “depict[] nudity, sexual conduct, sexual excitement or sado-masochistic abuse which is harmful to minors”<sup>158</sup> The following content in *Cosmopolitan* fits that definition, as at least one prosecuting attorney has determined: “I want to try anal sex, but I’m scared. Be honest...will it hurt?” featuring two wooden dolls posed engaging in the act; *Cosmopolitan*’s recommendation of working up

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Code §39-17-902; Tex. Penal Code §43.24; Utah Code Ann. §76-10-1206; 13 Vt. Stat. Ann. §§2802, 2804b; W. Va. Code §61-8A-2; Wis. Stat. §944.21(4)(b).

<sup>157</sup> *Id.*

<sup>158</sup> Sample definitions of materials that are “harmful to minors” from Colo. Rev. Stat. §18-7-502(1), D.C. Code § 22-2201(b), Fla. Stat. §847.012(3), Ga. Code §16-12-103(a), Idaho Code §18-1515, Minn. Stat. §617.293(1), N.M. Stat., §30-37-2, Va. Stat. §2804b, Vt. Stat. §2802.

to sodomy using good silicone lube, although “[y]ou may just have a back door that you prefer not to use for guests;” tips on how to talk dirty; long distance voyeurism, exhibitionism, and self-molestation (i.e., “do their thing”) via Skype; bath sex; and vibrating undies.<sup>159</sup> In other words, even if the material is not considered obscene under contemporary community standards for adults,<sup>160</sup> and therefore protected by the First Amendment, it is considered “harmful” or obscene under contemporary community standards for children. That means that while the sexual depictions cannot be banned entirely, *Cosmopolitan’s* display and sale must be restricted to those over the age of 18.<sup>161</sup>

## VII. CONCLUSION

Efforts to stop *Cosmo’s* stealth campaign to groom, lobby, and hypersexualize teens and

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<sup>159</sup> Amy Weirich, advisory letter to retailers regarding *Cosmopolitan*, November 7, 2016 available at <https://www.cosmohurtskids.com/news/2016/12/9/office-of-the-district-attorney-general>

<sup>160</sup> *Miller v. California*, 413 U.S. 15 (1973).

<sup>161</sup> See statutes listed in note 149.

prepubescent tweens (*Cosmo* Girls!) should exceed the efforts to curb childhood obesity and smoking. As has been done with tobacco and alcohol (i.e., restricted until ages 18 and 21), the sale of sex-centric *Cosmo* should be seriously and vigorously restricted, and access granted only to those over age 18, to protect the health and well-being of the next generation. Shelby County, Tennessee, District Attorney General Amy Weirich has demonstrated to other prosecutors that laws designed to protect children may be used to delimit access to *Cosmo*. Weirich sent a letter dated November 7, 2016 to all retailers in Shelby County informing them that *Cosmopolitan* contains materials harmful to minors and advising them that they needed to take measures to keep the magazine out of sight of children. Her efforts are a model for how society should respond to *Cosmo* to protect children.

