

GUEST EDITORIAL FROM THE ASSOCIATED PRESS

In defining consent, a gap between law, culture exists

It may sound simple: You either consent to sexual activity or you don't.

But just what constitutes an expression of consent is a hotly debated topic in the justice system and in society at large. And while there's been a gradual cultural trend, especially on university campuses, toward a standard of "affirmative consent" — otherwise known as "yes means yes" rather than "no means no" — the laws on sexual assault have not similarly evolved.

"There's a definite lag between what's happening culturally and what's happening in criminal law," said Deborah Tuerkheimer, a law professor at Northwestern University who has written extensively about the topic. "I haven't seen the #MeToo movement usher in a wave of criminal law reform. Maybe that's to come, but I haven't seen it."

There is no uniform legal definition of consent. That's because sexual assault laws, of which consent is often a key component, vary widely state by state.

Only a handful of states, among them California, Florida and Wisconsin, have an affirmative consent standard on the books, according to the anti-sexual violence organization RAINN. Far more than that — about half of all states — don't define consent at all in their sex assault laws. Many of these states use force, rather than lack of consent, as a standard for deciding whether an assault occurred.

Tuerkheimer saw that as "a huge problem."

"It certainly doesn't track the widespread consensus around what constitutes sexual assault," she said, noting that not all assault cases involve strong physical force, including assaults by someone the victim knows or assaults resulting from a power imbalance. "Consent has become the dividing line in most of our conversations about this in political discourse, and yet you have many states that are not there yet."

To help states arrive at a more consistent definition, an organization called the American Law Institute is working on updating the sexual assault laws in its 1962 Model Penal Code, proposals used as models for measures in state legislatures. A definition of consent took the body of judges, lawyers and academics about five years to work out. An early, simple affirmative consent standard was deemed to be "too far from cultural norms," and a compromise definition was ultimately approved. The proposed sex assault laws are likely to be voted on in May 2020.

Consent has become a front-burner issue in the #MeToo era, which since late 2017 has shone a light on sexual assault and harassment in an unprecedented way. But it's been a crucial issue on college campuses — often a laboratory for social change — for decades.

In 1990, students at Antioch College in Ohio were subject to nationwide ridicule when they introduced an extensive affirmative consent policy.

It hardly seems controversial now, but news anchors traveled to the campus and delivered snarky reports, predicting that kissing itself would be outlawed. "Saturday Night Live" mocked the policy with a skit about a game show called "Is It Date Rape?" with actress Shannon Doherty playing a contestant majoring in "victimization studies" — who hit a buzzer to say "date rape!" of every social scenario presented to her. The New York Times weighed in with an editorial, saying adolescents will always make mistakes "but legislating kisses won't save them from themselves."

Negative reaction shut down further movement toward such policies — for a while. But in recent years, campus activists have refocused on consent amid rising concern over sexual assaults at U.S. colleges and universities. President Barack Obama's administration put pressure on universities to update their codes and launched "It's On Us," a campaign to end campus sexual assault.

California and New York now legally require colleges and universities to use an affirmative consent standard. Across the country, the standard is present in a number of college campus codes, though precise numbers are hard to come by. ■



The Observer is 'our paper'

My name is Dorothy Swart Fleshman and I write Dory's Diary for The Observer and the Baker City Herald on the B Section of Home and Living on Mondays.

I am not on either of the newspaper staffs nor am I paid for my 10 years of their publishing my column. I also pay for my own annual subscription, so I believe I can speak freely in response to John Milbert's letter in Monday's paper berating The Observer for things presently out of its control.

The news media means a lot to me because it keeps me in touch with the world as well as my neighbors. There has always been newsprint on my doorstep for my perusal in making up my own mind regarding world and current events as well as enjoy the extras it provides.

That introduction out of the way, I would like to thank Mr. Milbert for what ever led to his expressing his thoughts so violently. Words are better than actual action in getting a point across. It must have been festering for a long time to come out so vehemently at this time, but it now opens an opportunity to discuss what seems to be currently wrong with the situation.

The problem, as closely as I can ascertain, is that The Observer, just as does the Baker City Herald and others, face not just the content

that appears in the paper on their publishing days, but that their problems are so much greater than they appear on the surface—primarily, their existence.

There is so much going on behind the scenes for these two newspapers, among others involved in the bankruptcy of the parent company out of our area, that it is surprising that our newspapers have existed as long as they have.

Much of their hanging on is by the dedication of the folks who have stayed loyal to the world of printed media and our area.

Because I am closer than most of the general public to our local newspaper, I have been able to observe the newsroom that is being so viciously criticized at the moment without just cause, and I see how hard they work with inadequate pay, equipment, or public acclaim. They don't even have an authorized editor right now but the four of them keep working together to see that their part of the paper comes out on schedule.

They need accolades not upbraiding at this point. Hurray for Dick, Ron, Amanda, and Lisa in the newsroom to start with! Likewise praises for the rest of the staff in their many responsibilities of each section of the newspaper that runs three times a week.

Mr. Milbert may not re-

My Voice ABOUT THE AUTHOR

Dorothy Swart Fleshman is the author of Dory's Diary published in The Observer and Baker City Herald Home and Living Section. She is a resident of La Grande. My Voice columns reflect the views of the author only. My Voice columns should be 500-700 words. Authors also should include their full name, age, occupation and relevant organizational memberships. We edit submissions for brevity, grammar, taste and legal reasons. We reject those published elsewhere. Send columns to La Grande Observer, 1406 5th St., La Grande, Ore., 97850, fax them to 541-963-7804 or email them to news@lagrandeobserver.com.

alize the constraints under which the employees labor or even that their press broke down and can not be officially repaired so that now the copy goes to the helpful East Oregonian in Pendleton to be printed before it can be returned over the mountain (even in winter) to be delivered to the customers here.

I am not angry at Mr. Milbert, just the situation in which the electronic industry has affected the printed page. There is room for both but it will take time, effort, financing, and those who care about the local newspaper's existence. Without their belief and support, we won't have to worry about receiving the newspaper on our doorstep. It will just be added to things of the past as a memory.

Mr. Milbert's letter brings up some very viable points, and when the bankruptcy

decisions are finalized and determined regarding our local paper in a couple of months or so, with The Observer and the Baker City Herald continuing on... or not... the content should then be re-evaluated for the generation they serve. Then opinions, like Mr. Milbert's, should be viable and noted.

It is our paper; we are responsible for its welfare if we want it to survive. All the bad words and anger in the dictionary directed in what we have now won't change it. Now is not the time to criticize but to support it. Those are young folks working down there facing their loss of livelihood through no fault of their own. They live in our community where we want them to stay. Don't kick them while they're down. Give them a helping hand if only with kind words. Pay it forward. ■

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