

# BABY SPICE: LOST BETWEEN FEMININE AND FEMINIST

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## INTRODUCTION

*She won’t win the French Open, but who cares? Anna Kournikova is living proof that even in this age of supposed enlightenment, a hot body can count as much as a good backhand. Kournikova says with great delight: “I can be a little girl or I can be grown up. I can be whichever I want.” And like that, both woman and child, she can also by turns be cagey or guileless, wise or foolish, cocky or dependent, tender or tough, coquettish or direct, beautiful or . . . Beautiful . . . All this, and the Jezebel of sweat also teases us . . . “She enjoys just saying ‘perhaps’” . . . [She is] Baby Spice.<sup>1</sup>*

The mere fact that blatant sexism has become passé and somewhat declassé (overtly anyway) does not mean that sexist attitudes are no

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1. Frank Deford, *Anna Kournikova*, SPORTS ILLUSTRATED, June 5, 2000, at 94-98 (quoting Anna Kournikova and Eric Van Harpen). A picture of Kournikova portraying the qualities of “Baby Spice,” see *infra* Part IV, is included in the figures in the appendix. See SPORTS ILLUSTRATED, June 5, 2000, at front cover, *reprinted infra* app. at fig. 1.

longer deeply imbedded in the cultural psyche. The fingerprint of sexism has become smudged and faded as we have learned to adapt to a co-ed world and, of course, learned to use “politically correct” terminology as well as to avoid putting anything damning in writing.<sup>2</sup> Accordingly, the persistence of core sexist attitudes is easily shadowed by the exhilaration from some real and some superficial improvements. Still, something ominous lingers.

Like Betty Freidan’s efforts to name “the problem that has no name,”<sup>3</sup> I intend by this Article to put a name on one significant residue of sexist thought which lingers even, if not primarily, among women. I posit that by looking at ourselves through the reflection of popular cultural images, we, as white<sup>4</sup> women,<sup>5</sup> see ourselves—or part

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2. See NANCY LEVIT, *THE GENDER LINE: MEN, WOMEN, AND THE LAW* 213 (1998). Levit argues that the days of being able to document overt gender bias from the written file, as were available to Anne Hopkins, of *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), are over. See *id.* However, the attitudes persist and they are still conveyed to others in the workplace. See *id.*

In most instances, gender stereotyping . . . will occur without explicit references to gender, or will consist of a gender stereotype couched in purportedly neutral language. Most gender stereotyping cases probably will entail much more subtlety[:] . . . shrugs, glances, gestures, code words, with nothing written or memorialized in a file.

*Id.*

3. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* 11 (1963). Friedan concluded that the problem in the late fifties and early sixties was the painful “schizophrenic split” between the “reality of our lives as women and the image to which we were trying to conform.” *Id.* at 7. The “feminine mystic,” or the notion that women desire nothing but to catch a man, raise children, “buy a dishwasher, bake bread, cook gourmet snails, etc.,” is at odds with a desire for independence, opportunities, dreams, education, and work. *Id.* at 10. I argue, *infra*, that the desire for independence, opportunities, dreams, education, and work of the millennial woman is apparently still at odds with the desire to catch a man. See *infra* Part V.

4. I readily acknowledge that the woman-child motif is projected primarily on white women in advertising and in our culture generally. The stereotypes for black women are different. One comparative study found that one third of the ads in “white-oriented publications contained images of women in submissive postures – ritualization of subordination” while those same ads were present in only fifteen percent of magazines aimed at African-American audiences. See *Catering to Different Ethnic Groups*, USA TODAY, Aug. 1, 1999, at 10, available at 1999 WL 3675643 (citing study by Tara L. McLaughlin, Washington University, St. Louis).

American advertising generally depicts white women. See Cheryl B. Preston, *Significant Bits and Pieces: Learning From Fashion Magazines About Violence Against Women*, 9 UCLA WOMEN’S L.J. 1, 70 (1998) [hereinafter Preston, *Bits and Pieces*]. In addition, the helpless, clueless, dependent, daddy’s girl encompassed as the woman-child motif and discussed herein is not a black woman stereotype. See Diseree A. Kennedy, *Marketing Goods, Marketing Images: The Impact of Advertising on Race*, 32 ARIZ. ST. L.J. 615, 615-18 (2000) (discussing advertising and racial hierarchies generally); Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. WOMEN & L. 53, 53-54, 119 (1999) (describing “Sapphire,” a stereotype of black women as “angry, threatening, intimidating, and unintelligent,” and a competing stereotype, “Mammy,” who “raise[s], train[s] and suckle[s]” whites); Joan R. Tarpley, *Blackwomen, Sexual Myth, and Jurisprudence*, 69 TEMP. L. REV. 1343, 1345-47 (1996) (expounding on a third stereotype, “Jezebel,” which labels black women as “wanton, libidinous,” the “whore, the slut, the prostitute”) (quoting BELL HOOKS, *AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM* 52-66 (1981)).

Although women of other races are occasionally pictured in advertisements, they are

of ourselves—clinging to that “schoolgirl appeal” in ways that sabotage a claim on full citizenship as competent, mature individuals.<sup>6</sup> This woman-child, or “Baby Spice,” construct de-claws the newly empowered, more confident, modern woman championed by the feminist movement.<sup>7</sup> Understanding the woman-child motif in relationship to feminist objectives<sup>8</sup> provides critical insights in charting a direction for the future of a “bogged-down” movement.

This Article first explores the current state of feminism and the

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not the focus of my study. See Preston, *Bits and Pieces*, *supra*, at 53-54. I assume the woman-child phenomenon is as likely, if not more likely, to be applied to Asian and Latina women. Although it is inaccurate to suggest that the stereotype applies universally to women, this limitation in target does not mean the woman-child stereotype is insignificant in terms of culture or feminism.

5. I use the generalized terms “women” and “men” in this article because, to the best of my knowledge, no one has come up with more precise terminology on which to base a discussion of gender. I recognize that not all biological women, even if limited to heterosexual women, may fit the general grouping I refer to as “women” in this article. I also recognize that women, as well as men, fall along a wide spectrum of attitudes, behaviors, and preferences. I offer generalizations covering both those women who demonstrate culturally defined feminine traits and others nonetheless grouped with culturally conforming women simply because superficial interaction with these women does not reveal ways in which these women vary from cultural stereotypes. As students of the law we are forced to deal with the cultural significance of gender as outwardly manifested because, even if we do not like it, people, especially jurors, respond in stereotypical ways to visually identified indicia of gender.

6. See *infra* Part IV.

7. See JIB FOWLES, ADVERTISING AND POPULAR CULTURE 142 (1996) (citing A. Gagnard, *From Feast to Famine: Depictions of Ideal Body Type in Magazine Advertising*, in PROCEEDINGS OF THE 1986 CONFERENCE OF THE AMERICAN ACADEMY OF ADVERTISING, at R46-R50 (E.F. Larkin ed., 1986)).

8. For this purpose, I define feminism as having four primary objectives:

**INCLUSION.** Feminism is the process of seeking out and promoting participation of the voices of women . . . . It is an inclusive impulse identifying women as one group that has been, traditionally at least, outsiders . . . . Inclusion is important not just because women deserve to be heard to protect their own interests, but also because all institutions, societies, and cultures will be enriched by the added insight.

**SELF-DETERMINATION.** Feminism [seeks to allow] each woman to identify and define herself socially, economically, and politically without external obstacles. Feminism . . . is permitting choice, then valuing and respecting the choices women make, at least to the extent choice is permitted and respected for men in society.

**PERSPECTIVE.** Feminism is looking at the structure and content of ideas from a woman-centered perspective, determining what women may tend to experience or know that others may not share. It goes to the root of knowledge, questioning how knowledge is transmitted and even what constitutes knowledge.

**EMPOWERMENT.** Feminism is drawing on the strength women have individually and collectively to accomplish the objectives listed above. It is challenging and provoking change in those forces that marginalize and limit women. Among feminists there are advocates for a broad spectrum of strategic approaches to the ultimate goal of liberation, dignity, and equality for women reflecting, to some extent, differing visions of what is ultimate liberation, dignity, and equality. Nevertheless, within the core of feminism as an ideology is the respect for difference, the inclusion of perspectives, and the opening of opportunities . . . .

Cheryl B. Preston, *This Old House: A Blueprint for Constructive Feminism*, 83 GEO. L.J. 2271, 2289-90 (1995).

need for new understandings of women's perceptions of themselves within the fabric of contemporary society. I argue that women are ambivalent about feminism, notwithstanding their acceptance of the gains feminism has made. Development of feminist thought, in legal theory and otherwise, is beginning to languish because of a false sense of comfort in our successes and a desire of the next generation of women to have it both ways: to have opportunities along with freedom from responsibility. To move forward, in fact merely to preserve the advances women have made over time, we must identify the source of women's ambivalence and find ways to resolve it. As is natural with ambivalence, its causes are typically deep and difficult to articulate.

In the struggle to discover what is happening to feminism, I suggest we must look beyond any individual woman's attitudes and locate women within the cultural mythology. The best insight into deep-rooted and unarticulated social assumptions is popular culture, and the clearest form of popular culture is print advertisements. I examine how such advertisements both reflect and mold society's attitudes. Using print advertisements as a Rosetta Stone reveals that our culture is deeply invested in the appeal of the "nymphet,"<sup>9</sup> the woman-child. With examples from a wide range of popular magazines, I illustrate how advertising images affirm the position of the woman-child and suggest adult women should seek to acquire her characteristics. What we may not see happening around us in our everyday life becomes quite apparent from how we allow ourselves to be depicted in advertising. Through a myriad of cues and symbols, advertising reveals that at some level women aspire to be "Baby Spice," a living vortex of conflicting themes: torn between the empowered, self-willed feminist and the fragile, needy, helpless traditional feminine stereotype.

After considering the state of feminism, the nature of advertising, and advertising's consistent display of the woman-child, I isolate and describe the kind of behavioral and attitudinal qualities we associate with a woman-child, the quintessential fourteen year old girl. In seeking to emulate her appeal, women risk the implication that they share her mental and emotional limitations. When an individual

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9. VLADIMIR NABOKOV, *LOLITA* 16 (2d Vintage Int'l ed. 1997) (defining "nymphet"). Nabokov states:

Between the age limits of nine and fourteen there occur maidens who, to certain bewitched travelers, twice or many times older than they, reveal their true nature which is not human, but nymphic (that is demoniac); and these chosen creatures I propose to designate as "nymphets."

*Id.*; see also *infra* Part IV.

woman seeks acceptance and respect as a powerful, competent, intelligent adult, she may nonetheless be washed in the gloss of the woman-child stereotype and presumed to have the childish characteristics attributed to women generally.

I address a number of implications the stereotype of childishness has for the development of law. I suggest how this stereotype might deter the entrance of women into the profession and the effectiveness of women in the profession. Moreover, the stereotype affects the resolution of cases and ultimately the development of legal theory. In addition, I argue women may be subjected to inequities on many fronts that the law must address. I illustrate with a few examples from the law governing rape, employment, medical malpractice, disability benefits, and guardianships.

Finally, I consider as a philosophical question why the woman-child stereotype is allowed to persist. I suggest reasons why some women may willingly act out the stereotype as well as why other women simply take no steps to confront or dispel it. I conclude by suggesting that the adolescent girl is a retreat from the responsibilities of adulthood and a ticket for the ultimate female brass ring: acceptance by men.

Following the conclusion, the appendix contains figures drawn from advertising images, which are referenced in the text. These figures come from a broad range of magazines covering the years 1997 to 2000.<sup>10</sup>

## I. THE WOMEN'S MOVEMENT AT LUNCH

*[D]espite substantial improvements, [women] still remain stuck in some familiar places.*<sup>11</sup>

From the current plateau, we can see that many American women are in fact distancing themselves from "women's issues" now that much of the hard work has been done.<sup>12</sup> Women enjoy the benefits

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10. The magazines from which I draw the figures are: *Better Homes & Gardens*, *Business Week*, *Cosmopolitan*, *Elle*, *Family Life*, *Fortune*, *Glamour*, *Golf Magazine*, *Harper's Bazaar*, *Ladies Home Journal*, *Mademoiselle*, *Modern Bride*, *Neiman Marcus: The Book*, *Newsweek*, *O: The Oprah Magazine*, *People*, *Seventeen*, *Sports Illustrated*, *Teen*, *Vogue*, *Woman's Day*, and *YM Magazine*.

11. Deborah L. Rhode, *Media Images/Feminist Issues*, in *FEMINISM, MEDIA, AND THE LAW* 9 (Martha A. Fineman & Martha T. McCluskey eds., 1997) [hereinafter *FEMINISM, MEDIA, LAW*].

12. See Cheryl B. Preston, *Consuming Sexism: Pornography Suppression in the Larger Context of Commercial Images*, 31 *GA. L. REV.* 771, 777 n.17 (1997) [hereinafter Preston, *Consuming Sexism*] (explaining how many women are dissuaded from identifying themselves as feminists); see also LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* 75 (1997) (acknowledging progress as evidenced by numbers of women in law school, but urging a "second-generation" of feminist effort to address more lingering, subtle concerns); DEBORAH L. RHODE, *SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY* (1997) (providing a thorough analysis of this trend); Joy Lang, Book Note, 13 *WIS. WOMEN'S L.J.* 103 (1998)

of the feminist revolution, such as greater opportunities for education, equal pay, access to public life, etc.<sup>13</sup> Few women are prepared to return to a pre-feminist era. However, many women, especially young women, are ambivalent about associating themselves with “troublemakers.”<sup>14</sup> They want to enjoy the vastly increased opportunities without taking on any of the taint they associate with the feminists who fought for these advances.<sup>15</sup> Their choices seem to reflect an odd juxtaposition of liberation and vulnerability that defies precise description, a perverse twist on “wanting it all.”<sup>16</sup>

Another factor makes this an important time to survey the field and make adjustments in feminist strategy. The sharp demarcation of gender in our society is fading only slightly.<sup>17</sup> We may now define the range of acceptable behaviors for men and women more broadly, but heterosexual Americans have not ceased thinking of themselves in

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(reviewing DEBORAH L. RHODE, *SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY* (1997)) (providing a law student’s self-declared journey from naïve denial to recognition).

I acknowledge that there is a plethora of reasons why women resist feminism. One is the friction between the “trailblazing women who had to sacrifice family for careers and the younger, want-it-all-now women,” who are trying to balance rather than sacrifice. Katarzyna Moreno & Morgan Murphy, *Generational Warfare: Think Men and Women Are from Different Planets? In the Workplace There’s Another Skirmish Going On: Between Young Women and Older Women*, *FORBES*, Mar. 22, 1999, at 62.

13. See Albert R. Hunt, *Women, Politics and the Marketplace*, WALL ST. J., June 22, 2000, at A9 (surveying women in the workplace). Hunt’s survey noted:

More than 80% of Americans, and an even higher percentage of men, say women have made considerable progress over the past generation in jobs; better than three quarters see similar progress in the marketplace. A solid plurality say the women’s movement has had a “largely positive impact” on America; fewer than one in five believe the impact has been negative.

*Id.* The survey also revealed that despite the fact “many Americans, especially women, think the pace of change is too slow,” only 29% of the women polled consider themselves feminists. *Id.*

14. See Julia E. Hanigsberg, *Glamour Law: Feminism through the Looking Glass of Popular Women’s Magazines*, in *FEMINISM, MEDIA, LAW*, *supra* note 11, at 82 n.2; see also Hunt, *supra* note 13, at A9 (“[F]or all the accolades they give the women’s movement, by better than a 2-to-1 margin women don’t consider themselves feminist. This feeling runs across the board . . . with one exception: women earning more than \$100,000 a year.”); Elayne Rapping, *You’ve Come Which Way Baby? The Road that Leads from June Cleaver to Ally McBeal Looks a Lot Like a U-turn*, *WOMEN’S REV. BOOKS*, July 2000, at 20-21 (“[F]eminism has become at best a confusing and at worst a damning term these days . . . Young women in particular . . . are at best confused and at worst horrified by the term.”).

15. See SUSAN DOUGLAS, *WHERE THE GIRLS ARE: GROWING UP FEMALE WITH THE MASS MEDIA* 272 (1994) (noting “I’m not a feminist, but . . .” is a cliché used by women who espouse all the benefits reaped by the women’s movement but who do not want to take on the baggage of the feminist stereotype).

16. See discussion *infra* Part V.

17. See LEVIT, *supra* note 2, at 34. “We still live in a world in which the sexes are sharply segregated: early in life, in names, clothing, and possessions; later, in occupations, civic associations, social groupings, and domestic roles. This gender separation is so pervasive it is almost invisible.” *Id.* at 2.

terms of gender.<sup>18</sup> What was the initial objective of some feminists, blending and then largely erasing the significance of gender beyond what is required by our biology, has simply not caught on. I doubt it will.

Feminism, especially in law, is at a critical juncture. Many of the blatant injustices against women have been significantly mitigated, but much work remains to be done.<sup>19</sup> Issues of voice, power, dominance, and lawyering style are finally recognized as legitimate components of legal theory.<sup>20</sup> Admittedly, the efforts to account for these issues in practice may have been largely superficial, but out-and-out denial of their existence is rare. Although we should certainly celebrate our successes, focusing inordinately on progress “has created its own obstacles to further change.”<sup>21</sup> The result is a

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Gender . . . is a complex structure composed of related elements including socially defined notions of appropriate behaviors, taken-for-granted beliefs and practices regarding the sexual division of labor within the family, and archetypal oppositions buried deep in the social subconscious . . . Gender is such a deep and pervasive structure that its impact is visible in virtually every domain of social activity.

Kathleen E. Hull & Robert L. Nelson, *Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions*, 23 LAW & SOC. INQUIRY 681, 697 (1998); see also KAY DEAUX, *THE BEHAVIOR OF WOMEN AND MEN* 7 (1976) (discussing how parents socialize young children along gender-specific lines, especially in relation to sex-related activities); FOWLES, *supra* note 7, at 220 (“Sex-role stereotypes and preferences for gender-specific toys are observable in children as young as 26 months; by 31 months of age, most children can place themselves in a gender category and will mark their gender with appropriate clothes, toys, attitudes, and behaviors.”) (citing D.B. MCCOY, *THE IMPACT OF PERSONALITY FORMATION AND GENDER DEVELOPMENT* 32 (1990)).

19. See Preston, *Bits and Pieces*, *supra* note 4, at 3-6. In her book, Lorraine Dusky recites the remarkable progress women have made in law and then concludes:

You would think that any problems vis-à-vis women in our legal system were solved.

You would think that our nation had finally accepted women as full and equal partners in the pursuit of justice. You would think men and women were equal before the law.

You would be wrong.

LORRAINE DUSKY, *STILL UNEQUAL: THE SHAMEFUL TRUTH ABOUT WOMEN AND JUSTICE IN AMERICA* 1-2 (1996).

20. See, e.g., Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 832 (1990); Naomi R. Cahn, *Styles of Lawyering*, 43 HASTINGS L.J. 1039, 1041-46 (1992) (citing *The Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 129-46 (1986-87)); Patricia A. Cain, *Feminist Legal Scholarship*, 77 IOWA L. REV. 19, 21 (1991); Ruth Colker, *The Practice of Theory*, 87 NW. U. L. REV. 1273, 1273-74 (1993); Linda R. Hirshman, *The Book of “A”*, 70 TEX. L. REV. 971, 1007-09 (1992); Martha Albertson Fineman, *Feminist Theory in Law: The Difference it Makes*, 2 COLUM. J. GENDER & L. 1, 1-4 (1992); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN’S RTS. L. REP. 7, 7-9 (1989); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculating on a Women’s Lawyering Process*, 1 BERKELEY WOMEN’S L.J. 39, 62-63 (1985); Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47, 47-48 (1988); Frances Olsen, *Feminist Theory in Grand Style*, 89 COLUM. L. REV. 1147, 1148 (1989); Ann C. Scales, *Feminists in the Field of Time*, 42 FLA. L. REV. 95, 96-99 (1990); Jeanne L. Schroeder, *Abduction from the Seraglio: Feminist Methodologies and the Logic of Imagination*, 70 TEX. L. REV. 109, 112-14 (1991); Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 797-800 (1989).

21. RHODE, *supra* note 12, at 1 (noting that the American Bar Association’s “Glass Ceilings

premature placidity, a lack of attentiveness that permits the threads of subordination we have not been quite able to part with to grow stronger, pulling us back.<sup>22</sup> This retrogression threatens the precious advances already made by feminist efforts.

The next step requires more delicate and subtle work. It requires going beneath the obvious and blatant.<sup>23</sup> It requires asking what we as women think about ourselves, rather than what “they”—men—think about us. It requires considering why we are reluctant to give up some behaviors that undermine our full participation in society. It means understanding our ambivalence. We “talk the talk” of liberation, but we don’t always “walk the walk.” We seem unaware of exactly what is inconsistent.

First, we must see what we might be doing, or the attitudes we are espousing, that hold us back. This Article hopes to use an analysis of popular advertising, especially print ads,<sup>24</sup> to bring into focus the

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report, together with two other recent surveys, . . . offer[s] a sobering account of progress yet to be made”); see also Deborah L. Rhode, *Myths of Meritocracy*, 65 *FORDHAM L. REV.* 585, 586 (1996) (citing the American Bar Association’s survey as well as other surveys to demonstrate the problems women are having advancing in the legal profession). A recent comprehensive study on the hiring and promotion of women found,

The . . . gains [of women in executive, administrative, and managerial jobs between 1970 and 1994] are impressive, but they may be overstated . . . . Although sex segregation has declined, it is still considerably higher within particular jobs than within occupations generally, and women continue to be blocked from many management jobs, especially from those at the top.

Lisa E. Cohen et al., *And Then There Were More? The Effect of Organizational Sex Composition on the Hiring and Promotion of Managers*, *AM. SOC. REV.*, Oct. 1, 1998, at 711.

22. Patricia Smith observes how easy it is to slip backwards:

[I]t is naïve to ignore the subtlety and complexity of psychological and institutional devices for securing the status quo, especially as it relates to entrenched power. The status quo stands for sexual inequality today just as it has for 5,000 years; the mechanisms for maintaining this are many and diverse . . . . [A]ny deviations from or challenges to the status quo are always subject to interpretations that make them more congenial to accepted thought. This has the effect of dissipating new movements and diffusing new ideas, while reinforcing and replenishing old ones, thus sapping momentum and diverting movements for change.

Patricia Smith, *Autonomy, Aspiration and Accomplishment: Some Steps and Barriers to Equality for Women*, 9 *J. CONTEMP. LEGAL ISSUES* 257, 265-66 (1998).

23. See Martha Chamallas, *The New Gender Panic: Reflections on Sex Scandals and the Military*, 83 *MINN. L. REV.* 305, 306 (1998) (“The dominant feminist approaches are now pragmatic, starting from the realization that because sexism is such a complicated, multi-faceted and ever-changing phenomenon, no one theory or strategy could ever be a sufficient response.”).

24. When I refer to “advertising” or “advertisement,” especially in magazines, I do not distinguish between the traditional paid advertisements and editorial photographs accompanying articles, which “in essence [are] advertisements meant to create hospitable environments for the paying advertisers: they include credits with information on where to buy every element of the representation, including makeup and clothing.” Julia E. Hanigsberg, *Glamour Law: Feminism through the Looking Glass of Popular Women’s Magazines*, in *FEMINISM, MEDIA, LAW*, *supra* note 11, at 78 n.16. Jean Kilbourne also notes there is a minimal distinction between the two:

[I]n most women’s and girls’ magazines . . . there is a very fine line, if any, between

current positioning of American women with respect to the ideals of feminism. In her introduction to a collection of essays on feminism and media, Susan Bisom-Rapp posits:

Popular culture is a fertile analytical site for feminist legal theory. Reaching an audience of millions, mass media both reflects and shapes social attitudes and increasingly provides a forum for political and cultural debates, particularly those that implicate law. It alternately functions as an instrument for social change and a tool for restabilizing or reconfiguring the status quo. As such, its analysis can provide feminists working in law with a barometer for gauging the impact of their ideas and with a point from which strategy can be formulated.<sup>25</sup>

Advertising is particularly rich with gender cues,<sup>26</sup> and the woman-child is one of the most frequent images in advertising.<sup>27</sup>

My objective is not to encourage using law to censor advertising or force advertisers into enlightenment.<sup>28</sup> Rather, I seek to increase awareness and thus facilitate the making of informed decisions about our personal choices, as well as enrich the discussion of how such stereotypes influence society and law.<sup>29</sup>

Awareness is critical. Although surrounded with and defined by advertising, most of us are quite ignorant about the significance of its

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advertising and editorial content. Most of these magazines gladly provide a climate in which ads for diet and beauty products will be looked at with interest, even with desperation. And they suffer consequences from advertisers if they fail to provide such a climate.

JEAN KILBOURNE, DEADLY PERSUASION, WHY WOMEN AND GIRLS MUST FIGHT THE ADDICTIVE POWER OF ADVERTISING 51 (1999).

25. Susan Bisom-Rapp, *Introduction to Chapter II: Feminism, Law, and Popular Culture*, in *FEMINISM, MEDIA, LAW*, *supra* note 11, at 87.

26. See Preston, *Consuming Sexism*, *supra* note 12, at 819-20 and sources cited therein.

27. See ELLEN MCCracken, DECODING WOMEN'S MAGAZINES: FROM *MADEMOISELLE* TO *MS*. 128 (1993) (stating that portrayals of "childish women in playful poses" are frequent).

28. See Kennedy, *supra* note 4, at 661-92 (describing legal regulations affecting advertising and a proposal to strengthen these).

29. See *infra* Part IV. The interaction between popular culture and law has received some prior attention. See, e.g., Kennedy, *supra* note 4; Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527, 527-29 (1986); Rosemary Coombe, *Publicity Rights and Political Aspiration: Mass Culture, Gender Identity, and Democracy*, 26 NEW ENG. L. REV. 1221, 1222-25 (1992); Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1605-06 (1989); John Frohnmayer, *Jumbo Shrimp, Military Justice, American Culture*, 17 FALL ENT. & SPORTS L. 1, 21-22 (1999); Jennifer Jaff, *Law and Lawyer in Pop Music: A Reason for Self-Reflection*, 40 U. MIAMI L. REV. 659, 668 (1986); Stewart Macaulay, *Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports*, 21 LAW & SOC'Y REV. 185, 185-86 (1987); Nancy B. Rapoport, *Dressed for Excess: How Hollywood Affects the Professional Behavior of Lawyers*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 49, 53 (2000); Naomi Mezey, Book Note, *Legal Radicals in Madonna's Closet: The Influence of Identity Politics, Popular Culture, and a New Generation on Critical Legal Studies*, 46 STAN. L. REV. 1835, 1861 (1994) (reviewing DUNCAN KENNEDY, *SEXY DRESSING ETC.: ESSAYS ON THE POWER AND POLITICS OF CULTURAL IDENTITY* (1993)).

message.<sup>30</sup> Most Americans deny being influenced by ads.<sup>31</sup> They underestimate the amount of advertising they see and believe it innocuous. Some aspects of advertising have received heavy commentary in recent years, most noticeably the extreme thinness of female models and the trend toward explicit sexuality. Some ads are still, and are intended to be, shocking. More dangerous, however, are the consistently and uniformly repeated cues that are virtually invisible to an audience not educated to see them.<sup>32</sup> We do not recognize their force and we take no steps to counteract or account for them.<sup>33</sup>

Thus, I am not as concerned about the kinds of ad techniques which have been brought to national consciousness, the kind to which we have been alerted. I seek to reveal the subvert and individually minute notes that by accumulation play persuasive themes.<sup>34</sup> When women are aware this message is being sent, they can

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30. See ANTHONY J. CORTESE, PROVOCATEUR: IMAGES OF WOMEN AND MINORITIES IN ADVERTISING 4 (1999) ("The average adult consumer is bombarded with at least 500 advertising and marketing messages daily. Some estimate the number to be as high as 1,500 ads a day, others put it at 3000. This makes advertising perhaps the most powerful educational source in society."); see also Preston, *Consuming Sexism*, *supra* note 12, at 847-50 and sources cited therein (describing how advertising is pervasive and expansive).

31. See Preston, *Consuming Sexism*, *supra* note 12, at 847 n.354 ("Advertising has much more power to influence us than we tend to admit.").

32. See *id.* at 848-49 n.354.

33. See generally The Chartered Institute of Marketing, *CIM Consumer Research: Advertising and Gender*, available at <http://www.marketingportal.com.co.uk> (last visited on Aug. 23, 2000) (summarized in, *Advertising is Still Seen as Stereotypical: Findings Show Women's Position Has Improved But Ads Have Long Way to Go*, BRAND STRATEGY, Apr. 20, 2000, at 1, available at 2000 WL 14173734). The CIM study shows that although seventy-three percent of the respondents believe that women are stereotyped in advertising, only twelve percent of men and nine percent of women believed women were shown as passive in ads. See *id.* Contrary to this assumption, portraying woman as passive is in fact an extremely common motif. See *infra* Part III.E In the CIM study, thirty-seven percent of men and (amazingly) twenty-three percent of women believed that "women are regularly *but accurately* stereotyped." *Id.* (emphasis added).

In another study college-age women were asked to rank magazine advertisements based on whether they contained harmful female stereotypes. See Robert Gustafson et. al., *The 'Thin Ideal'*, MARKETING NEWS, Mar. 15, 1999, at 22, available at 1999 WL 7722948; *College-age Women Unaware of Harm of Advertising Stereotypes*, MEDIA REPORT TO WOMEN, Apr. 1, 1999, available at 1999 WL 14243770 [hereinafter MEDIA REPORT]. Subjects reacted to the explicit or blatant images, but were more oblivious to the implicit images. See Gustafson *supra*. Of the seven stereotypes used in the study, the subjects ranked as "least harmful" images which "portrayed elderly women as 'ding-a-lings.'" MEDIA REPORT *supra*. The women subjects apparently think that such portrayals do not affect how society values the accomplishments of women. See generally *infra* Part IV (detailing how such ads harm all women).

The results of a third study showed that when viewing advertisements women readily identified the extremely thin models or the apparent effortlessness of the beauty. See Steven M. Kates & Glenda Shaw-Garlock, *The Ever Entangling Web: A Study of Ideologies and Discourses in Advertising to Women*, J. ADVERTISING, July 1, 1999, at 33, available at 1999 WL 23456125. But these women also did not seem aware of any of the common themes I discuss in this Article. See *id.*

34. See generally ERVING GOFFMAN, GENDER ADVERTISEMENTS 6 (2d ed. 1979).

make choices, the kind of choices I discuss later in Part V. Women can choose to act consistent with the expectation of female childishness, or they can resist. Women can choose to avoid certain periodicals where stereotypical images are frequent. They can stop purchasing products promoted by ads with harmful messages. They can voice their concerns to publishers and marketers. In their conduct, women can continue to value themselves and other women when they behave as legitimate adults. They can vow to act grown up.

Likewise, men can help when they become aware of the pressure in society on women to conform to and play out childishness. They can resist reinforcing the stereotype by rewarding women for truly adult behavior. They can check themselves to eradicate unconscious bias. Furthermore, both men and women can teach children to see advertising in a new light and ultimately to glory in powerful, independent, and responsible women.

## II. CULTURAL BINOCULARS

*The magical ability of the advertiser to use a few models and props to evoke a life-like scene of his own choosing is not primarily due to the art and technology of commercial photography; it is due primarily to those institutionalized arrangements in social life which allow strangers to glimpse the lives of persons they pass. . . . In seeing what picture makers can make of situational materials, one can begin to see what we ourselves might be engaged in doing.*<sup>35</sup>

Just as myth in the classical world served as “the exemplary model for all significant human activities,”<sup>36</sup> images in our culture, especially those most common and pervasive,<sup>37</sup> give “symbolic significance to prosaic products [in] what anthropologists describe as the magic of ritual.”<sup>38</sup> Advertising, like myth, relies on shared stories and

35. *Id.* at 23, 27.

36. Rex Warner, *Foreword* to *ENCYCLOPEDIA OF WORLD MYTHOLOGY* 11 (1971).

37. See Mezey, *supra* note 29, at 1858 (arguing that “[f]or many Americans, even the well-educated who love to complain of its mindlessness, commercial culture arguably provides their most vivid understanding of history and politics”).

38. FOWLES, *supra* note 7, at 98 (“[A]ll consumer products offer magic, and all advertisements are spells.”) (quoting JUDITH WILLIAMSON, *DECODING ADVERTISEMENTS: IDEOLOGY AND MEANING IN ADVERTISING* 141 (1978)).

[Pop culture a]dherents must regularly devote time to the activity of consumption, first by being familiar with the constantly updated Holy Writ of advertising and then in an act of Communion by effecting purchases . . . . Religious imagery, such as a halo around a product or a shaft of light from above falling upon a commodity, was common in advertising of the 1920s and 1930s . . . .

*Id.* at 97-98 (citing RONALD MARCHAND, *ADVERTISING THE AMERICAN WAY: MAKING WAY FOR MODERNITY, 1920-1940*, 282 (1985)); see also KILBOURNE, *supra* note 24, at 68-69 (“Advertising co-opts our sacred symbols and sacred language in order to evoke an immediate emotional response. Neil Postman refers to this as ‘cultural rape’ that leaves us deprived of our most

meanings.<sup>39</sup> “[Advertising] signs must be readable by others, so what the solitary consumer is buying is not so much self-definition in isolation as participatory symbols.”<sup>40</sup> By using a shorthand display “intentionally choreographed to be unambiguous,”<sup>41</sup> an advertiser can provide elaborate background into the actors’ relationship, situation, and motivation, thereby evoking a number of complex emotional responses.<sup>42</sup> The snapshots in print advertisements convey various depths of meaning primarily because we bring to each detail a collective understanding of its attendant and extenuated meaning. “In this expressive domain, in a wondrous shorthand, one finds symbolized the personal assumptions, the operating beliefs, the aspirations, and the plaintive wants of those who populate what is currently the most dominant culture on earth.”<sup>43</sup> In this way, “[a]dvertising performs much the same function in industrial society as myth performed in ancient and primitive societies. It is both a

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meaningful images.”) (quoting J. Curtis, *Wait a Minute Mr. Postman*, APPLIED ARTS MAG., May/June 1998, at 49).

39. We are socialized from birth to make sense out of the world by reading the subtleties of others’ behavior. See Debra Umberson & Michael Hughes, *The Impact of Physical Attractiveness on Achievement and Psychological Well-Being*, 50 SOC. PSYCHOL. Q. 227, 227 (1987). Gesture, expression, posture, clothing, and location constitute a “display” of intent. See *id.* Such “displays” allow us to organize daily details into manageable and understandable pieces and signals to others important information for negotiating our relationships and interactions. See *id.* For example, “[p]eople are likely to organize their perceptions and expectations of another individual around his or her race, sex, age and attractiveness—all observable characteristics which reflect status in our society.” *Id.*

The vast majority of us, by an unspoken consensus, learned pre-verbally by watching and following to adhere to the assumed schedule of gender depictions. See JOHN BERGER ET AL., *WAYS OF SEEING* 27 (2d ed. 1972) (positioning visual learning before other forms); FOWLES, *supra* note 7, at xv; GOFFMAN, *supra* note 34, at 1-8 (noting the power of images, especially in communicating gender); see also Louise Everett Graham & Geraldine Maschio, *A False Public Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 KY. L.J. 1027 (1996) (comparing the role of film in popular culture, and thus in constructing and reconstructing society, with the power of myth and folklore).

40. FOWLES, *supra* note 7, at 109 (“Members of the [advertising] audience have grown up learning not only their mother tongue and the prevailing social codes but also the lexicon of popular culture symbols.”).

41. Richard H. Kolbe & Paul J. Albanese, *Man to Man: A Content Analysis of Sole-Male Images in Male-Audience Magazines*, J. ADVERTISING, Winter 1996, at 1, available at 1996 WL 10841142.

42. See Richard W. Pollay, *The Distorted Mirror: Reflection on the Unintended Consequences of Advertising*, J. MARKETING, Apr. 1986, at 18, 29 (“[A]dvertising is a symbol-manipulating occupation. The symbols of fashion and elegance are used to glamorize clothing and cosmetics. The symbols of youthful gaiety sell soft drinks and candy bars. The symbols of adventure and sportsmanship are used to promote cigarettes and liquor.”) (quoting semanticist S.I. HAYAKAWA, *LANGUAGE IN THOUGHT AND ACTION* 268-69 (1964)).

43. FOWLES, *supra* note 7, at 167; see also Barbra Stern, *Advertising to the “Other” Culture*, NAT’L F., Apr. 1, 1997, at 35 (“[A]d agencies express for the collective society that which dreams and uncensored behavior do in individuals. They give spatial form to hidden impulses, and when analyzed, make possible bringing into reasonable order a great deal that could not otherwise be observed or discussed.”) (quoting MARSHALL MCLUHAN, *THE MECHANICAL BRIDE* (1951)).

creator and perpetuator of the dominant attitudes, values, and ideology of the culture, the social norms and myths by which most people govern their behavior.”<sup>44</sup> And advertisers can work this magic in nanoseconds.<sup>45</sup>

As with myth, we picture in advertising the images that “fit” the cultural story and reject the inconsistent,<sup>46</sup> unless an advertiser intentionally reverses an assumption to shock or create humor. The reality thus reflected is the cultural “story,” rather than actual life. “Advertisements depict for us not necessarily how we actually behave

44. KILBOURNE, *supra* note 24, at 67; *see also* Kates & Shaw-Garlock, *supra* note 33 and sources cited therein (referencing a wide variety of research establishing the importance of advertising in “legitimizing various authoritative beliefs about . . . gendered discourse”).

45.

[O]ne would be hard-pressed to find better dramaturgical examples of minimalist expressionism than, say, the famous Mean Joe Green commercial (“Have a Coke and a smile”), the celebrated familial telephone ads (“He called just to say, ‘I love you, Mom’”), or the brilliantly compressed love story that appears in one 30-second spot for Dodge (“Do you like trucks?”). . . . They are beautifully crafted little miniatures whose jewel-like production values radiantly outshine many longer, more sprawling attempts at grandeur.

Morris B. Holbrook, *Mirror, Mirror, on the Wall, What’s Unfair in the Reflections on Advertising?*, J. MARKETING, July 1987, at 95, 99. Studies show that adults can make judgments about a person’s attractiveness and character in a visual flash.

Our findings demonstrate . . . the adult perceptual system is capable of effortlessly or “automatically” detecting cue information associated with attractiveness. Furthermore, they suggest that physical attractiveness should be added to the list of other facial characteristics, such as age, expression, and identity . . . , which research shows can be detected with a single brief glance at another person.

The second major finding . . . was that, as expected, subjects made stereotyped attribute judgments of targets’ femininity/masculinity, job suitability, and cooperativeness on the basis, in part, of attractiveness information extracted during the 100-ms [milli-second] target presentation.

Paul Locher et al., *At First Glance: Accessibility of the Physical Attractiveness Stereotype*, 28 SEX ROLES 729, 735 (1993).

46.

[In advertising, u]npleasant imagery is risky and hence rare. Ordinarily, the images must be pleasant to the greatest number and offensive to the fewest; the chosen pictures must, as Andrew Wernick wrote, “reach over the heads of the combatants and beyond their incompatibilities to whatever, nevertheless, can be expected to unite them all.” Because the task of the messages is to change behavior, and the easiest, least resisted change in behaviors is in the direction of ideals, the images should usually be idealized depictions.

FOWLES, *supra* note 7, at 149 (quoting ANDREW WERNICK, PROMOTIONAL CULTURE: ADVERTISING, IDEOLOGY, AND SYMBOLIC EXPRESSION 43 (1992)).

Lynne Henderson provides a fascinating analysis of storytelling as a means of communicating within cultural mythology. *See* Lynne Henderson, *Without Narrative: Child Sexual Abuse*, 4 J. SOC. POL’Y & L. 479, 484 (1997). Henderson explains how “narrative also influences what is seen as ‘fact’—those things observed that ‘fit’ a story and those that are not observed or are discarded that don’t fit or don’t ‘make sense’ within the context of a cultural narrative or myth.” *Id.*; *see also* Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 STAN. L. REV. 39 (1994); Steven L. Winter, *The Cognitive Dimension of the Agony Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2230-55, 2271-79 (1989).

as men and women but how we *think* men and women behave.”<sup>47</sup> Anyone intentionally or unintentionally violating the unstated archetype creates immense discomfort for those observing the display. “[Many displays] are so much taken for granted that it awaits a student of some kind to explicate what everyone knows (but not consciously), and failure to perform leads to nothing more than diffuse unease and a search for speakable reasons to be ill-tempered with the offender.”<sup>48</sup>

Thus, through the magic mirror of advertising symbolism, we can isolate and study the collective “goings on”<sup>49</sup> and pinpoint “under cover” cultural patterns as “distill[ed] from the variety of human appearances the few that will be accepted as apotheoses and returns them in perfected form to an audience desiring to see such singular renditions.”<sup>50</sup> Print advertisements condense and then fix in a still life the details of daily interactions so we can hold and study them.

Even cynics must admit that advertising undoubtedly tells us something about our society. It either accurately reflects our aspirations and fears, or we allow advertising to lie to us and consistently misrepresent our aspirations and fears.<sup>51</sup> It either pictures what we envision of ourselves, or we make ourselves into what it envisions for us, because acquiescing is easier or more comfortable than challenging the myth.<sup>52</sup> In doing both, advertising is imitative and generative.<sup>53</sup> Through an “intimate give-and-take,”<sup>54</sup> ads both create<sup>55</sup> and reflect cultural values. Stated differently, “[t]he

47. Vivian Gornick, *Introduction* to ERVING GOFFMAN, *supra* note 34, at vii.

48. GOFFMAN, *supra* note 34, at 2-3.

49. *Id.* at 27; *see also* Holbrook, *supra* note 45, at 100 (noting that “content analysis of advertising [is] a useful index of social norms”) (internal cite omitted).

50. FOWLES, *supra* note 7, at 159.

51. *See* GOFFMAN, *supra* note 34, at 25 (noting that at a minimum advertising’s pictures “are not perceived as peculiar and unnatural”).

52. *See* Gornick, *supra* note 47, at ix (arguing that advertising socializes the process, encouraging the belief that the artificial pose reflects the natural self).

53. *See* FOWLES, *supra* note 7, at 157 (discussing the on-going debate regarding whether advertising creates social values or simply mirrors existing values).

Although some people, especially advertisers, continue to argue that advertising simply reflects the society, advertising does a great deal more than simply reflect cultural attitudes and values . . . . Far from being a passive mirror of society, advertising is an effective and pervasive medium of influence and persuasion, and its influence is cumulative, often subtle, and primarily unconscious.

KILBOURNE, *supra* note 24, at 67.

54. Gornick, *supra* note 47, at viii.

55.

[A]dvertising actually create[s] and name[s] taboos. The most famous, B.O. and Halitosis, are archaeological specimens from an age which we might fix as either Late Iron Tonic or Early Soap . . . . Bad breath and body odor have always existed [but

mass media perform two tasks at once. First, . . . they reflect dominant values and attitudes in society. Second, they act as agents of socialization . . . .”<sup>56</sup> Although I am particularly interested in advertising in its reflective role, mirroring daily “goings on” that help explain the source of residual sexism, advertising’s power to direct the development of social values is also pertinent,<sup>57</sup> especially as the influence of “family, religion, and educat[ion] have grown noticeably weaker.”<sup>58</sup>

I must emphasize that advertising is not just a study of the stereotypes held by advertisers,<sup>59</sup> even though the creative directors

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advertising] transfer[ed] them from personal idiosyncrasies into tribal taboos.

Pollay, *supra* note 42, at 24 (quoting HOWARD LUCK GOSSAGE, IS THERE ANY HOPE FOR ADVERTISING? 31 (1986)); *see also* KILBOURNE, *supra* note 24, at 71 (“As luxury goods, prepared foods, and nonessential items have proliferated, it has become crucial to create artificial needs in order to sell unnecessary products.”). *See generally* Scott Coltrane & Melinda Messineo, *The Perpetuation of Subtle Prejudice: Race and Gender Imagery in 1990’s Television Advertising*, 42 SEX ROLES 363 (2000) (concluding that advertising plays a part in reproducing contemporary stereotypes).

56. *Introduction: The Symbolic Annihilation of Women by the Mass Media*, in HEARTH AND HOME: IMAGES OF WOMEN IN THE MASS MEDIA 37 (Gaye Tuchman et al. eds., 1978). *See generally* R.P. RUBINSTEIN, DRESS CODES: MEANINGS AND MESSAGES IN AMERICAN CULTURE (1995).

57. Advertising tells us both who we are and what we should be. *See* Pollay, *supra* note 42, at 21 (explaining how advertising feeds our existing aspirations and fears, while expanding and redirecting them) (quoting MARYA MANNES, BUT WILL IT SELL? 32 (1964)); *see also* MICHAEL F. JACOBSON & LAURIE ANN MAZUR, MARKETING MADNESS: A SURVIVAL GUIDE FOR A CONSUMER SOCIETY 13 (1995) (“[W]e contend that commercialism—and the spending of over \$500 annually for every man, woman, and child in the country on highly sophisticated and carefully targeted commercial messages—has far more damaging effects than goading Joe Six-Pack to buy Miller instead of Budweiser.”).

58. Pollay, *supra* note 42, at 24 (quoting RONALD BERMAN, ADVERTISING AND SOCIAL CHANGE 13 (1981)); *see also* FOWLES, *supra* note 7, at 198 (“[S]elf-identity, which used to be handed to the individual through the impositions of societal schema . . . , now must be formulated in lieu of those eroding schema . . . .”); ANDREW WERNICK, PROMOTIONAL CULTURE: ADVERTISING, IDEOLOGY AND SYMBOLIC EXPRESSION (1991) (arguing that advertisements are promotional texts whose impact on cultural formation has become increasingly fundamental).

59. Three explanations can be made for why advertisers continue to produce ads with negative stereotypes of women. First, as mentioned in *infra* note 60, those who make the artistic choices are almost universally men and may carry some unconscious prejudices. A second reason is that, notwithstanding individual viewpoints, advertising reflects “what Carl Jung referred to as the ‘collective unconscious.’ Advertisers are members of the culture too and have been as thoroughly conditioned as anyone else.” KILBOURNE, *supra* note 24, at 136. Third, advertisers are really very savvy about their target audiences. They employ elaborate research methods. *See id.* at 77 (“In some ways, advertisers know us better than we know ourselves . . .”).

Advertising depends on developing carefully calculated marketing strategies. Advertising is neither an art nor a science, but uses techniques of both. Advertisers utilize elaborate market research to understand demographics (gender, age, education, and income levels) and psychographics (motivations, ideals, and priorities). Sophisticated statistical methods are used to interpret surveys. Eye tracking devices are used to determine how ads will be read. With recent advancements in technology, “the race is on to find methods that dig beyond what consumers can articulate to ‘what’s deeper in their mind.’” When the desired message is decided upon, another team of experts comes in to translate the message into the image.

Preston, *Bits and Pieces*, *supra* note 4, at 68-69 (internal footnotes omitted).

who chose copy and images, are not surprisingly, almost universally male.<sup>60</sup> Economics provide ample motivation for advertisers to discern our collective archetypal fears and aspirations, translate our fears and aspirations into shorthand messages, and manipulate them to encourage further consumption. As consumers, we represent a constituency, with purchasing dollars, who casts votes for particular products. In doing so, we implicitly sponsor the images by which the products have been sold to us.<sup>61</sup> It is society, not merely advertisers, that empowers, affirms, and ensconces these images.

Understanding both the reflection and reinforcement prongs of advertising is valuable to the feminist transformation. To the extent advertising teaches and molds attitudes deleterious to the status of women, we must use our awareness of its power to combat these messages. Concomitantly, to the extent advertising merely reflects reality, feminists can use advertisements as a slide under a microscope to uncover the lingering roots of sexism; ads are merely frozen, simplified types of real life exposing the obscured "goings on."

### III. PICTURING THE MASCOT OF RETROGRESSION

*In a culture where images generally wield more power than words, the public*

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The feedback advertisers receive on ads depicting the childish women must confirm that these images are effective. See Stern, *supra* note 43, at 35 ("Because advertisements present advertisers' views of how men and women can be profitably pictured, they are likely to show the culturally approved version of maleness/femaleness."). One advertiser tells of experimenting with a commercial featuring a "real" woman with average size, features, and abilities. See Jeffrey Scott, *Selling with Sexism: Resurgence of Hot Ads Fuels Social, Political Battle Over Unequal Treatment*, ATLANTA J. & CONST., Nov. 24, 1991, at H1. Women in the test audience hated the ad and in fact they were brutal in expressing their dislike of the woman in the commercial. See *id.* (citing Matt Smith, an executive with Hawley Martin Partners); see also CORTESE, *supra* note 30, at 45 ("Feminist efforts to redefine gender ideals for advertisers . . . met with disbelief, resistance and downright hostility.") (citing GENDER, RACE, AND CLASS IN MEDIA (Gail Dines & Jean M. Humez eds., 1995)).

60. See Joy Dietrich, *Women Reach High: Women in the Advertising Industry are Making Enormous Progress Around the Work, But It's Still Pretty Lonely at the Top*, ADVERTISING AGE INT'L, Jan. 1, 2000, available at 2000 WL 9531736. Dietrich published the results of a survey of thirteen worldwide advertising networks. See *id.* The survey found, "The percentage of female creative directors averages 8% and only reaches double digits at four networks . . ." *Id.* Similar results were found by the Institute of Practitioners in Advertising, the trade organization in the United Kingdom. See *id.*; see also Belinda Archer, *What's Your Problem?: Ten Years Ago, A Damning Report into the Status of Women in Advertising Shocked the Industry. So Why are Things No Better Today?*, GUARDIAN, Sept. 13, 1999, available at 1999 WL 25729429 (finding no female creative heads and a "disproportionately small number of rank-and-file female creatives . . . [O]nly 6% of copywriters are women and only 15% of art directors."). Of course, advertisers, even all male groups, have little incentive to intentionally oppress women, but "they unconsciously and unwittingly 'speak' dominant discourse(s) and adapt certain tacit, unquestioned ideological positions." Kates & Shaw-Garlock, *supra* note 33, at 33.

61. See KILBOURNE, *supra* note 24, at 33-34. Kilbourne asks, if advertising does not help us decide which products to buy, "Why would companies spend over \$200 billion a year on advertising? Why would they be willing to spend over \$250,000 to produce an average television commercial and another \$250,000 to air it?" *Id.*

*has become accustomed to the child-woman . . . . [She is] the mascot of backlash, the leading signifier that strong women provoke deep uneasiness . . . .*<sup>62</sup>

Once we recognize advertising as a useful tool for revealing culture, we can begin to examine what in fact advertising shows us about current notions of gender appeal. In other articles, I have addressed three important underlying propositions.<sup>63</sup> First, women, especially young women and teens, look to the images in fashion magazines to see what is currently fashionable and then, to greater and lesser degrees, they adapt themselves to conform to the desirable look.<sup>64</sup> Second, advertisers are strongly motivated to feature their products in a way that will immediately signal desirability to the viewer.<sup>65</sup> A successful advertiser wraps products in an aura of our aspirations. Third, for women in our society, “desirability” continues to mean appealing to men.<sup>66</sup> The need to appeal to men is culturally conditioned and is not necessarily an effort to get sexual attention. Rather, women perceive being appealing to men as the path to security (both financial and emotional), status (as a legitimate member of a male-dominant society), love, family, and respect.<sup>67</sup>

In this section, I will show that a major, although not the only, definition of sexy or appealing to men in recent fashion magazine advertisements is prepubescent sexy, the woman-child, or “Baby Spice.” Equating appealing women with the sexualized child emerges in five primary modes. First, advertisers are sexualizing younger and younger, or at least younger looking, models to illustrate what is fashionable. Second, the adult woman targeted by ads appears with, and as a mirror of, a young girl. Third, adult women in ads are linked to cartoon characters and toys. Fourth, they are posed or

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62. Elizabeth Kaye, *Pop Culture Hints This is the Year of the Child-Woman*, SAN DIEGO UNION-TRIB., June 28, 1993, at E4, available at 1993 WL 7490218.

63. See Preston, *Bits and Pieces*, *supra* note 4, at 70; Preston, *Consuming Sexism*, *supra* note 12, at 846-48.

64. See Preston, *Bits and Pieces*, *supra* note 4, at 67-70 (discussing the historical correlation between advertising and women’s attitudes toward their body as well as arguing that the express purpose of purchasing fashion magazines is to learn and then seek to conform); see also Hanigsberg, *supra* note 24, at 82 n.7 (listing high circulation rates for various women’s fashion magazines, e.g., *Glamour*, *Mirabella*, *Mademoiselle*, *Vogue*, *Essence*, and *Harper’s Bazaar*).

65. See Preston, *Bits and Pieces*, *supra* note 4, at 70 (arguing that the express purpose of purchasing magazines is to learn what is chic and to conform to that standard).

66. See *id.* at 58 (contending women seek to feel appealing to men); see also Tracy E. Higgins & Deborah L. Tolman, *Law, Cultural Media[ti]on and Desire in the Lives of Adolescent Girls*, in *FEMINISM, MEDIA, LAW*, *supra* note 11, at 179 (“Through this cultural story, girls are simultaneously taught that they are valued in terms of their sexual desirability and that their own desire makes them vulnerable.”).

67. By appealing to men, women are more likely to be taken care of economically and legitimized socially. See *infra* Part V.

positioned in such a way as to convey childishness, confusion, and triviality. The nanosecond symbolic message of these ads communicates a variety of qualities we should associate with children, not adult women. Finally, advertisements portray the modern woman as a decorative object, often using professional or feminist jargon to cloak the underlying message that a woman's primary purpose is to be pretty, flighty, and ambivalent.

#### A. *Kiddies and Schoolgirls*

We survived the blatantly offensive Calvin Klein "kiddie porn" jeans campaign in late summer 1995.<sup>68</sup> Nonetheless, the consistent trend has affirmed our taste for "kiddie" models. Model agencies and photographers recruit thirteen and fourteen year old girls or later teens who look much younger.<sup>69</sup> They feature these girls in typical pre-teen settings, with stuffed animals, toys, and paint on their faces – in an earnest yearning for sexual experience. Unquestionably, the fashion industry craves their "awkwardness and inexperience . . . freshness and innocence, . . . [and] unsullied adolescent beauty."<sup>70</sup> Such models are described as "angelic," having an "air of cloying wholesomeness."<sup>71</sup> The mood is "nymphet."<sup>72</sup>

Does this trend suggest that advertising's women are moving away from the promiscuous, temptress, and over-sexed theme of the past

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68. For images from this campaign, see YM MAG., Aug. 1995, at insert. See also KILBOURNE, *supra* note 24, at 283 (examining the Calvin Klein jeans campaign); Lauren R. Tucker, *The Framing of Calvin Klein: A Frame Analysis of Media Discourse About the August 1995 Calvin Klein Jeans Advertising Campaign*, CRITICAL STUDIES IN MASS COMM., June 1, 1998, at 141 ("While only two of the models are identified by the discourse as under the age of 18, the models as a group are repeatedly referred to as 'girls,' 'boys,' and 'teenagers,' reinforcing the assumption that all of the models are underage and that the campaign constitutes child exploitation."); *Noted in Brief*, BALTIMORE SUN, June 26, 1997, at 18A, available at 1997 WL 55177484 (discussing the reaction to the Calvin Klein jeans campaign).

69. See, e.g. *The Hot New Faces of Chanel*, SEVENTEEN, Nov. 1999, at 156 (introducing models aged fourteen and seventeen); Hettie Judah, *So We Want to Model: What's Wrong with That?*, INDEPENDENT (London), June 22, 1997, at 1-2 (referring to thirteen year old models at Vivienne Westwood's show); Bernadette Morra, *Ford Supermodel Says She 'Trained' for the Role*, TORONTO STAR, Feb. 13, 1997, at A28, available at 1997 WL 3821433 (discussing model whose career began at age fourteen); Matt Nichols, *Tokyo's a Model City for Orem Girl*, DESERET NEWS, July 9, 1997, at A1, available at 1997 WL 11817145 (reporting on fourteen year old Utahn who will spend summer modeling in Tokyo); Mimi Tompkins, *Canadian Supermodel is Just 15 But Acting Like a Pro*, MONTREAL GAZETTE, Feb. 4, 1997, F2, available at 1997 WL 4609121 (describing beginnings of modeling career at age thirteen). On average, female models in ads are about ten years younger than males. See FOWLES, *supra* note 7, at 208 (citing D.M. Davis, *Portrayals of Women in Prime-time Network Television: Some Demographic Characteristics*, 23 SEX ROLES 225, 331 (1990)).

70. Judah, *supra* note 69, at 2.

71. Richard Goldstein, *The Girl in the Fun Bubble: The Mystery of Jon Benet*, VILLAGE VOICE, June 10, 1997, at 38, available at 1997 WL 7918948.

72. See NABOKOV, *supra* note 9; discussion *infra* Part IV.

several decades? Definitely not. In varying degrees, the image of the young girl is overlaid with intense sexuality.<sup>73</sup>

Youth is sexy and is promoted as such. Images of teenagers, preteens, and even young children (especially girls) provocatively dressed, made up, and posed permeate the media. Young girls pout dreamily or gaze seductively at the camera—heads tilted downward, eye lifted, a trace of a smile on their lips. Grown women are pictured in “little girl” dresses, innocence reborn.<sup>74</sup>

This sexuality may not be a jaded, well-experienced sexuality, but it is sexuality with a sense of anxiousness, a willingness waiting to be discovered. “The infantilized woman or womanized child [is] the sexy woman infused with the adoring, undemanding child . . . .”<sup>75</sup>

Figures 2 through 6 in the appendix are subtle suggestions of sexualized early teen-aged girls.<sup>76</sup> Figure 2 is an example of the innocent, willing, but forbidden young girl.<sup>77</sup> She lies on a bed in a bikini with her arms above her head and her knee up. Her sexuality entices the onlooker; her facial expression suggests sexual thoughts; yet she is surrounded by net, like a veil, conveying the sense of taboo.

The two very young girls in figure 3 pose like street corner prostitutes.<sup>78</sup> Lounging with one arm against the tree with their exposed midriffs and their “come hither” gaze, they advertise teen shorts. The image of the blue-jean baby in figure 4 combines a silver bikini, dark eye makeup, and body sparkles with the carefree ease of a young girl meditating in the grass.<sup>79</sup> Her roller skates in the air and Wonder Woman bracelet denote the child she still is. The blade of grass aimed from her mouth suggests both a contemplative and a sexual motif. Meanwhile, the shadow covering her face downplays her individuality and focuses the viewer on her bare back.<sup>80</sup>

Similarly, in figure 5 the girl is made personally insignificant by covering her eye, sexual by the tube top and hoop earrings, and childish by the nostalgic bike with upturned handlebars.<sup>81</sup> Is she to

73. See KILBOURNE, *supra* note 24, at 281 (noting the disturbing increase of the “sexualization of children”); see generally CORTESE, *supra* note 30, at 64-66.

74. Joyce Davis, *Introduction to Chapter III: Essentializing Gender*, in FEMINISM, MEDIA, LAW, *supra* note 11, at 171, 173.

75. Kaye, *supra* note 62 (quoting MOLLY HASKELL, FROM REVERENCE TO RAPE (1974)).

76. See *infra* app. at fig. 2-6.

77. ELLE, Apr. 1997, at 279, *reprinted infra* app. at fig. 2.

78. SEVENTEEN, Apr. 1997, at 145, *reprinted infra* app. at fig. 3.

79. SEVENTEEN, Apr. 1998, at 151, *reprinted infra* app. at fig. 4.

80. See Preston, *Bits and Pieces*, *supra* note 4, at 17-20 (explaining that the elimination of the most individuating human characteristics, the eyes, is a primary way to dehumanize or weaken the character of the woman).

81. SEVENTEEN, Apr. 1998, at 153, *reprinted infra* app. at fig. 5; see Preston, *Bits and Pieces*,

be watched at play like the young girl with a hula hoop in the 1950's film rendition of *Lolita*?

Subtlety is abandoned in the depiction in figure 6.<sup>82</sup> The perfume vial, tucked between the prepubescent model's breasts in her bikini strap, is unquestionably phallic. The bare skin of this young girl, posed with a titillating hand to her cheek,<sup>83</sup> is covered with a sparkling makeup that resembles perspiration. The copy tells us that the product, "Fetish," is to be "app[lied] generously to your neck so he can smell the scent as you shake your head 'no.'"<sup>84</sup> However, the image shrieks "yes." This ad, which appeared in widely read daily metropolitan newspapers as well as fashion magazines aimed at teen girls,<sup>85</sup> associates young girls with the intentional sexual tease and reinforces the notion that "no" might mean something else.<sup>86</sup>

Another popular trend in 1999 advertising messages is the direct play on "schoolgirl" vogue. These ads declare the desirability of "Simply Schoolgirl"<sup>87</sup> and "Girlish Charm."<sup>88</sup> The "Sweet Inspirations" campaign in *Seventeen* insists that the schoolgirl, "with a sprinkle of fairy dust" and a sequined tiara, is the hot fashion trend.<sup>89</sup> The other pages in the Sweet Inspirations series read, "shy style," "age of innocence," and "simply schoolgirl."<sup>90</sup> "Schoolgirl" fashion is not aimed only at girls. Some ads feature much older women decked out in the new prep school fashion.

The appeal of the "schoolgirl" sells other products as well as clothing. In figure 7 a row of identically uniformed elementary school-aged girls is used to sell a shampoo available only in salons.<sup>91</sup> Although it is adult women who have their hair done at salons, the

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*supra* note 4, at 91 figs. 44-45 (illustrating a similar juxtaposition of girl play and sexual play in images which depict a young girl as a mythical mermaid and a young girl dressed in underwear holding a plastic beach pail).

82. SEVENTEEN, Sept. 1997, at 106, *reprinted infra* app. at fig. 6.

83. See *infra* Part III.D (discussing the trend and implications of portraying a female model with her hand to her face).

84. SEVENTEEN, Sept. 1997, at 106, *reprinted infra* app. at fig. 6.

85. See, e.g., REACT, Sept. 29-Oct. 5, 1997, at 9; ALL ABOUT YOU, Nov. 1997, at 3; SEVENTEEN, Sept. 1997, at 106, *reprinted infra* app. at fig. 6.

86. See KILBOURNE, *supra* note 24, at 273 (using the "Fetish" ad as an example of advertising which encourages men to "never take no for an answer. Ad after ad implies that girls and women don't really mean 'no' when they say it, that women are only teasing when they resist men's advances.").

87. SEVENTEEN, Aug. 1998, at 238.

88. 1999 Spring Promotional Placards in Dillard's Junior's Department.

89. SEVENTEEN, Aug. 1998, at 235.

90. SEVENTEEN, Aug. 1998, at 238.

91. ELLE, Apr. 1997, at 19, *reprinted infra* app. at fig. 7.

girls pictured epitomize the benefit the product promises: “Basic beauty. Pure and simple.”<sup>92</sup> This theme carries over to ads like figure 8, where a body wash being pitched to adult women readers in *Glamour* features a bathing suit-clad pre-teen with the caption, “clean, cool, innocent.”<sup>93</sup> The women’s underwear ad in figure 9 urges “please touch” when touting the “girliest underthings to appear in years. Yum.”<sup>94</sup> In figure 10, a razor “For Women” is aligned with the appeal of the smooth legs of girls not yet old enough to be hairy.<sup>95</sup>

I consider more fully elsewhere the link between sexualized young girls in advertising, the behavior of pedophiles, and the consequences in terms of sexual assault.<sup>96</sup> Not only is it dangerous for predators to be reinforced in their fantasy of the desirability of young girls, it is dangerous to suggest to young girls that they adopt sexualized behaviors when they are not sophisticated enough to effectively ward

92. *Id.*

93. *GLAMOUR*, Apr. 1999, at 120, *reprinted infra* app. at fig. 8.

94. *COSMOPOLITAN*, Oct. 1999, at 288, *reprinted infra* app. at fig. 9.

95. *SEVENTEEN*, Aug. 1997, at 79, *reprinted infra* app. at fig. 10.

96. See Preston, *Bits and Pieces*, *supra* note 4, at 35 (quoting a thirty-two year old man who attempted to mitigate his sexual assault sentence by admitting to forcible sexual abuse but stating that the fourteen year old girl “provoked” at least two sexual incidents); see also McCracken, *supra* note 27, at 126-29.

The obsession with sexualized school girls is particularly acute in Japan. The New York Times reported that “in Japan the best way for a prostitute to recruit clients is to put on a school uniform and adopt the naïve anxiety of a frightened school girl.” Nicholas D. Kristof, *A Plain School Uniform as the Latest Aphrodisiac*, *N.Y. TIMES*, Apr. 2, 1997, at 4, *available at* 1997 WL 79947.

“Japanese men tend to be obsessed by schoolgirls,” said [baby faced] Kaori, who would not give her last name but cheerfully conceded she is really 26.

“The men who come here are looking for submissive schoolgirls.”

This is an “image club,” one of several hundred in Tokyo where Japanese men pay about \$150 an hour to live out their fantasies about schoolgirls. In this club, customers can choose from 11 rooms, including classrooms, a school gym changing room, and a couple of imitation railroad cars where in the recorded roar of a commuter train, men can molest straphangers in school uniforms.

*Id.*

The consequences for girls are frightening. “[A]ccording to a recent survey carried out in Tokyo, . . . an astonishing three in four girls questioned said that they had experienced solicitation for sex by older men . . .” Michael Fitzpatrick, *From Schoolgirl to Sex Object*, *GUARDIAN*, July 8, 1999, *available at* 1999 WL 21229807. In Japan, everyday young schoolgirls are “forced to wear the clothes that have a nation in sexual and moral turmoil . . . [T]o Japanese men wrestling with a Lolita complex, school uniforms have become highly provocative.” *Id.*; see also KILBOURNE, *supra* note 24, at 282 (stating that in Japan “[a] magazine called *V-Club* featuring pictures of naked elementary-school girls competes with another called *Anatomical Illustrations of Junior High School Girls*”).

For further discussion of this obsession, see generally Marcus Gee, *Japan’s Lost Girls*, *GLOBE & MAIL*, July 8, 2000, at A7; Tim Larimer, *Japan’s Shame: Lawmakers Are Finally Pushing Legislation to Help End the Country’s Dubious Distinction as the World’s Main Source of Child Pornography*, *TIME INT’L*, Apr. 19, 1999, *available at* 1999 WL 15948803; Doug Struck, *Japan Tries to Squash Child-Sex Industry*, *SEATTLE TIMES*, Feb. 11, 2000, at C8, *available at* 2000 WL 5520142; *Tawdry Tales of Love for Hire*, *MAINICHI DAILY NEWS*, Feb. 17, 1999, *available at* 1999 WL 7538602.

off unwanted attentions.<sup>97</sup> For purposes of this Article, however, the primary significance of the sexualized girl is the extent to which she is heralded as the icon of attractiveness. If adult women seek to style themselves as naïve schoolgirls in heat, they risk being treated like schoolgirls in ways that impinge on their competence and credibility.

### B. *Mommy and Me*

In addition to the significant group of ads idealizing adolescent teens, many ads glamorize an even younger girl. A subtle message is communicated by ads which picture the adult woman, to whom the product is being hawked, posed parallel to and closely resembling a very young girl.<sup>98</sup> These ads suggest that an adult woman is appealing, and thus ultimately sexy, to the extent she lingers with, and approximates the appearance of, the child.

The physical features, attire, and pose of the woman and child in many ads are strikingly similar. The products are not obviously related to the presence of the child, but the copy reinforces the longing of the adult target consumer to be like the child. In figure 11, the pitch for shampoo reads, "There is a need in all of us to get back to our beginnings."<sup>99</sup> Figure 12 features a smiling woman wedged between two smiling babies demonstrating the baby-like whiteness achieved using a certain toothpaste.<sup>100</sup> In figure 13, the pair are "wishing on a star" apparently for the desired minivan to be handed to them, like the good things that come to women in the fairy tales they are reading.<sup>101</sup>

Luxotica eyewear, using a word that combines luxury and the exotic, taunts the woman purchaser in figure 14 to "[l]et them see you."<sup>102</sup> The woman pictured is a foil for the almost identical child. The message emphasizes the importance of being looked at. The adult woman targeted by Bali underwear in figure 15 yearns to be the

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97. In discussing the sexual fantasy of the young girl, it is worth noting that adult men, aged twenty-one and over, father over fifty percent of the babies born to teen women, aged fifteen to seventeen. See Karon Sherarts & Suzanne Stenson Harmon, *Baby Love Study Guide*, ITVS (1979) (analyzing the 1997 film subject, Carol Cassidy's *BABY LOVE*, who plays on the permutations of the word "baby" in our sexualized culture); see also Kathleen Sweeney, *Maiden USA: Representing Teenage Girls in the '90s*, AFTERIMAGE, Jan. 1, 1999, available at 1999 WL 12741585.

98. Goffman noted in 1976 the "tendency for women to be pictured as more akin to their daughters (and to themselves in younger years)." GOFFMAN, *supra* note 34, at 38. This is still common.

99. COSMOPOLITAN, Apr. 1997, at 39, *reprinted infra* app. at fig. 11.

100. PEOPLE, Aug. 9, 1999, at 134, *reprinted infra* app. at fig. 12.

101. NEWSWEEK, Nov. 10, 1997, at 28, *reprinted infra* app. at fig. 13.

102. GLAMOUR, Aug. 1997, at 160, *reprinted infra* app. at fig. 14.

naked pre-schoolgirl leaping through the grass in nothing but her shoes.<sup>103</sup> Although the surface message is the young girl's freedom, the direct focus on both "booties" is unmistakably sexualized. In figure 16, the woman seeks to adopt the innocence of the child's style.<sup>104</sup> In both modes, however, the "mommy and me" ad demonstrates the advertiser's sense that adult women purchasers will positively relate to products which associate them with children.

Another popular locus for equating women with girls is in ads with brides.<sup>105</sup> The widely published Estee Lauder "Beautiful" series shows a bride and an identically dressed girl who is likely age six or seven.<sup>106</sup> This is only one of many examples. For instance, figure 17 consists of similar pairs, but its copy is more explicit: "GIRLISH CHARM knows no boundaries";<sup>107</sup> The Spring 1999 David's Bridal ad campaign cooed: "Thank heaven for little girls . . . for little girls get BIGGER every day";<sup>108</sup> "From growing BEAUTIES TO SWEET young things."<sup>109</sup>

Even when not pictured with a child, women are still encouraged to look and act like one. Ads urge women to find their "inner child."<sup>110</sup> Indeed, the current "ideal" of beauty presented by media is the extremely thin, virtually flat-chested woman.<sup>111</sup> This look is the natural domain of pre-teen and early teen-aged girls, and can be had by mature women only with difficulty.

### C. *Simply Playthings*

Another way of picturing adult women as girls is to link them with cartoons and toys.<sup>112</sup> Popular ads for adult Pooh Bear clothing and accessories, such as figure 18, carry the catchy slogan, "for Grown-ups too."<sup>113</sup> They represent a significant group of ads that picture adult women aspiring to be adolescents, in contrast to using very young models or women folded in with girls, as discussed above. A more

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103. VOGUE, Mar. 1998, at 372, *reprinted infra* app. at fig. 15.

104. GLAMOUR, Aug. 1997, at 13, *reprinted infra* app. at fig. 16.

105. See, e.g., MODERN BRIDE, Aug./Sept. 1998, at 621, *reprinted infra* app. at fig. 17; see also DAVID'S BRIDAL CATALOGUE, Spring 1999, at 15; *id.* at 23; REDBOOK, Apr. 1997, at 11.

106. See, e.g., REDBOOK, Apr. 1997, at 11.

107. MODERN BRIDE, Aug./Sept. 1998, at 621, *reprinted infra* app. at fig. 17.

108. DAVID'S BRIDAL CATALOGUE, Spring 1999, at 15.

109. *Id.* at 23.

110. See, e.g., GOOD HOUSEKEEPING, Aug. 2000, at 81.

111. See Gustafson, *supra* note 33 (reviewing the literature on the consistency of "ultra-thin[ness]" as a standard of femininity in media).

112. See CORTESE, *supra* note 30, at 33-34 ("Women . . . are pictured as playful clowns [in advertising], supporting the attitude that women are childish and cannot be taken seriously.")

113. MADEMOISELLE, Apr. 1998, at 131, *reprinted infra* app. at fig. 18.

solemn looking young woman in figure 19 sports a “Hello Kitty Angel” bag in an ad placed on the page next to a picture of a condom and stories on the controversy over distributing condoms at a school and gun control.<sup>114</sup>

Similarly, the women and women-targeted products in ads are commonly linked with toys. Picturing women *as* toys, a similar motif, I discuss elsewhere.<sup>115</sup> The leather coat in figure 20 is worn by a woman standing over a yellow pedal car.<sup>116</sup> She has her hand over her face like she’s just been caught misbehaving. Figure 21 depicts a young girl toying with butterflies.<sup>117</sup> With a blank expression on her face, she observes one up close as several others decorate her hair. Another example is the pink purse pictured in figure 22 with a rubber duckie.<sup>118</sup>

In a very disturbing image, one Italian designer poses a grown woman straddled over the foot board of a bed.<sup>119</sup> She is dressed in a sheer top with her skirt open. To her sides are various stuffed animals. The tones are gray and neutral with only the splash of a Barbie doll in bright pink.

#### D. *Body Baby-talk*

To this point I have discussed fairly obvious links to childishness. Of perhaps more importance are the subtle symbolic cues that we absorb without awareness. Detail clues that betoken the childishness of the adult woman are conveyed by body language including posing women: (1) with a coy turned in toe, clueless shrug, or other displays of uncertainty, confusion, and embarrassment; (2) with hands to the mouth, emulating surprise, embarrassment, sexual uncertainty, and general stupefaction; and (3) with expressions of incompetence and inability. By using these simple details of posing, women are draped with symbolic tokens of subordination and powerlessness. These posing clues figure prominently in Erving Goffman’s classic study of advertising.<sup>120</sup> Goffman found that in advertising:

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114. SEVENTEEN, Aug. 1998, at 135, *reprinted infra* app. at fig. 19.

115. In *Bits and Pieces*, I discuss the objectification of women by posing them as dolls, mannequins, or toys. This creates the impression that the model is manmade and can be manufactured over and over again. See Preston, *Bits and Pieces*, *supra* note 4, at 91 figs. 20 (women as toy soldiers), 21 (women as identical robots), 23 (bride posed as Barbie doll), and 24 (woman as a mannequin).

116. ELLE, Nov. 1999, at 223, *reprinted infra* app. at fig. 20.

117. MODERN BRIDE, Aug./Sept. 1998, at 136, *reprinted infra* app. at fig. 21.

118. HARPER’S BAZAAR, Mar. 1999, at 353, *reprinted infra* app. at fig. 22.

119. HARPER’S BAZAAR, Mar. 1999, at 260-61.

120. See generally GOFFMAN, *supra* note 34, at 4-6. Later researchers affirm that Goffman’s

[W]omen are repeatedly shown mentally drifting from the scene while in close physical touch with a male . . . “as though his aliveness to the surroundings and his readiness to cope were enough for both of them”; concomitantly, women, much more than men, are pictured at [a] psychological loss [or disorientation] with her hands over her mouth and her eyes helpless with horror.<sup>121</sup>

Unfortunately, the clueless, disoriented, childish look has reappeared in redundancy in recent ads. The image of the barely dressed “waif,”<sup>122</sup> illustrates a young woman “stripped of clothes, . . . her blank face say[ing] that she is also stripped of experience, ability, competence and achievement.”<sup>123</sup>

One gesture of childishness, and concomitant powerlessness, is the tentative turned toe. The slightest twist of a foot in an ad is not an accidental or lightly chosen option for an advertiser.<sup>124</sup> The inward turned toe is an instantaneous symbol of ambivalence, doubt, saying one thing and either meaning another, or uncertain of meaning.

Figure 23 is a black and white minimalist photo featuring the turned-in toe.<sup>125</sup> Ask any viewer what conclusions can be drawn about this woman’s confidence and determination. In figure 24, “shy style” from the “age of innocence” is illustrated by a young girl, knees pulled up to rest her head, braids with a sequined tiara, and of course, both toes turned inward.<sup>126</sup> The grown woman in figure 25 sits with her toes turned in and her hand to her face, as she enjoys a dozen long stem roses and an expensive Waterford vase.<sup>127</sup> Is there any question that these were a gift? The picture’s use of the “daddy’s

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“vision of the construction of gender [is] so compelling that it has remained an undisputed foundation for later work.” Michelle A. Masse & Karen Rosenblum, *Male and Female Created They Them: The Depiction of Gender in the Advertising of Traditional Women’s and Men’s Magazines*, 11 WOMEN’S STUD. INT’L F. 127, 132 (1988).

121. Gornick, *supra* note 47, at viii (quoting GOFFMAN, *supra* note 34, at 65).

122. See Preston, *Bits and Pieces*, *supra* note 4, at 33 (describing the extremely thin, lost-looking, drug addicted model).

123. Kaye, *supra* note 62. See, e.g., ELLE, Apr. 1997, at 139.

124. A classic example is a Volvo ad admired by a professional advertising photographer.

The shot showed a man selling his car to a friend . . . . The seller is seen clasping his hands in front of him while the buyer stands stoically with his hands thrust deep into his pockets lest he be tempted to hand over any cash—but the real magic of the picture is in the seller’s right foot. The photographer . . . has the foot back on its heel, showing about two inches of daylight beneath the toe-cap. It is a wonderful symbol of anxiety . . . .

David Abbott, *Foreword to DAVE SAUNDERS, PROFESSIONAL ADVERTISING PHOTOGRAPHY 6* (1988); see also FOWLES, *supra* note 7, at 3-7 (describing the exacting details used in developing the Energizer bunny ads).

125. VOGUE, Mar. 1998, at 309, *reprinted infra* app. at fig. 23.

126. SEVENTEEN, Aug. 1998, at 239, *reprinted infra* app. at fig. 24.

127. VOGUE, Mar. 1998, at 259, *reprinted infra* app. at fig. 25.

girl” pose reinforces the notion that this is how women get the things they want.

The Levi’s ad in figure 26 displays a young woman in the school library.<sup>128</sup> Carrying a load of books, she may be on the verge of serious studying. However, her scant vest, eyes looking off into space, and feet turned in effectively convey doubt and uncertainty.

Posing women as confused girls has been a sustained trend for decades. Although we think women have come a long way in the last thirty years, an extensive study comparing 252 advertisements from 1979 to 252 from 1991 found that very little has changed in the images of women in advertisements.<sup>129</sup> Researcher Mee-Eun Kang found, among other things, that the “bashful knee bend” is not only one of the most frequent gender displays in ads, but that its frequency has not diminished since 1979.<sup>130</sup> The knee bend pose was found in 37.5% of the 1991 ads picturing women.<sup>131</sup> Similarly, women had their heads or bodies in a canting position as often in 1991 ads as in 1979 ads.<sup>132</sup> Both poses convey subordination. Meanwhile, current studies reaffirm that “men [in advertisements] are frequently presented in roles of authority and competency.”<sup>133</sup>

Other typical poses that convey childishness include shrugging the shoulders in befuddlement, looking away or down timidly, rolling eyes in bewilderment, and biting the lip in an intense effort to think of something. These characteristics are frequently displayed by women in advertisements. Consider figure 27: the model is shrugging her shoulders, clasping her hands in front of her, and looking away aimlessly as if she has decided it does not matter if she has no response at all.<sup>134</sup> The woman in figure 28 conveys cluelessness with just her face.<sup>135</sup> She bites her lip, rolls her eyes to the top right corner,<sup>136</sup> and arches her eyebrows.

The model in figure 29<sup>137</sup> appears to be older than the models in

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128. SEVENTEEN, Aug. 1997, at 84, *reprinted infra* app. at fig. 26.

129. Mee-Eun Kang, *The Portrayal of Women’s Images in Magazine Advertisements: Goffman’s Gender Analysis Revisited*, 12 SEX ROLES 979 (1997).

130. *See id.* at 990. This compares to 31.7% in 1979. *Id.*

131. *See id.*

132. *Id.*

133. Kolbe & Albanese, *supra* note 41, at 6.

134. GLAMOUR, Apr. 1998, at 136, *reprinted infra* app. at fig. 27.

135. SEVENTEEN, Apr. 1998, at 61, *reprinted infra* app. at fig. 28.

136. *See* GOFFMAN, *supra* note 34, at 62 (“[I]n this gaze-aversive behavior, some sort of submission to and trust in the source of stimulus seems to be implied.”).

137. COSMOPOLITAN, Apr. 1999, at 25, *reprinted infra* app. at fig. 29.

figures 26 through 28,<sup>138</sup> although nostalgic of her youth. She is a classic timid female, too shy to open her eyes for the camera. Yet the modern woman-child wants it both ways. Shy works only as long as she still gets her way. The model in figure 30, for instance, is crouched on the floor in a pink net dress, with her head coyly tilted to one shoulder.<sup>139</sup> Above her the text reads: “!exclamation/ blush/ Never outspoken, but always heard.”<sup>140</sup> This woman-child wants to be heard—wants it her way—but by manipulation, not forthrightness.

Another childishness classic is a hand in front of an open mouth. And while their hands are at their mouths, clueless women and girls tend to nibble their fingers. Goffman describes the hand-over-the-mouth look as conveying a psychological loss or disorientation.<sup>141</sup> “[F]ingers that shield the face serve to diminish cohesive bodily image and convey an impression of diffident unsureness.”<sup>142</sup> Such posing, whether “puckish” and flirtatious or sullen and contemplative, is an accepted symbol of subordination.<sup>143</sup> For example, when an advertiser wants to signal the confusion of Alzheimer’s disease in a snapshot, it uses a woman with her hand to her face, right eyebrow raised, eyes to the side as in figure 31.<sup>144</sup>

The hand-to-mouth motif<sup>145</sup> is one of the most common childish motifs in recent ads.<sup>146</sup> The message is particularly blatant when the hand-to-mouth is combined with rolling the eyes up and biting or pressing the lips, as in figure 32.<sup>147</sup> Other hand-to-mouth ads are more subtle, leaving the impact of their significance to be amassed from the sheer repetitiveness of the motif. Hand-to-mouth poses generally fall in three groupings, depicting: (1) surprise, embarrassment, and flirtatiousness; (2) sexuality; or (3) sheer stupefaction.

138. See SEVENTEEN, Aug. 1997, at 84, *reprinted infra* app. at fig. 26; GLAMOUR, Apr. 1998, at 136, *reprinted infra* app. at fig. 27; SEVENTEEN, Apr. 1998, at 61, *reprinted infra* app. at fig. 28.

139. SEVENTEEN, Aug. 1998, at 117, *reprinted infra* app. at fig. 30.

140. *Id.*

141. See GOFFMAN, *supra* note 34, at 57.

142. Masse & Rosenblum, *supra* note 120, at 137.

143. See *id.* at 133.

144. LADIES HOME J., Sept. 1999, at 51, *reprinted infra* app. at fig. 31.

145. See CORTESE, *supra* note 30, at 33 (describing the effect of the hand-to-mouth as “psychologically removed from the situation, disoriented or defenseless,” a state Goffman calls “licensed withdrawal”) (citing GOFFMAN, *supra* note 34, at 57).

146. *But see* Kang, *supra* note 129, at 990 (finding that the motif of a woman’s hand covering her mouth or face was more infrequent than expected, as only 8.7% of 1991 ads showed this pose). She did find, however, that its frequency had not diminished in comparison to 1979 ads. *Id.* at 979. My findings based on ads almost a decade later show this pose has returned in force.

147. MADEMOISELLE, Apr. 1998, at 191, *reprinted infra* app. at fig. 32.

The most innocuous of the hand-to-mouth looks conveys surprise, embarrassment, or flirtatiousness, as figures 33 through 36 illustrate.<sup>148</sup> The pose is reinforced by the copy in figure 33.<sup>149</sup> The model, wearing blue nail polish, covers her face with her hand, and exclaims, "What was I thinking when I bought this nail polish?"<sup>150</sup> This cosmetic store assures women that their return policy will compensate for women's general lack of judgment.

The ad in figure 34 is another example of pristine uncertainty.<sup>151</sup> Here the model is naked from just above the pubic area. Her head is down, she nervously bites her fingers and appears to be saying, "are you sure this is ok, . . . ?"

The ambivalent, silly, and embarrassed overlay evident in figure 34 is replaced with a more sensual tone in other ads. In figures 35 through 38, the hand-to-mouth pose is used to portray an initially-hesitant sexual willingness.<sup>152</sup> Figure 35 depicts a woman with a man resting his head on her breast.<sup>153</sup> She appears to be uncertain about either her previous behavior or what is about to take place. Similarly, the model in figure 36, with her fingers at her lips and holding a man's shirt together with her other hand, seems shy, afraid, guilty, but ultimately subordinate to the sexual tryst.<sup>154</sup>

Figure 37 is another fierce juxtaposition of sexuality and inexperience.<sup>155</sup> Although the model is wearing a sparkly heart ring and pictures with the child-cue hand to mouth, her sexuality implies experience. The collision between child and adult is captured in the text: "Hard Candy."<sup>156</sup> These competing flavors are also echoed in figure 38, where the wide-eyed model holds a fan to her open mouth.<sup>157</sup> The towel around her hair says she is playing. She is drenched in pink and barely covered in a kimono. Like a geisha, she combines sexuality with feminine bashfulness.

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148. See LADIES HOME J., June 1998, at 15, *reprinted infra* app. at fig. 33; GLAMOUR, Aug. 1997, at 24, *reprinted infra* app. at fig. 34; HARPER'S BAZAAR, Mar. 1998, at 278, *reprinted infra* app. at fig. 35.

149. LADIES HOME J., Jun 1998, at 15, *reprinted infra* app. at fig. 33.

150. *Id.*

151. GLAMOUR, Aug. 1997, at 24, *reprinted infra* app. at fig. 34.

152. HARPER'S BAZAAR, Mar. 1998, at 278, *reprinted infra* app. at fig. 35; VOGUE, Mar. 1998, at 280, *reprinted infra* app. at fig. 36; VOGUE, Mar. 1997, at 527, *reprinted infra* app. at fig. 37; SEVENTEEN, Aug. 1998 at 144, *reprinted infra* app. at fig. 38.

153. HARPER'S BAZAAR, Mar. 1998, at 278, *reprinted infra* app. at fig. 35.

154. VOGUE, Mar. 1998, at 280, *reprinted infra* app. at fig. 36.

155. VOGUE, Mar. 1998, at 527, *reprinted infra* app. at fig. 37.

156. *Id.*

157. SEVENTEEN, Aug. 1998, at 144, *reprinted infra* app. at fig. 38.

A third theme represented by the hand-to-mouth pose is the inability of the woman to actually solve a problem, no matter how hard she tries.<sup>158</sup> Figures 39 and 40, both appearing in the same issue of *Elle*, are classic examples.<sup>159</sup> Figure 41 manages to make the look even more childish because the model is biting her thumbnail and grabbing her hair while arching an eyebrow, almost always the right eyebrow, and looking off the page to the right.<sup>160</sup> The woman in figure 42, dressed in a Pooh Bear vest for emphasis, declares: “Just a little smackeral will do,” as though all she needs is a hint, a suggestion, and she will surely figure it out.<sup>161</sup>

Advertisers can convey the same message of incompetence with a variety of poses. In figure 44, the woman in the bottom right corner smacks her head completely befuddled by the lawn chessboard she stands on, while her neighbors struggle with their golf swings.<sup>162</sup> The women above them don’t seem to be doing much better with a bike and a ping-pong paddle. The carpooling mother whose hands are up to her face in figure 43 is totally at a loss until bags of Cheetos come to the rescue.<sup>163</sup>

Perhaps the most blatantly insulting ad is figure 45.<sup>164</sup> This woman cradles her face with both hands while her eyes pop. She attempts to decipher a calendar on which doses of antibiotics are laid out, totally overwhelmed by the burden of “remember[ing] . . . to take all of it.”<sup>165</sup> Similarly, figure 46 portrays a woman grabbing her head in worry and confusion, overwhelmed by her health care plan.<sup>166</sup>

In short, advertising’s women, like advertising’s female children, are compliant, needy, wanting guidance, indifferent, and the subject upon which others act.<sup>167</sup> They are usually “passive, dependent, and often incompetent and dumb,”<sup>168</sup> in contrast to advertising’s male

158. Goffman describes the problem a “flood out”: “When emotional response causes an individual to lose control of his facial posture, that is, to ‘flood out,’ he can partly conceal the lapse by . . . covering his face, especially his mouth, with his hands.” Goffman, *supra* note 34, at 57.

159. See *ELLE*, Apr. 1997, at front cover, *reprinted infra* app. at fig. 39; *id.* at 53, *reprinted infra* app. at fig. 40.

160. *ELLE*, Sept. 1999, at 411, *reprinted infra* app. at fig. 41; see Kang, *supra* note 129, at 990 (finding that more female models showed head or eye gaze aversion in 1991 than in 1979).

161. *GLAMOUR*, Apr. 1998, at 193, *reprinted infra* app. at fig. 42.

162. *WOMAN’S DAY*, June 20, 2000, at 105, *reprinted infra* app. at fig. 44.

163. *FAMILY LIFE*, Aug. 1999, at 23-24, *reprinted infra* app. at fig. 43.

164. *LADIES HOME J.*, Sept. 1997, at 110, *reprinted infra* app. at fig. 45.

165. *Id.*

166. *NEWSWEEK*, June 28, 1999, at 18, *reprinted infra* app. at fig. 46.

167. See Preston, *Bits and Pieces*, *supra* note 4, at 41 & n.157.

168. FOWLES, *supra* note 7, at 208 (quoting JULIA WOOD, *GENDERED LIVES: COMMUNICATION*,

figures who, from childhood on, are typically “active, adventurous, [and] powerful.”<sup>169</sup> By posing women in ways that display child-like attributes, advertisers subtly reinforce the image of the nonthreatening woman-child who is coy, unsure, and incompetent.

### *E. Pacified*

Rather than actively doing and becoming, most of advertising’s women are simply being seen. This phenomenon is evident in varying degrees for women of all ages. Whether at home or in the workplace, women frequently look like they are bored stiff, or if doing something, they appear to be just pretending. The ultimate career question seems to be deciding what to wear. This message mitigates the sense of accomplishment and reinforces the notion that women only rest or play.

Female passivity in ads starts early. Young girls in advertising are:

[M]ore often than their brothers displayed alone and asleep (in a vulnerable state), and are often in the company of dolls (whereby the doll and the girl symbolically flow into each other). Boys, however, are frequently featured outside the home, and although they still exhibit some babylike signs, they also exhibit signs of control and power.<sup>170</sup>

Adolescent children display the same gender stereotypes in ads. The “male is a person in control,” while females appear to “experience a kind of second infancy, . . . soft, wide-eyed, emotional, vulnerable, sucking or licking, with a canting posture.”<sup>171</sup> Boys are more “active, aggressive, rational, and unhappy than their female counterparts.”<sup>172</sup>

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GENDER, AND CULTURES 235 (1994)).

169. *Id.*

170. *Id.*, at 205 (citing Jean Umiker-Sebeok, *Natures Way? Visual Images of Childhood in American Culture*, 27 SEMIOTICA 173, 206 fig. 10.5 (1979)). Kilbourne draws a similar conclusion.

Boys are generally shown in ads as active, rambunctious, while girls are more often passive and focused on their appearance . . . Girls are often shown as playful clowns in ads, perpetuating the attitude that girls and women are childish and cannot be taken seriously, whereas even very young men are generally portrayed as secure, powerful, and serious.

KILBOURNE, *supra* note 24, at 142.

171. FOWLES, *supra* note 7, at 205 (citing Jean Umiker-Sebeok, *The Seven Ages of Women: A View from American Magazine Advertisements*, in GENDER AND NONVERBAL BEHAVIOR 207, fig.10.6, 209 (C. Mayo & N.M. Henley eds., 1981)).

172. *Id.* at 201; *see also* Coltrane & Messineo, *supra* note 55, at 369 (making the same conclusion about television advertisements). “Research consistently documents how television commercials present conventional gender stereotypes, with women shown as young, thin, sexy, smiling, acquiescent, provocative, and available. Men characters, in contrast, tend to be shown as knowledgeable, independent, powerful, successful, and tough.” *Id.*

This contrast is starkly illustrated in an ad for Secret deodorant, figure 47.<sup>173</sup> The adolescent male, for whom Secret is “strong enough,” is pictured muscle bound and climbing a rock overhang. The three females, for whom Secret is “pH balanced,” are tightly packed together in the back seat of a car, engaged in riotous giggling, the cause of which is not shown.<sup>174</sup>

Researchers in psychology have concluded,

While a boy learns to view his body primarily as a means for achieving mastery over the external environment, a girl learns that a main function of her body is to attract others . . . . [W]omen have more to lose by not meeting societal standards of beauty because they have fewer . . . [non-beauty] factors to fall back upon to raise their overall appeal.<sup>175</sup>

Advertising certainly reinforces the message that women and girls are merely decorative.

Our mothers were inundated with advertisements showing women in high heels, wearing flouncy dresses and pearls, thrilled with efficient new vacuum cleaners. In the 1960s Betty Friedan attacked the advertising industry for its emphasis on the “happy housewife,”<sup>176</sup> but in the intervening thirty years, there has been some, but not much, improvement in the frequency with which women are depicted in domestic chores or struggling with roles that are “beyond” them, too difficult or too confusing for their limited abilities.<sup>177</sup>

In the last two decades, the stereotypical woman whose profession is homemaking and mothering was depicted in advertising as overwhelmed with the chaos of kids, pets, and carpools, while her eldest went next door to borrow a cup of Prozac. This theme is sufficiently offensive that women have begun to resist it. While not

173. “TEEN, Apr. 1997, at 21, *reprinted infra*, app. at fig. 47.

174. See FOWLES, *supra* note 7, at 207 (“Adolescent girls are usually depicted quite differently from the opposite gender[,] . . . happy, convivial, conversant, open. They are indoors and protected, whereas boys are usually outside the home.”).

175. Stephen L. Franzoi & Mary E. Herzog, *Judging Physical Attractiveness: What Body Aspects Do We Use?*, 13 PERSONALITY & SOC. PSYCHOL. BULL. 19, 30 (1987); see also SANDRA LEE BARTKY, FEMININITY AND DOMINATION 28 (1990) (explaining why “[t]here is something obsessional in the preoccupation of many women with their bodies, although the magnitude of the obsession will vary somewhat with the presence or absence in a woman’s life of other sources of self-esteem and with her capacity to gain a living independent of her looks”).

176. See FRIEDAN, *supra* note 3, at 28 (arguing how images of women trivialized women’s goals for education, work, and independence).

177. See Gary L. Sullivan & P.J. O’Connor, *Women’s Role Portrayals in Magazine Advertising: 1958-1983*, 18 SEX ROLES 181, 186 (1988) (examining a comparison study where this motif appeared in forty-eight percent of the 1973 ads and thirty-five percent of the 1986 ads). These researchers conclude there has been no significant improvement in women’s status in print ads overall. *Id.*

entirely vanished,<sup>178</sup> it is becoming less common. However, the harried mother is being replaced by the woman of leisure, or rather of emptiness.

Kang's extensive comparison of 1979 and 1991 ads found that "licensed withdrawal" or "withdrawal gaze from scene at large" increased significantly in the last twelve years.<sup>179</sup> A hefty 22.7% of the women models in the 1979 ads studied showed this trait, but an increase to 33.2% of the women in the 1991 ads were simply gazing off the page in a passive, psychological loss or disorientation.<sup>180</sup> Other indicia of lack of independence and self-assertiveness were found to be equally present in the 1991 ads as in the 1979 ads.<sup>181</sup> Kang confirms that "the image of women that has predominated in magazine advertisements is of weak, childish, dependent, domestic, irrational, subordinate creatures."<sup>182</sup> Other researchers have found a 60% increase over similar years in the number of advertisements in which women are portrayed in "purely decorative roles."<sup>183</sup>

Indeed, modern women in ads seem bored and unconcerned with anything, except being beautiful. "[W]omen are ever more commonly portrayed not as producers (either at home or on the job) but as beautiful empty objects."<sup>184</sup> Ultimately, the decorative woman, like a child, is to be seen but not heard. She may cry, but not shout. She will wait until someone finds her. She will believe what she is told. She defies the old sexist notion that women who stay at home eat bonbons and watch television. That would be doing something. She is wealthy enough for a beautiful house and she is the proud owner of the latest appliances, but she is apparently not the person who must use them to keep the house beautiful.

In figure 48, a homemaker muses over a tomato in light cast from her latest and greatest designer refrigerator.<sup>185</sup> She is relaxed with one slightly bended knee and a quizzical tilted head. Her house is spotless; the lighting is soft and restful. Other than her fascination with this vegetable, she appears to have nothing pressing to do. She also illustrates well Goffman's observation that, in advertising, a woman's hands in ads are "just barely touching, holding or

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178. See *infra* app. at figs. 44-45.

179. See Kang, *supra* note 129, at 990-92.

180. See *id.*

181. See *id.* at 992.

182. *Id.* at 981.

183. Sullivan & O'Connor, *supra* note 177, at 86.

184. FOWLES, *supra* note 7, at 143.

185. BETTER HOMES & GARDENS, Apr. 1997, at 211, *reprinted infra* app. at fig. 48.

caressing—never grasping, manipulating, or shaping.”<sup>186</sup>

A scheduling calendar in figure 49 has only one entry for an entire month.<sup>187</sup> The entry reminds her to refill the dishwasher with Jet-Dry so the glassware will not spot. How is a person with such a busy schedule to cope?

What about women in the office? They seem busier than their homemaker counterparts, but what are they busy doing, other than looking good? In figure 50, one is, or would be, wearing a business suit but for the fact that the jacket is off so the potential purchaser viewing the ad can see how comfortable and appealing her bra is.<sup>188</sup> Note that in all three views in figure 50, the model has her hand to her mouth—thinking, not solving—and her eyes down or shaded.<sup>189</sup> Even if men were as concerned about how they looked at work, we would not sell professional looking underwear to them by picturing them in it with their suits cast over their shoulders.

The working woman's new power suit is a cross between an infant's layette and bare-all bikini. One of the designers quoted in the August 1997 *Vogue* “Suit Issue” noted that a woman in a suit, particularly one that covers most body parts, is “more about sensuality than unadulterated sex appeal.”<sup>190</sup> Among the choices of “sensuality” and “unadulterated sex appeal,” what about merely professional, competent, and not distracting? Suits in fashion magazines are quite likely to be pictured without a blouse, as in figures 51 through 53.<sup>191</sup>

The bankers hired by Jockey to pose in business jackets without skirts in figure 54, “Wall Street Confidential,”<sup>192</sup> hint of feminist power. However, the real message, the one that stays with the viewer, is sexualized. Like Japanese prostitutes dressing up as schoolgirls,<sup>193</sup> these women appear to be “dressed up” in office attire as a game, with their primary role attracting male sexual attention.

But the sexuality of working women in ads is laced with infantilism. One image features four models in Chanel suits walking in the

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186. Gornick, *supra* note 47, at viii (citing GOFFMAN, *supra* note 34, at 29); *see also* CORTESE, *supra* note 30, at 35.

187. BETTER HOMES & GARDENS, Apr. 1997, at 99, *reprinted infra* app. at fig. 49.

188. COSMOPOLITAN, Apr. 1997, at 275, *reprinted infra* app. at fig. 50.

189. *See* Preston, *Bits and Pieces*, *supra* note 4, at 35 (describing a model sheepishly playing with or covering her mouth).

190. VOGUE, Aug. 1997, at 187 (quoting Michael Kors).

191. *See* ELLE, Nov. 1999, at 26, *reprinted infra* app. at fig. 51; VOGUE, Mar. 1998, at 184, *reprinted infra* app. at fig. 52; VOGUE, Aug. 1997, at 183, *reprinted infra* app. at fig. 53.

192. FORTUNE, July 20, 1998, at 188, *reprinted infra* app. at fig. 56.

193. *See* Kristof, *supra* note 96.

financial district of a big city.<sup>194</sup> The text tells us that fashion is “thigh high” skirts intended to be worn with stiletto heels and “a strong *play* ethic.”<sup>195</sup> It challenges the big city woman to “exude a certain mischievous-schoolgirl charm” and “be young enough to dare.”<sup>196</sup> Similarly, the suit in figure 55, open to the model’s waist, carries designer label “Bebe.”<sup>197</sup>

Another commentator on the suit as a fashion statement answers the eternal question of why women wear “grown-up” or “power” suits?<sup>198</sup> Bill Blass declares women dress in a suit to be sexually appealing.<sup>199</sup> “[D]ressing in men’s clothes turned out to be the biggest come-on . . . [M]en have always loved a girl in their suits, in their shirts, in a pajama top. It’s very erotic.”<sup>200</sup> What happened to the grown woman in her own suit, who is not playing in men’s clothes, or, for that matter, in men’s professions?<sup>201</sup> Goffman notes this same sense of “dress up” in his study of ads from the 1970s.<sup>202</sup> He observed,

Women in ads seem to have a different relationship [than men] to their clothing and to the gestures worn with it. [It is] as though life were a series of costume balls. . . . It might be argued, then, that the costume-like character of female garb in advertisements locates women as less seriously present in social situations than men . . . .<sup>203</sup>

In other ways, ads suggest that the “professional” woman is play-acting. In offices and conference rooms, she is posed as a prop on the edge of someone else’s desk who will, when he returns, do the real work. Is the woman in figure 56 ordering men around because she herself cannot walk on her stiletto heels?<sup>204</sup> In figure 57, the working woman is lounging casually on a white couch, albeit with her

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194. VOGUE, Aug. 1997, at 222-23.

195. *Id.* (emphasis added).

196. *Id.*

197. HARPER’S BAZAAR, Mar. 1998, at 194, *reprinted infra* app. at fig. 55.

198. See Bill Blass, *Full Power*, VOGUE, Aug. 1997, at 208, 209 (articulating that women wear power suits because they are enticed by them).

199. See *id.*

200. *Id.* at 210.

201. See Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1292 n.92 (2000) (“The imitation man look—a shirt and tie, vest, or pinstriped suit—causes women to look as if they are dressing up in someone else’s (their father’s) suit and this is silly or, in some cases, sexy.”) (quoting Katherine T. Bartlett, *Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality*, 92 MICH. L. REV. 2541, 2552-53 (1994)).

202. Goffman, *supra* note 34, at 51.

203. *Id.* Men in ads seem to be “totally serious about, and deeply identified with, as though wearing a skin, not a costume” no matter what guise they are wearing. *Id.*

204. VOGUE, Aug. 1997, at 214, *reprinted infra* app. at fig. 56.

laptop and banker-gray flannel suit.<sup>205</sup> However, the photographer has cut her to size by chopping off one eye and then her entire upper body and head.<sup>206</sup>

The seriousness of a female Marine is undermined in figure 58 by the play on female triviality: “You can go anywhere if you’ve got the right make-up.”<sup>207</sup> The young woman in figure 59 combines the passivity of childhood with what appears to be intended as a three-piece silk suit.<sup>208</sup> Gazing aimlessly out a window, she wonders, “What should I wear?” Such trifling dilemmas.

The answer to her perplexing question about what to wear is given by the professional woman in figure 60: “Memo to self: Think outside the box and wear a belted sweater with a black tweed suit.”<sup>209</sup> In contrast, the professional man in figure 61 takes his cue from a more aggressive tradition.<sup>210</sup> The male model is wearing a traditional suit and a Viking two-horned metal helmet. The text declares: “DON’T JUST COMPETE. CONQUER.”<sup>211</sup> It advises business “leaders” to “dominate” the market and attract “hordes of loyal customers.”<sup>212</sup>

In one ad in *Fortune*, figure 65, a company providing corporate training services pictures a woman business owner or human resources director.<sup>213</sup> She wears eyeglasses on her nose and is clearly more mature than most of advertising’s women. However, she has her hand to her mouth pushing her lip, her left eyebrow raised while she looks off to the left. She is stumped, and the product advertised is necessary to save her. The businesswoman in figure 63 is equally “overwhelmed” by the everyday task of “copying, faxing, packing and shipping.”<sup>214</sup>

Consider figure 64, another ad about solving a business problem with a male model.<sup>215</sup> He is also an older person with glasses, a symbol of intelligence.<sup>216</sup> But he is identified as the CEO, and he

205. NEIMAN MARCUS: THE BOOK, Apr. 1998, at 161, *reprinted infra* app. at fig. 57.

206. See Preston, *Bits and Pieces*, *supra* note 4, at 15, 16 (explaining that the dismemberment or multiplication of female bodies leaves the viewer with the impression that the model may come apart or that her parts are interchangeable like toys).

207. SEVENTEEN, Apr. 1998, at 93, *reprinted infra* app. at fig. 58.

208. VOGUE, Mar. 1998, at 42, *reprinted infra* app. at fig. 59.

209. O: THE OPRAH MAG., Sept. 2000, at 164, *reprinted infra* app. at fig. 60.

210. FORTUNE, Aug. 14, 2000, at 39, *reprinted infra* app. at fig. 61.

211. *Id.*

212. *Id.*

213. FORTUNE, Aug. 14, 2000, at 293, *reprinted infra* app. at fig. 62.

214. BETTER HOMES & GARDENS, Aug. 2000, at 8, *reprinted infra* app. at fig. 63.

215. GOLF MAG., Sept. 2000, at 77, *reprinted infra* app. at fig. 64.

216. See Kolbe & Albanese, *supra* note 41, at 14.

looks contemplative, but not bewildered. He is shown with a full neck and head—"a portrait-like, competence-enhancing, head-and-shoulders" photo technique.<sup>217</sup> Compare figure 65.<sup>218</sup> The text tells us that the older woman pictured is running "your company." She is not intended to be confidence inspiring. The effect of the image and the words is initially sort of frightening and ultimately humorous.

A pair of parallel ads for a notebook computer, figures 66 and 67, vividly contrast the image of the professional woman and the professional man.<sup>219</sup> The text claims, in self importance, to depict the real person: "What kind of personal computer you choose tells a lot about what kind of person you are."<sup>220</sup> The man in figure 66 is a "nomad" emerging from the wilderness with a determined stride to take the big city by storm.<sup>221</sup> As "the only one with the overhead light on," he "demands" a computer that works as hard as he does. The female "collector" in the parallel ad, figure 67, is sitting on the edge of her desk staring aimlessly out the window.<sup>222</sup> Her chin rests on one hand and her feet are unshod. The space around her is filled with the most random, nonsensical arrangement of mostly impractical shoes, on the floor, the walls, and the window ledges. She is identified as a "collector." She may have an extensive "collection," but what she collects is so glaringly trivial. On her desk are her bronzed baby shoes, and one each of several pre-schooler styles. Her nostalgia to childhood is emphasized by the text which informs us she still has the invitation to her seventh birthday party.

#### F. *Talking the Talk*

On the surface, a noticeable number of advertisements play on feminist and woman-empowerment themes in text while the image reinforces harmful stereotypes.<sup>223</sup> Ads have co-opted feminist speech

217. *Id.* at 17.

218. SPORTS ILLUSTRATED, Sep. 14, 2000, at 43, *reprinted infra* app. at fig. 65.

219. BUS. WK., Oct. 9, 1995, at 11, *reprinted infra* app. at fig. 66; BUS. WK., Oct. 9, 1995, at 10, *reprinted infra* app. at fig. 67.

220. *Id.*

221. BUS. WK., Oct. 9, 1995, at 11, *reprinted infra* app. at fig. 66.

222. BUS. WK., Oct. 9, 1995, at 10, *reprinted infra* app. at fig. 67.

223.

Advertising picks up the slang of popular culture, the dialect of ethnic subcultures, and the jargon of social movements. There is often a resulting deflation of the worth and importance of gender equality. For example in [one] ad . . . the copy says "We believe women should be *running the country*." However, the illustration of the woman jogging belies the copy's insinuation of women's political power.

CORTESE, *supra* note 30, at 29; *see also* JACOBSON & MAZUR, *supra* note 57, at 82 ("Some ads

as a marketing ploy.<sup>224</sup> Marketing executives have noticed that “Bo Jackson, beer-swilling thugs and half-clad bombshells aren’t pulling in the young female set.”<sup>225</sup> Karen Avenoso adds:

After years of being told our hips are too wide, our hair too straight, our breasts too small, [in commercials using feminist speech] we’re lauded for our intelligence, our ambition, our psychological savvy. So, what’s a girl to complain about? . . . I’m being seduced by slick sisterly words, by powerful symbols hollowed of all meaning. . . . They use the lingo of feminism to lure the very same women who think it’s a dirty word . . . it draws more of us to department stores than to demonstrations.<sup>226</sup>

Faux-feminism is increasingly used for products aimed at women’s insecurities about their bodies. For instance, ads for hair products declare: “Strong Can Be Beautiful,”<sup>227</sup> and “Inner strength means outer beauty.”<sup>228</sup> Fingernail polish is touted as being “as tough as you,”<sup>229</sup> and skirts with thigh-high slits, matched with unbuttoned blouses, adorn the woman who “ha[s] the right to remain sexy.”<sup>230</sup> An ad for cosmetic contacts intended only to change eye color offers this encouragement: “Eye contact is speaking without words. Your voice should never waiver.”<sup>231</sup> Vogue Dessous bras and “tummy control pant[ies]” are sold with the pitch, “A Feeling for the Woman of Substance.”<sup>232</sup> The self-proclaimed empowered uninhibited woman in the Wonderbra, is portrayed in very high strappy sandals with her bra and panties on doing a silly pose and looking away from the

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parrot the slogans of the women’s movement while their content explicitly refutes them.”).

224.

What is it that is so utterly depressing about women’s magazines? Is it the combination of an aggressive feminism interspersed with all those articles about skin care, cosmetic surgery, and what really attracts a man? In men’s magazines, all the fragile machismo seems to have a subliminal text between the lines: “Hey, guys, we’re only kidding. This isn’t a magazine for grown-ups.” But the women’s mags sound as if they meant it—which is what makes their feminism fragile, their self-improvement articles devoid of self-respect.

Paul Greenberg, *There Just Seems to Be a Catch to Everything*, TULSA WORLD, Feb. 15, 1997, at A14, available at 1997 WL 3626333.

225. Karen Avenoso, *Trapped by Self-Actualizing Ads: Young Women Shape Up at the Expense of Greater Goals*, ADVERTISING AGE, Nov. 23, 1992, at 18.

226. *Id.*

227. ELLE, Apr. 1999, at 277.

228. SELF, Sept. 1997, at 206.

229. SELF, Sept. 1997, at 163.

230. COSMOPOLITAN, Apr. 1998, at 129; see also KILBOURNE, *supra* note 24, at 261 (explaining that the woman in this ad “is an object—available, exposed, essentially passive. She has the right to remain sexy, but not the right to be actively sexual.”).

231. VOGUE, Aug. 1997, at 171.

232. ELLE, Apr. 1997, at 91.

camera.<sup>233</sup> A young woman in another ad is urged to “Make Your Mark!” by sloshing the wall with outrageous “cosmic” cosmetic case colors.<sup>234</sup> A perfume is called a “declaration of independence,”<sup>235</sup> and T.J. Maxx assures women “there’s more to life than finding the perfect bathing suit,” but then adds, “just kidding.”<sup>236</sup>

A classic example of mixing damaging female stereotypes with feminist-empowerment language is a “Monostat 1” ad, which ran in *Glamour* magazine, August 1999.<sup>237</sup> The ad attempts to inspire women to pursue a more active, assertive daily schedule, but relies on negative stereotypes to get its message across. The ad states that in one day a woman can “change her mind 35 times” (implying the inability to make up her mind), “meet [her] soul mate . . . again” (intimating a persisting belief in superstitions), “get a really, really bad hair cut” (belying her vanity—notice the woman in the ad is wearing a hat), “learn to windsurf” (because, by-the-way, women can be x-treme, too), and “break the glass ceiling” (summing-up with a classic reference to the sexist cultural barriers hindering women from advancing in the workplace).<sup>238</sup> The target audience is supposed to feel confident and empowered knowing that she can do all this and “totally treat [her] yeast infection,” in one day.<sup>239</sup>

By turning feminist themes into trivial statements of fashion, these images assure that feminist ideas will, like all fashion trends, become quickly outdated.<sup>240</sup> Moreover, the juxtaposition of feminist language and purely cosmetic products suggest that women say they want to be taken more seriously, but this desire can be assuaged by being more beautiful. One ad series draws on “girl power” by showing hyper-aggressive young girls, but the matters for which these girls are ready to take desperate action are stereotypical fluff—e.g. the text of one says the model “owns about 27 kinds of lipstick, and if you don’t

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233. PEOPLE, May 25, 1998, at 25.

234. GLAMOUR, Aug. 1997, at 151.

235. SEVENTEEN, May 1999, at 25.

236. NEW WOMAN, Mar. 1999, at 7.

237. GLAMOUR, Aug. 1999, at 159.

238. *Id.*

239. *Id.*

240. See LEVIT, *supra* note 2, at 131 (citing an article in *Sassy*, a magazine for teenage girls, which “invites women to view feminism not only as unfashionable and passé, but as little more than a fashion statement, and a dubious one at that”) (quoting Zia Jaffrey, *Is Feminism the New ‘F’ Word?*, SASSY, Aug. 1995, at 9, 42). Jean Kilbourne argues that advertising encourages us to constantly work for physical self-improvement rather than social change. KILBOURNE, *supra* note 24, at 295. “[A]dvertising co-opts any movement for social change and reduces it to the narcissistic pursuit of pleasure and perfection.” *Id.* She illustrates with numerous examples of ads that trivialize the women’s movement. See *id.*

like it, you can eat dirt.”<sup>241</sup> Another ad says the young woman is “obsessed with her hair, and if you don’t like it, she may stick a comb in your eye during lunch.”<sup>242</sup> In addition to trivializing serious issues, this juxtaposition also implies that women who seem strong are “just playing.”

The whitewash of the empowered language is overshadowed by the subtle subordination cued by the image.<sup>243</sup> The subordination symbols in these ads may be even more damaging because the feminist wrinkle disguises the dominant message. How would our foremothers who fought for female suffrage react to one popular ad picturing a woman’s feet in a pair of fashionable shoes sticking out from under a voting booth curtain?<sup>244</sup> Although clever, the right they fought for is still demeaned with the copy: “We have the right to vote for whatever we see fit.”<sup>245</sup> Also in this series a woman clad in only a left shoe asks, “Where would we be without our rights?,”<sup>246</sup> and purses are sold with the slogan, “It is a woman’s right to choose. After all, she’s the one carrying it.”<sup>247</sup> Finally, modern women are assured they can “have it all,” skin moisturizer and UV protection.<sup>248</sup>

The pioneer in the study of gender in visual display, Erving Goffman, reached this profound conclusion: “*The expression of [gender] subordination and domination through [advertising’s] swarm of situational means is more than a mere tracing or symbol or ritualistic affirmation of the social hierarchy. These expressions considerably constitute the hierarchy; they are the shadow and the substance.*”<sup>249</sup> As we have seen, advertisers use “swarms” of detail to create, in a visual flash, a complex message about life. When we break down the detail, we see that the choice of models, the inclusion of mirrored children or playthings, and the posing convey the incessant theme of woman as child. Advertising’s models are painstakingly posed. The body language of the women, including shrugs, inward turned feet, hands to the mouth, and eyes gazing off the page, shrieks out silliness, confusion, and immaturity. Advertising co-ops feminist jargon and empowerment themes, but

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241. See John Leo, *Images of Power: The Hostile New Woman in the Ads*, SAN FRAN. CHRON., Nov. 21, 1993, at 3Z1, available at 1993 WL 6436221.

242. *Id.*

243. See Preston, *Bits and Pieces*, *supra* note 4, at 18-19 fig. 8 (depicting a woman with her cranium cropped off in the picture, but a text playing on her intelligence).

244. VOGUE, Mar. 1998, at 98-99.

245. *Id.*

246. VOGUE, Mar. 1998, at 95.

247. *Id.* at 96.

248. PEOPLE, Aug. 9, 1999, at 13.

249. Goffman, *supra* note 34, at 6 (emphasis added).

behind the words the pictures persistently reinforce the triviality of women. By learning to see the detail in advertising, we begin to acknowledge the pervasiveness of the message and, hopefully, to question why we allow it to lure us.

#### IV. ACTING OUT THE OUTER CHILD

*The ideal consumer [of fashion advertisements] . . . is a young woman who holds ambivalent feelings about new gender definitions. On the one hand, she appreciates the affirmative, prideful description of the modern woman, and, on the other, she is resistant to the stridency of the new ideology. Reading [a representative ad] she finds both positions articulated and is able to confirm as well as mock the new definition.*<sup>250</sup>

If women style themselves outwardly as children, they risk being treated as children. When the perception of “women” is that they should be lumped with “children,” every individual woman will have to overcome this presumption.

What does it mean to be equated with an early adolescent girl? I have compiled a list of common characteristics possessed by adolescents. When these adolescent characteristics are superimposed on adult women, they may become more akin to hints, suggestions, shadows, types, and intermittent reflections. But their flavor lingers and on some level these characteristics influence our expectations about women. This list is not exhaustive and many of the categories may overlap. I merely seek to identify the kinds of qualities that constitute the woman-child stereotype.

*Approval-seeking.* The adolescent girl is naïve, innocent, a blank slate.<sup>251</sup> In an article comparing “girlish” images in the Japanese and American versions of *Seventeen* magazine, authors Michael L. Maynard and Charles R. Taylor use the following definition of “girlish,” which is applicable to the notion of the woman-child: “[A] socially constructed, often playful childlike pose, spoken or acted out, that explicitly displays the vulnerability of approval seeking.”<sup>252</sup>

The adolescent typically associates status and privilege with those who are considered “grown up,” and she is thus easily impressed.<sup>253</sup>

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250. FOWLES, *supra* note 7, at 182.

251. See BIOSOCIAL SOCIETY SYMPOSIUM, BIOSOCIAL PERSPECTIVES ON CHILDREN 51 (Catherine Panter-Brick ed., Series No. 10, 1998) (indicating that innocence and often ignorance are fostered through British and American ideologies of childhood).

252. Michael L. Maynard & Charles R. Taylor, *Girlish Images Across Cultures: Analyzing Japanese Versus U.S. Seventeen Magazine Ads*, J. ADVERTISING, Apr. 1, 1999, at 39-40.

253. The phenomenon of deferring to someone older even if counterproductive is evidenced in many adolescent dating relationships. Psychologist John Mitchell explains that females from ages thirteen to sixteen years are frequently attracted to males who are several years older. See JOHN J. MITCHELL, ADOLESCENT VULNERABILITY: A SYMPATHETIC LOOK AT THE

She is an empty receptacle in which the “adult,” or person in power, may pour his or her wisdom. Because she is inexperienced, she is deferential, canting, and obeisant. One psychologist notes that when youth “seek idealized parental surrogates,” they “behave in a weak and self-effacing manner, a style that will enable others to overshadow them.”<sup>254</sup> The adolescent sees herself through the eyes of others and incorporates others’ opinions about her into her “sense of purpose [and] destiny.”<sup>255</sup>

Moreover, the naïve child needs guidance and protection. Not only is she controllable, she likes structure and direction.<sup>256</sup> Children are “protected,” but they pay a price for that protection. Similarly the woman-child can be controlled physically or forcibly “rescued.” She can also be “cared for” against her wishes. Decisions can be made for her benefit without consulting her. Adolescent “doings are unceremoniously interrupted under warrant of ensuring that they are executed safely.”<sup>257</sup> She is treated as though she is invisible, with no serious ownership in the enterprise at hand, just as children are subject “to various forms of nonperson treatment.”<sup>258</sup> Her needs are perceived as less important than those of adults.<sup>259</sup>

*Disengaged.* Sometimes the woman-child is not as curious and willing as assumed by the characterization of mere naïveté. The adolescent may be simply bored.<sup>260</sup> She mentally drifts, not fully engaged, as though she gives up trying to comprehend.<sup>261</sup> She need not be consulted on important decisions because she is assumed to

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FRAILTIES AND LIMITATIONS OF YOUTH 224 (1996) [hereinafter MITCHELL, VULNERABILITY]. The resulting power imbalance may explain why many teenage girls report being pressured or “talked” into decisions that do not serve long term interests. *See id.* Mitchell also reports that “a significant number of adolescent girls are impregnated by males who are at least five years older.” *Id.* (quoting J.S. MUSICK, YOUNG, POOR, AND PREGNANT: THE PSYCHOLOGY OF TEENAGE MOTHERHOOD 86 (1993)).

254. MITCHELL, VULNERABILITY, *supra* note 253, at 208 (quoting THEODORE MILLON, DISORDERS OF PERSONALITY DSM-III: AXIS III 164 (1981)).

255. *Id.* at 184; *see also id.* at 208-09 (describing how adolescents, who need constant praise, seek the approval of idealized power figures); *see also* MELVIN D. LEVINE ET AL., DEVELOPMENTAL BEHAVIORAL PEDIATRICS 51 (3d ed. 1999) (citing the importance of feedback from peers and adults in creating feelings of self worth).

256. *See* JOHN HEAD, WORKING WITH ADOLESCENTS: CONSTRUCTING IDENTITY 28 (1997) (observing that adolescents do value adult opinions and need adults for guidance, information, and motivation).

257. GOFFMAN, *supra* note 34, at 5.

258. *Id.*

259. *See id.*

260. *See* MARCEL DANESI, COOL: THE SIGNS AND MEANINGS OF ADOLESCENCE 38 (1994) (suggesting that teens are apathetic, mopish and awkward).

261. *See* JOHN J. MITCHELL, ADOLESCENT STRUGGLE FOR SELFHOOD AND IDENTITY 9 (1992) [hereinafter MITCHELL, STRUGGLE] (claiming that adolescents struggle to think clearly).

be without an opinion.<sup>262</sup>

*Confused.* Sometimes the adolescent may be perceived as truly trying to engage, but hopelessly unable. She is disoriented and overwhelmed by choices.<sup>263</sup> Of course, the response she elicits is a lack of confidence in her ability to think through and solve problems. Even when she makes decisions or states a point, she is interpreted as tentative. Because she lacks conviction, others sense she can be successfully “persuaded” and thus exert more pressure on her to conform than they would on someone they interpret as unmovable.<sup>264</sup>

*Overly Emotional.* The adolescent’s critics find her lacking in rational, linear, tough, clear reasoning. The adolescent is equated with emotion and with emotion-based exaggeration.<sup>265</sup> While rational thought and emotion need not be viewed as in conflict, the traditional paradigm so posits them. The emotional investment of a child is perceived as unduly sensitive and lacking balance. She is unable to separate her psychological needs and motivations from the merits of the question under consideration.<sup>266</sup> Thus, “adults” respond by disregarding her input, no matter how passionately she articulates it.

*Trivial.* The adolescent girl is ultimately engrossed with decorative fluff. She is spoiled, indulged, temperamental, demanding, and self-absorbed.<sup>267</sup> She blows her frivolous, superficial interests vastly out of proportion. She, like any adolescent, is associated with “extravagance” and “disequilibrium.”<sup>268</sup>

One way this triviality is played out is an over emphasis in the importance of physical appearance. The woman-child is meant to be

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262. See NORMAN A. SPRINTHALL & W. ANDREW COLLINS, *ADOLESCENT PSYCHOLOGY: A DEVELOPMENTAL VIEW* 109 (1984) (supporting the idea adolescents are in the process of learning to make decisions but cannot make many important or legal decisions).

263. See MORRIS ROSENBERG, *SOCIETY AND THE ADOLESCENT SELF-IMAGE* 4 (1989) (urging that adolescents are unclear about social duties and rights); KATHLEEN M. WHITE & JOSEPH C. SPEISMAN, *ADOLESCENCE* 21, 48 (1997) (characterizing adolescents as “overwhelmed” and confused).

264. See *PERSONALITY DEVELOPMENT IN ADOLESCENCE: A CROSS NATIONAL AND LIFE SPAN PERSPECTIVE* 8 (Eva Skoe & Anna von der Lippe eds., 1996) (suggesting that commitments during adolescence are relatively transient).

265. See LEVINE, *supra* note 255, at 53 (referring to a child’s tendency to exaggerate); MITCHELL, *STRUGGLE*, *supra* note 261, at 12 (indicating that adolescents are emotionally hypersensitive); WHITE & SPEISMAN, *supra* note 263, at 21 (identifying adolescents as overly sensitive, emotional, and overly dramatic in seeking to eradicate perceived injustices).

266. See MITCHELL, *VULNERABILITY*, *supra* note 253, at 229 (noting that adolescent thought is characterized by “distortion-creating” and “irrational” tendencies).

267. See WHITE & SPEISMAN, *supra* note 263, at 49 (describing the typical adolescent as moody). One of the primary characteristics of adolescence is egocentrism. See MITCHELL, *STRUGGLE*, *supra* note 261, at 9-11.

268. WHITE & SPEISMAN, *supra* note 263, at 23.

seen. She assumes the purpose of her body is to attract others.<sup>269</sup> “By putting oneself on display one begs for approval, a gesture of subordination which increases dependency on those who dispense approval.”<sup>270</sup>

*Conflicted.* The most fascinating, and likely the most dangerous, quality of the woman-child is the extent to which she seems to want it both ways. “Adults” may not accord her the more generous interpretation, that she is caught in a series of double binds. Rather they may perceive her as uncertain about her choices in a way that makes her unreliable, unpredictable, incongruous, and even unstable. She will pleasantly agree to a changed assignment and still harbor fierce resentment. Some will interpret her vacillation as even less benign. She may appear duplicitous and devious.<sup>271</sup>

Finally, although a child still, the woman-child pictured in 1990s advertising has not been entirely immune from the women’s movement. The way society stylizes children has in some ways changed drastically from the 1950s and 1960s. We no longer strictly control the behavior of children as we once did. Children have also changed and ads, if nothing else, keep pace with cultural norms.<sup>272</sup> The woman-child of today is saucy. She is the pre-teen who mouths off to her adoring father and flips her pony tail over her shoulder as she stalks out of the room.<sup>273</sup> But she will be back. The desirable girl eventually succumbs to the wishes of the father who knows best.<sup>274</sup> Moreover, at some level she is grateful for the security afforded by the structure of the adult’s discipline and the limited boundaries of the adult’s tolerance.

This is Baby Spice, a saucy, sexy adolescent girl: approval-seeking, disengaged, confused, overly emotional, trivial, and conflicted. This list is not the six observable traits of highly effective people.

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269. See MITCHELL, STRUGGLE, *supra* note 261, at 12 (arguing that adolescents become preoccupied with appearance and beauty); ROSENBERG, *supra* note 263, at 5 (revealing that it is in adolescence that the individual has a heightened awareness of self image).

270. MITCHELL, VULNERABILITY, *supra* note 253, at 184.

271. Although most people do not believe children intentionally lie, we tend to suspect a child’s report of facts. See *id.* at 228 (discussing research that has found that the egocentricity of adolescents “profoundly reduces thought efficiency” and overrides objectivity and impartiality). In addition, children and adolescents have active imaginations and may confuse fantasy with reality. See *id.*; WHITE & SPEISMAN, *supra* note 263, at 20-22 (noting adolescent tendency to fantasize and confuse the real with the possible).

272. See *supra* Part II.

273. See JANE KROGER, IDENTITY IN ADOLESCENCE: THE BALANCE BETWEEN SELF AND OTHER 11 (1996) (suggesting that adolescents are impulsive).

274. See MITCHELL, VULNERABILITY, *supra* note 253, at 209 (identifying adolescent need for idealized parents or parent surrogates); see also LEVINE, *supra* note 255, at 52 (revealing children face enormous internal pressure to conform to adult expectations).

The way a woman chooses to express herself by gesture and other symbols defines what can and cannot be done to her.<sup>275</sup> Goffman argues, “Given the subordinated and indulged position of children in regard to adults, it would appear that to present oneself in puckish styling is to encourage the corresponding treatment.”<sup>276</sup> For a woman to style herself as a child is to encourage others to treat her as a child. Such a presentation gives others permission to assume she also thinks like an adolescent. Unfortunately, the individual woman who does not present herself as a woman-child is still caught in the web of the stereotype until she can repeatedly prove it wrong.

The fact that many women may be perceived by others, and may even think of themselves, as sharing the observable outer appearance of children has many implications for law. This Article is not the appropriate place for extensive treatment of each of the legal junctures where women may be prejudiced by the woman-child stereotype,<sup>277</sup> but a few examples illustrate the nature of the risks. I recognize that the influence of woman-child in each of these areas is difficult if not impossible to quantify.<sup>278</sup> However, inability to reach “hard” data ought not discourage any effort to understand and explore.

Initially, we should consider if the existence of the woman-child stereotype impedes the influx of women in the profession. If the voices of women lawyers, judges, legislators, law enforcement personnel, and scholars have any impact on the development of substantive law, encouraging women to enter these fields is critical. Young girls’ self-definitions are heavily influenced by popular media. It seems obvious that girls are less likely to prepare for and pursue the educational challenges necessary for careers in law if they perceive adult women as less capable or if they believe adult women must choose between being competent and powerful or childish and attractive. If girls believe that the childish, clueless woman is more desirable and admired, surely some will seek to become this ideal—a

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275. See BERGER, *supra* note 39, at 46.

276. GOFFMAN, *supra* note 34, at 48.

277. For further discussion, see Preston, *Bits and Pieces*, *supra* note 4, and Preston, *Consuming Sexism*, *supra* note 12.

278. I briefly reiterate here the caveats regarding causation. See Preston, *Consuming Sexism*, *supra* note 12, at 64-71. Of course, many factors other than the woman-child stereotype contribute to the patterns that may disadvantage women in the areas of law I discuss. Moreover, the woman-child motif arises from and is evidenced in places other than advertising. Nonetheless, it is prominent in advertising and it would be folly to deny the influence of advertising in our culture. The consistent barrage of these images in what we accept as mainstream reflections of life must at least desensitize many to what is offensive about treating women as children. See *id.*

choice likely inconsistent with a legal career. If girls think women can be both, because they see advertising women in offices and dressed in suits yet draped with the indicia of childishness, they develop a false impression that looking and acting childish will not adversely affect a professional career.

Just getting women into law school and physically present in the profession is not enough. There is also a need to foster sufficient confidence for women to be comfortable as well as respected, and to “claim full authority” in legal matters.<sup>279</sup> The various state task forces on gender in the courts paint a consistent picture of women struggling to establish an effective professional persona. The California court task force report cites twenty-one earlier reports across the country that “discuss difficulties women face when seeking to establish their credibility” with employers, judges, other attorneys, and clients.<sup>280</sup> The New York task force states boldly: “Judges, attorneys, and court personnel do not give as much credibility to women as to men, and perceive women as acting differently from men.”<sup>281</sup> The work of the ABA Commission on Women in the Profession,<sup>282</sup> as well as a variety of other studies,<sup>283</sup> echoes these findings.

If women are to have a significant voice in law, we need legal employers to hire and promote women, senior partners to assign important cases to women, and prospective clients to choose women. In addition, we need presidents and governors to nominate and senators to confirm women judges. In those states with elections, voters need to support women judges. Those who hold each of these powers of selection may have allowed the cultural assumption that

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Quietly, covertly, media images teach young women entering the law—and practicing lawyers, too—what kind of behavior is acceptable, what manner, what speech, what dress . . . . And to the extent that they ratify the social conventions that have confined women to the private sphere, . . . the images undermine women’s claim to full authority in the law.

MONA HARRINGTON, *WOMEN LAWYERS: REWRITING THE RULES* 153 (1994).

280. ADVISORY COMMITTEE ON GENDER BIAS IN THE COURTS, JUDICIAL COUNCIL OF CALIFORNIA, *ACHIEVING EQUAL JUSTICE FOR WOMEN AND MEN IN THE CALIFORNIA COURTS*, FINAL REPORT 6, 67 (1996).

281. Cahn, *supra* note 20, at 1046 (quoting *The Report of the New York Task Force on Women in the Courts*, 15 *FORDHAM URB. L.J.* 129-146 (1986-87)).

282. *See id.* (quoting AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION, REPORT TO THE HOUSE OF DELEGATES 13 (1988)) (“[W]hen men display [soft spoken and conciliatory] varieties in lawyering styles, it is regarded as just that—a difference in style. When women depart from the stereotypical style of aggressive lawyering, it is more likely to be regarded as a gender difference and a basis for questioning competence.”).

283. *See, e.g.*, Bryna Bogoch, *Courtroom Discourse and the Gendered Construction of Professional Identity*, 24 *LAW & SOC. INQUIRY* 329, 367-69 (1999).

females engage in adolescent thinking and behavior to interfere with their assessment of worthy candidates. Who wants a judge who is naïve, unable to engage, bewildered, overly dramatic, or duplicitous?

Some like to think this stereotype does not enter into decisions at this level. Research suggests otherwise. One study looked specifically at bias demonstrated by potential clients:

Seventy-three percent of respondents [in a 1996 survey] observed gender bias directed towards female attorneys by clients. Seventy percent of respondents believe that a female attorney's ability to bring business into a law office is adversely affected by clients' gender bias. . . . Some respondents reported that (male) clients automatically assume that any female attorney is junior to any male attorney involved [with their case] . . . . A number also reported that clients deferred to male attorneys and seemed to implicitly assume that the male attorney was more knowledgeable than the female.<sup>284</sup>

By objective measures of success in law, women attorneys are not reaching their full potential in practice, according to various studies of gender issues in the profession.<sup>285</sup> A study conducted by John Hagan and Fiona Kay evidenced that being female was a significant deterrent to being made a partner, even after accounting for "experience, law school background, ethnicity, family status, firm size, field of specialization, work effort, corporate clientele, child care responsibilities, and leaves of absence."<sup>286</sup>

For purposes of my analysis, the most significant insight urged by Hagan and Kay is this: even though law employers perceive women law students and law graduates as slightly more educated and motivated than male peers, they see women as "more compliant."<sup>287</sup> "These qualities make [women] ideal workers for filling in the base of the practice hierarchy, because they are hardworking, competent, and less likely to balk at stunted mobility prospects."<sup>288</sup> Thus, law

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284. Ellen A. Pansky, *Gender Bias*, WOMEN LAW. J., Fall 1997, at 6-8.

285. See RHODE, *supra* note 12, at 141 (citing, among others, Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession—A Report to the Committee on Women in the Profession*, *The Association of the Bar of the City of New York*, 64 FORDHAM L. REV. 291 (1995); Chris Klein, *Women's Progress Slows at Top Firms*, NAT'L L.J., May 6, 1996, at 1); see also Cynthia Lucia, *Women on Trial: The Female Lawyer in the Hollywood Courtroom*, in FEMINISM, MEDIA, LAW, *supra* note 11, at 146, 149 (citing numerous studies comparing pay, power, and satisfaction of men and women working in law).

286. Hull & Nelson, *supra* note 18, at 684 (citing JOHN HAGAN & FIONA KAY, *GENDER IN PRACTICE: A STUDY OF LAWYERS' LIVES* (1995)); see also RHODE, *supra* note 12, at 9-10 (arguing that, even when combined with "differences in occupation, education, experience, and hours," women's choices do not account for the disparity in status and wages).

287. Hull & Nelson, *supra* note 18, at 686.

288. *Id.*

employers perceive women as willing to work without the recognition and prospects for promotion that men expect.

Similar findings appear in Margaret Thornton's report on interviews of 100 women lawyers practicing in Australia.<sup>289</sup> Thornton identifies the stereotype she calls the "fictive" female.<sup>290</sup> The fictive female is disordered, emotional, and submissive.<sup>291</sup> Thornton sees law practice as a "regime in which men act as rational, authoritative knowers and women are expected to assume roles as docile, supportive handmaidens."<sup>292</sup> Based on such findings, we can, it seems, fairly assume that the stereotype of the compliant, willing to please, deferential woman-child has infected law.

Where we lack direct data on the legal profession, we can refer to results of studies in other fields which compare the perceived judgments of the relative competence of male and female workers. One extensive study demonstrated that women college professors are more negatively evaluated by both male and female students.<sup>293</sup> Another series of studies showed that reviewers are more critical of written work and resumés carrying a female name than identical documents attributed to a man.<sup>294</sup> In a society saturated with images of women acting as children, we cannot hope to escape the implications for women attempting to assume professional roles.

The credibility issues do not cease when women are hired and placed in offices and courtrooms. The resolution of the law relies on the instincts of jurors. If jurors are less likely to attribute authority to women judges, and effectiveness to woman litigators, the verdicts jurors reach may not represent the best resolution of the legal problems in front of them. Moreover, there is the question of witness credibility:

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289. *Id.* at 682-83 (citing MARGARET THORNTON, *DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION* (1996)).

290. *Id.* at 688.

291. *See id.*

292. *Id.*

293. *See* Smith, *supra* note 4, at 97-99. Smith's study showed that the presumption of incompetence was based on visual identification alone. *See id.* The students were shown a picture of a lecturer and then listened to a taped lecture. *See id.* The script for the males and females reading the lecture was identical. *See id.* The students rated the lecture accompanying a picture of a white, middle-aged man as excellent and the female lecturers as barely competent, if competent at all. *See id.*

294. *See* Diana Burgess & Eugene Borgida, *Who Women Are, Who Women Should Be: Descriptive and Prescriptive Gender Stereotyping in Sex Discrimination*, 5 *PSYCHOL. PUB. POLY & L.* 665, 671 (1999) (reviewing the extensive research demonstrating the effects of negative stereotypes on women, especially the stereotype that women are incompetent); *see also* Hull & Nelson, *supra* note 18, at 689-92 (reviewing two books that discuss various difficulties women face in the legal profession).

[Recent studies of juries' responses to witnesses confirm] the perception of women as less believable, even when they are accurate and honest. Indeed, "both women and men perceive women as being less credible than men in all the senses of the term, and the recent years have by no means eliminated these attitudes."<sup>295</sup>

If women are socialized to communicate childishness in speech or mannerisms, they will naturally be perceived as lacking confidence. When a witness fails to communicate confidence, their message is disbelieved. In a study with mock-jurors, the researchers manipulated various verbal and nonverbal expressions relevant to confidence. They found that the mock-jurors discredited testimony from witnesses they perceived as less confident. "The potency of confidence as an accuracy cue concurs with survey research . . . showing that a large percentage of college students, nonstudent adults, police officers, and attorneys believe that confidence is a strong indicator of accuracy."<sup>296</sup> Evidence affirming the existence of the woman-child stereotype suggest women start out with one strike against them because their displays do not convey confidence.

If we could erase all vestiges of the woman-child syndrome in the courtroom, we would still be limited by the facts that occur long before litigation begins. In criminal cases, for instance, the judgments of law enforcement personnel open and shut courtroom doors as they respond to calls, pursue leads, and interview witnesses. They may conclude a woman is prone to exaggerate, mixing the real with the impossible, willing to change her story to please authority figures, unable to divide herself and her needs from objective truth. Do women need to be protected against their wishes, guided toward better choices, or put back in balance?

Even earlier in the process, before any legal investigation is begun, human interactions form the fact patterns that will frame the legal issues to be decided by judges and juries. Some of the legal consequences of the woman-child stereotype are obvious. Clearly the coquettish, flirtatious, and very young women in ads are easily perceived as equivocal, wanting inconsistent and irreconcilable options, and changing their minds at a whim. These qualities, even if charming, support the rapist's argument that an individual woman said no but she meant yes.

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295. Kathy Mack, *Continuing Barriers to Women's Credibility: A Feminist Perspective on the Proof Process*, 4 CRIM. L.F. 327, 330-31 (1993) (quoting Lynn Hecht Schafran, *Eve, Mary, Superwoman: How Stereotypes about Women Influence Judges*, 24 JUDGES J. 12, 16 (1985)).

296. Michael R. Leippe, *The Case for Expert Testimony About Eyewitness Memory*, 1 PSYCHOL. PUB. POL'Y & L. 909, 925 (1995).

One example of such a case is *Questo v. Birgers*,<sup>297</sup> a non-criminal action for damages. The trial established that a male police officer had removed a woman from her home to a hotel for safety after a domestic dispute with her husband earlier in the day. The officer then returned to the hotel and had sexual relations with her although she undeniably protested. He testified that he interpreted her nervousness and resistance as attempts to slow him down rather than stop him. He believed from her “body language” and the “atmosphere” (apparently including sleeping children in the same room) that she was consenting to sexual relations with him, in spite of her verbal refusal and other attempts to discourage him. The jury agreed with the officer.<sup>298</sup>

Employment law also turns on discerning the effects of prejudice. The passive, decorative female stereotype might suggest to employers that women do not do any real work and therefore are undeserving of being considered for hiring and promotions.

In addition, studies reveal continuing evidence of the “female gender stereotype [that] portrays women as needing to be rescued from problematic situations.”<sup>299</sup> A 1982 study of perceived sex difference in decision-making and the exercise of authority suggests that employers tend “to stereotype women as irrational or harboring other traits that ill-suit them for management . . . .”<sup>300</sup>

Vicki Shultz’ analysis of sexual harassment cases illustrates continuing perceptions of women workers as lacking adequate mental stability, strength, commitment, intelligence, and other necessary work-related qualities.<sup>301</sup> Shultz explains that women trying to enter male dominated fields are “subjected to demeaning forms of authority, humiliation, and abuse—objectified, not necessarily as sexual objects, but as fools, *children*, or creatures to be exploited and controlled.”<sup>302</sup>

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297. No. 573185 (Santa Clara County Super. Ct., filed Apr. 23, 1985). See generally Mary E. Lemieux, *Whatever Made You Think I Was Consenting: A Proposal to Silence Patriarchal Influence in Civil Sexual Assault Cases*, 2 HASTINGS WOMEN’S L.J. 33 (1990).

298. See *Questo*.

299. Lynn Bowes-Sperry et al., *An Analysis of Managerial Helping Responses Based on Social Role Theory*, GROUP & ORG. MGMT., Dec. 1, 1997, at 445, 468-69 (explaining the effects of female stereotypes in employment settings) (citing A. H. Eagly & M. Crowley, *Sex and Helping Behavior: A Meta-Analytic Review of the Social Psychological Literature*, PSYCHOL. BULL. 100, 283-308 (1986)). “[M]ale employees may be perceived as wanting to take charge of their lives and to solve their own problems. Therefore, managers may believe that it is more appropriate to use an understanding or probing response with male employees, thus allowing the employee to resolve his own dilemmas.” *Id.*

300. GENDER INEQUALITY AT WORK 129 (Jerry A. Jacobs ed., 1995) (citation omitted).

301. See Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1764 (1998).

302. *Id.* at 1767-68 (emphasis added).

I am fascinated by the implications of the woman-child stereotype in a less obvious field of law, bioethics and health care law. Consider the question of informed consent to medical procedures. Research suggests that doctors, a group that is overwhelmingly male,<sup>303</sup> frequently expect women patients to be malleable and trusting, not “capable of understanding medical-surgical mysteries.”<sup>304</sup> In an extensive 1993 study, more than twice as many women patients than men patients reported that they were “talked down to” or “treated like a child” by their physician.<sup>305</sup> Thus, some doctors make decisions without giving women a meaningful choice,<sup>306</sup> or after ignoring a woman’s expression of choice,<sup>307</sup> believing that the woman needs “guidance,” rescue, protection and the benefit of his more informed and more rational thinking.<sup>308</sup> One doctor explains the prevalence of hysterectomies:

They are done by doctors who respond to their patients’ requests for a hysterectomy to end their periods and who are just unethical

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303. See American Medical Association, *Women in Medicine Data Source*, <http://www.ama-assn.org/ama/pub/print/article/171-195.html> (visited Sept. 26, 2000). In 1998, females comprised 22.8% of physicians, up from 7.6% in 1970. See *id.* While this is a marked improvement, the medical profession remains predominantly male. See *id.*

304. DIANA SCULLY, MEN WHO CONTROL WOMEN’S HEALTH: THE MISEDUCATION OF OBSTETRICIAN-GYNECOLOGISTS 227 (1980). Scully’s conclusions are the result of a three year study of ob-gyn training in hospitals, including observation and interviews. See *id.* at 1-3.

305. Karen H. Rothenberg, *Gender Matters: Implications for Clinical Research and Women’s Health Care*, 32 HOUS. L. REV. 1201, 1213-14 (1996) (citing COMMONWEALTH FUND, SURVEY OF WOMEN’S HEALTH 7 (1993)). “Professional patterns of dominance [in the health care system] not only mirror, but reinforce social expectations of men as knowledgeable authorities and of women as deferential servants who follow but do not initiate treatment programs.” *Id.* at 1216.

306. See, e.g., KATHY DAVIS, RESHAPING THE FEMALE BODY: THE DILEMMA OF COSMETIC SURGERY 129-30 (1995) (reporting on interviews with women who claimed they were not allowed to make decisions relating to breast surgery); Rothenberg, *supra* note 305, at 1215-1217 (arguing that women do not effectively participate in decision making because of the power inequality); Susan M. Wolf, *Shifting Paradigms in Bioethics and Health Law: The Rise of a New Pragmatism*, 20 AM. J.L. & MED. 395, 405 (1994) (reporting on obstetricians who ignore women’s refusals of cesarean section deliveries). See generally Council of Ethical and Judicial Affairs, American Medical Association, *Gender Disparities in Clinical Decision Making*, 266 J. AM. MED. ASSOC. 559 (1991).

307. See Barbara Ann Leavine, *Court-ordered Cesareans: Can a Pregnant Woman Refuse?*, 29 HOUS. L. REV. 185, 206-07 (1992) (noting that doctors sometimes seek judicial declarations overriding pregnant women’s refusals to consent to certain forms of medical treatment); Rothenberg, *supra* note 305, at 1224-45 (discussing legal efforts to override other decisions an individual woman makes about her health and safety).

308.

[W]omen are first medically conceptualized and then ‘diagnosed’ as naturally sickly, blamed for being sick, treated as sick, and seen as irrationally pathogenic by nature. This carries important political consequences: women need to be and must be controlled by (preferably benevolent) men for women’s and children’s own good and for the collective social good.

Kathryn Pauly Morgan, *Contested Bodies, Contested Knowledges: Women, Health, and the Politics of Medicalization*, in THE POLITICS OF WOMEN’S HEALTH: EXPLORING AGENCY AND AUTONOMY 83, 103 (Susan Sherwin ed., 1998).

enough to tell themselves . . . “she obviously doesn’t want to know about the risk.” . . . Mostly they are done by male physicians who were trained in a milieu that did nothing to alter their ingrained male prejudices about women and that reinforced the attitude that it is all right to decide for a woman what she needs, instead of giving her the knowledge and power to make the decision for herself.<sup>309</sup>

Another research group found that almost two-thirds as many women as men had been told by doctors that a medical condition they reported existed “only in their heads.”<sup>310</sup> As recently as 1982, the *Journal of the American Medical Association* printed an article with a score of helpful suggestions for treating patients with “hysteria.”<sup>311</sup> “Hysteria” patients are defined as female hypochondriacs:

Hysteria, as used here, is a chronic condition, confined almost, but not exclusively, to women. Its key feature is a chronic or repetitive concern with physical symptoms and complaints that are frequently the occasion for the patient to visit a physician. Few or no physical findings are turned up to explain the complaint. . . . The repeated failure to find an organic basis for the patient’s often inconsistent complaints results in considerable frustration and sometimes embarrassment for the physician.<sup>312</sup>

In the article, Dr. Murphy notes the “hysteric’s tendency to exaggerate or misidentify symptoms. . . . The basic rule is: given the diagnosis of hysteria, take no surgical action until physical signs can be verified, however anguished the patient’s subjective complaints.”<sup>313</sup> Moreover, he warns that “hysterics” seductively flirt with physicians as a ploy to “retaining the physician’s interest.”<sup>314</sup> “Hysterical” women are not only hypochondriacs; they are generally deluded about life. “The cognitive link seems to be missing . . . . Insight-oriented psychotherapy is unlikely to be of benefit.”<sup>315</sup> A skilled doctor can eventually control a “hysteric.” “Even the patient herself may come to

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309. JOHN M. SMITH, *WOMEN AND DOCTORS* 41 (1992).

310. Karen J. Armitage, M.D. et. al., *Response of Physicians to Medical Complaints in Men and Women*, 241 J. AM. MED. ASS’N 2186, 2186 (1979) (“[Research] data tend to support the argument that male physicians take medical illness more seriously in men than in women.”); see also Barbara Bernstein & Robert Kane, *Physicians’ Attitudes Toward Female Patients*, 19 MED. CARE 600, 603 (1981) (reporting on a study that found physicians believe that women’s complaints are influenced by their emotions and women are more likely to be psychosomatic as well as more likely to make excessive time demands).

311. George E. Murphy, M.D., *The Clinical Management of Hysteria*, 247 J. AM. MED. ASS’N 2559 (1982).

312. *Id.* at 2559.

313. *Id.* at 2561.

314. *Id.* at 2562.

315. *Id.* at 2564.

appreciate the wisdom in your caution.”<sup>316</sup> How better could he have described the woman-child stereotype and the typical response it elicits?

A stereotype of women prone to exaggeration, emotionally hypersensitive, and wanting attention may explain empirical evidence that women are less likely to receive medical tests<sup>317</sup> and aggressive forms of treatment.<sup>318</sup> The data clearly establishes, for instance, that doctors are slower to identify heart disease and slower to recommend heart surgery with female patients.<sup>319</sup> While there are many complex and multifaceted factors that contribute to this statistically significant disparity,<sup>320</sup> the possibility exists that doctors assume women exaggerate or misinterpret their symptoms, and thus cannot be taken seriously.

Women may similarly be prejudiced in personal injury cases and awards of disability benefits, where a person’s perceived tendency to

316. *Id.* at 2562.

317. See Jeffrey Weiss, *Doctors Soul-Searching After Bias Study: Unconscious Sexism and Racism May be Killing Patients, Report Says*, HOUSTON CHRONICLE, June 6, 1999 (reporting on research published in Feb. 25, 1999 New England Journal of Medicine). In the 1999 research more than 700 doctors were asked to diagnose a videotaped “patient.” See *id.* These patients provided identical scripts, personal background information, and medical histories. See *id.* The doctors were less likely to appropriately respond to patients who were women, as well as male minority patients. See *id.*; see also Peter Franks and Carolyn M. Clancy, *Physician Gender Bias in Clinical Decisionmaking: Screening for Cancer in Primary Care*, 31 MED. CARE 213 (1993) (describing a study that confirms the existence of physician gender bias in clinical decision making).

318. See Philip J. Held et al., *Access to Kidney Transplantation: Has the United States Eliminated Income and Racial Differences?*, 148 ARCH. INTERNAL MED. 2594 (1988) (noting that males are more likely to receive certain kidney treatments); Carl M. Kjellstrand, *Age, Sex, and Race Inequality in Renal Transplantation*, 148 ARCH. INTERNAL MED. 1305 (1988) (“Women aged 46 to 60 years had less than half the chance of receiving a transplant when compared with men of the same age and race.”). See generally European Secondary Prevention Study Group, *Translation of Clinical Trials into Practice: a European Population-Based Study of the Use of Thrombolysis for Acute Myocardial Infarction*, LANCET, May 4, 1996, at 1203.

319. See Terri D. Keville, *The Invisible Woman: Gender Bias in Medical Research*, 15 WOMEN’S RTS. L. REP. 123, 128-9 (1993-94) (stating that men with heart disease are twice as likely as women to receive state-of-the-art medical treatments for heart attacks) (citing Charles Maynard et al., *Treatment of Acute Myocardial Infarction in Women: Results From the MITI Registry* (1991), reported in Lawrence K. Altman, *Study Finds Heart Treatment Differs for Men and Women*, N.Y. TIMES, Nov. 13, 1991, at A18); see also Steven S. Khan et al., *Increased Mortality of Women in Coronary Artery Bypass Surgery: Evidence for Referral Bias*, 112 ANN. INTERNAL MED. 561, 561 (1990) (suggesting that bias deters doctors from referring women for coronary bypass surgery until later in the course of their disease and this late treatment may account for the fact that women are more likely to die during or after such surgery); Jonathan N. Tobin et al., *Sex Bias in Considering Coronary Bypass Surgery*, 107 ANN. INTERNAL MED. 19, 20 (1987) (finding that doctors referred twice as many men as women heart disease patients for coronary artery bypass surgery). See generally Council of Ethical and Judicial Affairs, American Medical Association, *supra* note 306; Brigid Lusk, *Patients’ Images in Nursing Magazine Advertisements*, 21 ADVANCES NURSING SCI. 66 (1999); Reinhart Schuppel et al., *Sex Differences in Selection of Pacemakers: Retrospective Observational Study*, 316 BRITISH MED. J. 1492 (1998).

320. Is it possible that physicians think that a contribution to a male’s continued existence or quality of life is more important, satisfying, or better paying?

exaggerate pain symptoms is, of course, relevant. The standard for evaluating self reports of pain in disability hearings is loose, relying on individual judgment calls. The complainant is measured against "reasonable language, reasonable behavior as a patient, and generally reasonable patterns as a worker."<sup>321</sup> When hearing officers and juries are influenced by the woman-child stereotype, they may be more skeptical of female testimony. The primary researchers for the Ninth Circuit Gender Bias Task Force's Advisory Committee on Federal Benefits determined that female disability claimants were disadvantaged for many reasons, including perceptions that women complain more than men.<sup>322</sup>

Understanding the stereotype which links female to childishness, and thus to incompetency, may help explain why women are substantially more likely to be subject to attempts to appoint guardians or conservators for them than are men.<sup>323</sup> At the same time, women are noticeably less likely to be appointed as guardians for others.<sup>324</sup> This is just another example of health care law that may be enlightened by a study of the woman-child stereotype.

The law of rape, employment discrimination, medical malpractice, disability, and guardianships are not necessarily the most important or the first that should be considered. They merely represent the range of legal issues that may be tainted by the woman-child stereotype. The disparate treatment of men and women by the law may be better understood when we recognize that white women are seen through the lens of, and perhaps some act out, the traits associated with childishness in everyday interactions. Only if we can understand how people interact can we hope to formulate appropriate legal responses.

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321. Patrick D. Halligan, *Credibility, Chronic Pain, and Converted Mental Conflict: Some Distinctions for Adjudicators*, 8 SOC. SEC. REP. SERV. 793, 862 (1993); see also Linda G. Mills, *A Calculus for Bias: How Malingering Females and Dependent Housewives Fare in the Social Security Disability System*, 16 HARV. WOMEN'S L.J. 211, 218 (1993) (reporting on findings that women are disadvantaged in disability determinations).

322. See Peter V. Lee et al., *Engendering Social Security Disability Determinations: The Path of the Woman Claimant*, 68 TUL. L. REV. 1477, 1505-06 (1994) (finding that women are not perceived as credible in courtrooms when compared to their male counterparts).

323. See Susan Stefan, *Silencing the Different Voice: Competency Feminist Theory and Law*, 47 U. MIAMI L. REV. 763, 768-69 (1993) (stating that in Florida seventy percent of the guardianship appointments for persons over the age of sixty are for women).

324. See *id.*

V. "WHAT DOES A WOMAN WANT?"<sup>325</sup>

*[W]omen have long been taught that the most effective way to get what they want is to be a little girl. . . . [E]ver since women began pressing to be independent, they worried that independence would make them undesirable. . . . [T]he woman who fretted that she wasn't womanly enough may have to face the bizarre possibility that she isn't enough of a child.*<sup>326</sup>

What does this all mean? From my study, I draw some obvious, and some undoubtedly speculative, conclusions. I begin with the obvious.

White women<sup>327</sup> are consistently made infantile in advertising, but we are not outraged.<sup>328</sup> We see these images daily and, rather than make headline news with our protest, we vigorously support the products hawked in this fashion. The world view depicted in advertising carries significance far beyond marketing. It is intended, and created at a staggering price, to convincingly encapsulate our cultural script. By looking back in at advertising we see who we are in ways we do not always acknowledge.

The evidence suggests that women in our culture continue to permit themselves to be associated with the cute, coy, flirtatious, innocent, but sexy fantasy of Baby Spice. This association may work favorably for some women, some of the time. Admittedly, powerful dynamics push women into conformity with, or at least acquiescence in, the woman-child model. But, the woman-child association can have devastating effects on any individual woman's effort to be effective as a lawyer, to seek justice in the system, and to avoid being the victim of social and legal wrongs.<sup>329</sup> If this association is so dangerous, why do white women, and everyone who interacts with white women, tolerate this pervasive theme of childishness?

Perhaps we want a "sugar daddy" more than we want liberation.<sup>330</sup> The fantasy of being relieved from many adult responsibilities while

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325. PSYCHIATRY IN AMERICAN LIFE 70-71 (Charles Rolo ed., 1963) (quoting Sigmund Freud).

326. Kaye, *supra* note 62.

327. *See supra* note 4.

328. I have discussed elsewhere the intriguing question posed by cultural analyst Sut Jhally: "If grown women are largely treated as children in advertisements, why does this not look strange to us?" *See* Preston, *Consuming Sexism*, *supra* note 12, at n.258 (quoting SUT JHALLY, THE CODES OF ADVERTISING 133 (1987)).

329. *See* ALISON M. JAGGAR, FEMINIST POLITICS AND HUMAN NATURE 255 (1983). Jaggar claims childishness is an example of one of the ideologies invented by white male culture to define subordinate groups as inferior. *See id.* She warns that reinforcing the stereotype by acting childish reaffirms and cements subordination. *See id.*

330. *See* KILBOURNE, *supra* note 24, at 282 (stating that at least one male psychiatrist has attributed the obsession of Japanese men with school girls to being "threatened by the growing sophistication of older women").

basking in the good things of life, material and otherwise, is still intoxicating,<sup>331</sup> even if statistically unlikely.<sup>332</sup> Perhaps, the woman-child stereotype is more prevalent with respect to white women because they are the most likely in our society to succeed in being economically and socially “taken care of” by a man.<sup>333</sup>

331. In a book-length autobiographical essay, Nancy Friday reminisces:

Women packaged themselves for the eyes of men so as to capture their protection and power. “I’ll die if you leave me!” wasn’t just a line from a 1950s movie heroine, it was real life, how it felt. On their side of the bargain, men in their gray flannel suits looked providerish, permanently planted in the ground in their heavy, dark shoes, a look that promised women that all their years of denial of independence, adventure, speech, but mostly sex, had been worthwhile.

NANCY FRIDAY, *THE POWER OF BEAUTY* 299 (1996).

332. U.S. CENSUS BUREAU, *POVERTY IN THE U.S. 1998* 60-207 (1999), <http://www.census.gov/hhes/www/povty98.html> (visited Sept. 19, 2000) (showing that while only ten percent of all families are in poverty, 29.9% of all female-headed families are below the poverty line); see also Peter M. Cicchino, *Building on Foundational Myths: Feminism and the Recovery of “Human Nature”: A Response to Martha Fineman*, 8 AM. U. J. GENDER SOC. POL’Y & L. 73, 73 n.1 (1999) (claiming that the number of women heads of households are rising and that female-headed households are more likely to be in poverty than other households). The number of “displaced homemakers,” women who have depended on male support that fails them, has risen steadily since 1980. See Mary Elizabeth Hammerstrom, *Equitable Distribution of Military Pensions? Re-Thinking the Uniformed Services Former Spouses Protection Act*, 9 LAW & INEQ. 315, 321 (1991) (citing Tamar Lewin, *Data Showing Rising Plight of Displaced Homemakers*, N.Y. TIMES, June 2, 1990, at 13)). More than sixty percent of all poor adults in the United States are women. See *id.* (citing Martha E. Giminez, *The Feminization of Poverty: Myth or Reality?*, 17 SOC. JUST. 43, 48 (1990)).

Perhaps the danger of relying on male support is best stated by the opening paragraph of Cynthia Starnes, *Divorce and the Displaced Homemaker: A Discourse on Playing with Dolls, Partnership Buyouts and Dissociation under No-Fault*, 60 U. CHI. L. REV. 67 (1993):

Wifely submission is risky business in the 1990s. Gone is the day when a wife could depend on her husband’s labor to maintain her at home, “secure and safe.” Today is the day of divorce at will and equality rhetoric, which means that if her marriage ends, the homemaking wife will be catapulted into financial independence, and probably financial ruin.

*Id.* at 69.

333. Black women are more likely than white women to be impoverished even when married. See Joan Williams, *Do Women Need Special Treatment? Do Feminists Need Equality?*, 9 J. CONTEMP. LEGAL ISSUES 279, 286 (1998) (citing Mary Jo Bane, *Household Composition and Poverty: Which Comes First?* in *FIGHTING POVERTY: WHAT WORKS AND WHAT DOESN’T* 209, 227-28 (Sheldon H. Danziger & Daniel H. Weinberg eds., 1986)); see also Martha M. Ertman, *Commercializing Marriage: A Proposal for Valuing Women’s Work Through Premarital Security Agreements*, 77 TEX. L. REV. 17, 104-105 (1998) (explaining how married black women are more likely than white women to contribute substantially to family income); Berta Esperanza Hernandez-Truyol, *Las Olvidadas-Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. GENDER RACE & JUST. 353, 359 (1998) (observing that more single female heads of families are Latina than non-Latina and that Latinas “have the lowest median income of any group”); Ann R. Tickamyer, *Public Policy and Private Lives: Social and Spatial Dimensions of Women’s Poverty and Welfare Policy in the United States*, 84 KY. L.J. 721, 725 (1995-1996) (revealing that “almost fifty percent of Black and Hispanic female-headed families are poor compared to slightly more than a quarter of white female-headed households”) (citing SANFORD SCHRAM, *WORDS OF WELFARE: THE POVERTY OF SOCIAL SCIENCE AND THE SOCIAL SCIENCE OF POVERTY* 145-47 (1995)); U.S. CENSUS BUREAU, *supra* note 332, Table A (finding 29.9% of white female-headed households in 1998 are below the poverty line, while 40.8% of black and 43.7% of Latina female-headed households are in poverty).

Perhaps we want liberation, but only in a way that does not unduly risk emasculating the perhaps elusive safety net of male protection, legitimization, and financial support.<sup>334</sup> This net exists at the discretion of men. Whether or not it is true, women may fear men will only provide it for a price. Men want to be validated in both their ability to provide and in women's neediness. Bob Guccione, the founder of *Penthouse* magazine, stated: "Men like the idea that a woman may need the power they can provide, the security they provide. . . . A man wants to feel that he's giving something to the woman that makes him important and unique to her."<sup>335</sup> By playing the woman-child, women make such validation possible. Molly Haskell argues that the American heroine, the object of male desire, and the ideal (white) woman is "the sleep-walker, the child-woman."<sup>336</sup> Far from wanting a "real woman," the Pygmalion male wants a woman who never passes age twenty-five.<sup>337</sup>

In believing they can be taken care of, women function at different levels. Because of the erosion of female self-esteem in our society, it is likely some women have been so minimized they believe themselves helpless and idealize that males are omni-able. In a fascinating aside, one researcher on male dominance in advertising noted, "It is at least arguable that women may read authoritativeness in a male character as preferable because women may not yet be conditioned to accept their own self-sufficiency."<sup>338</sup>

A second type of woman may believe that she is fully capable, but think life will entail less effort and risk on the coattails of a man. Other women may know they are able, that they will nonetheless continue to bear heavy responsibility, and that they enjoy responsibility, but play along with the "little girl" act. One study concluded that even women in successful careers are targeted by ads with female stereotypes.<sup>339</sup> The researchers speculated that these "images . . . might be designed to reassure them they can be, or

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334. See Bill O'Reilly, *Back of the Book: Continuing Reverberations Over "Who Wants to Marry a Multimillionaire,"* FOX NEWS: THE O'REILLY FACTOR, Mar. 2, 2000, available at 2000 WL 6330797 (reporting how professional match maker, Janis Spindel confirms that single women who use her service are looking for a "successful" man: "Money is a must") (interviewing Janis Spindel, president of Janis Spindel Serious Matchmaker).

335. Kaye, *supra* note 62; see also *Dees v. Johnson Controls World Servs., Inc.*, 168 F.3d 417, 419 (11th Cir. 1999) (describing a male supervisor's harassment of a woman employee by stating that "she needed a 'sugar daddy' and that with a body like hers, she would not have to work if she listened to him").

336. MOLLY HASKELL, *FROM REVERENCE TO RAPE* 329, 347 (1974).

337. See *id.*

338. Stern, *supra* note 43.

339. See Coltrane & Messineo, *supra* note 55.

should be, conventionally feminine.”<sup>340</sup> The convention is, of course, defined by a culture that equates the feminine and the childish. Consider the single women who clamored to “Marry a Multimillionaire” on national television. These women did not seem helpless to care for themselves. Perhaps the Cinderella fantasy<sup>341</sup> is still robust because women quest for the illusive “brass ring” of femininity—being wanted by men.<sup>342</sup> Or, perhaps, the coveted brass ring for women is in fact being viewed by other women as the kind men want.

Being perceived as sexually attractive is important to a woman’s success in the world. . . . A woman’s self-esteem is often inextricably linked to her sexual attractiveness to men. . . . A woman experiences her worth by how much she is desired.<sup>343</sup>

Many women may not be motivated by the prestige of male desirability, but they want traditional families and male companions. This dream is dependent on having a father and husband. Perhaps, these women fear that men may be too threatened by real achievement, real power, and real adult women. Finally, perhaps some women simply enjoy a “dark flirtation with submission.”<sup>344</sup>

Of course, there are also women who make a conscious, practical compromise. Feminists acknowledge and respect the reality that women in our society must choose between bad and worse choices. Many women keep the peace, provide for themselves and their children, and meet other emotional and economic necessities by doing and being what works. Indeed, women are at a disadvantage when attempting to support themselves because of workplace barriers, pregnancy, responsibility for children and the elderly, and division of housework duties.<sup>345</sup>

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340. *Id.*

341. The Cinderella Complex is “a network of largely repressed attitudes and fears that keeps women in a kind of half-light, retreating from the full use of their minds and creativity. Like Cinderella, women today are still waiting for something external to transform their lives.” COLETTE DOWLING, *THE CINDERELLA COMPLEX* 31 (1981). The expected rescuer is, of course, a male “Prince Charming.” *See id.*

342. *See* Ellis D. Evans et al., *Content Analysis of Contemporary Teen Magazines for Adolescent Females*, 23 *YOUTH & SOC.* 99, 110 (1991) (“Articles and advertisements [in magazines] mutually reinforce an underlying value that the road to happiness is attracting males for a successful heterosexual life by way of physical beautification.”).

343. Jane Harris Aiken, *Intimate Violence and the Problem of Consent: An Essay*, 48 *S.C. L. REV.* 615, 631-32 (1997).

344. Kaye, *supra* note 62.

345. *See* Tickamyer, *supra* note 333, at 725, 738, 742 (noting work patterns of women). While single women without children have almost reached parity with men’s earning power, mothers earn less than men. *See* Lundy R. Langston, *Women in the New Millennium: The Promises of the Past Are Now the Problems for the Millennium*, 6 *CARDOZO WOMEN’S L.J.* 1, 16 (1999) (“Women do not enter the labor market—be it formal or informal—on the same basis as men,

In a thoughtful analysis of consent in cases of sexual violence, Jane Harris Aiken reminds us that,

Women are objectified and evaluated primarily by their sexual attributes and their skill in making use of those attributes. . . . Through flirtation, beauty, and the promise of possible sexual access, women can gain power. It is generally a derivative power—power gained through marriage and association with men.<sup>346</sup>

If sex appeal is defined as being “Baby Spice,” a failure to act out childishness, and thus “trade on one’s sex appeal,”<sup>347</sup> results in two negative consequences. First, it deprives women of one of the few effective routes to power available to them. Second, a woman who fails to play along with such expectations, “who refuses to participate in her own objectification is often socially shunned and treated as a sexual outlaw,”<sup>348</sup> labeled as “distant, frigid, . . . bitchy, or . . . [a] ‘dyke[].’”<sup>349</sup>

Conforming to whatever society currently defines as “attractive” has numerous rewards.<sup>350</sup> As outsiders in the arenas of power, women have learned to “pass,” or play along with the dominant group’s assumptions, recognizing that we can only gain acceptance if we make the dominant group feel comfortable around us.<sup>351</sup>

But contradictions inhere in playing the role of woman-child. Anna Kournikova may believe she can simply slide comfortably into either “girl or woman” as she will,<sup>352</sup> but a more mature observer surely recognizes the cost. How will Kournikova’s image serve her if she were to take a strong stand on an international tennis association rule or the like? If she were to run for a responsible public office? If she were raped?

Kournikova, as other women, may find herself involuntarily trapped in the category of “girl,” or she may discover playing both roles produces physiological as well as psychological trauma. As high a price as women may be willing to pay to stay eligible to be taken

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nor do they operate within it on equal terms.”); Joan Williams, *Do Wives Own Half? Winning for Wives after Wendt*, 32 CONN. L. REV. 249, 255 (1999) (describing the “wage gap” and “family gap” between women and men).

346. Aiken, *supra* note 343, at 629.

347. *Id.*

348. *Id.* at 632.

349. *Id.* at 629.

350. See generally Umberson & Hughes, *supra* note 39, at 228-231.

351. See Carbado & Gulati, *supra* note 201, at 1301-04 (describing the extent to which outsiders, white women, and minorities attempt to comfort majority groups and power holders to avoid work related disadvantages and become an exception to the stereotype).

352. See *supra* text accompanying note 1.

care of, life in the twenty-first century is not that easy. We cannot quite deny the strong internal and external voices telling women to achieve and be powerful. The conflict between these voices and the desirability, let alone safety and familiarity, of being the “little princess” produces deep anxiety. For instance, women in legal education consistently attempt to articulate the untenable position of being boxed in the double bind of being both feminine and effective legal gladiators.<sup>353</sup> They report the kind of self-doubt that is a natural by-product of being “living contradictions.”<sup>354</sup>

The psychological rift produced by these conflicting messages may be taking a more subversive and dangerous form. Jean Kilbourne, a pivotal commentator on advertising, suggests that the tension of trying to combine feminine powerlessness with feminist empowerment results in eating disorders.<sup>355</sup>

We can be successful as long as we stay “feminine” (i.e., powerless enough not to be truly threatening). One way to do this is to present an image of fragility, to look like a waif. This demonstrates that one is both in control and still very “feminine.” One of the many double binds tormenting young women today is the need to be both sophisticated and accomplished, yet also delicate and childlike.<sup>356</sup>

Another danger is that our collusion with these images, fashioning ourselves consistent with the sexualized child, invites woman-directed violence. Our society links playfulness with violence.<sup>357</sup> “As we learn to view ourselves as childish and playful, we are at the same time learning to naturalize violence toward women.”<sup>358</sup>

In an elaborate and provoking analysis of advertising and “hysteria”—defined as a medical, social, and emotional condition,<sup>359</sup> Mady Schutzman observes that women are socialized, by advertising as well as other forces, to behave like children—“dependent, naïve, vulnerable, playful, deferring, testing, exaggerating, physicalizing their needs, and even throwing tantrums.”<sup>360</sup> Then, as a response,

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353. See Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL'Y 119, 131-32, 141 n.111 (1997) (describing dilemma between cultural expectations for women and traits valued in litigation practice).

354. *Id.*

355. See KILBOURNE, *supra* note 24, at 137.

356. *Id.*

357. See MCCracken, *supra* note 27, at 128; see also Preston, *Bits and Pieces*, *supra* note 4, at 65-66.

358. MCCracken, *supra* note 27, at 128.

359. *But see* Murphy, *supra* note 311.

360. MADY SCHUTZMAN, *THE REAL THING: PERFORMANCE, HYSTERIA, AND ADVERTISING* 29-30

they are criticized for doing what they are taught. This unsolvable conflict erupts as hysteria.<sup>361</sup> Like the heroine in *The Yellow Wallpaper*,<sup>362</sup> a certain acting out of our impossible bind may be a reasonable response under the circumstances, but is unlikely to improve our status in society.

We can never ignore or denigrate the reality of women's lived experiences and the choices women make. We can seek to help women be aware and make informed decisions among what may well be less than ideal choices. We can seek to educate men, many of whom would perhaps seek to reaffirm the women around them in their strength, not their weakness. We can recognize the forces under which people act the way they do and take these into account in understanding law.

#### CONCLUSION: THE FINAL EQUIVOCATION

*[W]hen there is confusion and disappointment about what feminism offers and what it takes away, the waif represents contemporary woman's last retreat, her last reservation and her final equivocation.*<sup>363</sup>

Advertising is both a critical agent of socialization and a surprisingly profound summary of our attitudes and aspirations. When we examine modern advertising, we see that white women are consistently displayed in ways that either suggest women have the qualities of pre-pubescent girls or encourage them to aspire to those qualities. In many ads, women are immersed with subtle indicia of childishness though a myriad of details, such as the youth of the models, symbols of "schoolgirls," transference between very young girls and adult women, posing, gesture, facial expression, and language. These images are not effectively counterbalanced by competing images of powerful women.

Other ads dramatically reinforce the notion that the ideal of beauty is at least the outward expression of the typical physical, mental, and emotional characteristics of girls aged fourteen. Adult women are encouraged to adopt the patterns of dress and behavior that permit them to conform to this ideal.

These advertising images go largely unchallenged.<sup>364</sup> Women

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(1999).

361. *See id.*

362. CHARLOTTE PERKINS GILMAN, *THE YELLOW WALLPAPER* (The Feminist Press ed. 1973) (1899) (telling the classic feminist tale of a woman who creates a reality beyond the marriage that imprisons her).

363. Kaye, *supra* note 62.

364. There is currently very little evidence of public outrage or even public awareness of the stereotypes of women perpetuated in advertisements. I discuss elsewhere possible responses

either fail to recognize them for what they are, or are comfortable being infantilized. Women may act in complicity with the stereotype for a myriad of reasons, some frightening and others rather reasonable.

Whatever the reasons, serious implications result from acting like a child or being involuntarily lumped into the woman-child stereotype. The traits we associate with children are counterproductive to being taken seriously. The persistence of the stereotype may have particularly grave consequences for the law and lawyers. Women who see themselves in terms of adolescent girls are not likely to seek or be rewarded with meaningful participation in social power structures, particularly the law. Law enforcement personnel, lawyers, judges, and juries who cast women as children will naturally doubt their credibility. Inaccurate perceptions of life and behavior translate into inappropriate legal theory and practices.

We must recognize that some women are improperly stereotyped as childish, as well as acknowledge that some women may actually acquiesce in childish behavior. Elayne Rapping discusses her students' positive responses to television characters like Ally McBeal, another icon of Baby Spice.<sup>365</sup> "To them, [Ally McBeal's character] is very much about 'liberation' because it gives them permission to retreat to the worst pre-sixties attitudes and behaviors and still 'succeed' financially and romantically."<sup>366</sup> Understanding why will help us shape the law to respond appropriately.

Understanding why will also provide critical insight into the current malaise of feminism, in law and elsewhere. The fantasy associated with the woman-child myth helps explain women's ambivalence toward feminism and toward freedom, liberation, and empowerment generally.

Modern women are said to want it all. "[U]ltimately, the pictures [in ads] are meant for women [not men]. And the extent to which the waif is foam in the wake of The Year of the Woman is the extent to which what women want is at odds with what they say they want."<sup>367</sup> They want the benefits of the strong woman feminism has advanced, without alienating any potential admirers or putting off employers, supervisors, clients, and others in power positions (still mostly men)

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whereby consumers could make their displeasure known to advertisers. See Cheryl B. Preston, *Buying In* (forthcoming 2001).

365. See Rapping, *supra* note 14, at 20, 21 (acknowledging progress, but wondering about the "really important issues").

366. *Id.*

367. Kaye, *supra* note 62.

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who like the old rules better. Unfortunately, women risk that, instead of having it both ways, they will lose at both.

Just as space may not be the final frontier, acting out Baby Spice may not be a woman's final equivocation with feminism. But it is a significant form of equivocation and must be understood to be addressed appropriately.

APPENDIX

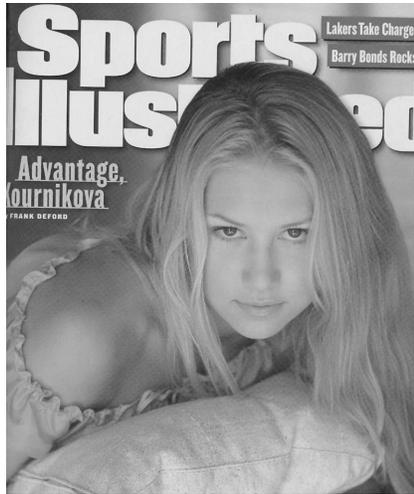


Figure 1. SPORTS ILLUSTRATED, June 5, 2000, at front cover.



Figure 2. ELLE, Apr. 1997, at 297.

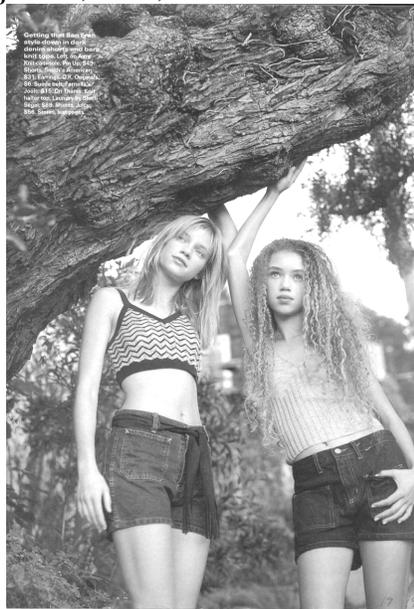


Figure 3. SEVENTEEN, Apr. 1997, at 145.



Figure 4. SEVENTEEN, Apr. 1998, at 151.



Figure 5. SEVENTEEN, Apr. 1998, at 153.

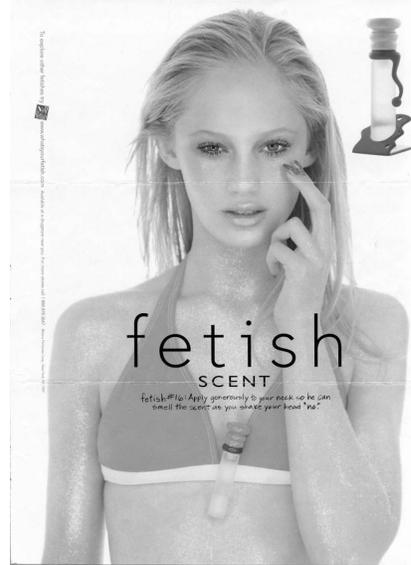


Figure 6. SEVENTEEN, Sept. 1997, at 106.



Figure 7. ELLE, Apr. 1997, at 19.

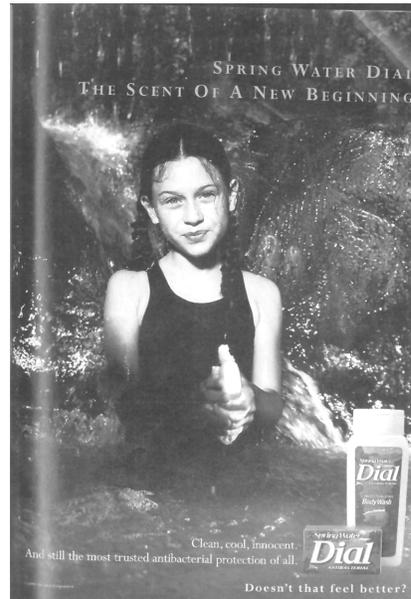


Figure 8. GLAMOUR, Apr. 1999, at 120.

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Figure 9. COSMOPOLITAN, Oct. 1999, at 288.



Figure 10. SEVENTEEN, Aug. 1997, at 79.



Figure 11. COSMOPOLITAN, Apr. 1997, at 39.



Figure 12. PEOPLE, Aug. 9, 1999, at 134.

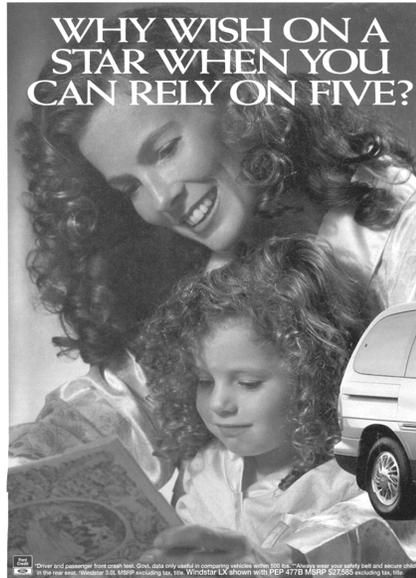


Figure 13. NEWSWEEK, Nov. 10, 1997 at 28.

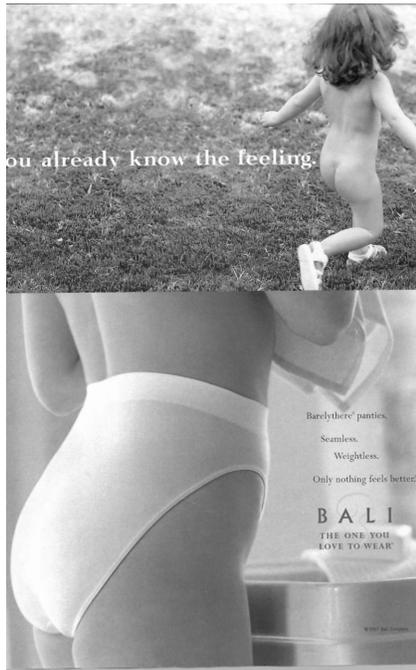


Figure 15. VOGUE, Mar. 1998, at 372.

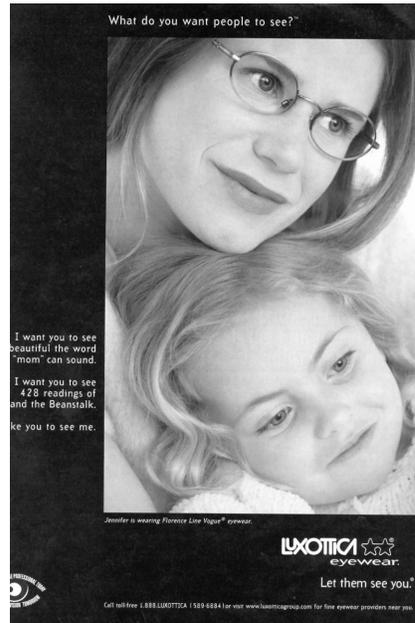


Figure 14. GLAMOUR, Aug. 1997, at 160.



Figure 16. GLAMOUR, Aug. 1997, at 13.

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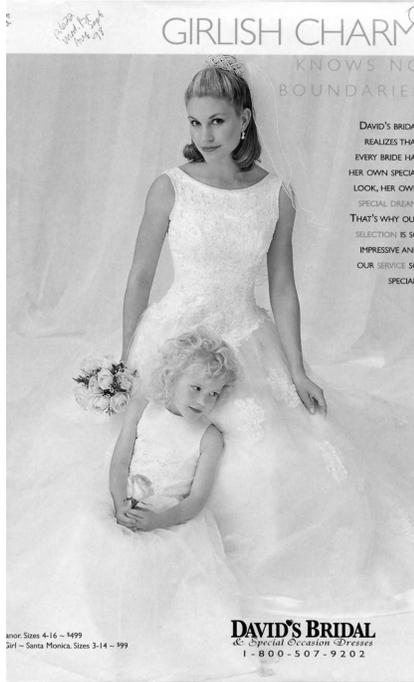


Figure 17. MODERN BRIDE, Aug./Sept. 1998, at 621.

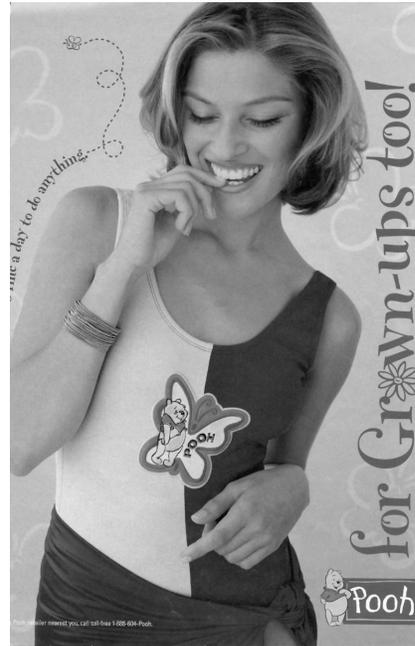


Figure 18. MADEMOISELLE, Apr. 1998, at 131.



Figure 19. SEVENTEEN, Aug. 1998, at 135.



Figure 20. ELLE, Nov. 1999, at 223.



Figure 21. MODERN BRIDE, Aug./Sept. 1998, at 136.



Figure 22. HARPER'S BAZAAR, Mar. 1999, at 353.



Figure 23. VOGUE, Mar. 1998, at 309.



Figure 24. SEVENTEEN, Aug. 1998, at 239.

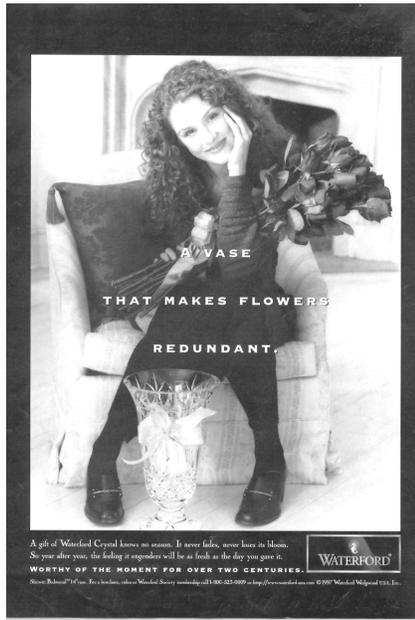


Figure 25. VOGUE, Mar. 1998, at 259.



Figure 26. SEVENTEEN, Aug. 1997, at 84.

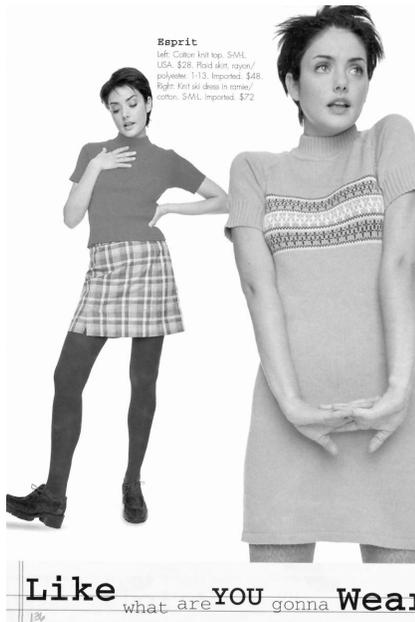


Figure 27. GLAMOUR, Apr. 1998, at 136.



Figure 28. SEVENTEEN, Aug. 1998, at 61.



Figure 29. COSMPOLITAN, Apr. 1999, at 25.

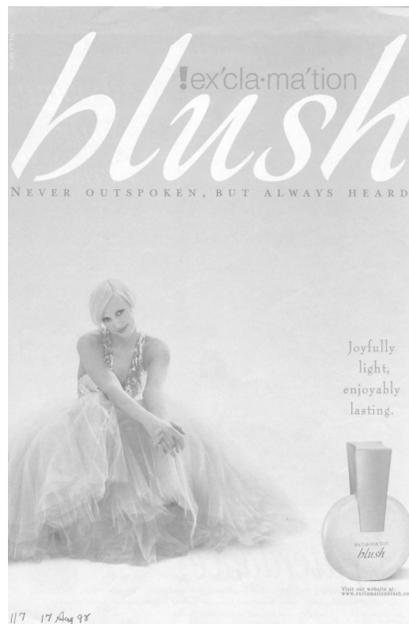


Figure 30. SEVENTEEN, Aug. 1998, at 117.

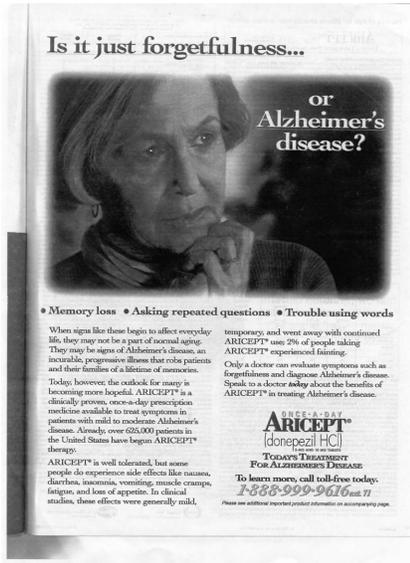


Figure 31. LADIES HOME JOURNAL, Sept. 1999, at 51.



Figure 32. MADMOISELLE, Apr. 1998, at 191.

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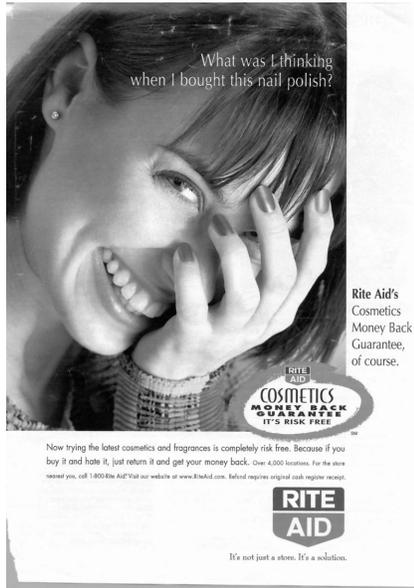


Figure 33. LADIES HOME JOURNAL, June 1998, at 15.



Figure 35. HARPER'S BAZAAR, Mar. 1998, at 278.

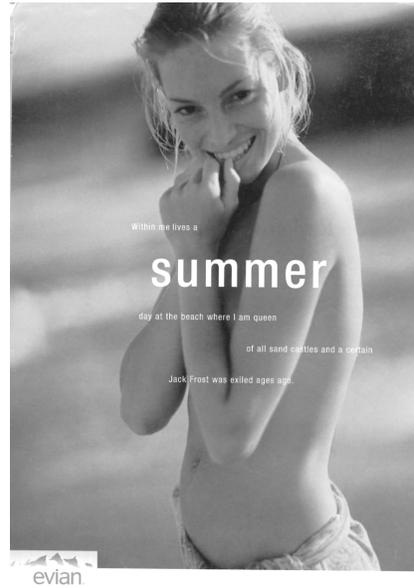


Figure 34. GLAMOUR, Aug. 1997, at 24.

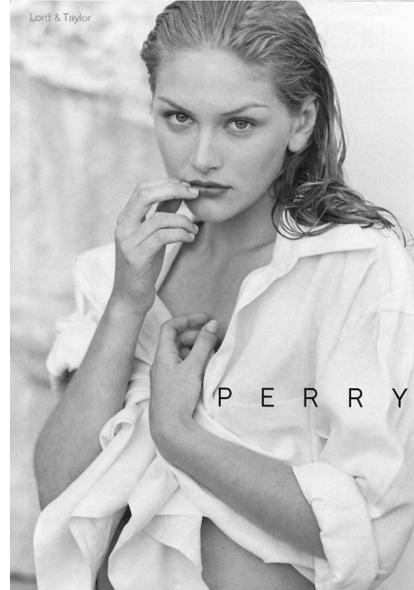


Figure 36. VOGUE, Mar. 1998, at 280.



Figure 37. VOGUE, Mar. 1998, at 527.



Figure 38. SEVENTEEN, Aug. 1998, at 144.

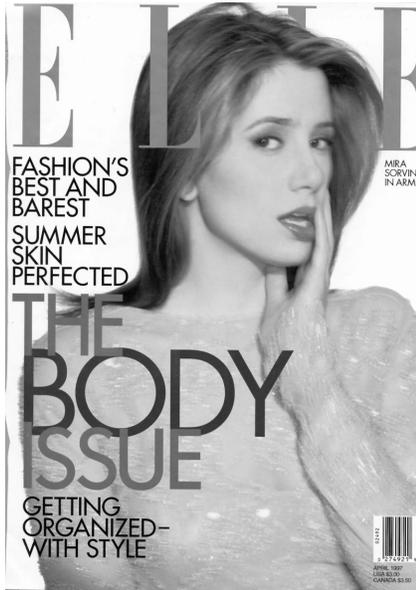


Figure 39. ELLE, Apr. 1997, at front cover.

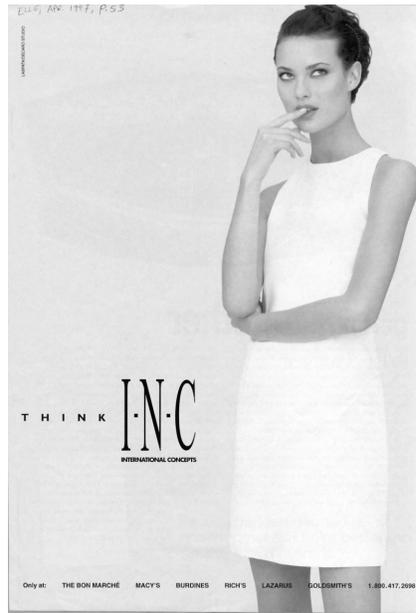


Figure 40. ELLE, Apr. 1997, at 53.

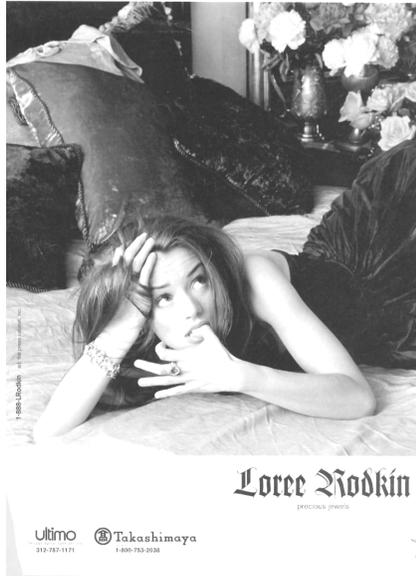


Figure 41. ELLE, Sept. 1999, at 411.

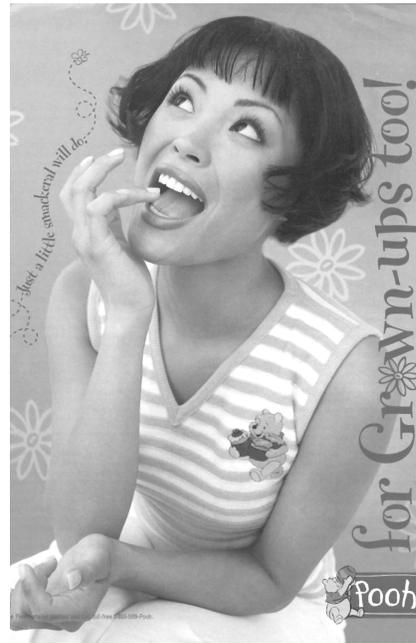


Figure 42. GLAMOUR, Apr. 1998, at 193.



Figure 43. FAMILY LIFE, Aug. 1999, at 23-24.



Figure 44. WOMAN'S DAY, June 20, 2000, at 105.

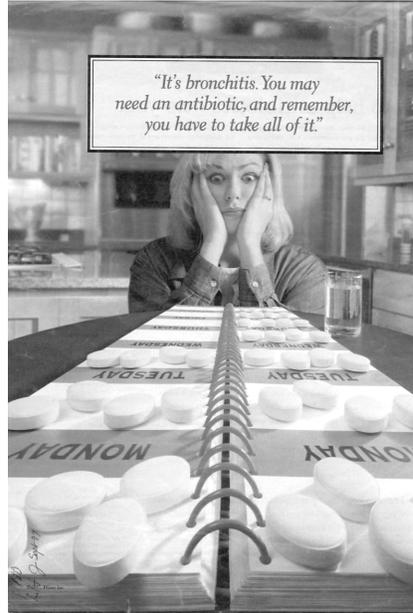


Figure 45. LADIES HOME JOURNAL, at 110.

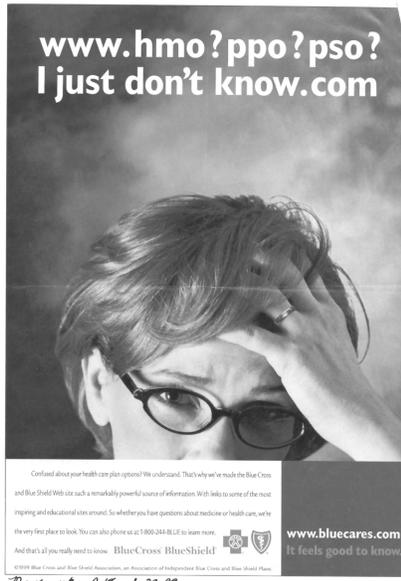


Figure 46. NEWSWEEK, June 28, 1999, at 18.

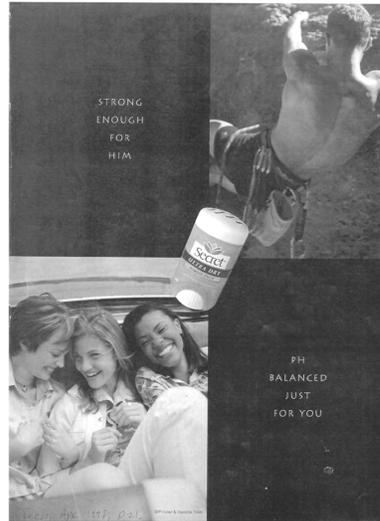


Figure 47. 'TEEN, Apr. 1997, at 21.

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Figure 48. BETTER HOMES & GARDENS, Apr. 1997, at 211.



Figure 49. BETTER HOMES & GARDENS, Apr. 1997, at 99.

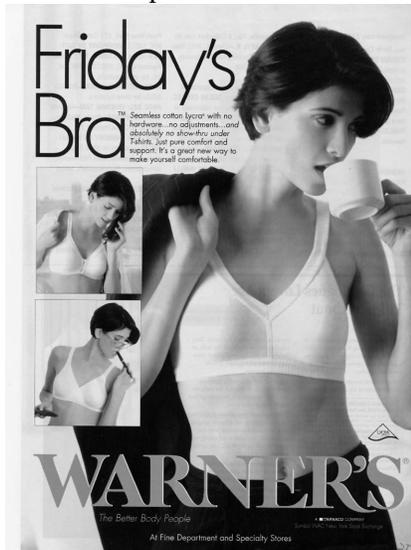


Figure 50. COSMOPOLITAN, Apr. 1997, at 275.



Figure 51. ELLE, Nov. 1999, at 26.



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Figure 56. VOGUE, Aug. 1997, at 214.



Figure 57. NEIMAN MARCUS: THE BOOK, Apr. 1998, at 161.

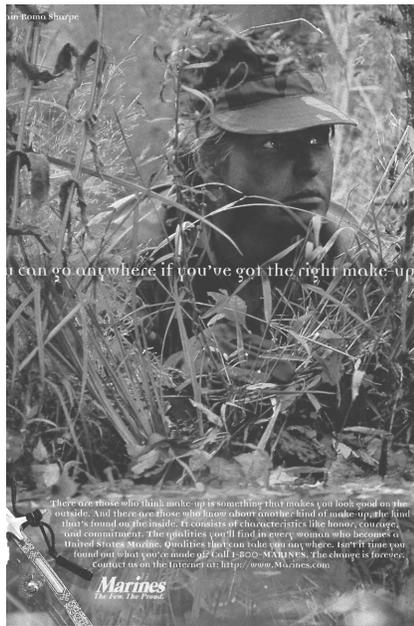


Figure 58. SEVENTEEN, Apr. 1998, at 93.



Figure 59. VOGUE, Mar. 1998, at 42.



Figure 60. O: THE OPRAH MAGAZINE, Sept. 2000 at 164.

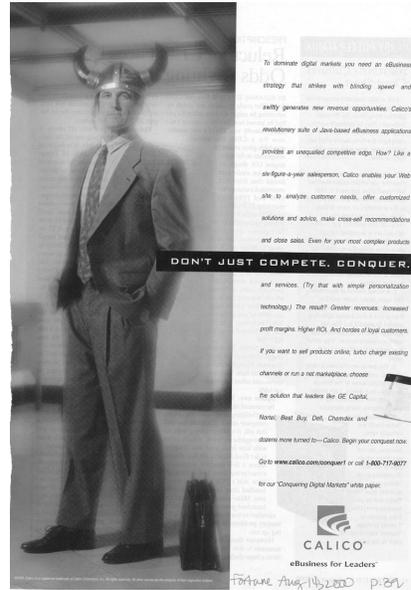


Figure 61. FORTUNE, Aug. 14, 2000, at 39.

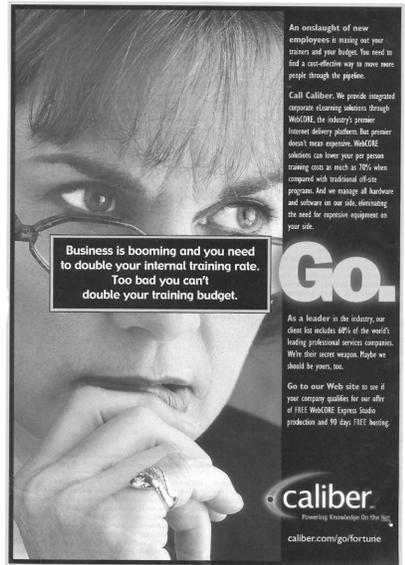


Figure 62. FORTUNE, Aug. 14, 2000, at 293.



Figure 63. BETTER HOMES & GARDENS, Aug. 2000, at 8.

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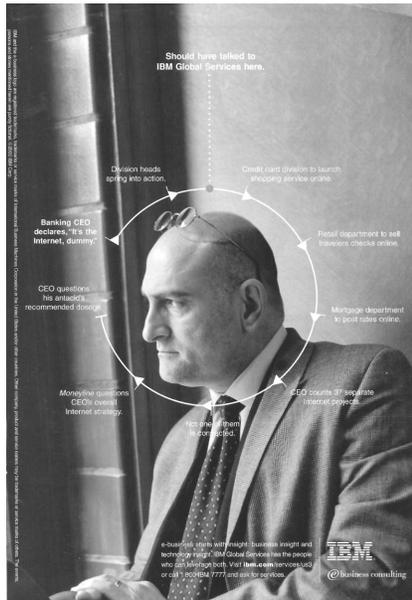


Figure 64. GOLF MAGAZINE, Sept. 2000, at 77.



Figure 65. SPORTS ILLUSTRATED, Sept. 14, 2000, at 43.

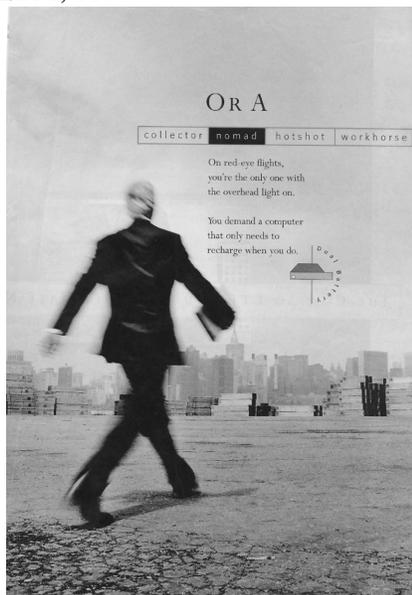


Figure 66. BUSINESS WEEK, Oct. 9, 1995, at 11.

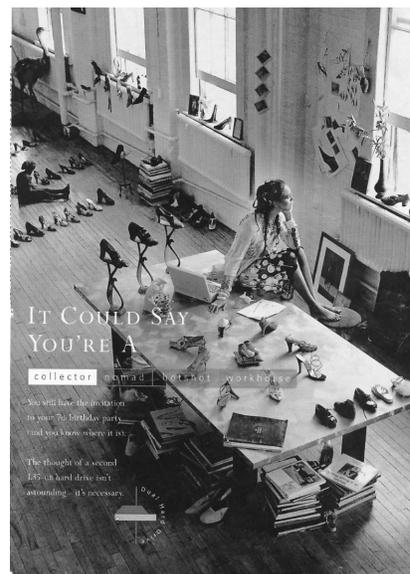


Figure 67. BUSINESS WEEK, Oct. 9, 1995, at 10.