

# The New York Times procures salacious details of “gray-zone sex”

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On February 21, the *New York Times* published a notice calling on college students to describe and document any sexual encounter “that may not be viewed as sexual assault but which constitutes something murkier than a bad date.” The notice includes a submission form where students can accuse individuals of having engaged in something the *Times* calls “gray-zone sex.” The *Times* asks its young tipsters to include names, email addresses, phone numbers and colleges, plus text message records and photographs documenting the encounters.

The *Times*’ announcement, written by gender editor Jessica Bennett and Daniel Jones, reads in its entirety:

As stories of sexual misconduct continue to dominate the news, a debate has erupted over a particular kind of encounter, one that may not be viewed as sexual assault but which constitutes something murkier than a bad date.

We’ve seen it play out on a public stage, from the Aziz Ansari incident to *The New Yorker*’s “Cat Person” story. So-called “gray-zone sex” has prompted impassioned conversations about—and personal reflection on—what constitutes consent and how we signal our desire or apprehension in the moment. This debate is especially vibrant on college campuses, where for years students and administrators have grappled with the issue.

We want to hear how you handle consent for sexual intimacy in relationships and encounters. Do you have a particular experience you find yourself thinking back to? What was said, texted or hinted at, through words or physical cues, that moved the encounter forward—or stopped it? How did it make you feel at the time, and how do you think about it now?

The February 21 solicitation links to an article Bennett wrote on December 16, 2017 titled, “When Saying ‘Yes’ Is Easier Than Saying ‘No,’” which sheds further light on what the *Times* means when it asks “what constitutes consent?” The two articles together show the provocative and witch-hunting character of the *Times*’ efforts to compile a database of sexual harassment allegations on college campuses across the country.

“For years,” Bennett begins in the December article, “my female friends and I have spoken, with knowing nods, about a sexual interaction we call ‘the place of no return.’ It’s a kind of sexual nuance that most women instinctively understand: the situation you thought you wanted, or maybe you actually never wanted, but somehow here you are and it’s happening and you desperately want out, but you know that at this point exiting the situation would be more difficult than simply lying there and waiting for it to be over. In other words, saying yes when we really mean no.”

Bennett provides two examples, one from her personal life and another from a short story published late last year in the *New Yorker* titled “Cat person.” In both cases, the woman is interested in the man, they court one another, and they both agree to have sex. In the *New Yorker* story, which is also linked in the February 21 announcement, the protagonist is physically unsatisfied by her partner, who she complains is “heavy” and “bad in bed.” Later, the protagonist tells all her friends a version of this encounter, “though,” the author explains, “not quite the true one.”

Bennett says “there are other names for this kind of sex: gray-zone sex, in reference to that murky gray area of consent; begrudgingly consensual sex, because, you know, you don’t really want to do it but it’s probably easier to just get it over with; lukewarm sex, because you’re kind of ‘meh’ about it; and, of course, bad sex, where the ‘bad’ refers not to the perceived pleasure of it, but to the way you feel in the aftermath ... Sometimes

‘yes’ means ‘no,’ simply because it is easier to go through with it than explain our way out of a situation.”

“Consent” is a legal term that marks the line between noncriminal and criminal conduct. Sex without consent can, and should, lead to the filing of a complaint followed by the initiation of a criminal investigation, prosecution and, if a jury is persuaded by the evidence, conviction. It is a basic legal tenet that the accused cannot be punished by the state for acts that are not proscribed by law, and in the American system, conduct that falls in a “gray zone” by its very nature does not meet the threshold for conviction: guilt “beyond a reasonable doubt.”

But the *Times*’s call for young people to submit reports of “gray-zone sex” is aimed at creating a parallel system, outside the framework of the law, in which the accused have no right to privacy or to due process. As law professor Catharine MacKinnon wrote in a *Times* column on February 4, “#MeToo has done what the law could not.”

Playing the role of prosecutors in the court of public opinion, the gender editor and her cohorts at the *New York Times* are creating a massive database that it can dig through to ruin the careers and lives of students and professors based on unproved accusations of sexual conduct that, in any event, is not illegal.

The aim of this reactionary campaign is both political and pecuniary.

First, the *Times* hopes to create a political and cultural climate in which a broad array of consensual conduct is deemed punishable, even if it does not violate any legal statute.

The *Times*’s appeal for accusations comes after a number of spreadsheets have surfaced where students and faculty can anonymously submit accusations of harassment or “creepy behavior” on the part of male colleagues or teachers. The submissions will involve a massive invasion of privacy. Individuals, without their knowledge or consent, may be placed in a situation where their most intimate behavior is being secretly documented and forwarded to the *New York Times*. Texts and even photographs will be examined and leered over by the gender editor and her colleagues. It is not difficult to imagine the abuses of privacy that will flow from the *Times*’s efforts to procure salacious material.

There are countless legal issues involved. There are many states that outlaw the transmission of sexually explicit and lewd material over the Internet. Will the individuals who foolishly transmit the material requested by the *Times* be opening themselves up to prosecution? If

the *Times*’s editors discover that one or another submission describes sexual behavior that occurred between minors, will they inform the police that they have evidence of a violation of age-of-consent laws?

If the *Times* receives a submission that describes a consensual sexual encounter between a student and an older faculty member or administrator, will it decide that it must inform the institution of a possible violation of institutional regulations? And what happens if and when prosecutors, having initiated investigations into “gray-zone sex,” obtain subpoenas, demanding that the *Times* turn over its files? Who can doubt that the *Times* will comply with court orders, regardless of the consequences for those who are caught up in the escalating witch hunt?

Second, the call for “gray-zone sex” stories is a shameless effort to make money. In early February, the *Times* announced a 46 percent increase in digital subscriptions over the past year, and its stock price has increased 40 percent since October, the month it published the allegations against Harvey Weinstein. Reuters wrote, “Subscriptions in the quarter also got a boost from the newspaper’s coverage of Harvey Weinstein’s sexual harassment story, helping the company post the highest-ever annual subscription revenue of \$1 billion.” It was also in October 2017 that the *Times* announced the position of “gender editor,” at which point Bennett declared that gender “needs to exist throughout every section of the paper.”

However, the newspaper has had trouble attracting younger readers who are more likely to turn to social media and independent websites for news. In 2017, the *Times* launched its own Discover section on Snapchat “with the aim of capturing younger demographics,” *Business Insider* wrote. The *Times*’s campaign to broaden the #MeToo campaign to include “gray-zone sex” stories, with a focus on college campuses, is a part of its filthy business strategy.



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