

# Sex, Lies & Children

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A favorite trick of the censors in this country is to blur the lines between protected speech, in the form of adult erotica on the one hand, with patently illegal material, in the form of child pornography on the other, by mixing the two at every opportunity. Family Values groups and other opponents of free speech routinely use the terms “pornography,” “obscenity” and “child pornography,” interchangeably, in the attempt to cause confusion in the mind of the public, and intentionally link perfectly legal content with evidence of a horrific crime. The media often plays along, whether through ignorance or complicity, and refers to the new child porn arrest as a "Pornography Bust." All of this helps convince the public through confusion, that pornography has something to do with abuse of children, and that all of it is probably illegal somehow. In some jurisdictions, law enforcement investigators seize every chance to mix these concepts in a blender, by charging defendants with obscenity as well as child pornography, no matter how remote the connection, or how strong the evidence. Some evidence of this can be found in a couple recent cases initiated by the Polk County, Florida, Sheriff Grady Judd. This is the same Sheriff made famous by declaring that he had jurisdiction to regulate anything online, so long as it was available for download in Polk County, Florida. According to Judd:

"But it makes no difference, because if you fed that server or you could receive information off that server in this county, then it gives us jurisdiction. ... Technically I could charge someone in Kansas, if I received *child pornography* here, obtained a warrant and had him extradited from Kansas and tried here."

<http://www.ojr.org/ojr/stories/051018glaser/>

Note the stray reference to "child pornography" there. That particular case had nothing to do with children, but was an adult obscenity case against Chris Wilson, arising from his operation of a user-generated content site. This quote provides a unique glimpse into the strategy of many law enforcement agencies and anti-porn groups, who constantly mention child pornography whenever discussing adult erotica.

Judd's office recently investigated an antique store owner by the name of John Denitto, who engaged in some adult content production on the side. See, [http://www.theledger.com/article/20090128/NEWS/901280284?Title=Winter Haven Business Owner Arrested on Obscenity Charge](http://www.theledger.com/article/20090128/NEWS/901280284?Title=Winter%20Haven%20Business%20Owner%20Arrested%20on%20Obscenity%20Charge). Sheriff's Deputies raided the business

based on the claim of a "confidential informant" that a teenager was being photographed there. Leaving aside the fact that a teenager can be 18 or 19 and still legally participate in adult photography, this unconfirmed statement gave law enforcement the hook they needed to raid the modeling studio, under the guise of a child pornography investigation. However, no evidence of child pornography was ever found, and the "confidential informant" turned out to be a former "model" herself, who was trying to buy her way out of her own criminal problems by turning informant for the state. Not the most reliable informant, to put things mildly.

But what does a good Deputy do when his information results in the seizure of nothing more than a bunch of video tapes of adults having sex? File obscenity charges, of course! Not much is required to arrest someone for alleged obscenity. A charging document needs to be filed saying that a prosecutor believes in good faith that there is probable cause that the material is obscene. Polk County usually goes the extra step of getting a local judge to sign off on a confirmation that such probable cause exists, but that is all smoke and mirrors. Any erotic work might be obscene, simply based on its sexually-explicit nature. The question of obscenity is left for the judge or jury. Until that ultimate determination is made, it is presumed to be non-obscene under the First Amendment.

Nonetheless, despite such a presumption, just about anybody involved in the commercial production or distribution of adult material can be prosecuted for obscenity. That is one of the (many) reasons the obscenity laws are unfair, unconstitutional and inhumane in modern society. There is no fair warning as to what material might result in serious felony charges, with implications and innuendo of child pornography to boot. Denitto's felony obscenity case remains pending, and no proof of child pornography ever came to light.

Law enforcement and prosecutors know that as soon as the specter of child pornography is raised, the defendant loses public sympathy, support of friends, and jury appeal. So they try to throw it in any time they can.

In another recent case from Polk County, Sheriff Deputies arrested Timothy Keck for numerous counts of obscenity depicting a minor. This sounds like a valid offense, until the facts get in the way. Keck was a former Sheriff's Deputy himself, until he had a falling out with the agency. Oddly enough, he found himself was targeted for some internet surveillance by that same agency, and a warrant was issued for offenses involving child pornography. Keck allegedly used Limewire™, a popular file sharing service, to download various images, including numerous drawings of underage individuals engaged in sexual activity. That's right, drawings. Oh, and the investigators apparently also dug up a single image from a temporary cache file allegedly depicting only the genitals of an underage couple in the act of intercourse. It has not been explained how one divines the age of models based solely on a depiction of their genitals engaged in a sex act. But Keck faces one count of possession of child pornography (for the temp file) and 26 counts of distribution of obscenity, for the drawings. This arrest has been described by Judd as the "largest roundup in the county," and "horrific."

See: <http://www.theledger.com/article/20090528/NEWS/905285074?Title=45-Men-Charged-in-Bust-Over-Horrific-Child-Porn;>

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Given that Keck was lumped in with 45 other suspects, all of whom are referred to as a group despite the lack of any apparent connection, some of the other images involved in the other cases may well have been horrifying. Child pornography is a heinous, inexcusable crime, and legitimate cases should be vigorously prosecuted. But when politicians or special interest groups start mixing in allegations of child porn with adult pornography, both children and adults become the losers. Trying to force a tenuous charge of child pornography just to tarnish the reputation of a suspect in an adult obscenity case dilutes and reduces the importance – and indeed the ‘horror’ – of real child pornography cases. Future child pornography investigations will not be taken as seriously by prosecutors, judges and juries, as a result. Adults also lose, when important constitutional safeguards are dismissed or glossed over as a result of the forced connection with child pornography allegations in these cases. Sexually-oriented media is entitled to full First Amendment protection. *Ashcroft v. Free Speech Coalition*, 534 U.S. 234 (2002). Protecting the most controversial and indecent speech is essential so that all other speech remains securely within the coverage of the First Amendment.

The tactic of mixing child pornography with adult obscenity has been used in countless other cases in the past, including the highly-publicized obscenity case against Mike Jones<sup>1</sup> in Chicago, and the federal obscenity case against certain written stories involving children by Karen Fletcher a/k/a Red Rose<sup>2</sup>. Child pornography was not the focus of either of these cases, but the concepts were thrown around by the prosecutors in court and in the public, in an effort to tarnish the reputation of the defendant, and make the obscenity charge more likely to stick.

Nowhere is the misuse of child pornography charges more apparent than in the case of ‘sexting.’ Countless articles, blogs and Op-Ed pieces have come out recently, decrying the use of harsh child pornography statutes against teenagers accused of sending racy photos of themselves. E.g., [Provocative Photos: Don’t Overreact to “Sexting”](#). Several states are currently [considering legislation](#) to decriminalize the behavior, or reduce its severity to nothing more than a misdemeanor. This is a step in the right direction. Children convicted of child pornography are forced by a federal law, the Adam Walsh Child Protection Act, to register as sex offenders – a label that can deal damage for the

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<sup>1</sup> Jones was charged with several counts of both obscenity and child pornography, the latter involving dubious evidence of possession in temp files. His attorney, J.D. Obenberger referred to the child porn charges as “concocted.” All charges against Jones were ultimately dismissed after the court suppressed the state’s evidence resulting from an illegal search.

<sup>2</sup> Fletcher was indicted for federal obscenity violations, although the U.S. Attorney, Mary Beth Buchanan, referred to the material as involving “...the rape and torture of children.” C, Deitch, Dirty Words, *Pittsburg City Paper*, <http://www.pittsburghcitypaper.ws/gyrobase/PrintFriendly?oid=oid:30196>. Of course, no children were raped or tortured by Ms. Fletcher, and she was never actually charged with child pornography.

rest of their lives. Teens impacted by this registration requirement cannot go to school, find jobs, or lead normal lives. E.g.: [Sexting Teens Who Send Racy Photos Run Risk of Child Porn Charges](#). Oddly, this is the only instance where the child porn victim is also the [perpetrator](#).

The end game for the activists and politicians here is to cause the public to immediately associate any incident involving pornography with the rape and abuse of children. If they can somehow work the word “child” into any sentence referencing “pornography” they have achieved a victory. But the misuse, and overuse, of child pornography statutes to prosecute these tangential cases involving cache files, young-looking adults, and sexting behavior, undermines the core policies of the child pornography laws for a cheap political purpose. Children will suffer when these cases are passed over by prosecutors, or dismissed by judges flooded with dubious claims of child exploitation. The censors may gain minor ground with these tactics, but the voices opposing distortion of constitutional freedoms under the guise of protecting children are getting louder.

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