anything. In its comeback September 1996 issue, the magazine *House & Garden* included a full page color photograph by Dewey Nicks of two beautiful girls on a sofa hugging each other closely, forehead to forehead, interlaced legs ending in high-heeled white sandals. The picture illustrated an article on the interiors of desert homes, and the photograph's caption read: "The house is blessed with several living areas, all outdoors except for this one, opposite, and all relaxed enough for children. The Burgesses's granddaughter Emily, right, and her friend, Bijou Phillips, fit right in. The glass table is by Noguchi."[60] Picking up quickly on the article's implications, Julie V. Iovine soon described in the *New York Times* "a new trend: an artificial world where home life can be as disquieting as contemporary art and fashion," and she explicitly compared the Nicks photograph with work by Sally Mann. "Welcome Home," she wrote.[61]

It has become possible to treat the relationship between the changing image of childhood and the power of mass media with intelligent wit, as David LaChapelle does in a photograph for a 1995 *New York Times Sunday Magazine* children's fashion feature, precisely because that relationship has become so familiar. (Permission to reproduce refused by the mother of the model.) "McKenzie Robertson, 6" wears the proverbial little black dress, once a hallmark of the sophisticated woman. Bright pastel plastic mirrors flank the girl: mirrors, we learn from the picture's credits, called "Naturally Pretty Beauty Set" and "Dream Vanity." On these toys appropriate for a child-woman appear cut-out covers of decidely adult women's fashion magazines, featuring the adult super-model Linda Evangelista. The six-year-old holds another such magazine on her lap, showing us the glamour pose she imitates. The whole picture is faintly surreal and quite humorous, but it comments on a cultural trend many people find frightening and deadly serious. The public dangers of photography have come home.

Photographs Against the Law

Photography's threats to children's safety provoke retaliation. The strongest reaction has been child pornography law. Most developed in the United States, both at the highest federal level, and at the subsidiary state level, child pornography law defends the ideal of childhood innocence against pictures. Lurking unresolved in these laws is the most fundamental problem of visual representation: the relationship between reality and images, a problem posed in its most acute form by the medium of photography. As a crisis in "ideal childhood" has appeared to spread everywhere in the media, the scope of child pornography law has become correspondingly wide, affecting pictures of all sorts, yet at its emotional core, child pornography law strikes back not at pictures but at sexual child abuse.

Few if any crimes are now so odious to western societies as the sexual abuse of children. During the fall of 1996, the inept prosecution of Marc Dutroux, child murderer, rapist and pornographer, outraged the Belgian nation; King Albert called for a national "moral revival" and some 300,000 citizens in a population of 10 million marched to demand government reform.[1] More than a thousand delegates attended a conference held in Stockholm in August 1996 to condemn the worldwide sexual exploitation of children; at the conference, France's state secretary of humanitarian action announced: "I consider our fight a crusade," against a "diabolical phenomenon."[2] Meanwhile, in the United States, the California state legislature drafted laws to punish child molestation with "chemical castration."[3] In prison, hardened violent criminals ostrasize child abusers.

Since the early 1980s, photography has been increasingly implicated in the crime of sexual child abuse. This trend originated in the United States, and then spread to Europe. By the middle of the 1990s, photography, in the form of child pornography, has become as crucial to the negative values associated with childhood as it is to the positive. As with all crimes, the social significance of child pornography is expressed most forcefully by prohibition, both by laws that forbid it and by scandals that crystallize and articulate social anger against it.

Responding to cultural pressure, often in the acute form of scandals, child pornography laws have become broader and stricter. Originally intended to punish actions against children, these laws have extended their reach to include representations of children both real and imaginary. The goals of child pornography laws are both unequivocal and highly laudable. Their means, however, are not always nearly as clear or as safe as their ends. Intertwined with absolutely unimpeachable provisions are some quite problematic assumptions about the relationship between actions and images, about realism, and about the interpretation of meaning. It is frightening to question any provisions of child pornography law because they are so closely bound to the emotionally explosive issue of actual child abuse. And yet they do have to be questioned. As long as we are in the domains of the ideal and the normal, photographic confusions between fantasy and reality can be entertaining, consolatory, or even productive. When it comes to the law, however, with its actual victims, crimes, and punishments, we have to be much more rigorous. The most obvious issue at stake is freedom of expression. Less obviously and more pragmatically, child pornography laws could be improved if they were more care-fully reasoned. And, most importantly, current child pornography laws allow us to turn away from many real abuses of children in our society.

Child pornography law in the U.S. has a surprisingly recent beginning. In 1982, judges of the law case *New York v. Ferber* ruled that child pornography could have no artistic significance, and hence could not be defended on those grounds. But it was not until 1984 that child pornography was legally distinguished from other pornography and defined according to a stricter standard. Along with irrefutable provisions against the actions of pornographers, this 1984 U.S. federal law banned the "lascivious exhibition of genitals" in pictures. The "factors" which could make a picture of a child's body illegal in the United States included: "whether focal point of visual depiction was on minor's genitalia or pubic area, whether setting of visual depiction was sexually suggestive, whether minor was depicted in unnatural pose or in inappropriate attire considering his age, whether child was fully or partially clothed or nude, whether visual depiction suggested sexual coyness or willingness to engage in sexual activity, and whether visual depiction was intended or designed to elicit sexual response in viewer," and, finally, the defendant's use of the picture regardless of the photographer's intent. In contrast with adult pornography: "constitutional requirements for child pornography are much simpler and more susceptible to credible assertion... [a] conclusion based on observation, not one based on evaluation."[4]

Despite its confident tone, the 1984 law used some rather vague language. What does "sexually suggestive" mean, applied to places, poses, or attire? Did Congress have at its disposal a geiger counter for "sexual coyness"? "Sexual response" is deemed remarkably singular, as if all sexual responses were the same. Legislators asserted their ability to see right through pictures to someone's unambiguous thoughts, but who is that someone, and how many someones need be involved – will one suffice, and which one? Most disturbingly, the frame of legal interpretation slips and slides in every direction; "design," "intent," and "use" are treated interchangeably, but somehow "observation" remains putatively reliable, precise, and consistent.

In 1984, it did not matter too much whether the legal language defining child pornography was vague and overly broad, because at that point the law only considered pornography as evidence of actions perpetrated against real children. Prompted by a rising concern about all pornography, President Ronald Reagan launched an investigation under Attorney General Edwin Meese in 1986. The investigation culminated in a report titled *Attorney General's Commission on Pornography Final Report.* Sponsored by a conservative Republican administration, the Meese report, as it is often called, was bound to be conservative in its assumptions, logic, and conclusions.[5] Yet in the very first paragraph devoted to child pornography, the Meese Commission declared: "The distinguishing characteristic of child pornography, as generally understood, is that actual children are photographed while engaged in some form of sexual activity, either with adults or with other children."[6] Later the Commission emphasized: "'child pornography' is only appropriate as a description of material depicting *real* children" (their emphasis).[7] In a footnote, a very important footnote, the Commission elaborated: "The Court also required that the 'category of "sexual conduct" proscribed must also be suitable [sic] limited and described'[458 U.S. 474, 746 (1982)] and must not include mere 'nudity.'"[8]

By 1989, however, the judgment of *Massachusetts v. Oakes* included children's nudity within the definition of pornography, provided the image showed "lascivious intent." "Mere nudity" is a key concept, much more crucial than it might seem. If nudity can be construed as an extension of "sexual activity," it can also be construed otherwise. Bodies represented nude or naked or undressed are not necessarily sexual, although of course they could be. Pictures of the bodies of children are not necessarily or exclusively bait for pedophiles. What else pictures of children's bodies might mean is the subject of the entire next chapter. For now, the point I want to make is that nudity is not an

action. Nudity might imply or suggest an action involving the person pictured and the person taking the photograph, but it is not in and of itself an action, let alone a criminal action. To introduce the issue of "mere nudity" therefore introduces the possibility that the criminal category of child pornography could include images whose "sexual activity" was not a matter of action but of interpretation at best, fantasy at worst. Of course nudity might be a sign that some criminal activity was taking place outside the image, and the law could have stigmatized that activity outside the image. Instead, the law was beginning to stigmatize the image itself, on the basis of a "lascivious intent" so vaguely defined that it could depend entirely on subjective interpretation.

At the same time, U.S. law was beginning to define child pornography as being generally visual and specifically photographic. The 1984 federal law already uses the word "exhibition" to signal a visuality the law assumes and condemns but never confronts. A close reading of federal and state statutes reveals that, by the mid 1990s, law equated child pornography with what was most often called "visual depictions" and that visual depictions were equated with photography (photography including prints on paper, film, video, and computer images). Rather than cite every state law, which would be tedious, let me just cite the Meese report, itself citing the important 1982 *New York v. Ferber* decision: "the category of 'child pornography' is limited to works that *visually* depict sexual conduct by children below a specified age."[9] The emphasis is the commission's.

Why photography? Because photographs can and do document actions. Also, though, because photographs look realistic to us, it is therefore commonly believed that photographs occupy a threshold between reality and representation. Despite the idealization that makes commercial and amateur photography of children so popular, the idea persists that photographs – especially photographs of children – are always and entirely real. Commercial and amateur photographic myths of childhood have convinced us all too well, as have popular myths about photography in general. Kathryn Harrison's 1993 novel *Exposure*, for instance, based its plot on the assumption that photographs reveal the psychic truths of both makers and subjects. An abusive father's entire relationship with his daughter can be apprehended through his photographs, and indeed it is to his picture-taking that her neuroses and near-suicide are directly attributed. The book became a best-seller and its many reviews extended the messages of its narrative, explicitly linking *Exposure's* fiction to actual photographers, most often to Sally Mann.[10] I would respond by adapting Abraham Lincoln's famous adage: some photographs can document reality all of the time, all photographs can document reality some of the time, but all photographs can't document reality all of the time.

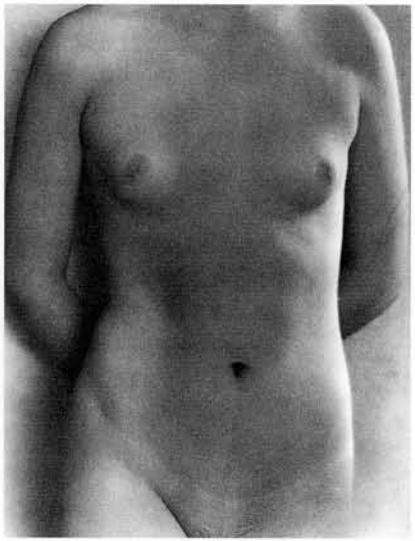
It is perfectly understandable that the first reaction against sexual child abuse should be to exterminate its every manifestation, and to extend the definition of child abuse as far as necessary to achieve that objective. Ever since child abuse was recognized as a social problem, in about the middle of the twentieth century, western nations have been using the tools of law, social policy, and protective agencies to eradicate it.[11] As time goes on, however, it should become possible to refine and sharpen the policy instruments at our disposal, rather than relying on blunt, inefficient, and inaccurate tools. The easiest, and most negative, way to think about the problem of child pornography is as a direct win-lose confrontation between children's rights to safety and adults' rights to freedom of expression, in which the gains of one value necessarily entail the losses of the other. A more constructive approach would ask how both kinds of rights can be protected at once. No one gains when fundamental liberties are needlessly sacrificed. If freedom of speech were always and everywhere the opponent of children's safety, then we would face an irreconcilable conflict. But if we could find a crucial distinction between the rights of real children to be protected against real abuse, and the rights of imaginary pictures to legal protection as free speech, then we would face not a conflict, but two categories of rights, which might well be mutually compatible. The way to maximize both freedom of expression and children's protection is to locate a workable boundary between the real and the imaginary in photographs. Such a boundary will have to be flexible, but it must be found to avoid collision between two socially imperative values.

Let me repeat that I am not questioning child pornography laws as they were first issued in the early 1980s and approved by the 1986 Meese report, nor am I questioning the majority of the subsequent provisions that have been introduced at the federal or state level. Like most people, I would be horrified if the law did not protect real children from real sexual abuse. But what, I feel compelled to ask, is real? The issues of photography's links to reality are slippery and will never be definitively resolved. Nonetheless, because the issue of realism has been introduced into both child pornography laws and public attitudes toward all photographs of children, questions need to be asked. We must not be deluded by the argument that the protection of children precludes rational discussion of difficult issues. Proclamations such as

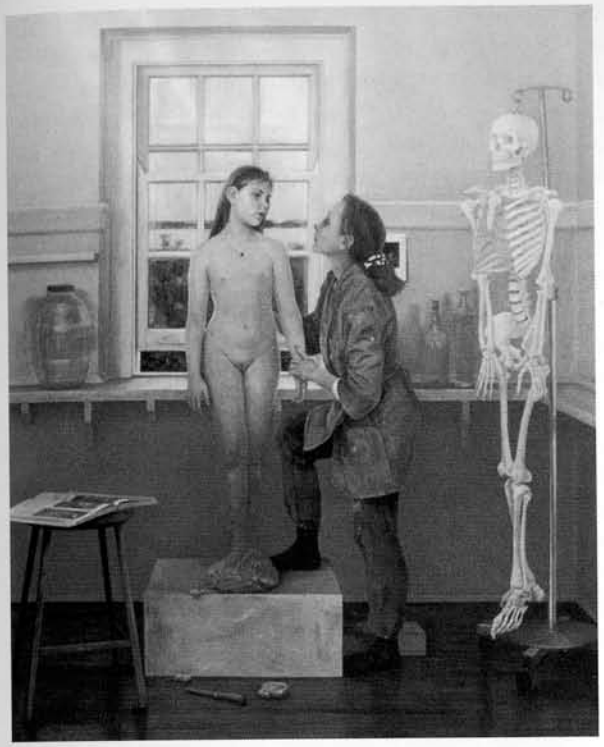
this one by Andrew Vachss, a lawyer who works on child abuse cases, are intended to stifle vital debate: "In truth, when it comes to child pornography, any discussion of censorship is a sham, typical of the sleight-of-hand used by organised paedophiles as part of their ongoing attempt to raise their sexual predations to the level of civil rights."[12] No one wants to be branded a child abuser (even by association). Not surprisingly, therefore, no one trained in visual issues or visual history has participated in drafting, deciding, or debating child pornography law. But what about the proverb: "Don't throw the baby out with the bathwater"?

We first need to consider the distinction between photography and other visual media. Is it always so clear that photographs are about reality while other forms of expression do not involve real people or situations? Take a comparison between Dorothea Lange's *Torso, San Francisco* (1923) and Ronna Harris's *Pygmalion* (c.1995).

Lange's photograph certainly originated in the act of clicking a camera at a real person. Apart from that fact, however, the photograph conveys very little evidence of anything except the appearances of a body. A girl has been pictured at a poignantly fleeting moment, just as she passes from childhood into adulthood, a moment rendered as a universal subject rather than a personal or social one. In the Romantic tradition of the elegiac sculptural fragment, the image represents only an anonymous torso, a torso bathed in a gentle light that blurs contours



77 DOROTHEA LANGE Torso, San Francisco 1923



78 RONNA HARRIS Pygmalion c.1995

and minimizes surface variations. Lange conveys burgeoning adulthood as the luminous emergence of form. Brightness eddies around an otherwise almost imperceptibly swelling breast, while at the image's center bottom edge, a slanting thigh shadows delicate pubic tracery. The torso in Lange's photograph could almost be a detail of Harris's painting. Indeed, the smoothly illusionistic style of the painting not only cues a photographic kind of looking, but also signals the reliance of the painting on live models, in this case two good friends of the artist, a real mother-daughter pair.[13] Both the painting's title and its content retell an old story about realism and desire. According to an ancient Greek myth, the adult male sculptor Pygmalion fell in love with a beautiful sculpture of an adult woman he had carved. Lo and behold, the statue came alive; you can guess the rest. In Harris's version, the adult woman artist desires a live child, which, given both metaphoric equations and gendered oppositions between masculine artistic creation and feminine biological procreation, puts a decidely modern and feminine spin on the Pygmalion tale. (When Harris made this painting, she

was trying to adopt a daughter.[14]) The photograph's anonymous formalism could – hypothetically – seem less real than the painting's personalized illusionism. The photograph's laconic abstraction of sexuality could also seem more aloof than an explicit reference to a story of desire, no matter how maternal the desire might be. It is much more likely, however, that the body in the photograph will seem more real than the body in the painting, simply because of their difference of medium. We perceive Harris's image through the expectations of imaginative distance associated with oil painting, while we perceive Lange's image through expectations of immediacy.

Strong signs of sexuality can become invisible in a painting, while ambiguity can seem sexually explicit in a photograph. I don't think anyone has yet suggested censoring Caravaggio's canonical *Cupid*, a raunchy baroque painting of a boy in the iconographically explicit guise of Eros, complete with centrally located penis and arrow of love. As a friend and baroque art specialist, Elizabeth Honig, pointed out to me, Robert Mapplethorpe's 1976 photograph *Jessie McBride* looks

79 CARAVAGGIO Cupid 1598–99

rather like Caravaggio's painting, only much cooler and more domestic – no reaching, no smile, and no arrows. Unlike the Caravaggio painting, however, Mapplethorpe's photograph has been the subject of intense controversy.

In the late spring of 1989, a retrospective exhibition of Mapplethorpe's work became a national scandal. After having showed at three respectable art institutions, its fourth venue at the Corcoran Gallery of Art in Washington D.C. was abruptly cancelled by the Corcoran director. Heated debate over the cancellation, Mapplethorpe's recent death from AIDS, and a $10,000 NEA (National Endowment for the Arts) grant to the organizers of the retrospective, all contributed to the Helms Amendment (H.R. 2788), passed in July of the following summer, which forbade NEA money to "promote, disseminate, or produce" among other things, "the exploitation of children or individuals engaged in sex acts." When the Mapplethorpe show proceeded to the Cincinnati Contemporary Art Center, the Center's director, Dennis Barrie, was charged under Ohio state law with both "pandering obscenity" and two counts of child pornography. (Barrie was acquitted in September of 1990.[15])

Two subjects were at stake: explicit sado-masochistic homosexual acts and exposed children's genitals. You know child nudity has become controversial when an image of a naked boy doing nothing but perching on a chair in a kitchen, a photograph taken with the full knowledge and consent of both the boy and his mother, gets the same reaction as an image of one rubber-clad man urinating into another man's mouth. The other picture of a child in the retrospective, *Rosie*, admittedly challenged viewers more than *Jessie McBride* did; the girl's

80 ROBERT MAPPLETHORPE Jessie McBride 1976

81 ROBERT MAPPLETHORPE Rosie 1976

placement squarely in front of us, pushed forward spatially by the stone bench she sits on, incites us to peek up her raised skirt. The girl's childish pose and her apparent lack of concern with her exposure contrast ambiguously with the formality of the bench's rich carving, as well as with her traditional, even nostalgic, smocked plaid dress.[16] Nonetheless, the only explicit aspect of *Rosie* is the sight of her genitals, especially in comparison with Mapplethorpe's X-folio images that not only represent sexual acts, but also costumes explicitly designed, marketed, and worn for sex acts.

Very few people hold sexual images of adults and sexual images of children to the same standards, if only because of the issue of consent. Mapplethorpe himself felt very strongly that photographers should have the consent of their subjects, a feeling he twice expressed as a story told about himself as a child. "I found myself in a situation with a dirty old man wanting to do nudes and being pushy, pulling my clothes off, it was horrible. I would never do that to somebody."[17] As philosopher and critic Arthur Danto, writing admiringly on Mapplethorpe, points out, though, our modern western culture does not believe that children can give consent to adults because children are inherently powerless in relation to adults.[18] We hold this to be particularly true in the case of consent to sexual acts because we believe children, by definition, cannot know the adult sexuality to which they might seem to consent. The issue of consent is particularly vexed in the case of photographs taken by a child's parents. It used to be thought that relationships within families were both trustworthy and private, but this is no longer universally accepted. Some would argue that the only person to whom a child can give consent is a parent, while others would retort that a parent is the last person from whom a child would be able to withhold consent.

Consent will remain a key issue in the interpretation of photographs. Any investigation into the circumstances of a photograph has to include questions about coercion, power imbalances, and authority. Consent, however, is not an infallible or conclusive test. Arguably, no person less powerful in any way than their photographer can give genuine consent: no person poorer, less mentally stable, racially discriminated against, socially marginal, etc.; yet many legitimate photographers, including many great documentary photographers, have made it their professional mission to represent exactly such people, while many historians and critics as well as photographers have argued that the disadvantaged benefit from becoming culturally visible. Moreover, if we were to maintain that consent is essential to photography, yet also that no child can give consent to any adult, then all family snapshots of children become unethical, which is patently absurd.

Mapplethorpe's case also raises the issue called "art." The verdict in Cincinnati Art Center Director Barrie's trial was reached, in the end, on the basis of whether or not Mapplethorpe's photographs were art, and Mapplethorpe himself had deemed the category crucial: "having a formalist approach to it all, which I hadn't seen in photography or pornography."[19] When *New York v. Ferber* ruled in 1982 that child pornography could not be defended on grounds of artistic significance, photographs of "mere nudity" were not at stake. Once the *New York v. Ferber* ruling could be combined with rulings or laws like the 1989 *Massachusetts v. Oakes*, which included "mere nudity" within the definition of child pornography, then any photograph of a nude child, including those long considered "artistic," could potentially be criminally indicted, since "lascivious intent" is hopelessly vague. Besides being the product of stricter standards for the protection of children, the legal trend of child pornography law is also the product of shifting attitudes toward art.

Few people outside the professional art world categorically shield "art" from political and social censure. For one thing, modern art purports to intervene in politics and society, and thereby courts political and social counter-attack. The postal inspector asked to comment on the Alice Sims case (about which more later) was not entirely unfair when he proclaimed: "Art is anything you can get away with."[20] Calling

a photograph art should not automatically grant any kind of immunity, nor calling oneself an artist, or exhibiting in something called an art gallery, or publishing in something called an art press, or participating in a class on something called art. Art can be a misleading, if not deceitful, label, of course. So why not interrogate images with more basic questions, including but not limited to formal issues? Does the image, whatever its label or origins, treat its medium with skill, imagination, or critical thought? Does the image interpret its subject? For what purposes and in what circumstances was the image made, exhibited, or circulated? The list of questions could go on and on. It should go on and on, because if suspicion about a label like "art" can foreclose careful looking and serious thought about the beauty, meaning and function of images, then a huge portion of our modern culture will have been exempted from intelligent discussion.

As child pornography laws, goaded by issues like consent and artistic immunity, have extended their reach to any photograph of a nude child, a whole new territory has been opened to suspicion. While most child pornography law convictions attack criminals who willfully inflict physical harm on real children, enforcement of these new laws has also wreaked havoc on the lives of a very different sort of person. Since the mid 1980s, the American legal system has dealt with an increasing number of photographs which could not have been defined as child pornography earlier. Dozens of photographers, many of them the parents of their subjects, who never imagined anyone would see pornography in their work, have incurred penalties ranging from attacks in print to time in jail. Some have been separated from their children, others have had their studios ransacked, property impounded, or their friends, family, dealers, and models harassed. Many, even if they were never indicted, let alone convicted, have had to pay legal fees for their defense that leave them deeply in debt. The psychological traumas incurred were no less deep, all the more so for having been unanticipated. These cases have been widely reported in the popular press, and thoughtfully presented in several art periodicals to what one could call their professional constituencies.[21] What I want to emphasize here about these "pseudo-pornography" cases, as they are sometimes called, is that they all depend on a new starting point; rather than being initiated by actions against real children, they begin with interpretations of photographs.

"Pseudo-child pornography" cases revolve around photography. Take the story of Alice Sims. Sims's tangle with the law was not provoked by her finished "Water Babies" series – drawings made from superimposed slides of naked babies and waterlilies – but by the photographs she used to prepare her final work. Sims had shot scenes of her gamboling naked children and their friends, which, as usual, she had dropped off for development at a Dart Drug store. Some frames showed children with their hands near or touching their genitals. In July 1988, one of those rolls of film was sent for processing by Dart across state lines from Virginia to Maryland. On 14 July, police and postal inspectors arrived at Sims's house, searched it, and seized "evidence." She was being investigated for interstate child pornography, a federal crime that made her liable for a ten-year prison sentence. Someone at the photo lab had judged Sims's photographs "sexually explicit" and reported her to the police. Meanwhile, Sims's two children, aged one and six, were taken by Department of Social Services social workers into "protective custody" (their parents never found out where). Doctors examined the two children for signs of sexual abuse. None was found, and the Sims children were returned to their parents within twenty-four hours. The police never pressed charges, but neither did they definitively close the case.[22]

Accusations of child pornography only partially or tangentially involving photography, and that do not involve the display of genitals, can still be reasonably negotiated. In May of 1994, residents of Brookline, Massachusetts were startled to find two additional traffic signals at one of their busy street corners. Instead of the usual walk/don't walk signs, the signals flashed two quasi-photographic images of a naked mother and child. In both images the mother was restraining the child, holding its arm or wrapping her arms around it. I say "it" because both figures were posed so that no genitals were visible. At first some viewers could not tell whether even the adult was male or female. The signals were a public project by local artist Denise Marika, funded with $1,500 in state arts lottery money allotted by the Brookline Council on the Arts and Humanities. Brookline viewers described the work variously as "out of place," "isn't the least bit suggestive or erotic," "offensive," "close, but I don't think it crosses the line," "not something I get a good feeling about," "disgusting." One member of the arts grant committee joked: "The results are mixed. Half the people are holding onto their kids. But so far, nobody's taken off their clothes."[23] Newspapers and television heralded the controversy. The town's transportation director had never gotten so many calls. Some residents demanded the work's removal. A town meeting was called to discuss the installation. Marika explained her intentions and goals. She managed to soften even her fiercest opponent, the president of a local Parent Teacher Organization.

82 DENISE MARIKA Crossing 1994

The twelve-inch square images, transferred onto acetate, had originally been photographs Marika took of herself and her son. She wanted her figures undressed to convey the universal meaning of her message about maternal protection from danger, a message she felt belonged in the public domain. Marika, when preparing an installation like *Crossing*, takes roll after roll of film in order to obtain an impersonal image of rote repetition, the opposite of personal documentation. The fact that the image was once a photograph of herself and her child is "irrelevant," in her opinion, to the final work.[24]

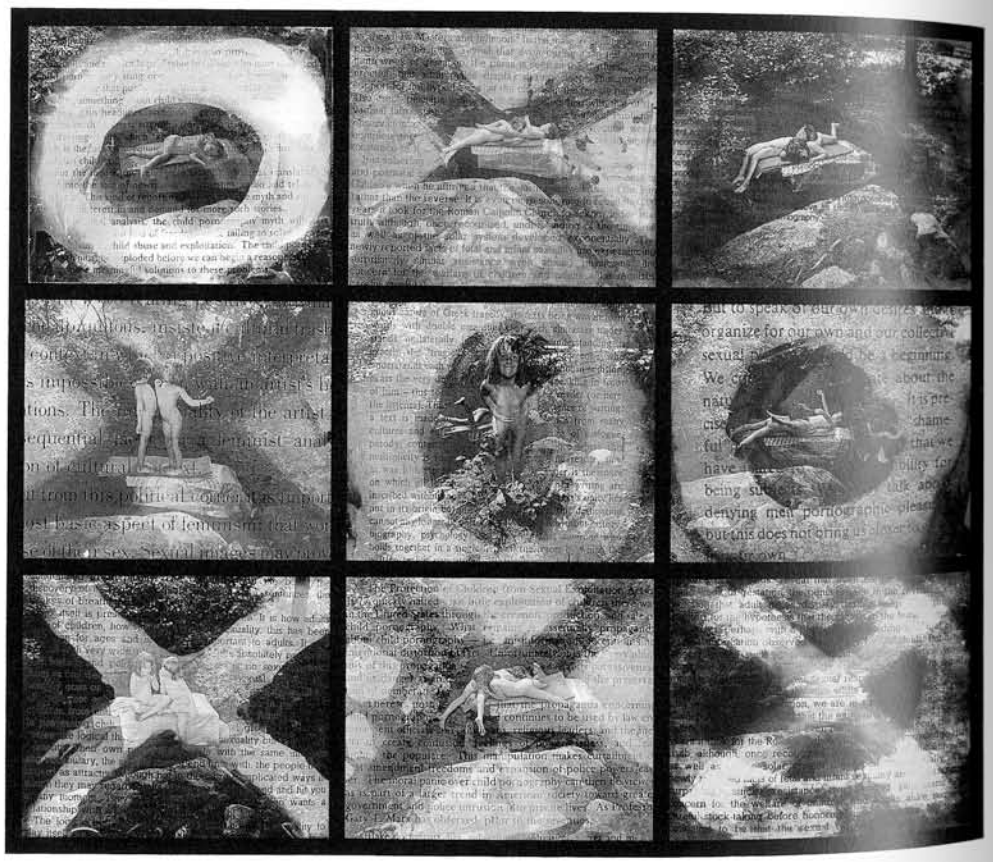
Robyn Stoutenberg was not able to sway her accusers with a similar argument about expressive intention because the image in question was a photograph that did show a child's genitals. Like Marika's traffic signals, Stoutenberg's boxed photograph originated in a broad philosophical question. The image contrasts two kinds of flesh – one precious, the other disposable; one tenderly alive, the other starkly dead. Moreover, again like Marika's work, Stoutenberg's photograph forms the center

83 ROBYN MCDANIELS Oscar With Birds c.1993

but not the entirety of her image. The photograph of the boy and the bird was enclosed within a box with yet another body, a stuffed (real) bird. Both Marika's and Stoutenberg's works pose questions about their photographic medium. Is a flashing photograph a more effective sign than a red light? What kinds of protection can signs of danger trigger? Can photography, like taxidermy, preserve a life that has died? Do we consume photographs like dead meat? What bodies do we treasure, and for what purposes? The background facts of the boy in *Oscar with Birds* being Stoutenberg's own son – the flesh of her flesh – and of the stuffed bird (a cut-throat finch dead from being egg-bound) having been given to her by the boy's father, might further complicate her image.[25] All these interpretive possibilities were cancelled by the documentation of a child penis.

Stoutenberg's photograph certainly did document a penis. It did also put that penis on public display. The people who complained to the police were employees of a middle school next to the gallery exhibiting

Stoutenberg's work, fearful their students would see her photograph through the gallery's window-front, a picture which they said showed a child having sex with a chicken.[26] Look at the image carefully, however. It documents nothing but the sight of a penis. Not only, in documentary terms, is the penis several inches away from the chicken, but, for sex-act purposes, the chicken is upside-down. Moreover, an uninformed viewer can have no idea who the child is because his head is not included in the photograph. The documentation and display of a child's genitals now suffice to override everything else about a photograph, and even, in the Stoutenberg case for example, suffice to distort visual evidence. Inextricably connected though the documentary and expressive aspects of a photograph might be, mainstream moral and legal opinion feels able to dismiss representation and judge photographs entirely as



84 PATTI AMBROGI X's and O's; The Sun and the Earth 1992

reality. If photography is the gate between representation and reality, then law has decided that it swings open in one direction only.

Patti Ambrogi directly denies photography's realism in her 1992 work *X's and O's; The Sun and the Earth*. Ambrogi's nine-image piece reacts against allegations of child abuse and pornography aimed at her work in 1989. *X's and O's* layers photographs of her twin daughters playing outside, writings by Mary Calderone and Kate Millet, and a pattern of x's and o's that, in the words of an art critic, refer to "the game Tic-Tac-Toe, and in turn the randomness and the limiting strategies of censorship."[27] According to Ambrogi, photography and writing are both modes of analysis, and both subject to win-or-lose censorship tactics. According to American law, only photography is. Whatever Calderone or Millet might write, they are not subject to prosecution for child pornography, nor does the law "read" photographs as a medium.

The arguments for censoring sexually ambiguous photographs of children carry enormous emotional force. The issue is not arguments about photographs that record explicit sexual acts with real children, or any photographs that are used instrumentally as evidence of such acts. The issue is the arguments for criminalizing photographs on the basis of nudity alone, a nudity whose sexual meanings have to be interpreted, or, even more subjectively, images of clothed children someone deems sexually suggestive. There are basically four of these arguments, and they are all both highly charged and problematic. The first is the correlation between sexual child abuse and possession of pornography. The second is the use of pornography to entice children into abusive situations. The third is a market for pornography that motivates the exploitation of children. And the fourth is the trauma suffered by the children who are photographed, both at the time the photographs are taken, and then at any future time when they see or remember the photographs.

Many child molesters possess pornography. This is a very frightening fact. Whether the picture collection appears hard-core, ambiguously suggestive, or mixed, is immaterial. Some expert witnesses have testified to researchers and government investigatory commissions that a majority of the sexual child abusers they convict collect child pornography. The official and very thorough "report to the General Assembly" on the sexual exploitation of children by the Illinois Legislative Investigating Committee, published before any draconian child pornography laws were passed, stated: "Without an exception, all of the child pornographers with whom we came in contact were also child molesters."[28] Plenty of particular law cases record the sordid association of

abuse and pornography. In a sad New York case decided in May of 1992, a father, referred to as Mr. G., was convicted of abusing his tiny son and daughter sexually in several ways, one of which was photographing them. The pictures he had taken were used as key pieces of evidence against him. The children's mother was fully aware of their abuse, but was too battered by her husband to protect them.[29] Another case, the story of Robert Black, gripped the entire United Kingdom. First convicted for molesting and kidnapping a girl in 1990, Black was later tried for the murder of three other girls, and sentenced in 1994 to ten life sentences. The pornography Black had collected in his home, including scrapbooks, 110 magazines and 50 videos or films, was shown to the jury during his trial. Part of his collection had been bought in London, the rest in the Netherlands and Denmark.[30] Even more wrenching are spectacular public acts of violence against children, like the Dunblane massacre, committed by child pornography collectors. In April 1996, Thomas Hamilton burst into the kindergarten class of his local school and gunned down sixteen children, together with their teacher. Hamilton had a large collection of child pornography at home.

The association between child molesting and pornography is so strong that child molesters are assumed to make or collect pornography. During the still controversial 1984 Fells Acres case in Massachusetts, the assumption was strong enough to survive contradictory evidence. Violet, Cheryl, and Gerald Amirault were accused of abusing the children enrolled in their family-run day-care center, Fells Acres. Soon the headline "Day-Care Kiddie Porn Probe" blazed across the front page of the *Boston Herald* newspaper. Gerald Amirault said: "the media kept portraying my family as kid pornographers." The toddlers on whose (induced) testimony the prosecution relied had spoken of photographs. Yet neither intensive searches nor cross-examinations ever discovered any evidence whatsoever of any pornographic activity on the part of any of the Amiraults. Nonetheless, a state postal inspector was called to testify at the Amiraults' trial that child pornography existed in the state of Massachusetts. The Amiraults were convicted. A juror, Carol Beck, recalled in 1995: "I don't think it was so much a sex-abuse case as it was a child-porno case. The kids didn't show a lot of abuse signs because what was going on was mostly for pictures. In my mind, that's what I honestly felt."[31]

Needless to say, the action of taking photographs can by itself be a form of child abuse. In 1992, for example, L. Lane Bateman, at the time of his arrest a drama teacher at the prestigious Phillips Exeter Academy, was convicted of having abused a former student by taking explicit photographs of him, collecting them, and sending copies to him. Bateman collected child pornography over a period of twenty years, amassing books, prints, and more than three hundred pornographic videotapes.[32] It is very tempting indeed to put possession of child pornography and actual child abuse into a cause and effect relationship – too tempting. Many professional studies have been carried out on the relationship between images of violence or sex and acts of violence, but none has proved that images directly cause actions. There simply is no consistent or reliable evidence that looking at an image all by itself can make a person commit an action, even the action represented in the image. These studies are discussed in detail in several excellent books and articles, accompanied by extensive bibliographies.[33] The easiest way to consider the problem is this: all convicted child molesters might collect child pornography, but not all people who look at child pornography molest children. The high incidence of child abusers who possess pornography could indicate that both abusive acts against real children and the possession of pornography share a common cause, but if so, eradicating child pornography would do little if anything to attack the abuse of real children at its root.

Consider the logical analogy of gun control. A much better cause and effect argument could be made about guns and violent crime than about pornography and molestation. The children murdered in the Dunblane massacre, for instance, were actually killed by guns, not by pornography. Yet even those who advocate gun control, for instance in reaction to the Dunblane massacre, do not argue that no one under any circumstances should be allowed to own a gun, but rather that some kinds of guns should be outlawed, and that some surveillance of all gun sales should be exercised. The principle of gun control rests on careful differentiation among kinds of guns and among kinds of people. Most murders might be committed with guns, but not all people who own guns commit murders. Organizations which oppose gun control, like the American National Rifle Association, completely reject gun-cause, crime-effect arguments.

Most importantly, the overwhelming share of child abuse is not primarily correlated to pornography, let alone perpetrated by profit-driven commercial pornographers. According to the National Committee to Prevent Child Abuse (whose statistics tend to the high end of widely varying estimates), in the United States alone 11% of 3,111,000 reported child abuse cases in 1995 were cases of sexual abuse. Depending on the studies, between 6% and 63% of adult women report they have been sexually abused as children.[34] According to the *Encyclopedia of Child*

Abuse, "about 70% of sexual abusers are known to children before the abuse takes place. The most frequent offenders are fathers and stepfathers." The better the child knows the offender, the more prolonged and repeated the abuse is likely to be.[35] In many cases the abuses of dedicated pornographers might not be possible without child abuse in the home. The exemplary 1980 Illinois government report on the sexual exploitation of children discovered that "a large percentage of children involved in pornography and prostitution have been runaways or have been abused by their parents."[36] Many child molesters, like Robert Black and Thomas Hamilton, themselves came from deeply troubled homes. The enemy is not outside but inside.

A second argument for attacking child abuse from the direction of photographs is the use of pornography to lure children into sexually abusive situations. Show children susceptible to peer pressure pictures of other children engaged in sex acts or naked, the argument goes, and they can be induced to do what they would not do otherwise. There are certainly cases in which pictures have been used with exactly those intentions. In 1995, for example, David Cobb, teacher of English for twenty-seven years at another elite school, Phillips Andover Academy, was arrested on charges of child kidnapping and sexual abuse. The fourteen-year-old boy who turned Cobb in testified that he had not only been paid to rub lotion on Cobb, but had also been shown photographs of naked children and adults. Police reported finding 512 such polaroid photographs in Cobb's possession.[37] Precisely because the harm is done by the action of using images, the burden of criminality should be placed on actions, not on photographs themselves. David Cobb's 512 polaroids, for instance, did no harm to his young victim until he used them as bait. If a photograph does not depict any sex acts, but only the body of a child, the appearance of a photograph does not itself prove how it was used. If a photograph, no matter how sexually ambiguous, can be proved to have been used to lure a child into abuse, then the action of using the photograph is unambiguously criminal.

Tolerance, the third argument proposes, lends legitimacy to pedophilia in general, irrespective of violent acts, which in turn stokes the profit-motive of a child-pornography industry. Here two different problems are at issue: first, whether sexual fantasies harm real children, and second, whether a child pornography industry is harming real children.

Consider the constitutional implications of outlawing private fantasies about all sorts of crimes, fantasies that never express themselves in any action other than looking at pictures. How many television

shows or films would survive censorship? The entire genre of the suspense thriller would have to be eliminated, as well as most romances. The Constitution of the United States is grounded in a respect for freedom of thought. Extremely sophisticated arguments have been mounted by some legal theorists, notably Catherine McKinnon, to establish cause and effect relationships between private fantasy and violent action,[38] but those arguments have been widely discredited by the legal and feminist communities they address.

In any case, the market for child pornography in the United States was never large, and contracted dramatically under the pressure of the laws passed against it in the early 1980s. Child pornography does exist. All expert research, government reports, or police investigations that rely on systematic study, however, concur that there is virtually no commercial child pornography in the United States, and that what little pornography survived the laws of the early 1980s is home-made and clandestinely circulated among a small group of people.[39] We do not live in a society that fosters any significant presence of incontrovertible child pornography in the public domain. The myth of a huge child pornography industry fuels many arguments in favor of strict censorship, but has been consistently disproved ever since its inception. Already by 1980 the Illinois report dismissed recycled rumors of 300,000 children involved in multi-million dollar child porn rings run by the Mafia. The report did discover child pornography, most of it made for private use or circulation by "individual child molesters."[40] According to the report, in 1980 the FBI completed a two-and-a-half-year porn sting operation. "None of the 60 raids resulted in any seizures of child pornography, even though the raids were comprehensive and nationwide."[41] The longest lasting, biggest-selling underground child porn magazine of the 1970s, the *Broad Street Magazine* (of which one out of twelve pages in a typical issue included images), never sold to more than 800 individuals nor grossed more than $30,000 a year.[42] Then came the crackdown of the 1980s. According to the conservative Meese report, 66 persons were indicted for child pornography between 1 January 1978 and 21 May 1984, and 183 persons between 21 May 1984 and 27 February 1986.[43] Even a spokesman for the National Law Center for Children and Families, a conservative children's advocacy group, said to the *New York Times* in February 1994: "There's really no commercial child pornography in the United States."[44] Anxiety has shifted to a black market exchange in images, particularly in computer images. Yet when, in September of 1995, the FBI announced the results of an investigation into the viewing habits of 3.5 million America

Online subscribers, they had only been able to locate 125 potential child sex offenders, which included persons soliciting sex acts with children as well as persons trafficing in pornography.[45] A sting appeal for images of children engaged in sex acts reportedly received eight replies.[46] Kevin Di Gregory, Deputy Assistant Attorney General of the Criminal Division of the Justice Department, testified to a Senate Hearing in June of 1996 that all recent Justice Department operations, including the vast programs "Innocent Images" and "Operation Long Arm," resulted in "over 40" convictions. These are numbers that signal a marginal fringe phenomenon, not an epidemic or a cultural crisis.

The fourth argument, about the trauma of the photographic record, is not only problematic; it may also be counter-productive. Remember we are talking about photographs that only display the child's body, not photographs that record any sex acts. Of course any photograph of child nudity might be taken in circumstances that are highly unethical, if not illegal; if so, then the photographer may well be liable for prosecution for his or her actions. An inherently innocuous photograph of a child could be marketed as sexually explicit pornography through packaging, promotional material, captions or whatever, and these attached meanings could make the photograph seem retroactively traumatic to its subject. In either case, the best protection against the photograph itself becoming traumatic is to stop casting moral doubt on the photograph, and instead shift blame to where it belongs, on the abusive makers and users of photography. Recent child pornography law casts shame on the child's body. When every photograph of a child's body becomes criminally suspect, how are we going to avoid children feeling guilt about any image of their bodies? This fourth argument against child pornography will become a self-fulfilling prophecy. Children will be traumatized by photographs of themselves if they are taught that those photographs are criminal. And the reverse. Rosie Bowden, the subject of Mapplethorpe's 1976 *Rosie*, raised in the 1970s, says the photograph is: "very, very sweet ... The only unnatural thing about that photo was that I was wearing a dress." She intends to hang a copy of it on the wall of the restaurant she owns.[47] Were your parents or grandparents traumatized by the existence and even public display of photographs of themselves as naked babies? No, of course not, because such photographs were a completely standard fixture of family photography, and because the explanation given for the photographs was that their bodies were so cute – and innocent.

Actions and images are not the same. All four arguments in favor of including any photograph of a child's body within the purview of child pornography law depend on a confusion between two aspects of photography. The actions of making and using photographs are real. Photographs themselves may seem convincingly real, but they are not real. In between these two absolutely true facts stretches a difficult grey zone: the zone in which a photograph documents some real action. That grey zone will always require close looking, common sense, and adjudication. No one principle can ever deal in advance with everything in the grey zone of documentation. Whatever the difficulties, however, photographs should always be looked at instrumentally for evidence of actions. If child pornography law confuses two categorically different things – the actions of making or using photographs with the photographic image itself – then its logic will be fundamentally flawed.

Here is a typical example of highly dubious child pornography logic, all the more dangerous because it is expounded with the genuine desire to protect real children: "We further assert that child pornography is the documentation of child abuse and, therefore, cannot be considered protected speech and/or a Constitutional right." The speaker is Sara O'Meara, the co-founder, Chairman, and CEO of Childhelp USA, an organization devoted to "abused and neglected children."[48] Because this argument is not only compressed, but relies on compression, I want to restate it more slowly, step by step. Children are inherently powerless and therefore cannot give consent to sexual acts. Sexual acts with children are therefore criminalized sexual abuses. The conditions under which children are photographed to produce sexual images are a form of child abuse. Therefore the making of sexual images of children is a criminal act. Sexual photographs of children document their own making, therefore they are documents of a crime. Therefore the photographs themselves become criminal actions. Speech is protected by the First Amendment, but actions are not. Therefore sexual images of children, being actions, are not protected by the First Amendment and can be prosecuted as crimes.

This logic should be difficult to follow, because in its fully articulated form it includes some difficult steps. Are the documents of an action equivalent to that action? If the action is a crime, are documents of it a crime? Are all visual representations of an action documents? The assumption that allows these questions to go unanswered is the assumption that all photographs are documents, as opposed to representations, or forms of expression.[49] O'Meara's statement reveals the constitutional stakes of child pornography debates. In the United States, freedom of "speech" is protected by the First Amendment of the nation's Constitution, first because it was so primary in the minds of the

nation's founders. Actions are not protected by the First Amendment. If the mere fact of the photographic medium renders every photograph of a child an action, rather than a visual form of "speech," then no photograph is safe, and the freedom guaranteed by the First Amendment has been significantly curtailed, especially in the highly visual, if not photographic, culture of the late twentieth century.

At this critical juncture came *Knox v. the United States*. *Knox*, as I will call it for the sake of brevity, was a crucially transitional case, at once a series of judicial decisions and a national scandal. It was a case that reached the right conclusions for the wrong reasons. Because the judges and the grass-roots movements involved were eager to convict child pornography by whatever means available, *Knox* established a dangerous precedent. *Knox* denied distinctions between form and content as well as between action and image, and therefore left a legacy of rulings and attitudes which made child pornography law potentially affect every photograph of a child, nude or clothed.

Stephen Knox was a history graduate student at Penn State with a previous conviction for possession of child pornography when, in 1991, his apartment was searched, and the images in question, videotapes produced by a company called Nather, were seized along with supporting evidence. On 11 October 1991, Knox was convicted of possessing child pornography, a crime punishable by up to ten years in prison under federal law.

Knox set a legal precedent. The genitals of the children pictured in the Nather tapes were covered, the children were wearing what the court called "normal" clothing, and the children were not engaged in explicitly or implicitly sexual conduct, though often judges and reporters referred vaguely to "sexually suggestive poses." The children pictured had not been posed, had not been brought anywhere to be pictured, and were not even aware they were being taped. The Nather tapes were condemned as pornography because a zoom lens had been used to create extended close-ups of the children's clothed genital areas. Framing had made content illegal.

Knox had crossed a dangerous line. Judgments on the circumstances in which a photograph was made, based on the documentary evidence supplied by photographs, are sound. Judgments on an image's meaning based on its content might be acceptable. Judgments on an image's meaning based on the framing of its content, or based on any other stylistic or technical aspect of an image, are intrinsically suspect. However marginally, the Nather tapes were not being used as documentary evidence. They were being judged as representations.

While the courts did not agree with this distinction between evidence and representations, *Knox* gave them enough trouble to produce some curious reasoning. The U.S. District Court of Pennsylvania, where Stephen Knox was first tried, ruled against him on the grounds that the upper thighs of the children, which were sometimes exposed, were a part of the pubic area. Stephen Knox received a five-year sentence. His appeal to the Third Circuit U.S. Court of Appeals was denied on 15 October 1992. The upper thigh was not a part of the pubic area, the appeals court ruled, but exhibition of the genitals did not require that the genitals be visible.

Knox was appealed to the Supreme Court. As is customary in controversial or legally difficult cases, the Solicitor General wrote a brief to the Supreme Court advising it of his opinion. Unlike the Attorney General, under whom he nominally serves, the Solicitor General is not a political appointment and acts almost as an additional Supreme Court Justice. In his brief dated 17 September 1993, Drew Days III, for the first and last time in *Knox's* history, addressed the central issue of the case. Days argued that "lascivious exhibition" did require visibility because some aspect of the documentary content of the images, as opposed to their technique or effect, was required to constitute pornography. (Days's argument has frequently been caricatured as saying that all nude photographs of children are pornographic.) Days consequently argued that *Knox* had been judged on incorrect grounds. *Knox* was accordingly remanded, with new instructions, to the Third Circuit Court of Appeals on 1 November 1993.

Knox exploded. Days had anticipated trouble, but not this much trouble.[50] Religious groups, child-advocacy groups, and almost the entire U.S. Congress claimed to represent children's interests by attacking Days's position. Tapping into their grass-roots organization, right-wing religious groups jammed congressional phone circuits with calls. Phone circuits at the Justice Department were so overloaded they almost broke down.[51] Within three days of Knox's remand, on 4 November 1993, the Senate passed a non-binding resolution censuring the Justice Department position, by a vote of 100 to 0. According to a constitutional law scholar, such censure is "almost unprecedented."[52] Eight days after the Senate censure, on 12 November, President Clinton publicized a letter to Attorney General Janet Reno ordering tougher child pornography laws to obviate the Days brief. On 8 April 1994, a Federal Judge allowed a "friend of the court" (*amicus curiae*) brief criticizing the Days brief to be filed at the Third District Court of Appeals by 173 Republican and 61 Democratic members of Congress, joined by several

organizations describing themselves as children's advocates, including the national organization Law Center for Children and Families. Twelve days later, on 20 April, the U.S. House of Representatives echoed the Senate's censure of the Justice Department, voting 425 to 3. The Third District Court reaffirmed its ruling on 9 June 1994. The court rejected the argument of the Days brief, citing the intent of Congress, an intent clarified by Congress in its censures and in its friend of the court brief.[53] Immediately following the 1994 mid-term congressional elections, on 10 November 1994, the Justice Department reversed its position on *Knox* in a brief signed by Attorney General Janet Reno. Because it is legally unprecedented for such a brief to be signed only by the Attorney General, and not by anyone else in the Solicitor General's office, it can be assumed that Reno's position was not supported by her own department, but instead by the White House. The lawyer for the Law Center for Children and Families, John D. McMickle, reacted to this last *Knox* brief by saying to the *New York Times*: "This case is the first indication of how the Justice Department and the Clinton Administration will react in a conservative world."[54]

Knox treated all photographs of children as actions. The case itself did not end in a wrong decision, but it left dangerous possibilities in its wake. It did not matter any longer whether real children had actually been harmed. And, meanwhile, the definition of child pornography had been broadened well beyond any explicit sexual content. So logically, it might not matter much longer whether the image was photographic, because documentary evidence of a crime was no longer the point. If someone, anyone, could see sexuality of any sort in any image of a child, that image might be judged pornographic and its maker, distributor, or possessor could face $100,000 in fines and ten years in jail.

By September of 1995, all these possibilities had been proposed as law. Senator Orrin Hatch (R-UT), speaking also for Senators Spencer Abraham (R-MI) and Charles Grassley (R-IA), introduced to the U.S. Senate "The Child Pornography Prevention Act." Hatch's proposal included several quite sensible provisions, notably stricter rules against the marketing of child pornography. At the same time, however, he also suggested outright that no real children had to have been involved at all in the making of an image for the image to be a form of child abuse. Hatch was particularly concerned about computer-generated or computer-altered images, which are notoriously not "real," though photographically realistic. Moreover, Hatch proposed that rules against the "lascivious display" of the genitals be extended to prohibit the depiction of "the buttocks of any minor, or the breast of any female minor."[55]

In June of 1996 a Senate Judiciary Committee convened to hear arguments in favor of Hatch's proposal. Present were Senators Hatch, Grassley, Joseph Biden (D-DE), Dianne Feinstein (D-CA), Paul Simon (D-IL), and Strom Thurmond (R-SC). Once again, several useful and effective measures were discussed. And once again, those reasonable ideas were intertwined with dangerously vague and sweeping suggestions. It seemed to be a foregone conclusion that images of children which did not involve any real children at all should nonetheless be considered actions against children, and prosecuted as such. Images were being granted an autonomous power greater than ever before. Bruce A. Taylor, President and Chief Counsel of the National Law Center for Children and Families, reassuringly argued that paintings and classical art would not be affected by proposed changes in the law because they "don't look like real children being abused." I wonder, then, why computer-generated images look "real" if everyone knows how likely they are to have been artificially created. Will a generation raised with computers believe any photographic image looks "real"? Senator Hatch conceded that not all pictures of children's buttocks and chests were pornographic. He had "faith in the intelligence and common sense of the justice system" to know what was lascivious and what wasn't.[56] In other words, all pictures of children's buttocks and chests are presumed guilty until the legal system proves them innocent.

The Child Pornography Prevention Act of 1996 was passed in October 1996, tucked into an omnibus spending bill. Punishable by penalties ranging from five to thirty years, child pornography had come to mean any image of any child's body. Bruce Taylor summed up the difference between old and new laws: "Congress has moved from seeing child pornography as a crime scene of yesterday's child abuse. It is also a tool for tomorrow's molestation. In other words, pedophiles look at child pornography and become incited to molest children, and pedophiles show those pictures to children to seduce them into imitating the pictures."[57]

The specter of an evil power hangs over all images of children's bodies. *Knox* was about popular attitudes as well as about law. Both the law and attitudes have continued to drift in the direction *Knox* pointed to, and not just in the United States. The rock group Megadeath's *Youthanasia* album was released in October 1994 with a computer generated digital image of an older woman hanging naked babies on a clothesline. Dave Mustaine, a member of Megadeath, said the image was inspired by the song-line: "We've been hung out to dry." "That line," Mustaine said in a television interview, "is probably the strongest

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representation of how we feel about the young people who listen to our music and what their future holds for them." Some retailers in Canada and Germany refused to stock the album because of its cover, while the album was completely banned in Malaysia and Singapore because the cover image was deemed "defamatory."[58] In December of 1995, Germany censored the on-line service CompuServe, banning child pornography, illegal adult pornography, and legal pornography judged too explicit for children to see. For technical reasons, Germany's ban required a worldwide black-out affecting four million CompuServe members around the world.[59] In September of 1996, England's Hayward Gallery withdrew Mapplethorpe's 1976 photograph *Rosie* in advance from a major Mapplethorpe exhibition, after warnings from child charity groups and advice from the police.[60] Times had changed, the police warned, since 1976.[61]

The case of Toni Marie Angeli shows just how much times have changed. Compound expanding suspicions with increasing revulsion and you get an accident waiting to happen. In the fall of 1995, Toni Marie Angeli was taking a photography course at the Harvard University extension school with a highly respected professor, Jack Leuders-Booth. She decided to do her final class project on "Innocence in Nudity," using her four-year-old son as a model. At her professor's suggestion, Angeli took her negatives to a lab she had not worked with before, Zona Photographic Laboratories. There a lab technician, Ashling Bar, decided the images looked pornographic. Bar shared her concerns with Zona co-proprietor Mary Osgood, who called the police. The entire contact sheet of these images has never been publicly reproduced, yet it is essential to see the entire sheet to understand how flimsy the allegations against it were. (I was fortunate to be shown the sheet by Angeli's lawyer.) It is quite true that many frames showed the boy's genitals, and several pictured him peeing toward a chain-link fence. In two frames the boy's face was in tears. A majority of frames, however, showed the child smiling and laughing, playing with his fully-dressed father in a home setting. More shots were centered on the child's face than were centered on his body. In one frame, Angeli had apparently given someone else (her child perhaps) a chance to use the camera, which has been turned on Angeli and her husband hugging and smiling. Absolutely nothing anywhere on the contact sheet was explicitly sexual in any adult sense, and the contact sheet as a whole, which is what Zona was looking at, provided an affectionate family context for each individual image. Indeed, no pornography charges were ever pressed against Angeli. At least, not directly.

When Angeli, together with her husband and child, came to pick up her photographs at Zona on 2 November, she was stalled. Two plain-clothed police officers arrived and said they were investigating a crime, the crime of child pornography. At this point, the police officers and Angeli tell different stories. The two police officers claim Angeli immediately became violent and verbally abusive. Angeli claims she started fighting and swearing after the officers told her they could take her child away from her. Under the aegis of assistant Middlesex county DA Marilee Denelle, Angeli was charged with damaging Zona's property – damages valued at less than $250 – and convicted by a jury. Ostensibly, the trial had nothing to do with pornography, but in practice it had everything to do with pornography. Zona's owners would not have passed their highly subjective judgment on Angeli's photographs if they had not been motivated by the fear of pornography. Neither the police officers nor Angeli would have lost their tempers if child pornography were not so serious an accusation. Though the jurors heard all about the accusation, they were never allowed to see the photographs. The mere accusation of pornography, though it could not be substantiated, was in and of itself enough to ruin Angeli's credibility. About that, everyone agreed. Since the accusation was so damning in Angeli's own eyes, she refused to accept any sentence which, in her estimation, would in any way concede she or her photographs had been at fault. She therefore refused Judge Roanne Sagrow's initial, lighter, sentence. Sagrow, following the example of everyone else in the case, lost all rational restraint, sentenced Angeli to thirty days in a medium-security prison, and refused appeal. No one in jail could believe that Angeli was really serving thirty days for the crime of which she was convicted, so they all assumed she must be a child pornographer, and treated her accordingly.

Of course everyone wants to catch child molesters, and to err on the side of caution. Weighed against each other, the safety of one child feels more imperative than the comfort of a few dozen photographers, no matter how innocent they might be. The adults will probably recover, especially if they are innocent, while the child might be irrevocably damaged. If the price of a strong child pornography law were logical flaws in the law, if the law had to be vague in order to be effective, then of course the price would be trivial. Adults would have to give up some freedom of expression in order to prevent child abuse. These arguments are extremely effective emotionally, and they are voiced in all debates over child pornography law. Dee Jepsen, for instance, President of "Enough is Enough!" – a non-profit, non-partisan women's organization opposing child pornography and illegal obscenity – testified to a

Senate Judiciary Committee in 1995: "Does it really matter what the *exact* percentage is of material that is available by computer, to children as well as adults – material that degrades and tortures women, sexually uses children and debases human beings (and, in the view of animal lovers, even animals). Any is too much. One child's life misdirected into unhealthy sexual behavior is too much."[62]

Perhaps, however, some other questions should also be asked. What is the most effective way to protect one more child from real sexual child abuse? How can we adjust the wording of child pornography laws to protect both children and a constitutional right to free expression ? How does our modern society want to picture the child's body? These are questions whose answers go beyond facile oppositions between the needs of children and the rights of adults. The goal, I believe, is not to oppose one value against the other, but rather to see how the two values can be constructively reconciled. To achieve this goal, it is necessary to think critically about the degree of power we attribute to photography, and to consider the problem of child pornography as one part of a broader cultural situation. It is not necessary to put real children at risk or to curtail freedom of expression.

The most effective protection of children is law that targets actions. Needless to say, real children are effectively protected by all prosecutions of actual child molestation. Any action that materially harms a child is a crime, including actions that involve photography. Images themselves are not actions, let alone criminal actions, but the ways images are made, distributed, and marketed can be crimes. Expanding child pornography law so that it potentially affects every image of any child only diverts precious resources from the efficient to the inefficient, from certainty to possibility, and from fact to fiction. If we want to be sure to save more children, we should pay attention to the enormous number of children whose sexual abuse has nothing to do with pornography. The disparity between the numbers of child pornographers being convicted and the numbers of real children being abused is staggering. The U.S. Justice Department convicted some sixty child pornographers in the years 1995-6. Of the 3 million children whose abuse or neglect was reported in 1993, of whom about 1,300 died,[63] some 300,000 were sexually abused. Clearly, child pornography is a small area of sexual child abuse, a tiny corner of all child abuse. According to child-welfare agencies, the main factors associated with almost all child abuse are not pornography, but single parenthood, poverty, and substance abuse.[64] Society is turning away from the whole situation of abuse to fixate on one tiny corner. The United States devotes more and more resources to pornography, and less and less to real children.

The history of the 1980s and 1990s suggests that surveillance of images substitutes for the care of real children. The years during which child pornography law escalated were the same years during which funding was slashed for social services that protect children. Americans seem willing for their government to spend money controlling pictures of children, but not for government to spend money on children themselves. We live in a society that is willing to pay for the monitoring of 3.5 million computer users in order to catch some 40 pornographers, but which will not pay for day-care, foster parent programs, adoption services, or school lunches. We live in a society that is willing to pay for FBI agents and DA offices to launch massive legal investigations based on photographs of naked children that might or might not be interpreted by some person as possibly showing lascivious intent, but not willing to pay for social workers who deal every day with already documented abuse, rape and murder of children. There were resources for the New Jersey DA office to investigate Eljat Feuer for months in 1995 on the suspicion that photographs of his naked daughter (photographs taken for a photography class, in the presence of the child's mother and nanny) might betray some hint of a weird attitude of which there had never before been any other signs. But apparently there were no resources that year for New York City child welfare workers to pursue repeated complaints of actual sexual abuse and prevent Elisa Izquierdo from being violated by her mother with a toothbrush and a hairbrush, being forced to eat her own feces, and finally having her brains smashed against a cement wall.[65] "Please encourage your workers to follow this simple mathematical equation," the Child Welfare Administration had written to its case-workers. "For every opening you should have two closings/transfers."[66]

Why have a bad law when a good law would do the job just as well? Returning legal prohibition from images back to actions would not affect the prosecution of actual child molesters in any significant way, and at the same time it would uphold freedom of expression. The point is not to eliminate pictures of children from among the forms of evidence against child abusers, but rather, simply, to emphasize that pictures have to be used instrumentally as evidence of an actual crime against real children. I doubt that any final judgments against child molesters would be changed by this shift in the language of the law. For one thing, the Anglo-Saxon judicial system is already based on the careful consideration of circumstances surrounding alleged crimes and

the evidence of those crimes. In practice, for instance, *Knox* was not judged on the basis of the images of the Nather video tapes themselves, but – both by the courts and the press – on the basis of the ways in which the images were titled and marketed, with explicit promises of adult masculine sexual arousal, and names like "Young and Sassy," or lines like "just as good as nudity, some say better." Yet this reliance on context was never acknowledged, and all judgments therefore purported to rely on the content alone of images. The mistake both judges and the press made was not about whether Knox was guilty or whether the Nather tapes were pornographic. Their mistake was a confusion between the logic they used and the logic they turned into law. If *Knox* had been decided overtly instead of covertly on the basis of how the Nather tapes were actually used, the verdict would have been the same, and freedom of speech could have remained completely unthreatened.

No sensible judge will be fooled by specious distinctions between the content of an image and its use. In the late spring of 1996, for example, Judge Guido Calabresi of Connecticut faced an appeal from Robert David Sirois, who had been convicted of sexually exploiting boys and transporting across state lines the pornographic images he had made of sex acts between the boys and another adult man. Sirois trotted out several arguments on his behalf, including the idea that his films and photographs should not be evidence against him because their content did not document exactly the "use" of which he was accused. Calabresi replied: "There is undoubtedly an active component to the notion of 'use.' But that component is fully satisfied for the purposes of the child pornography statute if a child is photographed in order to create pornography." Sirois argued that he had not crossed state lines only to create pornography. Calabresi retorted: "A person who transports children across state lines both to engage in sexual intercourse with them and to photograph that activity is no less a child pornographer simply because he is also a pedophile."[67]

Shifting child pornography law back to actions, where it began, would not protect the guilty, but it might protect the innocent. An emphasis on the uses rather than the interpretations of photographs could change the way cases are investigated and argued. Lawyers and judges could avoid the pitfalls of personal taste and return to solid laws of evidence. Returning the aim of the law to actions would certainly change some of the ways child pornography cases are initiated. One uninformed person's completely subjective interpretation of the sexual meanings of an image of a child's body should not be a legal basis for the investigation of people's private lives. Unfortunately, most American states have passed laws which mandate such dubious citizen judgments, by requiring photo processors to report images they believe might be lascivious. Photo processors work in a void that can only be filled by their own tastes and, now, with the assumption that all photographs of children's bodies are guilty until they are proved innocent. True, they can consider single frames in the context of contact sheets or a roll of film, but otherwise, they have no knowledge of the circumstances in which a photograph was taken. Yet they have been put in the position of state censors, able and even urged to set ruthless legal machines into motion. Those machines cost time and money.

The investigation of Jock Sturges, a San Francisco photographer of adolescent girls, reputedly cost taxpayers over a million dollars. The investigation led nowhere. On top of the FBI bill, the lab whose technician had reported Sturges lost almost $200,000 to protest pickets or boycotts and went out of business the next year.[68] In a climate of fear, any image of a child's body can seem dangerous to a lab. Following the Angeli case, the *Globe* newspaper surveyed photo processors throughout the Boston area. They all responded that they too would have turned in photographs of child nudity they deemed suspicious. What did they think was suspicious? Each had its own criteria. Janice Dee, a customer service official of Qualex, a Marlborough lab that processes more than 7 million photos a year, including for the Caldor's, Walgreens, Kmart, and BJ's Wholesale Club chains, said: "We'll print pictures of a baby in a bathtub. Anything else, even a three-year-old, is not an acceptable picture. That's not a normal thing to do." Sharon Howard, owner of Double Exposure in Gloucester, Massachusetts, would not print any photographs of nude children, not even bathtub or bearskin shots of infants and toddlers. Kathy Salerni, a technician at Perfecta Camera in Chelmsford, Massachusetts, said: "If I saw a nude child, I would call the police immediately."[69]

Child pornography law avoids the most basic cultural issues it inadvertently raises. The new scope of child pornography law has been triggered by ubiquitous media sexualization of children, yet the law persists in digging a gulf between the demonic and the sacred. We are thus allowed to ignore our own complicity in the changing image of childhood. We may not want to think about it, but perhaps children are just as sexualized by ordinary consumer culture as they are by pornography. It should give us pause that a child molester can be excited by the trappings of "normal" childhood as well as by child pornography. When the van belonging to Robert Black, serial child murderer, was searched, a camera was found, and so was a girl's dress and several

girls' bathing suits; when his apartment was searched, pornographic videos, books, and magazines were found, and so were more children's clothing.[70] Institutionalized child molesters told researchers studying them that "one of the most erotic stimuli they had encountered" was Coppertone's venerable suntan lotion ad illustrated with a picture of a dog pulling off a tanned girl's bathing suit from her pale bottom.[71]

Child pornography law deals with change by catering to fear of change. At the very least, United States law treats childhood extremely inconsistently. On the one hand, child pornography law is based on an assumption, and a defense, of absolute childhood innocence. On the other hand, most states are moving to abolish distinctions between adult and child by prosecuting and punishing child offenders according to the same laws as adult criminals. The ideal of childhood innocence is in its death throes. The ideal is not dead yet, but it cannot survive the media transformations of the 1980s and 1990s. Child pornography panic fixates us on images like Calvin Klein jeans ads or Coppertone ads that feed off what remains of Romantic childhood, marshalling the signs of traditional innocence one last time in order to fuel their modern spectacles of desirable children. The late twentieth century is a troublingly transitional time in the history of childhood, a time in which the old signs of childhood are no longer viable but new ones have yet to become credible. In the absence of known and acceptable alternatives, only the destruction of the old order appears evident.

Yet we are witnessing not only the end of one era of childhood, but also the beginning of another. Some people, I know, perceive any departure from the Romantic ideal of childhood as an intrinsically negative trend, to be fought against with every means, including legal. Many more people, I believe, will resist changes in the image of childhood only until they feel confident a new concept of childhood can protect children effectively. As long as changes in the image of childhood seem entirely exploitive, then of course they will be unacceptable. But it is not impossible for childhood to be constructively redefined. Not only could the image of childhood be reinvented. It is being reinvented.