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### **A Man Who Thinks Child Porn is Free Speech Is Not Fit for Justice**

by **Cathy Ruse** (more by this author)

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President Barack Obama has nominated David Ogden for Deputy Attorney General. It is another bad nomination that should not be confirmed. Ogden is a hero to the porn industry for good reason.

His clients include a long line of porn companies such as Playboy, Penthouse and Adam & Eve. But in his long career defending the interests of pornographers, no case is more shocking or repugnant than a case in which David Ogden fought for the rights of a pedophile to receive a certain genre of child pornography.

Here are the facts.

In 1991, customs officials intercepted a mailing requesting two videotapes with the titles "Little Girl Bottums (Underside)" and "Little Blondes" distributed by the Nather Company in Las Vegas, Nevada. The purchaser was a Pennsylvania man named Stephen Knox, and a search of his apartment revealed other videotapes distributed by the Nather Company containing numerous vignettes of teenage and preteen females, between the ages of ten and seventeen, striking provocative poses for the camera. The 3rd Circuit Court of Appeals described the tapes as follows:

The children were obviously being directed by someone off-camera. All of the children wore bikini bathing suits, leotards, underwear, or other abbreviated attire while they were being filmed....The photographer would zoom in on the children's pubic and genital area and display a close-up view for an extended period of time. Most of the videotapes were set to music. In some sequences, the child subjects were dancing

or gyrating in a fashion not natural for their age.

The Nather catalogues found in Knox's apartment -- in which Knox had checked off his favorites -- showed the videos were obviously created for and pandered to pedophiles. One ad read: "'Sassy Sylphs' will blow your mind so completely you'll be begging for mercy." Another read:

Just look at what we have in this incredible tape: about 14 girls between the ages of 11 and 17 showing so much panty and a-- you'll get dizzy. There are panties showing under shorts and under dresses and skirts; there are b--bs galore and T-back (thong) bathing suits on girls as young as 15 that are so revealing it's almost like seeing them naked (some say even better).

Federal child pornography law prohibits the depiction of "sexually explicit conduct" involving children, including videos focusing on the "lascivious exhibition of the genitals or pubic area." The 3rd Circuit Court of Appeals had no trouble concluding that Stephen Knox was guilty of violating child pornography law.

David Ogden claimed Knox was innocent.

In the brief he filed for the ACLU, Ogden said the videos were not child pornography at all. He argued that the children's genitals were not clearly visible and that the videos should therefore be treated as just another art form with full protection by the First Amendment. Even more outrageous was Ogden's claim that if the Nather tapes were child porn, then librarians everywhere would fear prosecution! Libraries had images of clothed minors, he argued, any of which could be subject to prosecution limited only by a subjective test of lasciviousness.

This argument was clearly absurd, and thankfully the court concluded it was also legally wrong. On June 9, 1994, the Court of Appeals affirmed the judgment against Stephen Knox for violation of federal child pornography law.

President Obama has nominated David Ogden to a high-level position in his

sub-cabinet -- not a position in agriculture or defense but the number two position at the Department of Justice, the Department charged with prosecuting adult and child pornography violations. The porn industry is so excited by the prospect of having one of their allies in this key position that they have not been able to contain themselves. XBiz, a leading "adult" newswire, called Ogden a "strong pick," and porn attorney Colin Hardacre of Los Angeles said Ogden's nomination is "a good sign for the adult industry."

Can Americans trust Ogden to administer justice and vigorously prosecute those who violate our pornography laws? Based on his record, the answer is clearly no. There should be no room at the Department of Justice for a man like David Ogden.

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