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Donald Dean Kasischke v. State of Florida

SC07-128

>>> ALL RISE.

IN THE GOOD MORNING, GOOD
MORNING.,,
R.

>>> SUPREME COURT IS BACK IN
SESSION PLEASE BE SEATED.

>> THE FINAL CASE ON OUR
CALENDAR THIS MORNING IS --
KASISCHKE.

>> KASISCHKE VERSUS STATE OF
FLORIDA.

>> MAY IT PLEASE THE COURT
TOM ON BEHALF REGNIER ON
BEHALF OF -- THIS INVOLVES
INTERPRETATION OF PORTION OF
STATUTE HAS TO DO WITH
CONDITIONS OF PRACTICALS FOR
SEXUAL OFFENDERS THE STATUTE
SAYS THE -- HOUSES PROHIBIT!!\$\$!!!!!!!!!!!!!!!

PROHIBITED FROM VIEWING
OWNING POSSESSING OBSCENE
PORNOGRAPHIC SEXUALLY
STATING MATERIAL INCLUDING
TELEPHONE ELECTRONIC ME KWOM
POULTER PROGRAMS SERVICES
THAT ARE RELEVANT.

>> WHY SHOULDN'T THE PHRASE
THAT A RELEVANT -- MODIFY,
THE WORDS FOLLOWING,
INCLUDING.

>> WELL YOUR HONOR THAT IS
THE ARGUMENT THAT THE STATE
MADE IN THE APPELLANT!!\$\$!!!!!!!!!!!!!!!COURT USING
DOCTRINE OF THE LAST
ANTECEDENT THE DOCTRINE OF
THE LAST ANTECEDENT IS NOT
NECESSARILY!!\$\$!!!!!!!!!!!!!!!
NECESSARILY, ANY INFLEXIBLE
RULE, AND IT -- IT DOESN'T
APPLY!!\$\$!!!!!!!!!!!

APPLY, IT IS U.S. SUPREME
COURT HAS SAID, WHEN IT
WOULD NOT MAKE SENSE IN THE
WOULD SEEM TO BE SOME
CONTRARY INTENTION.

>> WHY NOT MAKE SENSE.

>> WELL, IN THIS CASE, THIS WOULD MEAN THAT THE PERSON WOULD BE PROHIBITED FROM VIEWING ANY ELECTRONIC MATERIALS!!\$\$!!!!!!!!!!!!!! MATERIALS, THAT ARE RELEVANT TO DEVIANT BEHAVIOR PATTERN BUT WOULD NOT BE PROHIBITED FROM VIEWING BUT IF IT WERE OTHER PRINT MATERIALS FOR EXAMPLE PRINTED MATERIALS, THEN THAT RESTRICTION RELEVANT TO DEVIANT BAIFSHER WOULDN'T SFLOOI THAT IS COVERED BY THE FIRST THE FIRST PHRASE WITH REGARD TO THE OBSCENE OR HE PORNOGRAPHIC IF IT IS A PROBLEMATIC PIECE OF SOMETHING, WOULD IT NOT?

>> WELL, WHAT IT MEANS IS YOU COULD HAVE THE SAME PICTURE IN PRINTED FORM, AND THAT RESTRICTION RELEVANT TO DEVIANT BEHAVIOR PATTERN WOULD NOT APPLY TO IT BUT IF THE PERSON SAW THAT SAME PICTURE SAY ON A COMPUTER SCREEN BECAUSE IT IS NOW IN ELECTRONIC FORM WOULD IT HAVE TO BE RELEVANT TO HIS DEVIANT BEHAVIOR PATTERN FOR IT TO BE PROHIBITED, THE STATE HASN'T REALLY GIVEN ANY EXPLANATION, WHY WOULD YOU HAVE THAT DIFFERENT DIFFERENCE, WHY A DIFFERENT RESTRICTION ON ELECTRONIC PRODUCT AS OPPOSED TO TO PRINTED PRODUCT TO COULD YOU MAKE A MINUTE TO FRESH OUR MEMORY ABOUT OUR JURISDICTION IN THIS CASE WHAT THE BASIS OF JURISDICTION IS.

>> YES YOUR HONOR, THE BASIS FOR JURISDICTION THAT IS CONFLICT WITH THE SECOND DISTRICT'S OPINION, IN TAYLOR, AND IN TAYLOR, THE COURT WAS FACED WITH A QUESTION OF THERE WAS A OPERATIONER -- A PRO OBLIGATIONER GIVEN

RESTRICTION CONDITION 29 OF
HIS CONDITION, IT SPRIED!!\$\$!!!!!!!!!!!!
SPRIEDHIBITED HIM FROM
VIEWING OWNING POSSESSING
OBSCENE PORNOGRAPHIC OR
SEXUALLY EXPLICIT MATERIAL
APPARENTLY WHAT HAPPENED IN
THAT CASE PROBABLY HANDED A
COPY OF THE 1959 A VERSION
OF THE STATUTE -- 1995
VERSION DID NOT APPLY IN
THIS CASE THE COURT AGREED
THAT ENTIRE CONDITION 29
WHICH DID INCLUDE OBSCENE
AND PORNOGRAPHIC HAD TO BE
RELEVANT TO HIS DEVIANT
BEHAVIOR PATTERN, NOW THE
THIRD DISTRICT.

>> NOW SKBT IT REALLY FOUND
JUST TOLD THE TRIAL COURT TO
MAKE SURE THAT THE
CONDITIONS STATED IN THE
ORDER AS CONSISTENTED WITH
WHAT IS STATED -- CONSISTENT
STATED IN SUBSTITUTE DIDN'T
INTERPRET JUST SAID THEY
NEED TO BE CONSISTENT.

>> I DISAGREE WITH AT A
RE13EKFULLY YOUR HONOR IT
SAYS WE AGREED, WITH TAYLOR
THAT CONDITION 29 IN WRITTEN
ORDER PROBATION SHOULD BE
MORE SPECIFIC RELATE TO \$\$
TAYLOR'S ADMINISTRATOR
DEVIANT BEHAVIOR PATTERN
THEN GOES ON TO SAY, THAT
THAT IS -- TO CONFORM WITH
THE LANGUAGE OF THE STATUTE,
SO WE ARE TALKING ABOUT
EXACTLY THE SAME SECTION OF
THE STATUE THAT IS IN
QUESTION HERE, AND THE COURT
IS SAYING THAT IN ORDER TO
TRACK WITH THE STATUTE, THAT
PHRASE RELEVANT TO HIS
DEVIANT BEHAVIOR PATTERN HAS
TO AFLY CONDITION 29 IT
DOESN'T SAY JUST SOME PART
OF CONDITION NINE.

>> IS THIS A DUE -- JUST
ASSUMING WE GET PAST
JURISDICTION!!\$\$!!!!!!!!!!!!!!!!!!!!
JURISDICTION.

>> YES.

>> IS THIS A -- YOU ARE
MAKING A DUE PROCESS CLAIM
THAT BECAUSE THE STATUTES
CONFUSING!!\$\$!!!!!!!!!!!!!!!
CONFUSING, THAT YOUR CLIENT
WOULDN'T BE ON NOTICE, IS
THAT ONE OF THE, AT?
>> YES YOUR HONOR.
>> WHAT ABOUT WHAT DO WE DO
WITH THE FACT IN THIRD
DISTRICT OPINION THAT SAYS
THAT IN ADDITION THE
DEFENDANT WAS ADVISED BY HIS
COMMUNITY!!\$\$!!!!!!!!!!!!!!!
COMMUNITY OFFICER WOULD HE
NOT VIEW OWN POSSESS ANY
PORNOGRAPHIC MATERIALITY ON
COMMUNITY CONTROL ISN'T THAT
WE HAVE THAT OFTENTIMES,
SOMETHING MAY BE, MAYBE A
LITTLE BIT UNCLEAR, BUT
THEN, THE COMMUNITY, IS THAT
-- A DISPUTED FACT OUR EVEN
IF DISPUTED SINCE THE THIRD
DISTRICT OPINION SAYS IT,
YOU ARE NOT TAKING ISSUE
WITH THE FACT IT IN COULDN'T
BE A CONDITION OF COMMUNITY
CONTROL, THAT IS NOT
POSSESSING HE PORNOGRAPHIC
MATERIAL JUST THAT THIS
STATUTE GIVE A BROAD BANNED
BUT -- US DOENT GIVE A BROAD
BANNED BUT IF COMMUNITY
CONTROL OFFICER EXPLAINS IT
DOESN'T THAT TAKE AWAY ANY
CONFUSION AT LEAST AS TO
YOUR CLIENT?
>> YOUR HONOR, PROBATION
OFFICERS ARE NOT IN A
POSITION TO INTERPRET
STATUTES!!\$\$!!!!!!!!!!!!!!!
STATUTES.
AND IN THIS CASE, THE --
>> YOU DIDN'T DISPUTE THAT
HE WAS TOLD THAT.
>> NO THAT IS NOT DISPUTEED
IN THE RECORD.
>> AND ON TOP OF IT, FOR
THIS CASE, THIS WOULD BE A
STRONGER CASE, SEEMS TO ME
IF YOUR CLIENT WAS IN
POSSESSION OF PLAYBOY, BUT
WHAT HE WAS IN POSSESSION OF

SEEMS DIRECTLY RELEVANT TO THE OFFENDER'S DEVIANT BEHAVIOR PATTERN, I MEAN -- I GUESS WE HAVE THEM IN EVIDENCE BUT, THESE ARE MEN ON MEN, AND THERE'S -- THINGS THAT I WOULD THINK WOULD BE TO SOMEONE TO COMMITTED HIS CRIME, SEXUAL!!\$\$!!!!!!!!!! SEXUALLY STIMULATING KINDS OF -- MATERIAL, SO DON'T YOU YOU KNOW EVEN IF WE TREPRT INTERPRET AS NARROWER I DON'T SEE HOW YOU ARE IN THIS CASE -- THAT THAT THE KIND OF MATERIAL THAT WAS POSSESSED ISN'T RELEVANT TO HIS DEVIANT BEHAVIOR.

>> WELL YOUR HONOR, MY CLIENT!!\$\$!!!!!!!!!! CLIENT, FEELS THAT BECAUSE THE HISS CRIME WAS AGAINST A PERSON UNDER 16 YEARS OF AGE, THAT ANY PORNOGRAPHY TO BE RELEVANT TO DEVIANT BEHAVIOR PATTERN --

>> HE MIGHT BELIEVE THAT EVEN IF WE INTERPRET STATUTE MORE NARROWLY WOULD I THINK THAT 18-YEAR-OLD VERSUS A 15-YEAR-OLD!!\$\$!!!!!!!!!!!!!!!!!!!!!! 15-YEAR-OLD, IS -- I MEAN I DON'T -- I DON'T THINK THAT THEY GOT TO GET SIGN ACTIVELY INTO WHAT MAKES YOUR CLIENT PREY ON 15 YEAR OLDS, IT IS THE FACT THAT HE -- DID SOMETHING TO IS NOT A CHILD, IT WASN'T A -- HE WASN'T A PEDOPHILE, IT WAS -- ADOLESCENT BOY, THE FACT THAT HE IS VIEWING OTHER THINGS THAT INVOLVE MALE ON MALE PORNOGRAPHY TO ME IS -- CLOSE ENOUGH TO THE OFFENDER'S DEVIANT BEHAVIOR PATTERN.

>> YOUR HONOR WOULD I DISAGREE WITH THAT, BECAUSE WE ARE INTERPRETING A PEENLT STATUTE HERE I FEEL WE NEED MORE PRECISION THAN THAT, ALSO IT IS AN IMPORTANT DIFFERENCE, BECAUSE, IF HE

CLIENT BAIFSHOR BECAUSE IT HAD NOTHING DO WITH WOMEN.
>> EXCUSE ME, I IT THIS HAS TO BE RELEVANT TO WHAT IS DEVIANT ABOUT THE BEHAVIOR, AND WHAT IS DEVIANT ABOUT THE BEHAVIOR THAT IS IT WAS WITH UNDER AGED PERSON THE FACT THAT IT IS -- MALE ON MALE DOES NOT MAKE ITS DEVIANT ACCORDING TO THE LAW THE FACT THAT IT IS ORAL SEX DOES NOT MAKE IT DEVIANT ACCORDING TO THE LAW.

>> WHAT IS YOUR VIEW THAT THE PURPOSE OF THIS STATUTE IS?

>> THE PURPOSE OF THE STATUTE IS IF WE LOOK AT THE NATIONAL INSTITUTE FOR JUSTICE STUDY THAT THE LEGISLATURE RELIED ON, THE PURPOSE IS THAT THEY DON'T WANT SEXUAL OFFENDERS TO BE TOO STIMULATED INTO REPEATING THE -- KINDS OF OFFENSES THAT THEY REPEATED BEFORE AND ONE OF THE POINTS THAT THE STUDY MAKES IS THAT THE CONTAINMENT POLICIES FOR SEXUAL OFFENDERS, HAS TO BE TAILORED!!\$\$!!!!!!!!!!!!!!

TAILORED, TO THE OFFENDERS'S DEVIANT BEHAVIOR PATTERN THAT IS WHY, THIS PARTICULAR PHRASE ABOUT RELEVANT TO THE DEVIANT BEHAVIOR PATTERN, SHOULD EYE PLY TO -- SHOULD APPLY TO ALL THE ITEMS THAT ARE LISTED OF HE PORNOGRAPHIC --

>> THEY HAVE TO BE OH --
>> IN PROBATION HEARING --
>> EXCUSE THE WAS THIS -- IN OTHER WORDS, IF WE AGREE WITH YOU.

>> YES?

>> -- WE WOULDN'T SAY BUT WE WE ARE NOT GOING TO MAKE A FINDING OF FACT, AS TO WHEN THESE ARE OR AREN'T, I MEAN WHEN YOU DID THE JUDGE ASSUME THAT IT WAS JUST ANY PORNOGRAPHIC MATERIALS

DIDN'T LOOK AT THAT WOULD BE SOMETHING WANT YOU TO PRESENT EVIDENCE ON OR DID YOU TRY TO PUT EVIDENCE ON, AT THE PROBATION VIOLATION HEARING?

TO SAY THAT IT WASN'T REALLY SFLANT AND YOU DIDN'T -- IT WASN'T RELEVANT --

>> THE ATTORNEY AT THE PROBATION VIOLATION HEARING MADE THE POINT THAT THESE DID NOT APPEAR TO BE WERE NOT CLEARLY UNDER AGED PEOPLE, AND THEREFORE THIS WAS NOT RELEVANT TO MY CLIENT!!\$\$!!!!!!!!!!!!

CLIENT'S DEVIANT BEHAVIOR PATTERN, THE JUDGE SIMPLY SAID, IT WAS VERY CLEAR THE JUDGE WAS USE YEEG STANDARD THAT HE WAS NOT TO HAVE ANY PORN WHATSOEVER,\$\$!!!! -- PORNOGRAPHY DIDN'T MIKE FIND WHETHERING CHILD PORNOGRAPHY WHETHER PEOPLE UNDERAGE WHEN THIS CASE WAS IN THIRD DISTRICT THE FIRST PANEL DECISION!!\$\$!!!!!!!!!!!!

DECISION, HAD O A MAJORITY AND -- OPINION BOTH SIDES AGREED WHOEVER THAT IT WAS IMPOSSIBLE TO TELL IF PEOPLE IN PICTURES WERE UNDER AGE.

>> JUSTICE BELL HAS A QUESTION.

>> NOW, YOU AGREE THAT THE PRIOR STATUTE BEFORE THE AMENDMENT PROHIBITED ANY AND ALL PORNOGRAPHIC OR SCENE OR SEXUALLY STIMULATING MATERIAL.

>> THAT IS CORRECT.

>> EXPLICIT -- SEXUALLY EXPLICIT EXCUSE ME IT WAS MODIFIED TO ADD THIS -- CLAUSE IN QUESTION HERE.

>> THAT IS CORRECT.

>> AND WHAT EVIDENCE DO YOU HAVE FOR ARGUMENT THAT THAT LIMITS FROM ANY MATERIAL TO JUST THIS MORE NARROW MATERIAL?

>> WELL, THERE'S THE

EVIDENCE IS THE WORDING OF THE STATUTE ITSELF, IF RAISED WITH -- PHRASE WAS ADDED.

>> THEY DIDN'T DELETE ANY THOUGH SO YOUR ARGUMENT MAKES THE WORD ANY REDUNDANT OR -- IRRELEVANT.

>> WELL THE WORD ASK THE ANY" DOES NOT ME GAIT KWAFG LANGUAGE THAT COMES AFTER IT, MIAMI CLAIMING ALL PAPER CLIPS THAT FALL ANY PAPER CLIPS THAT FALL ON THE FLOOR, THAT DOESN'T MEAN ALL PAPER CLIPS EVERYWHERE JUST MEANS ANY PAPER CLIPS THAT FALL ON THE FLOOR.

>> BUT IT SAYS ANY -- SUCH MATERIAL AND THEN IT SAYS INCLUDING --

>> YES.

>> THAT ARE RELEVANT.

>> YES.

>> SO IT IS A OR IN NARROW CLASS THAN THE ASK THE ANY".

>> YES -- THE AS SAID BEFORE IT IS ANY OBSCENE PORNOGRAPHIC SEXUALLY STIMULATING MATERIAL, THAT ARE RELEVANT, TO HIS DEVIANT BEHAVIOR PATTERN, THAT IS THE WAY I'M READING IT.

>> OKAY AND WHAT IS THE SUPPORT FOR THAT -- WHY WOULD THEY LEJS!!\$\$!!GISLATE TO DO THAT.

>> O THE REASON WOULD BE IN THE NATIONAL INSTITUTE FOR JUSTICE STUDY WHICH TALKS ABOUT TAILORING CONTAINMENT POLICIES TO OFFENDER'S DEVIANT BEHAVIOR.

>> WHY IS THAT WHY WOULD YOU --

>> WELL, I -- I'M NOT A PSYCHOLOGIST NOT EXACTLY QUALIFIED TO EXPLAIN THE WHOLE REASONING BEHIND IT BUT IT DOES GO INTO A VERY GENERALLY STATEMENT THAT ONE-SIZE-FITS-ALL TIEPDZ OF TREATMENTS!!\$\$!!!!!!!!!!!!!!!!!!!! TREATMENTS, DO NOT WORK FOR

SEEKSUAL OFFENDERS.

>> WE ARE NOT TALKING ABOUT TREATMENT HERE, IN PROBATION WE ARE TALKING ABOUT PROTECTING THE PUBLIC FROM FURTHER HARM BECAUSE SEX OFFENDERS ARE VIEWING MATERIAL THAT STIMULATES THEM.

>> YES.

IT ALSO USES THE WORD CONTAINMENT!!\$\$!!!!!!!!!!!!!!!!!!!! CONTAINMENT, PROCEDURES, CONTAINMENT POLICIES PROBABLY MORE APPROPRIATE FOR WHAT IS HAPPENING HERE IS THAT CAREFUL CONTAINING HIS --

>> PUTT BUT IF WE ACCEPT YOUR ARGUMENT THIS GUY COULD HAVE A COUPLE OF THINGS THAT TURN HIM ON, BUT BECAUSE HE WAS JUST FOUND WITH THE ONE MINOR INSHE DIDN'TED ON A MALE THAT IF HE HAD SIMILAR INCIDENT WITH A MINOR FEMALE OR WHATEVER IT WOULD NOT BE A VIOLATION OF THE OF THIS PROBATIONRY CONDITION?

>> -- OR IF IT WAS 18-YEAR-OLD.

>> IF HE HAD IF HE HAD -- SOME KIND OF MATERIALS --

>> RIGHT.

>> NOTE ACTION, OKAY.

-- NOT AN ACTION, OKAY.

IT IS WE ARE TALKING ABOUT PENAL STATUE HERE REAL SHOULD BE CONSTRUED AS NARROWLY AS POSSIBLE. SO THAT THE DEFENDANT HAS CLEAR WARNING ABOUT EXACTLY WHAT HE IS DOING, I WOULD -- I WOULD.

>> SO IF HE HAD BEEN CHARGED WITH A 17-YEAR-OLD MALE BUT HAD A VIDEO THAT HAD 18-YEAR-OLD MALE THEN WOULD IT NOT BE VIOLATION OF THIS CONDITION UNDER YOUR INTERPRETATION.

>> THAT IS CORRECT, BECAUSE -- THERE IS NOTHING ILLEGAL ABOUT SEX WITH AN 18 AREA

OLD SEX WITH A 17-YEAR-OLD
MALE IS OF COURSE ILLEGAL.
>> HOW WOULD THE STATE EVER
APPROVE THAT IN A -- --
MATERIAL --
>> OF COURSE, THE WILL BE
SOME CAUSE THE OUT BE
MATERIAL THAT IS FOUND --
MIGHT BE MATERIAL THAT IS
FOUND INHERENTLY IT IS
OBVIOUS, THAT THE PERSON IS
YOU UNDER AGE.
>> YOU ABOUT YOU ADMIT IF IT
IS GENERALLY PUBLICLY
AVAILABLE INTERNET
PORNOGRAPHIC YOU ARE NOT
GOING TO KNOW WHO THE
PARTIALS -- PARGSPANTS ARE
OTHER PARTICIPANTS ARE WE
ABLE TO PROVE AGES.
>> MY NOT BEEES TO APPROVE
IF NOT SELF-EVIDENT FROM
PICTURES THEMSELVES WOULD I
ALSO LIKE TO POINT OUT
THOUGH THAT THE STATE DOES
LIGHTER VERSION HERE CAUSES
IT IS A PROBATION VIOLATION
AND PREPONDERANCE OF THE
EVIDENCE SO THE DOES EASY
THE \$\$\$STATE'S BURDEN SOMEWHAT
BUT ALSO -- THE U.S. SUPREME
COURT IN IN CHILD
PORNOGRAPHY CASES SAID EVEN
THOUGH IT MAY BE DIFFICULT
TO PROVE IN SOME CASES
VIRTUAL PORNOGRAPHY FOR
SOMETHING WHETHER SOMETHING
IS VIRTUAL PORNOGRAPHY OR
EXPLOITING LIVE CHILD ACTORS
THAT IT IS STILL THE \$\$\$STATE'S
BURDEN, TO PROVE.
THAT AND THAT THAT IS YOU
KNOW THAT IS BASIC OF THE
LAW STILL THE \$\$\$STATE'S BURDEN
IF IT IS DIFFICULT TO --
>> THAT IS TO PROVE THE
CRIME NOT A CONDITION OF
PROBATION!!\$\$!!!!!!!!!!!!!!!!!!!!
PROBATION, OF WHETHER OR NOT
THIS MATERIAL STIMULATES A
PERSON SO THAT THEY ARE IN
OTHER \$\$SO THEY ARE MORE
LIKELY TO GO OUT COMMIT
ANOTHER OFFENSE ISN'T THAT

CORRECT?

THE CASES YOU ARE TALKING ABOUT WHEN IS FOR THE ACTUALLY CHARGED WITH A CRIME NOT VIOLATING A CONDITION OF PROBATION INTENDED TO PREVENT, FURTHER CRIMINAL BEHAVIOR.

>> THAT IS THAT IS CORRECT.

>> BASICALLY MY ARGUMENT IS THAT THERE HAVE BEEN, SEVERAL INTERPRETATIONS -- HE THE STATUTE BECAUSE THE STATUTE IS -- SO AMBIGUOUS THAT MY CLIENT'S DUE RIGHTS ARE VIOLATED BY BECAUSE HE IS NOT -- A FAIR WARNING ABOUT EXACTLY WHAT KIND OF BEHAVIOR WAS PROHIBIT!!\$!!\$!!!!!!!!!!!!!! PROHIBITED.

AND IF NO FURTHER QUESTIONS I RESERVE THE REST OF MY TIME FOR REBUTTAL.

>> THANKS YOU!!\$!!\$!!!!!!!!!!!!!!HANK YOU, SIR.

>> GOOD MORNING MAY IT PLEASE THE COURT LINDA KATZ THE ATTORNEY GENERAL'S OFFICE.

>> THERE YOU GO.

>> ON BEHALF OF THE STATE OF FLORIDA!!\$!!\$!!!!!!!!!!!!!! FLORIDA.

>> THEY CONCERN WITH THE STATE'S POSITION IT SEEMS TO ME THIS IF THE STATE'S POSITION IS CORRECT, THAT THIS PARAGRAPH IS REALLY CONTRADICTORY!!\$!!\$!!!!!!!!!!!!!! CONTRADICTORY, BECAUSE IF IT IS INTENDED TO PROHIBIT ALL PORNOGRAPHY THE LAST FRAY RELEVANT TO DEFENDANT'S DEVIANT BEHAVIOR PROP IS SUE PURCHASE FLEWES PROHIBITED FROM VYING ANY PORNOGRAPHIC MATERIAL.

PUT A PERIOD AFTER SERVICES DON'T YOU HAVE TO PUT THAT ARE REALLY -- RELEVANT ON THE OTHER HAND IF YOU SAY THAT ARE RELEVANT MODIFIES, STIMULATING VISUAL AUDITORY MATERIAL, MODIFIES INCLUDING

TELEPHONE OR ELECTRONIC
MEDIA AND THAT THAT MEANS
THAT YOU CAN'T VIEW
PORNOGRAPHIC MATERIALS ON
PAIB BUT YOU CAN VIEW
PORNOGRAPHIC MATERIAL
COMPUTER PROGRAMS OR EXTRA
SERVICES AS LONG AS THEY ARE
NOT RELEVANT TO YOUR -- TO
THE DEVIANT BEHAVIOROR
PATTERN, WHICH, TO ME
CONTRADICTS!!\$\$!!!!!!!!!!!!!!!!!!!!
CONTRADICTS, THE TERM
INCLUDING, BECAUSE INCLUDING
MEANS EVERYTHING FOLLOWING
IS A SUBSET OF PORNOGRAPHIC
MATERIALITY BUT YOU'RE NOT
CONCLUDING!!\$\$!!!!!!!!!!!!!!!!!!!!
INCLUDING EVERYTHING IT IS
ONLY THOSE THINGS IF
RELEVANT TO \$\$DEFENDANT'S
DEVIANT BEHAVIOR PATS
SOUTHERN IT IS NOT A SUBSET.
>> CLEARLY BASED ON THE
ARGUMENT THAT HAS BEEN PUT
FORTH THUS FAR, THIS IS A
CONFUSING STATUTE, THE
WORDING IS AMBIGUOUS AND
THIRD DCA REASONBLY AGREED
TO DISAGREE.
>> THEN IF YOU ARE CONCEDING
THAT IT IS AMBIGUOUS THEN WE
HAVE TO INTERPRET IT IN THE \$\$
DEFENDANT'S FAVOR.
>> I -- RESPECTFULLY BEG TO
DIFFER ON THAT, WHAT WE DO
THEN INDEPENDENCE WE PLY THE
RULES OF START CONSTRUCTION.
>> THE RULE OF LENITY IS ONE
OF THOSE RULES.
>> HOWEVER THE RULE OF LAW
LENITY WOULD NEVER PERMIT,
OR SUGGEST THAT AN
UNREASONABLE RESULT SHOULD
BE THE --
>> WHY UNREASONABLE RESULT
TO SAY THAT TO SAY ONLY
RELEVANT ANY PORNOGRAPHIC
FEDERAL RELEVANT TO \$\$
DEFENDANT'S DEVIANT BEHAVIOR
PATTERN YOU AGREE IS A
REASONABLE CONSTRUCTION OF
THE STATUTE IF NOT ABSURD TO
CONSTRUE IT THAT WAY SO WHY

COULDN'T YOU CONSTRUE IT
THAT WAY.

>> BECAUSE THE RULES OF
STATUTORY CONSTRUCTION ONCE
THERE IS AN ESTABLISHED
AMBIGUITY AS THIS COURT HAS
ACKNOWLEDGED!!\$\$!!!!!!!!!!!!!!!!!!!!
ACKNOWLEDGED, WOULD THEN GO
TO THE LEGISLATIVE HISTORY,
AND THE INTENT OF THE
LEGISLATURE!!\$\$!!!!!!!!!!!!!!!!!!!!
LEGISLATURE, FIRST LOOK AT
THE HISTORY, AND IT IS VERY
IMPORTANT, WOULD I ENCOURAGE
THE COURT TO LOOK AT THE
EARLIER VERSION AS IT
EXISTED IN 1959 SIDE-BY-SIDE
-- 1995 WITH AMENDED VERSION
IN 1997, THERE ARE VERY --
UNDERSTANDABLE REASONS, FOR
THE CHANGE, AT FIRST THERE,
WAS A TOTAL BAN, AND THAT
TOTAL BAN HAS NEVER BEEN
REMOVED IT HAS NEVER BEEN
INDICATED IN ANY OF THE
LEGISLATIVE HISTORY THAT IT
WAS THE INTENT TO REMOVE THE
TOTAL BAN.

>> LET ME STOP YOU RIGHT
THERE IF INTENT IS A TOTAL
BAN WHY DO YOU NEED THE
PHRASE AT ANY POINT IN THIS
PARAGRAPH THAT ARE RELEVANT
TO THE OFFENDERS DEVIANT
BEHAVIOR PATTERN WHY DON'T
YOU JUST SAY INCLUDING,
TELEPHONE ELECTRONIC MEDIA
COMPUTEER PROGRAMS OR
COMPUTEER SERVICES, PERIODS,
THEREFORE EVERYBODY KNOWS
THAT DEFENDANT CANNOT SEE OR
HAVE ANY PORNOGRAPHIC
MATERIAL WHETHER IN HAND, OR
VIA COMPUTEER OR MEDIA.

>> THEREINLIZE THE
DIFFERENCE WHEN YOU ARE
DEALING WITH A SOEKS FENDER
WHAT IS HE PORNOGRAPHIC AND
OKAY SCENE TO A POERN WHO IS
NOT A SOEKS FENDER IS
DIFFERENT, THAN SOMETHING
THAT IS SEXUALLY
STIMULATEING TO A PERSON WHO
IS A SEX OFFENDER.

>> THAT IS TRUE WITH A
COMPUTER PROGRAM OR A PIECE
OF PAPER THEY THINK THE
COMPUTER PROGRAM, PART,
WERE AN ATTEMPT AS ON THE
PART OF THE LEGISLATURE TO
ADDRESS ELECTRONIC AGE WE
LIVE IN NOW WE KNOW THERE
ARE CHAT ROOMS WHICH HAVE IN
FACT BEEN THE VEHICLE FOR
WHICH PREDATORS HAVE BEEN
ABLE TO MAKE CONTACT WITH
VICTIMS!!\$\$!!!!!!!!!!!!!!
VICTIMS.

>> I'M CONFUSED LET ME ASK
YOU JUST SOME -- EXAMPLES
AND TELL ME WHETHER IT IS
PRO OBLIGATIONER COULD HAVE
THIS OR NOT -- PRO
OBLIGATION ROAR -- P\$\$!!!!
PROBATIONER COULD HE PLAY
PLOY MAGAZINE.

>> NO A TOTAL BAN ON
PORNOGRAPHIC THAT WOULD NOT
BE ILLEGAL TOO PERSON NOT A
SEXUAL -- OFFENDER.

>> NOBODY.

>> HOB CONVICTED OF ANY
SEXUAL OFFENSE CAN HAVE
PLAYBOY EVEN IF IT SO WHERE
IS

>> --

>> YOU CAN WATCH PLAYBOY ON
LINE ACCORDING TO YES
BECAUSE -- IF NOT IF IT IS
NOT RELEVANT TO THE
OFFENDER'S DEVIANT BEHAVIOR
PART EARN ACCORDING TO THE
STATE YOU CAN SEE PLAYBOY ON
LINE JUST CAN'T HAVE THE
MAGAZINE.

>> THE ONE ASPECT THAT THE
STATE MAIN CONTAINS IS
ALWAYS IN EFFECT IS THE
TOTAL BAN.
PERHAPS THAT IS AN
INCONSISTENCY AS YOU POINT
OUT, THAT SOMETHING IS
AVAILABLE ON LINE AND MAYBE
LEGISLATURE DIDN'T PROPERLY
CONSIDER THE VAST ARRAY OF
MATERIALS THAT ARE AVAILABLE
ON LINE.
BUT THE FIRST -- THRESHOLD

ARGUMENT THAT IS THE TOTALLY
BAN WAS NEVER REMOVED, THIS
STATUTE WAS IN FACT INTENDED
TO BECOME MORE EXPANSIVE,
NOT NARROW.

AND.

>> WHAT WAS IT INTENDED --
IT WAS INTENDED TO THEN
COVER THE COMPUTERIZE AGE IS
THAT WHAT YOU ARE SAYING.

>> COMPUTER AGE AND BENIGN
INNOCUOUS MATERIALS WOULD
NOT BE PORNOGRAPHIC OR
OBSCENE BUT WOULD BE SEXUAL!!\$\$!!!!!!!!!!!!
SEXUALLY SOMETIME

LATELIEDING TO A PERSON WITH
ANY ONE OF SEVERAL PARPHILIA!!\$\$!!!!!!!!!!!!!!!!!!!!
PARPHILIAS!!\$\$!!!!!!!!!!!!!!!!!!!!
PARPHILIAS.

>> THAT WOULD HAVE TO ON A
CASE-BY-CASE BASES HAVE TO
BE FACTS DRIVEN --

>> YES AND --

>> BUT HOW IS THE DEFENDANT
THEN -- AND MAYBE IT DOESN'T
MATTER IN THIS CASE HOW IS
THE DEFENDANT TO KNOW IN
ADVANCE WHETHER IT IS
SOMETHING THAT IS
PERMISSIBLE THAT IS ON LINE,
OR NOT PER MISS I BELIEVE?

.
>> HE PERMISSIBLE?

>> THE DEFENDANT HAS NOTICE
BASED ON DEFINITION OF
OBSCENE A LEGAL DEFINITION
GIVEN BY THE UNITED STATES
SUPREME COURT, IN THE --
VCALIFORNIA AND DEFENDANT
ALSO HAS NOTICE HIS TR ACTS
AS CONTAINED IN HIS
INFORMATION!!\$\$!!!!!!!!!!!!!!!!!!!!
INFORMATION.

>> COULD YOU GIVE ME AN XHL
OF EXAMPLE OF WHAT WOULD BE
PROHIBITED IN AND INCLUDED
THAT WOULDN'T BE IN THE
FIRST PART?

>> AND --

>> THERE COULD BE A PICTURE
OF TEENAGERS, WEARING
BATHING SUITS AT THE BEACH,
WHICH WOULD BE TOTALLY
INNOCUOUS TO A A PERSON WHO

WASN'T A SEXUAL OFFENDER
WITH THIS PARTICULAR DEVIANT
BEHAVIOR PATTERN, HOWEVER.
>> THAT WOULD BE PROHIBITED
UNDER THIS STATUTE?
>> YES WOULD IT.
>> TEENAGERS IN BATHING
SUITES!!\$\$!!!!!!!!!!!!
SUITES.
>> YES WOULD IT.
>> HOW IS THAT HOW IS THAT
OBSCENE OTHER PORNOGRAPHIC.
>> THAT IS THE WHOLE THRUST
OF THE ARGUMENT THAT PART
OBSCENE AND PORNOGRAPHIC IS
TOTAL PAN PART ONE.
>> FOLD WHICH BY INCLUDING
US DOENT SAY AND I THINK YOU
WANT TOUS INTERPRET
INCLUDING AS AND NOT
INCLUDEING.
>> YES IT WAS AESHL PART.
>> AS MANY HAVE SAID AND
WHEN THEY SAID INCLUDING
THEY MEANT WHETHER OBSCENE
OR PORNOGRAPHIC SO THE FACT
THAT THEY SAID INCLUDING
INSTEAD OF AND YOU THINK WE
SHOULD DISREGARD THAT JUST
PUT AND THERE INSTEAD.
>> IN TERMS OF STATUTORY
CONDUCTION!!\$\$!!!!!!!!!!!!!!!
CONSTRUCTION THIS COURT IS
NOT TO NECESSARILY GO AHEAD
TAKE A STATUTE WITH CLEAR
INTENT MAYBE NOT VERY CLEAR
ON FACE BUT AFTER
CONSTRUCTION SEEMED TO BE
CLEAR AND MERELY THROW IT
INTO THE HEAP PILE OR ALLOW
DEFENDANT TO REAP WINDFALL
FROM UNREASONABLE
INTERPRETATION!!\$\$!!!!!!!!!!!!!!!
INTERPRETATION.
>> SO YOUR ARGUMENT BEFORE
IT SAID SEXUALLY EXPLICIT
NOW THE PICTURE OF YOUNG
GIRLS IN SKIMPY BATHING
SUIITS MAY NOT BE SEXUALLY
EXMRS. TO IT REASONABLE
PERSON BUT BY CHANGING TO
SEXUALLY STIMULATING
MATERIAL, WOULD IT BE MORE
EXPANSIVE!!\$\$!!!!!!!!!!!!!!!

EXPANSIVE, BECAUSE FOR THE PERSON WHO HAS DESERVE YANCEY FOR YOUNGER GIRLS, DESERVE YANCEY IT WOULD ININCLUDED PROHIBIT THAT THE PRIOR STATUTE WOULD NOT HAVE PROHIBITED CAUSES IT WASN'T SEXUALLY EXMRS. INSIGHT ABSOLUTELY THAT WAS --

>> THE INTERPRETATION, THAT!!\$\$!!!!!! THAT -- THAT THE DEFENDANT PROPOSES IS NOT INCONSISTENT WITH THAT AT ALL, BECAUSE IF WE SAY THAT THEY ARE PROHIBITED FROM POSSESSING ANY SEXUALLY STIMULATING MATERIAL, THAT IS RELEVANT TO THE DEVIANT BEHAVIOR PATTERN IT INCLUDES BOTH ONLINE PICTURES AND A MAGAZINE SHOWING TEENAGEERS IN BATHING SUITS DOESN'T SEEM TO ME LOGICAL TO SAY THAT THE LEGISLATURE INTENDED TO PROHIBIT SOMEBODY FROM GOING ON LINE TO SEE SOMETHING, BUT NOT PROHIBITED IF IT IS IN A MAGAZINE, AND VICE VERSA.

>> IT WOULD APPEAR THAT THAT MAY MAYBE WAS A LOOSE WRITING ON THE PART OF THE LEGISLATURE!!\$\$!!!!!!!!!!!!!!!!!!!!!! LEGISLATURE, HOWEVER THE INTENT TO KEEP THE TOTAL BAN INTACT BY LOOKING AT THE HISTORY, AND STATUTORY INTEBT CLEARLY STILL EXISTS WOULD I LIKE TO JUST PUT ANALOGY BEFORE THE COURT TO SHOW THE UNREASONABLE NATURE OF THE \$\$DEFENDANT'S INTERPRETATION IF A DEFENDANT HAD A CONVICTION FOR DRUG PROCESSION WAS IN A TREATMENT -- PROCESSION WAS IN TREATMENT PROGRAM THAT DRUG HE HAPPENED TO BE CONVICTED OF OF WAS COCAINE I DON'T THINK THERE WOULD BE A CONDITION THAT WOULD SAY YOU ARE NOT PERMITTED TO HAVE ANY COCAINE, BECAUSE THAT IS TAILORED TO YOUR

CONVICTION, HOWEVER, WE HAVE
NO PROBLEM WITH HEROIN
MARIJUANA ALCOHOL --
>> DON'T.
>> NO BUT EVEN ALCOHOLIC
SUBSTANCES THE POINT IS IT
IS ADDICTIVE NATURE THAT
GOES TO SEE PSYCHOLOGICAL
ASPECT --
>> LET ME JUST GO BACK TO A
QUESTION, SEXUALLY
STIMULATING VISUAL MATERIAL,
DOES -- THAT PHRASE IS THAT
PHRASE MODIFIED BY A
RELEVANCY OFFENDERS DEVIANT!!\$\$!!!!!!!!!!!!!!
DEVIANT --
>> YES, SO IT IS NOT SO --
>> SO YOU WOULD BECAUSE I
THOUGHT YOU WERE SAYING IT
WAS ONLY THE INCLUDING
TELEPHONE ELECTRONIC MEDIA,
SO IT IS THE SEXUALLY
STIMULATING VISUAL MATERIAL
SO THAT AGAIN PLAYBOY WHICH
I DON'T THINK IS HAS BEEN
FOUND TO BE OBSCENE OR
PORNOGRAPHIC!!\$\$!!!!!!!!!!!!!!
PORNOGRAPHIC.
>> PORNOGRAPHIC IS NOT
ILLEGAL FOR A PERSON WITHOUT
A SEXUAL DEVIANT --
>> LET'S JUST TAKE THIS IS
THE -- "SPORTS ILLUSTRATED"
SWIMSUIT ISSUE WHICH A LOT
OF PEOPLE SEEM TO LIKE TO
BUY.
THAT ONE FOR SOMEBODY THAT
WAS DEVIANT IN TERMS OF
THEIR FEMALE LIKE MOLESTING
YOUNG CHILDREN WOULD THAT
POSSIBLY BE SEXUALLY
STIMULATE!!\$\$!!!!!!!!!!!!!!
STIMULATING FOR THEM?
WHEREAS BATHING SUITS FOR
BOYS --
>> THAT WOULD HAVE TO TAKE
SOME PROGRESSIVE WOULDN'T
IT.
>> THAT WOULD -- PROVE, THAT
WOULD HAVE TO TAKE APPROVE
HOW EACH -- O P\$\$ROOF, THE
MATERIALS INVOLVED IN
VIOLATION OF COMMUNITY
INVOLVE WERE, SO CLEARLY

WITHIN THE REALM OF THE FIRST PORTION WHICH IS STILL INTACT THAT THERE IS NO QUESTION.

>> I GUESS THAT IS --

>> ANOTHER ISSUE BECAUSE THAT IS BEYOND THE -- WE HAVE TO RESOLVE THE CONFLICT ISSUE HERE YOU MAY BE RIGHT ON THAT, I'M CONFUSED ABOUT WHAT YOU JUST SAID BECAUSE IT -- I THINK IN RESPONSE TO JUSTICE PARENT HE\$E'S -- PARIENTE!!\$#!!!!!!!!!!!!!!!

PARIENTE'S QUESTION YOU SAID THE TERM SEXUALLY STIMULATING VISUAL AUDITORY MATERIALS IS MODIFIED BY THAT ARE RELEVANT TO.

>> CORRECT.

>> THEN, NOW WE ARE WAY BEYOND THE DOCTRINE OF LAST -- ANTECEDENT WE ARE IN PENULTIMATE ANTECEDENT OR SOME OTHER ONES, WHAT -- DOCTRINE OF SFRAUCH CONSTRUCTION TO USE TO GET STATUTORY CONSTRUCTION TO USE TO GET BEYOND THOSE TERMS AFTER INCLUDEING TO GET TO THE OTHER ONE WITHOUT GETTING TO THE VERY BEGINNING.

>> THE MOST GENERAL DOCTRINE PROVIDED BY THIS COURT IN TULMAN, COLEY BELFAST WE LOOK AT LEGISLATIVE HISTORY WE LOOK AT INTENT OF THE LEGISLATURE!!\$#!!!!!!!!!!!!!!! LEGISLATURE.

>> THE LIFE HISTORY IF GOING TO LOOK AT THAT SEEMS PERFECTLY CONSISTENT WITH THE \$\$DEFENDANT'S POSITION WHICH IS THAT LIKE HE SAID, ALL THESE UMBRELLA KIND OF PROHIBITIONS DON'T WORK WE WANT TO TAYLOR TO IT THE SPECIFIC PROBLEM THAT THE DEFENDANT IS HAVING AND SEVERE GOING TO PROHIBIT DEFENDANTS FROM -- FROM POSSESSING PORNOGRAPHIC MATERIALS!!\$#!!!!!!!!!!!!!!!

MATERIALS, THAT ARE RELEVANT TO THE OFFENDER'S DEVIANT BEHAVIOR SEEMS TO ME LEGISLATIVE HISTORY IS PERFECTLY CONSISTENT WITH THAT CONCLUSION.

>> THE STATE MAINTAINS IN ALL DUE RESPECT THAT THE LEGISLATIVE HISTORY IS TO THE CONTRARY THE LEGISLATIVE HISTORY IS IN FACT VESTED WITH THE STATE'S INTEREST IN PROTECTING BOTH THE VICTIMS AND SOCIETIES AT LARGE AGAINST THESE TYPE OF OFFENSES!!\$!!!!!!!!!!!!!!

OFFENSES --

>> YOUR POSITION IS WANTED TO BE MORE EXPANSIVE PROHIBIT EVERYTHING.

>> ABSOLUTELY.

>> WITH THAT -- REGARD TO THAT POSITION THEN THE TERMS THAT ARE RELEVANT TO OFFENDER'S DEVIANT BEHAVIOR PATTERN, SHOULDN'T HAVE BEEN INCLUDE NEED STATUTE BECAUSE THAT LIMITS THE PROHIBITION, AND THEY WANTED TO BE AS EXPANSIVE AS POSSIBLE.

>> NO.

I -- WOULD LIKE TO CLARIFY. AND PERHAPS WOULD IT BE HELPFUL TO HAVE A BIFURCATED APPROACH TO LOOK AT THE STATUTE IN TWO -- STATUTE IN TWO PARTS FIRST PART THE TOTAL BAN AS IT EXISTED IN 1959, THE SECOND PART IS THE ADDITIONAL PROHIBITION AS TO SEXUALLY STIMULATING MATERIALS BECAUSE WE ARE NOW IN LIGHT OF THE ANTI-- STUDY REALIZING A TAILORED APPROACH WILL ALSO HELP EFFICIENCIES OF RE-- EFFICACY REHABILITATION HE AND REINDIVIDUAL RESID ADVISES\$!!!!ISM -- RECIDIVISM, BEFORE ANY OUR QUESTIONS ARE POSE I HAD JUST WANT TO ALSO ADDRESS, THE THRESHOLD ISSUE OFFON CONFIGURE TO CLARIFY OR CORRECT SOMETHING IN THE

COURTS SUM REES FOR THE PRESS, THERE WAS STATEMENT THAT THE THIRD DCA UPHELD THE COMMUNITY CONTROL VIOLATION, BUT CERTIFIED CONFLICT WITH TAYLOR, IN FACT, THERE WAS NO SUCH CERTIFICATIONS!!\$\$!!!!!!!!!!!!!!!!!!!!!! CERTIFICATIONS, AND AS A MATTER OF FACT THE THIRD DCA JUST REFERRED TO TAILOR AS MERELY, STATING THE LANGUAGE HAD TO BE TRACKED BECAUSE THERE WAS BASICALLY AN OLD FORM IN THE PROBATION CONDITION, THAT TRACKING THE 95 LANGUAGE AS ITS EXISTED BEFORE THE AMENDMENT, AND THE TELL YOU STATUTE WASN'T CORRECTLY IN THAT CONDITION. THE COURT SAID AND I QUOTE AS THE SECOND DISTRICT ONLY REQUIRED THAT THE PROBATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! PROBATIONRY CONDITION TRACK THE STATUTERY LANGUAGE SECTION 948.03587 THE COURT DID NOT ADDRESS WHETHER OR NOT THE PHRASE RELEVANT TO THE OFFENDER'S DEVIANT BEHAVIOR PATTERN MODIFIED THE BAN ON VIEWING OR POSSESSING PORNOGRAPHIC MATERIAL.

>> THAT IS TRUE BUT THE COURT IN TAYLOR DID SAY, WE AGREE WITH TAYLOR THAT CONDITION 29 IN THE WRITTEN ORDER OF PROBATION, SHOULD BE MORE SPECIFIC AND RELATE TO \$TAYLOR'S PARTICULAR DEVIANT BEHAVIOR PATTERN.

>> I'M AWARE OF THAT LANGUAGE AND I UNDERSTAND YOUR POINT WHOEVER I THINK WHEN YOU LOOK AT THE FACT THAT WE HAVE TWO DIFFERENT STATUTES!!\$\$!!!!!!!!!!!!!!!!!!!!!! STATUTES, VERY OFTEN, THE COURT DOES REMAND FOR WORKED TO BE -- WORDING TO BE PRECISE!!\$\$!!!!!!!!!!!!!! PRECISELY TRACKED TO APPROPRIATE STATUTE IT APPEARS IN CONTEXT THAT IS

WHAT THE TRUE INTENTION WAS,
NEVERTHELESS!!\$\$!!!!!!!!!!!!!!!!!!!!!!
NEVERTHELESS, EVEN ASSUMING
THAT JURISDICTION DOES EXIST
IN THIS CASE, THE STATE
MAINTAINS THAT THERE WAS NO
DUE PROCESS VIOLATION THERE
WAS CERTAINLY CLEAR NOTICE
AND THE COURT HAS MADE IT
CLEAR THAT THE LEGISLATIVE
INTENT JUSTICE CANTERO, USED
THE NARROWING PORTIONSES OF
LEGISLATIVE INTENT, HOWEVER,
IT HAS TO BE VIEWED AS A
POHL WHOLE WHEN YOU LOOK AT
THE LEGAL LANDSCAPE AS IT
EXISTED AT THE TIME THAT
THIS 1997 AMENDMENT WAS IN
EFFECT, THE COURT AND THE
LEGISLATURE WERE REPEATEDLY
MAKING EFFORTS TO STRICTLY
ENFORCE AND STRENGTHEN THE
LAWS THAT PERTAIN TO SEXUAL
OFFENSE!!\$\$!!!!!!!!!!!!!!
OFFENSES, WE HAVE JIMMY RYCE
ACT WHICH ALLOWED CIVIL
COMMITMENT, THE DEFENDANTS
-- WHO ARE CONVICTED OF THIS
TYPE OF -- OFFENSE ARE NOT
PERMITTED TO LIVE OR WORK
ANYWHERE NEAR WHERE CHILDREN
PLAY, GO TO SCHOOL, ET
CETERA.
WE HAVE ACKNOWLEDGED THAT AS
A STATE THAT THIS IS AN
IMPORTANT INTEREST FOR US TO
PROTECT THE PUBLIC.
AND WE HAVE SEEN IN THE
NIJ. STUDY WHICH WAS OI NIJ
STUDY WHICH WAS IN FACT
EXPRESSE EXPRESSLY MADE
CONSIDERATION BY LEGISLATURE
THAT THESE TYPE PARPHILIAS,
ARE VERY FREQUENTLY, BASED
ON MORE THAN ONE SEXUAL
DESERVE YANCEY MORE THAN --
DEVIANCY.
>> HOW DID YOU ACCOMMODATE
IN EDITOR ARGUMENT IF WE
ACCEPTED THAT PARTICULAR
TYPES ELECTRONIC TELEPHONIC,
THOSE -- THAT APPEAR TO BE
NOT THE BLANKET TYPE OR,
BROAD, THEY SEEM TO BE, VERY

SPECIFIC, WOULD YOU ADDRESS HOW THOSE ARE CONSISTENT WITH YOUR ARGUMENT, THAT THIS IS AN ADDITIONAL GROUPING OF THINGS, TO MAKE IT MORE STRINGENT?

>> BECAUSE WE KNOW, AND ALL TOUGH DO IS LOOK IN THE PAPER, DOUBTS HAVE TO READ CASORS STATUTES, CASES OR STATUTES!!\$\$!!!!!!!!!!!!!!

STATUTES, THAT THERE IS -- A RISE BECAUSE OF THE ACCESS TO THE INTERNET IN ADULTS ATTEMPTING TO CONTACT --

>> BUT IN DOING THAT DOESN'T THAT LEAVE SOME SOME TYPES OR SOME MEDIUMS OUT?

>> PERHAPS IT DOES, AND WE KNOW THAT IN FACT STATUTES ARE NOT PERFECT THEY SHOULD BE WRITTEN WITH COMMON SENSE MORE IMPORTANTLY SHOULD BE READ WITH COMMON SENSE.

AND -- THE COMMONWEALTH CITED BY THIRD DCA WHICH IS A -- APPELLATE CASE OUT OF KENTUCKY STUMD UP THE CONCERN OF THE LEGISLATURE AND I BELIEVE THIS STRAIGHT SUCCINCTLY SAID REDUCING ACCESS TO OBSCENE

PORNOGRAPHIC OR SEXUALLY STIMULATING MATERIALS, FURTHER THE GOALS OF REHABILITATION!!\$\$!!!!!!!!!!!!!!

REHABILITATION, DETERRENCE, AND PUBLIC SAFETY, IN CONNECTION WITH SEXUAL OFFENDERS!!\$\$!!!!!!!!!!!!!! OFFENDERS.

AND ANY OTHER INTERPRETATION, I.E., THE \$\$ DEFENDANT'S INTERPRETATION, WOULD DEFEAT THE GOALS OF REHABILITATION!!\$\$!!!!!!!!!!!!!!

REHABILITATION, AND PREVENTION OF RECIDIVISM IT MAKES NO CITIZENS THE STATUTE SHOULD BE INTERPRET!!\$\$!!!!!!!!!!!!!! INTERPRETED IN A WAY THAT WOULD FURTHER THE INTENT OF THE LEGISLATURE. THE INTENT OF THE

LEGISLATURE WAS TO EXPAND
THIS CONDITION, NOT TO
NARROW IT.

WOULD IT SEEM TO FLY IN THE
FACE OF REASON TO ADOPT THE \$\$
DEFENDANT'S ARGUMENT.

>> WHEN YOU LIMIT THEED ME
YUNS WITHIN WHICH ARE
PROHIBITED IN THAT LAST YOU
ARE REALLY NOT EXPANDING IT
ARE YOU?

>> WE ARE EXPANDING -- FROM
THE TOTAL BAN, AS BEING THE
FIRST PART.

>> TO EVERYTHING --

>> TO ITEMS THAT ARE SEXUAL!!\$\$!!!!!!!!!!!!

SEXUALLY STIMULATING, BASED
ON THE NIJ STUDY, TO
RECOGNIZE THAT PEOPLE WITH
CERTAIN DEVIANT BEHAVIOR
PATTERNS MAY REO FEND
BECAUSE OF STIMULATION THAT
IS CAUSED BY SOMETHING THEY
VIEW --

>> BASICALLY, BEFORE AGAIN
IT WAS JUST OBSCENE
PORNOGRAPHIC OR SEXUALLY
EXPLICIT MATERIAL.

>> CORRECT.

>> BUT WHAT YOU ARE SAYING
NOW BECAUSE OF CHAT ROOMZ,
PHONE SERVICES, AND,
COMPUTEER SERVICES,
CONNECTING AND NETWORKING
MYSPEACE, A YOU WILL THESE
OTHER THINGS THAT THERE ARE
OTHER AFTERNOON NEWS BEYOND
THE SEXUALLY EXPLICIT
MATERIAL THAT MAY BE
STIMULATING TO SOMEBODY WITH
A PARTICULAR PARPHILIA.

>> YES AND THINK THERE IS A
DIFFERENT AGE WE LIVE IN
PERHAPS LEGISLATURE HAS
GRAPPLED WITH THIS, IN LESS
THAN THE MOST PRECISE WAY
BUT THAT DOES NOT MEAN THAT
THE STATUTE SHOULD BE DEFEAT!!\$\$!!!!!!!!!!!!
DEFEATED OR INTERPRETED,
ACCORDING TO THE DEFENDANT'S
SUGGESTION!!\$\$!!!!!!!!!!!!!!!
SUGGESTION, LENITY IS A RULE
OF LAST RESORT, WHEN YOU
DELVED INTO ACCORDING TO THE

UNITED STATES THE RENO V.
CAN CORREA YOU LOOKED AT
EVERYTHING YOU COULD
POSSIBLY LOOK AT FOR
GUIDANCE THERE IS STILL
AMBIGUITY CONFUSION,
ALTHOUGH THERE MAY BE, A
CONFUSION AS TO WHAT TAIRMS!!\$\$!!!!!!!!!!!!
MATERIALS APPLY TO BAN THERE
CAN BE NO CONFUSION THERE
WAS A TOTAL BAN ADDITIONAL
EXPANSION TO STATUTE INTEND!!\$\$!!!!!!!!!!!!
INTENDED BY THIS LEGISLATURE
TO HAVE SEXUALLY STIMULATING
MATERIALS RELEVANT TO THIS
PARTICULAR DEVIANT BEHAVIOR
INCLUDED IN THE PROHIBITION,
AND UNLESS THERE ISSUE NO
FURTHER QUESTIONS THE STATE
MAIN CONTAINS THAT --
MAINTAINS THAT THE
CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!
CONVICTION, FOR THE
VIOLATION OF COMMUNITY
CONTROL SHOULD IN FACT BE
AFFIRMED AND MOST
IMPORTANTLY, THAT THIS
STATUTE SHOULD NOT BE
INTERPRETED IN AN
UNREASONABLE WAY, WHICH
WOULD ENCOURAGE SEXUAL
OFFENDERS!!\$\$!!!!!!!!!!!!!!!!!!!!
OFFENDERS, TO REOFFEND.
THE RATE OF RECIDIVISM IS
SKYROCKETING THERE IS
EMPIRICAL EVIDENCE IT
BEHOOVES THE COURT TO DO
WHATEVER IN ITS POWER AID!!\$\$!!!!
ACCORDING TO MANY CASES TO
PREVENTED IT.
IT IS THE INTEREST OF THE
COURT TO MAKE SURE THAT ANY
STEPS BE TAKEN TO PREVENT
FUTURE RECIDIVISM AND
ATTACKS ON CHILDREN AND
SOCIETY.
>> THANK YOU VERY MUCH.
>> ZBLEES REBUTTAL?
-- REBUTTAL?
>> THANK YOU YOUR HONOR, YES
AS FAR AS THE LEGISLATURE
INTENDED!!\$\$!!!!!!!!!!!!!!!!!!!!
INTENDEDING TO MAINTAIN
TOTAL BAN ON OBSCENE

PORNOGRAPHIC MATERIALS THE
LEGISLATURE WANTED TO DO
THAT COULD HAVE LEFT THE
STATUTE AS IT WAS.

ALSO, THAT.

>> THE ARGUMENT BY THE STATE
IS IS NOT THAT THEIR
ARGUMENT IS THERE MAY BE
SOME THINGS THAT ARE SEXUAL!!\$\$!!!!!!!!!!!!
SEXUALLY STIMULATING, GLAD
TO THOSE WITHIN THE FIRST
CATEGORY THAT THERE MAY BE A
SUBSET, THINGS THAT ARE
SOCIALUALLY STIMULATING
DEPOSTPONED UPON THE --
DEPENDING UPON CONDITION
THAT IS WHAT IT IS DIRECTING
TO NOT TO MODIFY ALL OTHERS
THAT IS THEIR ARGUMENT COMRP
THAT IS INCORRECT.

>> UNDERSTAND, WELL, PART OF
THE REASON IT IS INCORRECT
IS IT DOESN'T FIT IN WITH
THE LEGISLATIVE HISTORY
WHICH THAT IS THE IDEA IS TO
TAILOR THESE TO SPECIFIC
DEVIANT BEHAVIOR PATTERNS OF
THE OFFENDER ALSO, JUST THAT
READING OF THE STATUTE,
WHICH IS THE READING THAT
THE THIRD DISTRICT GAVE,
JUST DOESN'T MAKE SENSE
GRAMATICALLY!!\$\$!!!!!!!!!!!!!!!!!!!!!!
GRAMATICALLY, WHAT WOULD BE
SAYING THAT HE IS PROHIBITED
FROM POSSESSING OBSCENE.
OR PORNOGRAPHIC.

>> WELL, WOULD -- THE FACT
THAT YOU HAVE INCLUDED,
CHATROOMS ALL THE ELECTRONIC
THINGS THAT YOU CAN -- YOU
KNOW, CITE USING THOSE, THAT
YOU WILL NOW YOU IF THAT HAD
BEEN INCLUDED UNDER PRIOR
STATUTE --

>> I THINK IT WOULD HAVE
HAVE YES PORNOGRAPHIC
MATERIAL --

>> MATERIALS.

>> --

>> MATERIAL IT IS A VERY --

>> WE SEE IT ALL THE TIME
WHERE YOUNG GIRLS ARE GO HIS
DOOR MEETING THIS LOVER THEY

MET ON LINE IT IS IN THE
NEWSPAPER ALMOST DAILY, THEY
MAY HAVE HAD CONVERSATIONS
IN CHATROOMS.

>> YES.

>> THAT WERE NEITHER
PORNOGRAPHIC!!\$\$!!!!!!!!!!!!!!!!!!!!
PORNOGRAPHIC, OBSCENE OR
SEXUALLY EXPLICIT NOW NOW
WHEN WOULD OLD STATUTE HAVE
PROHIBITED THOSE DEFENDANTS
ON PROBATION WHO HAVE THE
PROCLIVITY TO GO AFTER YOUNG
GIRLS IN CHATROOMS, WHERE
WOULD THAT CONDITION HAVE
PROHIBITED THAT THAT
ACTIVITY.

>> I BELIEVE THAT THAT WHAT
YOU ARE DESCRIBING, IS
ILLEGAL BEHAVIOR, IF YOU ARE
TALKING ABOUT PERSON WHO IS
OF AGE, MAKING SOCIALUALLY
EXPLICIT EXCELLENT TO
SOMEBODY WHO IS UNDER AGE,
I'M NOT SURE BUT --

>> I'M TALKING ABOUT THIS
CONDITION, YOU AGREE THAT
THAT CONDITION IS PREVIOUSLY
SUMMITED WOULD NOT HAVE BEEN
BIAS TO VIOLATE \$\$\$SOMEBODY'S
PROBATION BECAUSE WAS
NEITHER PORNOGRAPHIC OBSCENE
SEXUALLY EXMRS. INSIGHT I
WOULD SAY THAT IS POSSIBLE
DEPEND!!\$\$!!!!!!!!!!!!

DEPENDING ON THE CONTENT OF
THE COMMUNICATE\$\$!!ION SO IF
VIOLATION OF THE LAW.

>> STILL A VIOLATION OF THE
LAW DOESN'T NEED TO BE
INCLUDED IN THIS PROVISION,
THAT IS.

>> IS INCLUDING NECESSARILY
A LIMITING WORD?
AND IT SEEMS TO ME THAT
WHERE YOU ADD INCLUDING,
THAT DOESN'T NECESSARILY
MEAN THAT IT IS INCLUDING --
NOT LIMIT TO -- COULD IT BE
IT COULD BE IN ADDITION TO
SPECIFY SPECIFIC ITEMS THAT
THE LEGISLATURE IS INCLUDING
WITHIN THE TOTAL BAN,
COULDN'T IT?

>> WELL, YES, IT IS NOT --
NECESSARILY COMPLETELY LIMIT
BUTH WITH THE LEGISLATURE
SEEMS TO BE DOING THOUGH IS
MAKING ITS CLEAR THAT WE ARE
REFERRING NOT JUST TO --
PRINTED MATERIALS BUT TO ALL
KINDS OF ELECTRONIC --

>> BUT IN THE REAL WORLD,
WHERE WE LIVE, WE KNOW THE
LEGISLATURE IS NOT TRYING TO
LIMIT WHAT CAN BE LOOKED AT
BY SEXUAL DEVIANTS THEY ARE
TRYING TO EXPAND IT ARE THEY
NOT.

>> WELL, EXCEPT THAT THEY
ADD IN THIS PHRASE ARE
RELEVANT TO THE DEFENDANT --
OFFENDER'S DEVIANT BEHAVIOR
PATTERN DOES SEEM TO NARROW
IT FITS WITH LEGISLATIVE
HISTORY.

AS I SAID IN MY BRIEF, YOU
CAN'T BAN OBSCENE, WOULD YOU
HAVE TO BAN OBSCENITY OR
OBSCENE MATERIALS, SO THE \$\$
STATE'S INTERPRETATION THAT
THERE IS STILL A BAN ON
OBSCENITY DONATES QUITE FWIT
IN GRAMATICALLY WITH THE WAY
THE LEGISLATURE HAS WORDED
THIS.

>> WITH OUR QUESTIONING WE
HAVE EXHAUSTED ALL OF YOUR
TIME WE THANK YOU BOTH OF
YOU FOR YOUR QUALITY
ARGUMENTS!!\$\$!!!!!!!!!!!!!!!
ARGUMENTS, AND WE WILL TAKE
THE CASE UNDER ADVISEMENT.

>> THANK YOU.

>> THAT YOU YOUR HONOR.

>> COURT WILL STAND IN
RECESS UNTIL 9:00 TOMORROW
MORNING.

>> ALL RISE,,,,,,,,,,,,,