


Class 10: Child Pornography

Administrative

Next Time: 233-63; Supplement 11-12 (Note 5)

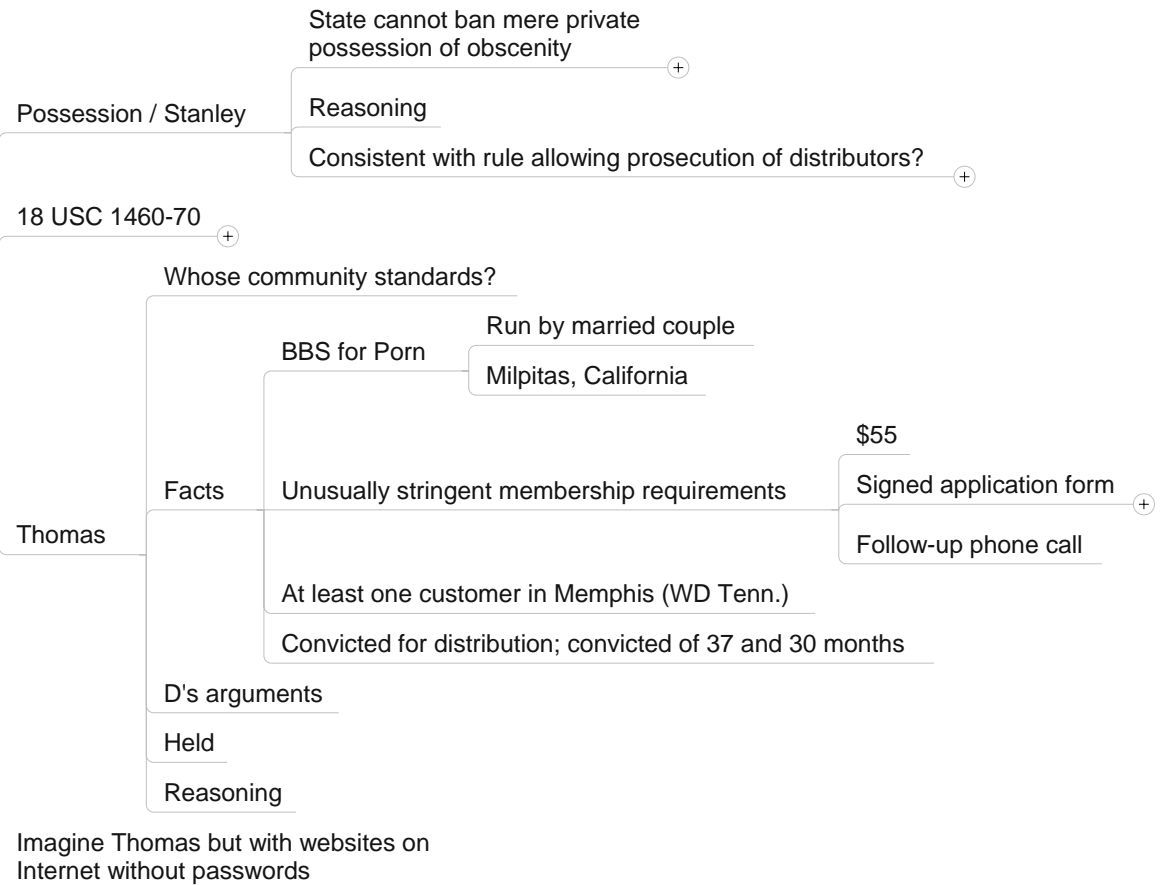
When this branch contradicts the syllabus, the syllabus wins (unless told otherwise)

MindManager questions?

Download your "limited time demos" today. 

Last Time

Obscenity



Class 10: Child Pornography

Child Pornography

Policy / Constitutional Theory

- Statutes
 - 18 USC 2252 Unlike 1030, responsible only for version in the casebook
 - Why? CP laws amended a lot
 - 18 USC 2252A
 - Sentences
 - Mandatory Minimums

BBS based in Denmark that sold CP over the Internet
 Danish police seized the business records
 Records indicated D had purchased two images
 Police searched D's house and D confessed Became Confidential Informant (CI)

Indictment

- (a)(1) Transporting
- (a)(4)(B) Possessing
- Omitted from opinion
 - At first, plea agreement on (a)(4)(B) charge
 - But a case intervened, and government wasn't sure it could prove this charge
 - So plea withdrawn with no second plea offered
- Trial Under (a)(2) as well

Mohrbacher

Facts

How the BBS worked

- Prosecution's expert Odd fact: D put on no witnesses at all
- Computer system connected to a modem.
 - Username
 - password
- List of images available for download Individuals would select pictures and download them to their computer

- Issue
- Held
- Reasoning

Receipt versus Possession?

Class 10: Child Pornography

Child Pornography

Sexting
Browser Cache What is it?

"Possession" and cache

Accidental Possession +

Definition of receive/possess in Romm

Cited in Kuchinski
seeks it out and exercises dominion and control over it.

Kuchinski

Key facts
16 images in downloaded files and 94 in recycle bins
15k - 19k more found in Internet Cache

Held
User had no knowledge of cache files, so no possession/control of the images.

Reasoning +

Romm

Note 2
42 images found in cache None stored separately

Evidence showed D knew about cache files. He had "cleared the cache"
He had enlarged some thumbnails

Guilty

Tucker (10th Circuit)

Appeal of case we didn't read
Tucker conceded he knew the browser stored things in cache +

Guilty

Simone (Va Cir. Ct.)

Searched for "lolitas" "pre-teens" and "pedophilia"
No evidence he knew of cache
Still possession
Test: Did D "reach out and control the images at issue"

Different Responses

What is rule, and does it make sense?