

Sunday, April 1, 2007

Courts may not ban probationers' possession of "pornography".

The First Amendment and the rest of the Bill of Rights. (From the public domain.) Pornography is not a clearly-defined legal term of art. Consequently, due to the First Amendment, courts may not ban probationers from possessing pornography (as opposed to "child pornography" and obscenity, both of which are defined in more detail (even though ill-defined) in the law books). U.S. v. Loy, 237 F.3d 251 (3d Cir. 2001); accord, U.S. v. Guagliardo, 278 F.3d 868 (9th Cir. 2002), cert. denied, 537 U.S. 1004 (2002): "[A]lthough the scope of the term 'obscenity' has been exhaustively examined (and even the term 'indecentcy' has been given a specific definition by the FCC, see FCC v. Pacifica Found., 438 U.S. 726, 731-32, 57 L. Ed. 2d 1073, 98 S. Ct. 3026 (1978)), the term 'pornography', unmoored from any particular statute, has never received a precise legal definition from the Supreme Court or any other federal court of appeals, and remains undefined in the federal code." U.S. v. Loy, 237 F.3d at 263. Thanks to a fellow criminal defense listserv member for posting these cases. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00