

lack thereof, of these images can be made to the jury, but is not grounds for preclusion of the evidence.

Secondly, defendant's assertion that "it is quite clear Defendant Karban was not even in the room when the websites were being surfed" is simply not true. Defendant provided a printout of the online chat dialogue engaged in between Ms Augustine and Cherie Karban. In that printout, it clearly indicates that there was a time that Ms Augustine took a shower, thereby giving the defendant the opportunity to view the material. Again, this issue is one that can be argued to the jury, but it is not a basis for preclusion.

Finally, defendant's argument that admission of adult images and urination text is somehow governed by Rule 404 of the Arizona Rules of Evidence is misplaced. There is nothing illegal about possessing adult images and urination text that would classify such possession as a prior bad act. In the alternative, if the Court does find that testimony Rule 404 applies, undersigned counsel submits that there is sufficient clear and convincing evidence that the defendant engaged in that act. First, the images and text were found on the defendant's computer, which was in his possession at the time. The images and text were initially placed on defendant's computer during a time the defendant admits being in possession of his computer. Furthermore, Ms. Augustine has previously denied looking at these images and/or text. Finally, the combination of sexual acts and urination is not mainstream, and may be considered aberrant.

For all of the above reasons, undersigned counsel respectfully requests that the Court deny defendant's motion in limine, and allow the State to introduce evidence that adult images and urination text were found on defendant's computer.

RESPECTFULLY SUBMITTED this 12th day of February, 2008.

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

BY _____
/s/ Rachel Phipps-Yonas
Deputy County Attorney

Copy of the foregoing mailed/delivered
This 12th day of February, 2008 to:

The Honorable Raymond Lee
Judge of the Superior Court

Stepehn Frank Karban
201 South 4th Avenue 2E2-26
Phoenix, Arizona 85003
Pro Per Defendant

Evan Romberg
Office of the Legal Advocate
Advisory Counsel for Defendant

By _____
/s/ Rachel Phipps-Yonas
Deputy County Attorney