



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 23, 2008

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
Washington, D.C. 20515

Re: United States v. Christopher S. Handley, No. 1:07-cr-00030-JEG (S.D. Iowa)

Dear Madam Speaker:

Pursuant to 28 U.S.C. 530D, I am writing to advise you that on October 23, 2008, the Solicitor General determined not to appeal the interlocutory decision of the district court in the above-referenced case. A copy of the district court decision is enclosed.

The defendant in this case was charged in a superseding indictment with receipt of obscene visual representations of the sexual abuse of children in violation of 18 U.S.C. 1466A(a) (Count 1), possession of obscene visual representations of the sexual abuse of children in violation of 18 U.S.C. 1466A(b) (Counts 2 through 4), mailing obscene matter in violation of 18 U.S.C. 1461 and 2 (Count 5), and a forfeiture count (Count 6). The superseding indictment described the images in counts 1-4 as "one or more drawings or cartoon[s] that depict a minor engaging in sexually explicit conduct, and is obscene, and depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital; or oral-anal, whether between persons of the same or opposite sex, which lacks serious literary, artistic, political, or scientific value."

The district court denied defendant's motion to dismiss the indictment, "with the exception of any prosecution under subsections 1466A(a)(2) and (b)(2)" only. By upholding the constitutionality of 18 U.S.C. 1466A(a)(1) and (b)(1) against overbreadth and vagueness challenges, the court allowed the prosecution to proceed on all counts in the superseding indictment. The district court precluded the government from alternatively relying on 18 U.S.C. 1466A(a)(2) and (b)(2), however, concluding that those provisions were unconstitutional. In rejecting the government's arguments to the contrary, the court reasoned that those provisions regulated "visual depictions not involving the use of actual minors," and that such depictions "can only be banned if [they are] obscene or involve[] the use of actual minors." The court observed, however, that

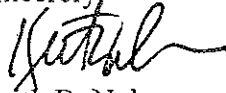
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"[t]his conclusion has minimal impact on this case given the almost complete redundancy of the conduct criminalized by subsections 1466A(a)(1) and (b)(1) with that of subsections 1466A(a)(2) and (b)(2)."

The Department has defended the constitutionality of 18 U.S.C. 1466A(a)(2) and (b)(2) and will continue to do so. Despite the district court's constitutional conclusion with respect to 18 U.S.C. 1466A(a)(2) and (b)(2) in this case, the court's ruling permits the government to proceed with its prosecution against this defendant with respect to all of the counts of the superseding indictment. In light of that fact and the non-precedential value of the district court's decision, as well as upon consideration of the possibility that an appeal could result in adverse appellate precedent for cases (unlike this one) in which 18 U.S.C. 1466A(a)(2) and (b)(2) are necessary prosecutorial tools to achieve a conviction and the fact that an appeal would likely delay a trial and conviction of the defendant in this case, the Solicitor General determined not to authorize an appeal in this case. If an appeal had been authorized, the government's brief would have been due on October 24, 2008.

Please let me know if we can be of further assistance in this matter.

Sincerely,



Keith B. Nelson  
Principal Deputy Assistant Attorney General

Enclosure