

Congratulations to Assistant District Attorney Michelle Hutton in the Office's Appellate Division. Her written and oral advocacy convinced an *en banc* Superior Court to uphold the possession of child pornography conviction in the case of Commonwealth of Pennsylvania v. Anthony Diodoro. After a jury convicted Diodoro, a three judge panel of the Superior Court overturned the guilty verdicts on appeal. Assistant District Attorney Hutton filed a petition for reconsideration, and thanks to her persuasive legal argument, the Superior Court withdrew its Opinion and granted her request for reargument before a nine-member panel of judges. Statistically, less than 2% of all cases in which reargument is requested are granted any relief.

In Diodoro, pursuant to a search of the defendant's home computer, 370 pornographic images were found, 30 of which were clearly child pornography. Diodoro admitted viewing the images, including the child pornography. He also admitted to intentionally visiting specific websites for that purpose. Pennsylvania's statute makes it a crime for any person to **knowingly possess or control** any book, magazine, pamphlet, slide, photograph, film, videotape, **computer depiction** or other material which contains child pornography. The jury returned guilty verdicts on 30 counts of Sexual abuse of children for "possessing or controlling" child pornography and for Criminal use of a communication facility based on defendant's use of his computer.

On the initial appeal, the defense successfully argued that merely viewing the child porn images was not a crime. Although he accessed the Internet sites containing child pornography and viewed the images there, he never saved or

downloaded them, and the computer stored the images in his cache file without defendant's knowledge.

On Superior Court reargument, Assistant District Attorney Hutton persevered by emphasizing that Pennsylvania's statute involves not just possessing child pornography but **controlling** such images. Ms. Hutton convinced the court that Diodoro's actions of operating the computer mouse, locating child porn websites, opening the sites, displaying the images on his computer screen, clicking the next icon to move on to see more images and then closing the sites evidenced control over the images. Moreover, while viewing the child pornography, defendant had the ability to download, print, copy or e-mail the images.

The decision was significant for the federally funded state Internet Crimes Against Children Taskforce initiative which District Attorney Mike Green heads. Even before the court's ruling, Green noted the broader applications of the case in the computer-based information age where such technology is being used in other criminal areas. Michelle's work on this case is not finished, however, because the defense has filed a petition for allowance of appeal with the Pennsylvania Supreme Court. Stay tuned.