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*“The pursuit of justice is a team effort.”*

## *Newsletter*

*Legal News Briefs for Attorneys*

### **Techniques For Fighting Ineffective Assistance At Trial**

Placido Ortiz was convicted of carjacking and murder in Puerto Rico in 1976. After serving more than twenty-two years in prison, NLPA was enlisted to assist Mr. Ortiz and his new counsel, Keith Golden of Columbus, Ohio, in his quest

for justice.

At trial, Mr. Ortiz was the victim of corrupt counsel. His trial attorney was paid by Mr. Ortiz’s co-defendant, who represented both men at trial. Before trial, Mr. Ortiz told his attorney that he wanted to discuss a plea deal. However, his attorney would not do so, because for him to plead would jeopardize the case of the co-defendant, who he was also representing and who wanted to go to trial. During the trial, Mr. Ortiz told counsel he wanted to testify, but counsel did not permit him to do so. Instead, counsel told him he was focusing on his co-

defendant’s case at trial, and that Mr. Ortiz’s case would be addressed on direct appeal. At age 18, Mr. Ortiz was convicted and sentenced to life in prison. Trial counsel never prepared nor filed the appeal he had promised his client.

In 1997, Mr. Ortiz filed for post-conviction relief before the Puerto Rico courts. Relief was ultimately denied by the Supreme Court of Puerto Rico, and Mr. Ortiz, with NLPA and counsel’s assistance, took his case to federal court by the filing of a 2254 Motion. The habeas petition argued that Mr. Ortiz was denied the effective assistance of counsel because

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counsel manifested an obvious conflict of interest at trial and because he failed to file an appeal despite Mr. Ortiz's wish and the promise that he would do so. Mr. Ortiz submitted a sworn affidavit outlining counsel's errors with his petition.

Despite the slim possibilities of winning with an ineffective assistance of counsel claim, on September 9, 2002, the United States District Court for the District of Puerto Rico found no evidence in the record to refute Mr. Ortiz's sworn affidavit. The court concluded that counsel's failure to comply with the defendant's request to file an appeal was prejudice *per se*. The court issued a conditional writ of habeas corpus, which released Mr. Ortiz, from state custody unless the trial court vacated and re-entered a judgment of conviction and allowed a fresh appeal. After more than twenty-five years, Mr. Ortiz has finally obtained justice through the efforts of NLPA and his dedicated attorney.

### *A New Look for A New Year....*

As we at NLPA start our new year of 2003, we introduce to you a small format change in our monthly newsletter. First of all, we have changed the general layout of the newsletter to make it easier to see new cases which may impact your

practices. Though we will continue to lead the publication with information of how our consulting services have impacted recent litigation (our "victories" with local counsel), we will also highlight new cases. We have also added a "Practice Tips" section to address some practice tips and other matters of interest to counsel in the proverbial trenches. Finally, we will also endeavor to pass on administrative information from both state departments of correction and the Bureau of Prisons so that you may know more about the quality of life issues affecting our clients after sentencing.

The second change is the frequency of our publication. Though we will continue preparing a monthly newsletter, it will be directed to two distinct audiences. Every other month, a newsletter focusing on legal briefs for attorney practitioners will be forwarded to our colleagues throughout the nation. On the alternate months, the newsletter will be focused to assist law libraries and prison paralegals, referencing questions and issues important to that readership. Of course, any attorney wishing to receive both should simply notify us through our Website at [contactus@nlpacincinnati.com](mailto:contactus@nlpacincinnati.com) and we will insure that each monthly issue is mailed to you.

We hope that this new look is helpful and that the focus of the newsletter better serves our friends not only in the Bar but those behind them.

Happy New Year!

### ***What's New Around The Nation***

#### *Washington:*

#### **U.S. seeking more prison time for white-collar crimes**

The Justice Department wants officers and directors of public companies who "abuse their position of trust" to spend more time in jail.

For instance, officers whose conduct causes more than \$20 million in damage to their corporation, should face 10 years in prison, the Justice Department said in letters to the U.S. Sentencing Commission, which sets guidelines for federal judges.

After the accounting scandals at Enron Corp. and other public companies, Congress directed the sentencing commission to ensure that corporate criminals receive heightened penalties. The Justice Department, in letters dated Oct. 1 and Dec. 18, expressed concern that the commission was not going far enough and would send a message to the public that "fraud crimes are not taken seriously."

"We believe the commission's

action must ensure that white-collar criminals are held fully accountable and must result in tough, consistent, incarceratory penalties for those who would threaten the integrity of our financial markets and our economy," the letter said.

Criminals whose fraud activities cause a company more than \$1 million in losses should go to prison for about five years, the Justice Department said, while those responsible for more than \$100,000 in losses should receive about 18 months in prison.

The government said it wants to "ensure that all but relatively minor business crimes will result in prison for the wrongdoer."

The commission, which is scheduled to vote on sentencing guidelines this month, is considering automatic sentence enhancements for abuses by directors and officers of public companies.

Generally, automatic enhancements result in more prison time. The guidelines set by the commission are intended to lead to uniform sentencing by federal judges across the nation.

The Justice Department proposed heightened punishment for directors and officers who abuse their position to further criminal activity. Also targeted are officials of public companies whose acts result in "substantial economic

dislocation," such as employee layoffs or "serious" financial loss to pension funds, retirement accounts or individual stockholders.

The Justice Department expressed concern over judges using so-called downward departures to give some fraud or theft criminals lower penalties because of charitable work or "extraordinary" acceptance of responsibility.

Such a sentence "feeds the public perception that businesspeople who steal are treated far more leniently than 'street criminals,'" the Justice Department said.

#### *Michigan:*

#### **Most of state's mandatory minimum drug sentences eliminated.**

Ending twenty-five years of sentencing policies in the state, Governor John Engler signed historic legislation on Christmas, repealing most of the state's mandatory minimum sentences for drug offenses.

Judges in the state are now free to use their judicial discretion, within established guidelines, to impose sentences in drug cases based on a range of factors, rather than solely drug quantity. In addition, lifetime probation for low-level drug offenders has been replaced with a five-year probationary period.

The state parole board has also been provided with the authority to provide earlier parole for some prisoners.

The change in the law was bipartisan and echoed the words of the former Governor William Milliken, who called the now-repealed provisions the "worst mistake of my career" when he signed them into law in 1978.

#### *US-Canadian Border*

#### **National security entry-exit registration system**

Due in part to the Canadian Government's concerns regarding the National Security Entry-Exit Registration System (NSEERS), the Department of Justice (DOJ) issued new regulations concerning registration. Individuals who were born in or are nationals of specified countries are required to register upon entry to the U.S. regardless of their current citizenship.

These requirements have been modified for those individuals who were born in the enumerated countries and who are now Canadian citizens. For Canadian citizens, place of birth will no longer automatically trigger registration. However, the INS still has the right to register any individual entering the U.S. who is not a U.S. citizen, if they believe the individual may pose a threat to the U.S. In fact, it appears that individuals ""from more than

100 countries around the world"" have been registered on the basis of intelligence-based criteria. What criteria is used has not been disclosed.

### **Practice Tips**

Along the immigration front, many attorneys have questions concerning some of the more practical rules recently adopted and implemented governing registration.

The first practical issue involves the simple notification if a foreign national changes an address. All foreign nationals, including legal permanent residents (green card holders) who are not U.S. citizens are required by Section 265 of the Immigration and Nationality Act to notify the INS of address changes while in the United States. Notification must be sent to the INS of a change of address, in writing, within 10 days of the change.

Failure to provide the INS with this information can result in criminal and monetary penalties, and can be grounds for deportation.

Although this is not a new requirement it has not been enforced by the INS. However there are recent reports of the Department of Justice utilizing Section 265 in cases involving national security.

If you are unsure of the appropriate method for

notifying the INS of a change of address, please feel free to contact us for more information.

In addition, new registration requirement for non-immigrants already in the U.S. were recently published. The regulations dramatically expand special registration provision, now requiring males aged 16 or older from the 5 countries designated for Special Registration, who were *already present* in the U.S. on or before September 10, 2002 and have remained since then, to have appeared before INS for registration **on or before December 16, 2002**. If they have not, certain penalties will be imposed.

*Currently non-immigrants--i.e., anyone who is not a U.S. Citizen or Permanent Resident, A and G visa holders, as well as individuals who have applied for asylum are exempt--from Iran, Iraq, Libya, Sudan and Syria are listed as individuals automatically subject to special registration and fingerprinting requirements upon entry. This regulation expands the registration requirements to citizens or nationals of these countries who entered the U.S. before the special registration requirements were instituted in September 2002.*

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### **IMPORTANT NOTICE:**

The Bureau of Prisons just announced a major change in the manner in which it assigns inmates to halfway houses around the nation. Due to an internal memo from the Department of Justice, the Attorney General has concluded that the Bureau of Prisons lacks the general authority to designate a defendant to community confinement in lieu of imprisonment.

Specifically, when a federal inmate receives a sentence of imprisonment under a Zone C or D, the BOP cannot designate that defendant to community confinement from the outset of his sentence. In addition, an inmate can only be transferred to a halfway house no sooner than the last 10% of his sentence or six months whichever is less. A full discussion of this new policy and practice tips to address its ramifications will be discussed in our next newsletter.

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**"Our Constitution was designed only for a moral and religious people.**

**It is wholly inadequate for the government of any other."**

- John Adams

*About NLPA -*

NLPA is a technical consulting firm, owned by attorneys, and

dedicated to the professional mission of providing counsel, research, and related work product to members of the Bar. Although our fifteen-person attorney research department provides some consulting assistance to attorneys in the area of civil practice, most of NLPA's sixteen year history has been dedicated to working with the criminal defense bar. Our ownership structure includes attorneys licensed to practice before many local, state, and federal courts; however, NLPA is not a law firm and provides no "front line" legal services. On the other hand, we are far from being simply a paralegal service. Our sole purpose is to provide research and consulting assistance. With cutting-edge computer research capabilities, an experienced and top quality staff, and more than sixteen years' experience, NLPA is well-positioned to provide the type of assistance members of the bar oftentimes need.

Since 1986, NLPA has provided affordable, quality consulting to lawyers across the nation. Through our involvement in literally thousands of cases, coupled with our national professional staff, NLPA has developed a unique and unmatched expertise in pretrial, trial, sentencing, appellate, and post conviction matters. Whether your client is in the

state or federal systems, faced with local or international matters, NLPA is a team member worth engaging.

As a result of its affiliations, National Legal Professional Associates has increased its ability to service you as counsel. With NLPA's relationship with the law firm of Murray, Ratliff & Robinson, P.A., assistance is available in arranging for local counsel and co-counsel, if needed, throughout any judicial district in the United States. NLPA has also increased its centers of operation, now having offices in San Juan Capistrano, California and Tijuana, Mexico to augment its Cincinnati, Ohio operations center, and Naples, Florida administrative office.

Getting NLPA started on your team is not difficult nor time-consuming. Simply contact us at the numbers below and a member of our staff will review your case and needs, discuss financial arrangements and time constraints, and commence a program for meeting your needs.

You are important to us and we hope we can commence and maintain a long-term relationship with you. Please know that we are here to assist

in all your needs.

If you would like to know more about the services we offer, please contact us at:

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*WE CARE,  
WE LISTEN,  
WE GET RESULTS*

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THIS PUBLICATION IS NOT MEANT TO BE A

## ***LET IT BE IN 2003***

As part of our consulting services, we enjoy publishing this Newsletter for our colleagues throughout the year. However, we only want to send these issues to you if you *want* to receive them.

If you wish to remain on our Newsletter mailing list for the coming year, please confirm your address by contacting us:

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Thank you!