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“The pursuit of justice is a team effort.”

Newsletter

Legal News Briefs for Attorneys

Breaking With Tradition

* * *

The Proof Is In The Results

Why should I use *National*

Legal Professional Associates?

What does NLPA bring to a case?

How good *is* your work product?

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These are the questions that almost always arise when counsel considers bringing NLPA onto a case. For sure, the traditional practice of law never included

consulting or outsource firms. Since the dawn of the profession (which may have been when Cain killed Abel and then represented himself *pro se* before the ultimate Judge), attorneys relied on their own professional expertise and experience in defending clients.

But times have changed. The state of the law is more complex. The playing field which represents criminal *National Legal Professional Associates* brings a two-decade expertise to augment your representation of criminal defendants. Akin to a tenured associate down the proverbial hall, NLPA brings its vast research ability and drafting skills to bear in exponentially adding value to your limited time.

It does take a leap of faith to turn over such research to an outsource firm. It is solely that reason that we at NLPA publicize our prior cases as much as we do. *The proof of our ability lies in the successes of those attorneys who have retained us.*

This proof continues. In the past month, attorneys who have used our research and drafting resources have successfully defended actions for their respective clients. In the case of *McKenzie v. State of North Carolina*, a state defendant sought post conviction relief from his 1998 conviction for robbery, burglary, and assault with a deadly weapon. Through his representation by North Carolina attorney, Jerry Leonard assisted by Charles A. Murray, Esq. and with the research and drafting services that NLPA provided to counsel, the defendant filed a Motion for

proceedings is far from level. And the Government is far from fair in utilizing its vast resources to maintain the juggernaut of criminal prosecutions fed by Appropriate Relief alleging such constitutional violations as ineffective assistance of counsel under the Sixth Amendment and Due process violations for the trial court refused to allow the defendant to testify and refused to address outrageous misconduct by law enforcement officers.

The state Supreme Court recently reversed the lower court decision denying the motion, remanding the matter back for an evidentiary hearing.

Likewise, in the Western District of Virginia case of *United States v. Aurelio Lopez*, NLPA was asked to provide research and drafting assistance to defense counsel, David Downes, specifically including objections to erroneous statements in the Presentence Investigation Report, and arguments against various enhancements recommended by the Probation Department. Facing a guideline range of 30 years to LIFE, NLPA's research to Mr. Downes' coupled with his advocacy effected an ultimate sentence for Mr. Lopez of fifteen years.

Though each and every case is different, the proof that NLPA's abilities are truly an asset to an attorney continues to be shown.

We urge you to keep NLPA in

current drug laws, concern over sex offenses, as well as the fear related to national security.

mind as you review your caseload and manage your work. As our history reflects, there is no better outsource and technical specialist in the field.

What's New Around The Nation

United States Supreme Court

Ineffective Assistance of Counsel

Hidden behind the rush of cases reported on in the national media during the High Court's final week of the term, the Court reiterated an attorney's obligations under the Sixth Amendment in *Wiggins v. Smith*, No. 02-311, 2003 U.S. LEXIS 5014 (June 26, 2003). The *Wiggins* case involved a capital murder conviction out of Maryland in which public defenders failed to investigate and present mitigating evidence of the defendant's dysfunctional family background. In fact, counsel admitted that the defense never retained a forensic social worker to examine and investigate the defendant's social history.

Though the lower courts found that the defense attorneys made reasonable strategic choices in not investigating the defendant's history and presenting it to the

jury, the Supreme Court disagreed. Justice O'Connor, writing for the Court, severely questioned why counsel did not investigate, and present to the jury, testimony demonstrating the defendant's limited intellectual capabilities, Counsels' decision not to expand their investigation into the defendant's background beyond the Government's presentence investigation report and a prior foster home record was "short of the professional standards" then prevailing in Maryland. Justice O'Connor specifically referenced the need to follow the standards articulated by the ABA which includes the professional requirement to engage in such investigations necessary "to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor. "

Seventh Circuit

Fourth Amendment and Metal Detectors

One day, Mr. Darion Ford decided he wanted to visit a roller skating rink. As he entered the rink, he activated a metal detector at the entrance. An off-duty police officer, acting as the rink's private security guard, frisked him and found crack cocaine, a drug scale, and a large amount of cash. Mr. Ford was

childlike emotional state, and absence of aggressive behavior patterns. Further, the Court questioned why counsel never introduced to the court the fact that the defendant was raised by a chronic alcoholic who forced her children to beg for food or eat subsequently charged with violating 21 U.S.C. 841(a)(1). Mr. Ford moved to suppress the evidence found and the U.S. District Court granted that motion. The Government appealed.

In *United States v. Ford*, 2003 U.S. App. LEXIS 12935 (7th Cir. June 26, 2003), a panel from the Seventh Circuit affirmed.

First, the appeals ' court found that the pat down of Mr. Ford was unreasonable. Noticing that the search was conducted by a police officer and that Mr. Ford did not consent to it, the Fourth Amendment is implicated. The Court discussed the fact that since patrons were not asked to empty their pockets of anything that might trigger the detector, the officer should expect the detector to be triggered for any reason, even for an innocuous pen. Thus, the officer had no reason to pat Mr. Ford down out of a safety concern. Mr. Ford was not allowed to leave, and was forced to be the subject of a pat down.

Finding that Mr. Ford's Fourth Amendment rights were violated by the pat down, the appeals' court affirmed the lower court's

paint chips and garbage, who left her children alone for days on end, who tortured her children, and who had sex with men while her children slept in the same bed.

granting of the motion to suppress.

Ninth Circuit

The Presumption of Retaliation

Under the well-known *Pearce* standard, the government carries the burden of rebutting the presumption that a harsher sentence imposed upon a remand from an appellate court was retaliatory. The recent case of *Nulph v. Cook*, 2003 U.S. App. LEXIS 12924 (9th Cir. June 26, 2003) reiterated this principle.

On appeal, the Ninth Circuit reversed a lower court's denial of a habeas corpus petition holding that the state failed to carry its burden to rebut the presumption as the defendant had originally challenged his sentence on direct appeal, had been successful, and had been resentenced. Finding that the defendant had been denied due process, the case was reversed and remanded for issuance of the writ.

Practice Tips

Cincinnati

**How To Do A Better Job
Choosing a Jury**

Choosing a jury is clearly an art. However, with most of the arts, the more information that is available, the more fine-tuned a practitioner's skills become.

- Business affiliations
- Political party affiliation
- Professional licenses
- Property ownership
- Vehicle, boat, and airplane ownership
- Driver's license information
- Internet domains
- UCC filings
- AKAs
- Neighborhood information (including median income, average age and years of education, and median home value)

If you as trial counsel would like NLPA's assistance in selecting a jury, please contact our Cincinnati office for details.

Washington

**New Light on Prosecutorial
Misconduct**

In an extensive and comprehensive report, the Center for Public Integrity announced its investigative findings of our nation's prosecutors last week. And the results are very compelling.

Since 1970, individual judges

NLPA can assist with providing you, as counsel, with up-to-date information in jury selection.

As we discussed in May's newsletter, NLPA is equipped with the newest software to help litigators assess each potential juror's fit with a case. We have available to us, and in turn to our and appellate court panels cited prosecutorial misconduct as a factor when dismissing charges at trial, reversing convictions or reducing sentences in at least 2,012 cases, the three-year investigation by the Center had found.

The consequences of such actions are severe. In 28 cases, involving 32 separate defendants, misconduct by prosecutors led to the conviction of innocent individuals who were later exonerated, the Center found. Innocent men and women were convicted of serious charges, including murder, rape and kidnapping and assault.

A team of 21 researchers, writers and editors analyzed 11,452 cases in which charges of prosecutorial misconduct were reviewed by appellate court judges. In the majority of cases, the allegation of misconduct was ruled harmless error or was not addressed by the appellate judges, and the conviction stood.

The full report can be obtained by contacting NLPA's Cincinnati offices or by downloading it from the Center's website at

clients, a standalone product that gathers public record background information on potential jurors. This process includes obtaining information on potential jurors such as:

- Criminal records
- Bankruptcies

www.publicintegrity.org. Also, by visiting the website, one can review a searchable, online database, reviewing case citations and summaries tracking misconduct in each of the fifty states.

New York

**A Clear Voice Takes
Retirement**

As The Honorable John S. Martin, Jr. of the U.S. District Court for the Southern District of New York takes retirement, his closing words are worth repeating:

I have served as a federal judge for 13 years. Having reached retirement age, I now have the option of continuing to be a judge for the rest of my life, with a reduced workload, or returning to private practice. Although I find my work to be interesting and challenging, I have decided to join the growing number of federal judges who retire to join the private sector.

When I became a federal judge, I accepted the fact that I would be paid much less than I could

earn in private practice; judges make less than second-year associates at many law firms, and substantially less than a senior Major League umpire. I believed I would be compensated by the satisfaction of serving the public good - the administration of justice. In recent years, however, this sense has been replaced by the

Congress's distrust of judicial discretion led to the adoption in 1984 of the Sentencing Reform Act, which created the United States Sentencing Commission. The commission was created on the premise, not unreasonable, that uniformity in sentencing nationwide could be promoted if judges and other criminal law experts provided guidelines for federal judges to follow in imposing sentences. However, Congress has tried to micromanage the work of the commission and has undermined its efforts to provide judges with some discretion in sentencing or to ameliorate excessively harsh terms.

For example, when an extensive study demonstrated that there was no justification for treating crack cocaine as 100 times more dangerous than powdered cocaine, the ratio adopted by Congress in fixing mandatory minimum sentences, the commission proposed reducing the guideline ratios. However, the proposal was withdrawn when Congressional leaders made it clear that Congress

distress I feel at being part of a sentencing system that is unnecessarily cruel and rigid.

For most of our history, our system of justice operated on the premise that justice in sentencing is best achieved by having a sentence imposed by a judge who, fully informed about the offense and the offender, has discretion to impose a sentence would overrule it.

Congress's most recent assault on judicial independence is found in amendments that were tacked onto the Amber Alert bill, which President Bush signed into law on April 30. These amendments are an effort to intimidate judges to follow sentencing guidelines.

From the outset, the sentencing commission recognized the need to avoid too rigid an application of the guideline system and provided that judges would have the power to adjust sentences when circumstances in an individual case warranted. The recent amendments require the commission to amend the guidelines to reduce such adjustments and require that everyone be reported to Congress. They also require that departures by district judges be reviewed by the appellate courts with little deference to the sentencing judge.

Congress's disdain for the judiciary is further manifested in a provision that changes the requirement that "at least three" of the seven members of the sentencing commission be federal judges to a restriction that "no more than" three judges may

within the statutory limits. Although most judges and legal scholars recognize the need for discretion in sentencing, Congress has continually tried to limit it, initially through the adoption of mandatory-minimum sentencing laws.

serve on it. Apparently Congress believes America's sentencing system will be jeopardized if more than three members of the commission have actual experience in imposing sentences.

Every sentence imposed affects a human life and, in most cases, the lives of several innocent family members who suffer as a result of a defendant's incarceration. For a judge to be deprived of the ability to consider all of the factors that go into formulating a just sentence is completely at odds with the sentencing philosophy that has been a hallmark of the American system of justice.

When I took my oath of office 13 years ago, I never thought that I would leave the federal bench. While I might have stayed on despite, the inadequate pay, I no longer want to be part of our unjust criminal justice system.

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 needs.

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.

National Legal Professional

**A judge is a law student
- H. L. Mencken (1880-1956) -
who marks his own
examination papers."**

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*Or to find out more, visit us at
our recently updated Website at*

www.NLPA.com

WE CARE,

***WE LISTEN,
WE GET RESULTS***

THIS NEWSLETTER IS DESIGNED TO INTRODUCE YOU TO NLPA. AS NLPA IS NOT A LAW FIRM, PROFESSIONAL SERVICES ARE ONLY PROVIDED TO LICENSED COUNSEL

IN ALL AREAS THAT INVOLVE THE PRACTICE OF LAW. NLPA HAS CREATED THIS PUBLICATION TO PROVIDE YOU WITH AUTHORITATIVE AND ACCURATE INFORMATION CONCERNING THE SUBJECT MATTER COVERED. HOWEVER, THIS PUBLICATION WAS NOT NECESSARILY PREPARED BY PERSONS LICENSED TO PRACTICE LAW IN A PARTICULAR JURISDICTION.

THIS PUBLICATION IS NOT MEANT TO BE A

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