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

## *Newsletter*

*Legal News Briefs for Law Libraries*

### **ANOTHER NLPA VICTORY!**

## **SUPREME COURT REMANDS CASE BASED ON ARGUMENTS MADE EVEN BEFORE *BLAKELY* AND *BOOKER*.**

Tyrone Smith was convicted in 2003 of distribution of 50 grams or more of crack cocaine, and

conspiracy to distribute 50 grams or more of crack cocaine, in the United States District Court for the Middle District of Pennsylvania. During his trial, numerous long-time acquaintances, cooperating witnesses who were also in jail with Mr. Smith, were paraded before the jury. They told the jury how they had purchased drugs from Mr. Smith in the past, how he had employed others to assist him with his drug business, and how he tried to persuade them not to testify at his trial. The only witness for the Government that was not in jail, other than the police involved in the case, identified Mr. Smith as a

person who drove another drug dealer to several deals. Mr. Smith was found guilty, and received a guideline sentence of 360 months. His sentence was enhanced for drug amounts, a leadership role, and obstruction of justice.

NLPA assisted attorney Matthew M. Robinson with Mr. Smith's appeal. The appeal argued that the in-court identification of Mr. Smith by the Government's witness was tainted and therefore improperly admitted, because the DEA agents showed the witness a single known photograph of Mr. Smith before any identification was ever made. The

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Third Circuit Court of Appeals raked the Government over the coals for its identification procedure, finding "beyond question that the DEA's identification procedure was impermissibly suggestive and created a strong likelihood of misidentification." The Court further found no independent basis for the witnesses' in-court identification, and that the procedure violated his due process rights. Unfortunately, despite chastising the Government for the impropriety of the identification, the Court of Appeals found this error to be harmless, in light of other evidence of guilt.

Nevertheless, Mr. Smith prevailed on appeal. Among the other issues, the appeal argued that there was no credible evidence to support the sentencing enhancements that were applied. Although the sentencing issues were raised prior to the Supreme Court's decision in *Booker v. United States*, 543 U.S. \_\_\_, 125 S.Ct. 738 (2005), the court found the imposition of the sentencing enhancements unconstitutional. The court remanded Mr. Smith's case to the District Court for re-sentencing.

Through the team effort of counsel and NLPA, Mr. Smith successfully challenged a 30 year sentence. He won on the claim that his sentencing enhancements were improper, even though the law applied by the court was not in effect at the time Mr. Smith's case was tried or even when his appeal was briefed. This demonstrates the importance of raising *all* of the right appeal issues at the right time. With a thoroughly researched and well-presented appeal brief, sometimes the seemingly

impossible becomes possible, and justice does prevail.

### IMMIGRANTS/ALIENS OBTAIN LEGAL RELIEF AND VICTORIES

#### Despite the Department of Homeland Security Clamping Down on Immigration Matters

Too many people link immigration and immigrants with other problems that have nothing to do with immigration. If you think we should reform health care, welfare, and education in this country, we should have those debates. But those debates and the debate over how to fix our immigration system are separate issues.

-Gorver Norquist,  
Conservative Activist  
and President,  
Americans for Tax  
Reform

The subject of Immigration in the United States today brings together labor, business, faith-based, the law, Latino, Asian-American, African and conservative groups. With the advent of 9/11, and the somewhat ambiguous "war on terror" the American populace refocused its attention on its borders and grappling with immigration issues. This has caused a backlash against immigrants or aliens residing within the U.S. territory with more stringent adherence - and oftentimes an overzealous if not

illegal adherence to immigration laws. There has also been a barrage of immigration reforms initiated in Congress. See *In the 109<sup>th</sup> Congressional Session, H.R.100*, Title: To amend the Immigration and Nationality Act to modify provisions relating to judicial review of orders of removal; *H.R. 245*, Title: To amend the Immigration and Nationality Act with respect to the record of admission for permanent residence in the case of certain aliens; *H.R.698*, Title: To amend the Immigration and Nationality Act to deny citizenship at birth to children born in the United States of parents who are not citizens or permanent resident aliens. Simply put, immigrants have become America's new *boogeymen*. But it is not all bad, and the realities of an emerging global community and economy, requires discovering ways to protect American interests, while respecting the inalienable rights of all people - including immigrants.

The reaction to the prospect or paranoia of illegal immigrants has reached the level of placing electronic monitoring bracelets around the ankles of aliens "whose immigration status is being challenged by the government." Zwerdling, Daniel, *Electronic Anklets Track Asylum Seekers in U.S.*, National Public Radio, Morning Edition, March 2, 2005. There have been mixed reviews in response to this practice. The fact remains, however, that there are potentially 100s to 1000s of aliens who are being subjected to treatment that may violate their constitutional rights. Yes, aliens residing in the United States of America have constitutional rights also.

Specifically, immigration matters are now under the jurisdiction of the Department of Homeland Security or DHS. What was once the Immigration and Nationality Services or INS, is now the United States Citizenship and Immigration Services or USCIS. That means, normally when legal matters arise concerning an alien, the USCIS is the governmental agency in charge of handling them. What has not changed are the U.S. Constitution and the rights and privileges it affords all persons in America. Granted, there are some rights that aliens do not possess *vis a vis* U.S. citizens, but conventional wisdom belies the true size of the variance. For instance, aliens are guaranteed the equal protection of the laws as pronounced in the Fourteenth Amendment to the U.S. Constitution. U.S. Const. Amend. XIV.

In the same vein, any USCIS Immigration Court or Board of Immigration Appeals' determination of an alien's legal status is reviewable - hence, reversible - by the United States Courts of Appeals. This includes judgments of non-citizenship, deportability, denial of asylum, criminal convictions, etc. However, many aliens are not aware of the full extent of the protections provided by the U.S. legal system. Instead, they often accept the treatment and unfavorable rulings without contesting them. Importantly, too many times aliens have cognizable and colorable legal causes of actions and procedures that would help them in obtaining the results they seek, but fail to utilize them.

Furthermore, the reality that *aliens are people too and in fact they help make this country great* is increasingly, *albeit* slowly, being embraced by the collective national conscience. Attracting the talent of foreign-born scientists and engineers is a key factor in maintaining the nation's economic competitiveness and preeminence in science. Moreover, the notion that every job filled by an immigrant is one less job available to a native-born worker is inherently simplistic and does not account for the fact that immigrant jobs or that unemployed natives and immigrant workers often do not compete for the same jobs. Paral, Rob, *Essential Workers: Immigrants are a Needed Supplement to the Native-Born Labor Force*, The Immigration Policy Center, American Immigration Law Foundation, March 30, 2005.

Also, to balance the "boogeyman" effect, there are bills that have been introduced into Congress that actually aids immigrants with their plight in the United States. See *In the 109<sup>th</sup> Congressional Session, H.R. 60*, Title: To designate Sri Lanka, India, Indonesia, Thailand, Somalia, Myanmar, Malaysia, Maldives, Tanzania, Seychelles, Bangladesh, and Kenya under section 244 of the Immigration and Nationality Act in order to render nationals of such foreign states eligible for temporary protected status under such section; *H.R. 247*, Title: To increase the numerical limitation on the number of asylees whose status may be adjusted to that of an alien lawfully admitted for permanent residence; *H.J.RES.2*, Title: Proposing an amendment to the Constitution of the United States to permit persons who are not natural-born citizens of the

United States, but who have been citizens of the United States for at least 20 years, to be eligible to hold the Office of President.

Regardless whether the typical American sentiment is "pro" or "anti" alien, the United States Judicial System was founded and operates on the principles of fairplay, justice, and respect for the rights of all humans, native-born or otherwise. That means, aliens are not subject to the whim of the courts and/or judiciary officials, but must be afforded many of the same due process of law and other rights that comport with the U.S. Constitution. As far back as memory can go, Immigrants have been asserting the constitutional safeguards, protections, and guarantees to achieve victories over adverse court decisions with detrimental consequences. This practice exists through today, and undoubtedly will continue well into the future.

See the following recent examples of aliens obtaining the relief they pursued in the courts:

**KAROUNI V. GONZALES**, 399 F.3d 1163 (03/07/05 - 9<sup>th</sup> Circuit - 02-72651) - Alien's petition for review is granted where the evidence compels the conclusion that alien has a well-founded fear of future persecution if he were removed to Lebanon.

**IAO V. GONZALES**, 400 F.3d 530 (03/09/05 - 7<sup>th</sup> Circuit - 04-1700) - Alien's petition for review is granted where the immigration judge's opinion cannot be regarded as reasoned, and alien is entitled to a rational analysis of the evidence.

*LI v. ATTY GEN. OF THE U.S.*, 400 F.3d 157 (03/10/05 - 3rd Circuit - 03-1930) - Deliberate imposition of severe economic disadvantage because of a protected ground may rise to the level of persecution within the meaning of asylum law.

*NAMO v. GONZALES*, 401 F.3d 453 (03/17/05 - 6th Circuit - 03-4194) Alien's charge of being removable from the United States is reversed and remanded to determine whether, in light of the changed circumstances in Iraq, it is more likely than not that alien would be subject to torture if he was to return.

*ZHAO v. GONZALES*, 404 F.3d 295 (03/15/05 - 5th Circuit - 03-60681) Alien's petition for review is granted and the Board of Immigration Appeals' decision reversed, where the immigration judge improperly concluded that plaintiff's credited testimony was legally insufficient to establish a well-founded fear of future persecution.

*SOLIS-ESPINOZA v. GONZALES*, 401 F.3d 1090 (03/23/05 - 9th Circuit - 03-70625) Alien's petition for review granted where he is not subject to removal since he qualified for citizenship under 8 U.S.C. section 1401(g).

*MINASYAN v. GONZALES*, 401 F.3d 1069 (03/22/05 - 9th Circuit - 02-73556) Alien is not subject to removal as a felon convicted of an aggravated offense since he is a derivative citizen of the United States pursuant to Immigration and Nationality Act section 321(a).

*ANA INT'L, INC. V. WAY*, 393 F.3d 886 (12/16/04 - 9th Circuit - 03-35130) The Attorney General's decision to revoke a visa, pursuant to 8 U.S.C. section 1155, is not barred from judicial review by the Immigration and Nationality Act.

*EDWARDS v. INS*, 393 F.3d 299 (12/17/04 - 2d Circuit - 03-2292, 03-2104) Aliens who were erroneously denied the opportunity to apply for relief under section 212(c) of the Immigration and Nationality Act should not be barred from seeking such relief as a result of their subsequent accrual of five or more years of imprisonment on aggravated felony offenses.

*AGYEMAN v. CORR. CORP. OF AM.*, 390 F.3d 1101 (12/10/05 - 9th Circuit - 03-16068) Dismissal of alien's suit, alleging improper abuse while in custody at a correctional facility, is reversed where the district court abused its discretion in declining to appoint counsel for plaintiff.

Thus, there are legal remedies for aliens when they become enthralled in the judicial system. There is relief from deportation, non-citizenship rulings, denial of asylum, criminal convictions, among others. It is only a matter of immigrants exercising their rights and securing effective representation. National Legal Professional Associates (NLPA) stands ready to continue to help attorneys lead the fight for justice and help aliens obtain the relief they deserve.

## THE PATRIOT ACT UNDER ATTACK

The Patriot Act, an act of the United States Congress designed to allow for law enforcement to more easily track and arrest terrorists, is easily manipulable to allow for the restrictions of the privacy and civil rights of all Americans. Allowing for access to an individual's medical and financial records, library book checked-outs, and wiretaps without the requisite probable cause required by the Fourth Amendment to the United States Constitution unduly infringe upon the rights of all Americans, and not just those suspected of terrorism. Recently, however, the judiciary has finally taken a step in rolling back the onerous invasion upon civil rights fostered by the Patriot Act.

In *Doe v. Ashcroft*, 334 F.Supp. 2d 471 (S.D.N.Y. 2004), the Hon. Victor Marrero struck down several portions of the Patriot Act. In *Doe*, the Federal Bureau of Investigation (FBI) issued a national security letter (NSL) pursuant to 18 U.S.C. §2709 (later amended by the Patriot Act) ordering an Internet access firm to disclose its customer records. The court ordered that the act forcing disclosure of such information violated the Fourth Amendment to the United States Constitution. The act at issue effectively barred any opportunity for the recipient of the NSL to challenge the propriety of the letter through judicial means.

Furthermore, even if the recipient of the NSL was able to first disclose the information to an attorney who could then determine whether to disclose the information to the FBI, the legislation was not narrowly tailored in order to serve the

government's interest in preventing terrorism, thus violating the First Amendment to the United States Constitution. In reaching its decision, the court noted that

National security is a paramount value, unquestionably one of the highest purposes for which any sovereign government is ordained. Equally scaled among human endeavors is personal security, an interest especially prized in our system of justice in the form of the guarantee bestowed upon the individual to be free from imposition by government of unwarranted restraints on protected fundamental rights. Efficiency, too, counts as a basic value, though it essentially serves as a tool in the service of other interests. To perform its national security functions properly, government must be empowered to respond promptly and effectively to public exigencies as they arise, and in pursuit of those necessary actions to maintain a reasonable measure of secrecy surrounding its operations and methods. . . . But, throughout the ages when the weighing has had to be done, time, wisdom and hard experience, aided by the inherent soundness of our underlying values, have steered resolution

on a fairly consistent course. One guiding principle in that path is clearly marked in tried and proved results: that, by definition, efficiency, invariably serves as the quickest and most expedient way to get from here to there; but, in the protection of fundamental values, the race is not always to the swiftest or cheapest means. So the Constitution counsels. . . . This pronouncement echoes other like counsel issued when the Court has been called upon to settle conflicts of equally high moment. In another prominent case in point the Court remarked: "Even the war power does not remove the constitutional limitations safeguarding essential liberties."

*Id.* at \*9. (quoting *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398, 426 (1934)). Clearly, there are boundaries which cannot be crossed by the government in pursuing admittedly rational goals.

In recognizing that the government cannot reach across certain boundaries, the court recognized that the struggle between the power of the government to achieve its legitimate ends compared to the power of the citizens in maintaining their rights necessarily weighs in favor of the government. While the government has many different means in order to achieve a legitimate end, the citizenry lacks simultaneous methods to exercise

their constitutionally guaranteed rights. Furthermore, once a right is extinguished, such as the Fourth and First Amendment rights implicated in *Doe*, the right is often permanently extinguished, as the citizenry possesses no manner in which to reassert the extinguished right.

Judge Marrero also found that the portions of the Patriot Act at issue, in which the Internet service provider was barred in perpetuity from discussing the NSL, amounted to a form of prior restraint on speech, which was also ruled impermissible. The court noted that "an unlimited government warrant to conceal, effectively a form of secrecy per se, has no place in our open society." *Id.* at 143.

What does this case mean to those involved in the criminal justice system? This case signals a change in the attitude of the judiciary, and the country as a whole, that the government can no longer act in an arbitrary and unilateral manner to combat terrorism. In limiting the power of the government to act in such a manner, Judge Marrero has made it clear that defense attorneys must no longer bow to the seemingly overwhelming will of the federal government, but must act to preserve the rights of defendants against unconstitutional police power.

Also, in striking down overreaching portions of the Patriot Act, it is clear that similar portions of the Act, such as those portions allowing for unfettered intrusions into such personal information as medical records and financial records, may soon find themselves under judicial scrutiny. Therefore, defense attorneys and defendants alike

must maintain a vigil over the investigatory methods used by law enforcement agencies, and challenge any and all methods that run afoul of the Constitution, even if seemingly protected by the Patriot Act.

In challenging the constitutionality of the Patriot Act, NLPA finds itself at the forefront of such efforts, much like its leading role in arguing for the sentencing reforms that accompanied such landmark cases as *Apprendi v. New Jersey* and *Blakely v. Washington*. Regardless of the area of criminal law, be it sentencing rights or Fourth Amendment issues, NLPA continues to maintain its role as a leading advocate for the rights of the accused, and as such is always ready and willing to assist those who feel that their rights have been violated.

### THE ELEMENTS OF A SEARCH WARRANT

Most criminal investigations are supported by a search warrant. Perhaps taken for granted as valid, the warrant is often left unchallenged by defense attorneys. However, the mere presence of a search warrant does not automatically mean that the warrant is valid and beyond reproach. Search warrants must be carefully crafted and satisfy a number of procedural and mechanical safeguards in order to be valid.

The first element that must be satisfied for a warrant to be deemed valid is that the warrant must be issued by a disinterested, neutral, and detached magistrate. *Johnson v. United States*, 333 U.S. 10 (1948). The magistrate cannot be a

law enforcement official of any type. Magistrates cannot be paid for issuing warrants, while having pay withheld for denying warrants. Magistrates cannot blindly “rubber stamp” warrant applications without determining if probable cause exists. Basically, a magistrate will be held to be neutral and detached only if his or her impartiality cannot be questioned.

Next, the magistrate must find probable cause to believe that the place to be searched contains items connected with criminal activity. This determination is to be made based only upon the facts presented to the magistrate. The decision by the magistrate must be one that would be reached by a reasonably prudent person and must be dependent upon reliable information.

Probable cause has been defined as meaning no more than the existence of a “fair probability” that evidence of a crime will be found. A totality of the circumstances approach is utilized in determining if probable cause exists, measuring those facts available to the magistrate at the time of decision. A practical, nontechnical approach is used to determine whether probable cause exists, such as whether a particularized and objective basis for suspecting the place to be searched of containing evidence of a crime exists.

However, a search warrant is not a blanket to cover all possible evidence of a crime. Rather, warrants must describe the place to be searched and the items to be seized with particularity. For instance, a warrant leaving to the police officer the decision of what items to seize in a search for

obscene materials is invalid. Only those items that the executing officer could reasonably believe were described as searchable by the warrant may be searched. Further, where a search uncovers items, such as computer files, containing a mixture of searchable and non-searchable content, the items must be separated before a search is executed.

The evidence used to support a warrant application, normally in the form of an affidavit, must contain more than mere conclusions to enable the magistrate to make an independent evaluation of whether probable cause exists. The facts upon which officers relied in seeking a warrant must be presented to the magistrate. A “bare-bones” affidavit stating that the affiant believes that probable cause exists will not satisfy the necessary showing needed to obtain a warrant. An informant who has presented the information upon which a warrant is to be based must be determined to be reliable, with measures of reliability depending upon such factors as the informant’s history of veracity and the basis for the informant’s knowledge. Corroboration of an informant’s statement obviously increases the statement’s reliability.

Furthermore, information supporting a warrant must not be stale. The evidence supporting issuance of the warrant must be closely related to the time in which the warrant is sought. An informant cannot observe controlled substances in a location and then request a search warrant be issued based upon such information two years after the substances are observed. The question of staleness depends upon

the inherent nature of the alleged crime, such as the thing to be seized (*i.e.*, whether perishable and easily transferable) and the nature of the criminal (*i.e.*, whether nomadic or entrenched).

Once a search warrant is issued, issues still remain as to its execution. Law enforcement officials may not exceed the scope of the warrant in conducting a search. Such protection prevents a "general, exploratory rummaging" in a person's belongings. As to what may be seized, "nothing is left to the discretion of the officer executing the warrant." *United States v. Janus Industries*, 48 F.3d 1548 (10<sup>th</sup> Cir. 1995). However, a search may be extensive as reasonably necessary to locate the items described in the warrant. Therefore, a warrant to search a specific area for an item authorizes law enforcement officials to do such things as break open locked containers which may contain the object of the search. Furthermore, the plain view doctrine allows police to search and seize an item visible in their plain view when said item is clearly an instrumentality of crime, even if the item is not included in the search warrant.

Execution of the warrant also requires that law enforcement officials make a lawful entry into the location sought to be searched. Lawful entry requires that law enforcement officials announce their presence and intent to enter. Only in situations where announcing would be dangerous or would allow for the destruction of evidence is this requirement waived. Although no minimum time exists between the announcement and the entry, no

more than 15 seconds normally need be waited.

Finally, in challenging the validity of a search warrant, it must be remembered that the decision of the magistrate to issue a warrant will be given great deference. Furthermore, when a law enforcement official reasonably relies upon a warrant that is subsequently determined to be invalid, the evidence seized will not be suppressed. Only when a warrant is unreasonably relied upon will subsequently seized evidence be suppressed.

### RECENT SUCCESSFUL CASES

Since NLPA's newsletter in January we have had 16 successful cases. In addition to the sentencing successes, we are seeing more and more recently the trend of appeals being successful in the Federal Court of Appeals. In all of the cases below these cases were remanded for the *Booker* decision. It is usually not a common result of us to see so many appeal victories however, this was exactly what our attorneys were projecting when reviewing the *Blakely* decision and the possible effects it would have on defendants in the Court of Appeals. These cases are set forth below.

**Oronde Stokes** - (USDC WD MI) Mr. Stokes was sentenced to 192 months. The guidelines recommended 292 - 365 months. However, statutorily maximum sentence of 20 year is LESS than guideline range and statutorily maximum of 20 years or 240 months shall be the guideline sentence pursuant to U.S.S.G. § 5G1.1(a) Saving him 5 years!

**Lee Robinson** - (USDC MD FL) NLPA was hired to assist Mr. Robinson's attorney with research for his sentencing. His PSI recommended a guideline range of 262-327 months. With our help his attorney was able to receive for him a sentence of 188 months in prison. This saved him more than 6 years in prison.

**Pedro Ortega-Chavez** - (USDC KS) NLPA was contracted in this case to assist counsel in getting a lower sentence than that of the 168-210 months that his PSI was recommending. With our assistance and research his attorney was able to achieve a reduced sentence of only 87 months. This saved Mr. Ortega more than 7 years incarceration.

**Robinson Martinez** - (USDC WD MI) NLPA assisted Mr. Martinez's counsel in the preparation of sentencing research to help reduce the guideline range of 97-121 months that his PSI recommended. At his hearing Mr. Martinez received a sentence of only 48 months imprisonment.

**Hasan Howard** - (USDC ND OH) NLPA assisted Mr. Howard's counsel in fighting his PSI recommendation of 97-121 months. With our help his attorney was able to get him a sentence of 67 months. This saved Mr. Howard at least 30 months imprisonment.

**Calvin Goodrich** - (USDC ED PA) NLPA has been hired to assist Mr. Goodrich and his counsel with his sentencing and appeal. His PSI recommended life for him. With our help his attorney achieved a sentence of 138 months (11 ½ years).

**Darryl Carl Tyler** - (USDC ED NY) NLPA was hired to assist counsel for Mr. Tyler in the preparation of the appeal of his life sentence. On March 14, 2005 the Court of Appeals for the 2<sup>nd</sup> Circuit affirmed the conviction but, remanded the case for re-sentencing. On March 28, 2005 the US District Court established new sentencing date of June 23, 2005 for Mr. Tyler setting aside his life sentence.

**Nathaniel Mitchell** - (USDC ED TX) NLPA assisted counsel in this case in fighting a recommendation of 240 months in Mr. Mitchell's PSI report. At his sentencing he received just 165 months - saving him more than 6 years in prison.

**Luc Van Nguyen** - (USDC CD CA) Mr. Nguyen was facing 168-210 months imprisonment. With NLPA's help his attorney was able to achieve for him a sentence of 154 months - saving him 14-56 months in prison.

**Sharron Robinson** - (USDC NJ) NLPA assisted Mr. Robinson's counsel in fighting a recommendation of 151-188 months in his PSI report. With our help he received a sentence of 144 months. This saved him at least seven months imprisonment.

**Fratz Duperval** - (USDC MD GA) Mr. Duperval hired NLPA to assist him in fighting his case at sentencing. His PSI recommended 24-30 months. With our help Mr. Duperval received only 18 months - saving him nearly half the time in prison and paving the way for an earlier release via the drug treatment program.

**Jerry Banks** - (USDC ND OH) NLPA prepared sentencing research for Mr. Bank's attorney. PSR recommended 262-357 months. At sentencing Mr. Banks received 144 months thus saving him 118-213 month imprisonment.

**Darryl Green** - (USDC SD OH) During April the appeal was decided and the judgement vacated and remanded back to the District Court for re-sentencing for possible *Booker* issues.

**Ernest Tate** - (USDC ND OH) NLPA prepared this appeal for Mr. Tate's attorney in which the case was also vacated and remanded back to the District Court for re-sentencing based on *Booker*.

**Tyrone Smith** - (USDC MD PA) Again, the Court of Appeals ruled in favor of Mr. Smith and vacated the judgement remanding the case back to the District Court for re-sentencing based on *Booker*.

**Jeremy Fish** - (7<sup>th</sup> Cir. COA) In the Fish case NLPA was hired by Attorney Joan Boyd to assist with a Petition for Writ of Cert. The case was remanded to the Court of Appeals for review of *Booker* application.

### ANOTHER NLPA VICTORY

#### **Conviction for Listed Chemical Possession Does Not Result in Sentence for the Amount of Methamphetamine That Could Be Produced**

Is the government trying to sentence one of your client's for an amount of drugs that he was not actually involved with? What about a crime he didn't actually commit? Unfortunately, scenarios

such as these are all too common in today's legal world, where overzealous prosecution by the government seems to be a more frequent occurrence than ever before. A good example is the case of *United States v. Bruce Byers*, Case No. 03-CR-8-20, United States District Court for the Southern District of Ohio (Columbus).

Mr. Byers was convicted of possession of a chemical used to manufacture methamphetamine, but was acquitted of conspiracy to manufacture methamphetamine and manufacturing methamphetamine. Despite these acquittals, the government sought to have him sentenced based on the amount of methamphetamine that could be produced from the chemical he possessed, instead of the actual quantity of the chemical. Under the chemical quantity table of United States Sentencing Guideline § 2D1.12, Mr. Byers would have received a base offense level of 12 for the amount of chemicals he was convicted of possessing. The government argued that he should be sentenced under §2D1.1's drug quantity table for the amount of methamphetamine that **could** have been produced from the chemical he possessed, and his resulting base offense level should have been 26. To back up their position, the government had a single Fifth Circuit case dealing with a similar situation where the court ultimately sentenced the defendant under a higher base offense level from § 2D1.1's drug quantity table, instead of a lower base offense level from the chemical quantity table.

Fortunately for Mr. Byers, he was represented by a highly experienced criminal defense attorney named Keith Golden, from the law firm of Krupman, Golden, Meizlish, Marks & Wittenberg, LLP of Columbus, Ohio. Since Attorney Golden had utilized NLPA's research services numerous times over the years, he knew that their research staff might be able to uncover case law to help him dispute the government's sentencing theories. Attorney Golden called NLPA and brought one of the research attorneys up to speed on the case. NLPA's experienced research staff immediately went to work, and was able to uncover a significant amount of case law favorable to Mr. Byer's position at sentencing. When faced with the irrefutable case law provided by NLPA, and the arguments skillfully presented by Attorney Golden, the court had no choice but to sentence Mr. Byers based on the lower offense level provided by the chemical quantity table.

Thanks to the tireless efforts of Attorney Keith Golden and NLPA, Mr. Byers received a sentence of only 27 months, which is approximately five years shorter than the 78-97 month sentence the government initially sought. Naturally, the United States Attorney's office was severely disappointed about the outcome, but there were no legitimate arguments for them to make in the face of the case law provided to Attorney Golden by NLPA.

NLPA continues to be at the forefront of developing criminal

law, assisting attorneys in all 50 states and every federal jurisdiction. If you or your clients need assistance with pretrial work, a sentencing hearing, an appeal, state or federal post-conviction motion, deportation proceedings, or any other area of developing law, NLPA's resources and experience can provide you with the most up to the minute research and arguments available.

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### PRESS RELEASE

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The Sixth Amendment to the United States Constitution guarantees every individual charged with the commission of a felony the right to be represented by an attorney both at trial and on appeal. The Sixth Amendment does not guarantee you the right to the counsel of your choice. This forces many defendants to proceed to trial with an attorney appointed to represent them, regardless of their working relationship with that attorney simply due to a lack of money.

The increasing and often excessive costs of legal services leave most defendants and their families without the ability to retain the attorney of their choice. That is why National Legal Professional Associates is pleased to announce that we have entered into an arrangement with the Sixth Amendment Foundation to help defendants and their families retain NLPA to assist their counsel.

The Sixth Amendment Foundation, of Blue Ash, Ohio is a privately funded group whose main purpose is to assist criminal defendants and their families obtain the legal representation they need and deserve - especially for sentencing, appeal and post-conviction proceedings. The Sixth Amendment Foundation provides creative financing packages to defendants and their families that enables payments to be set up on a monthly basis. The Sixth Amendment Foundation has programs for everyone, regardless of whether you own property or you have prior bankruptcies or an imperfect credit score.

For information on financing NLPA's assistance to your counsel contact the Sixth Amendment Foundation at, PO Box 428807, Blue Ash, Ohio 45242. Alternatively you can call them at 513.600.2917.

For additional information on the services offered by National Legal Professional Associates please contact our offices at the address, phone number or website above.

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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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