

# **FEDERAL CONVICTIONS REVERSED**

The following is a publication of the Office of the Federal Public Defender for the Northern District of New York. The cases are from United States Courts of Appeal and the United States Supreme Court. The opinions contain at least one point favorable to criminal defendants.

The purpose is to give CJA Panel Attorneys a shortcut to case law favoring their clients. All cases should be researched to see if they are still viable. A precedent in one jurisdiction is not necessarily the law elsewhere. None of the cases should be cited without first reviewing the entire opinion. This warning is especially for prisoners and defendants who wish to rely on the cases herein. A one-line summary cannot possibly be sufficient to cite these cases without first reading each.

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This collection has previously existed as Reversible Errors and Errores Juris. The new name reflects that coverage is now limited to errors overturning federal criminal convictions, not sentences, nor are other aspects of the criminal justice system addressed. There are two reasons. First, it has been difficult to update so many areas of law on a regular basis. Second, federal sentencing law has changed drastically in recent years and it will take time to determine the common bases for reversal among federal jurisdictions.

Updates can be found at [www.nynd-fpd.org](http://www.nynd-fpd.org) The publications will be distributed by e-mail in Acrobat 8.0. Those who need an Acrobat reader can download one free at [www.adobe.com](http://www.adobe.com) .

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Alexander Bunin, Editor, Federal Public Defender, 39 North Pearl Street, 5<sup>th</sup> Floor, Albany, NY 12207  
[alex.bunin@fd.org](mailto:alex.bunin@fd.org).

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# Federal Convictions Reversed

## Right to Counsel

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United States v. McKinley, 58 F.3d 1475 (10th Cir. 1995) (Court improperly denied defendant self-representation).

United States v. McDermott, 64 F.3d 1448 (10th Cir.), cert. denied, 516 U.S. 1121 (1996) (Barring defendant from sidebars with stand-by counsel denied self-representation).

United States v. Goldberg, 67 F.3d 1092 (3rd Cir. 1995) (Defendant did not forfeit counsel by threatening his appointed attorney).

United States v. Duarte-Higareda, 68 F.3d 369 (9th Cir. 1995) (Court failed to appoint counsel for evidentiary hearing).

Delguidice v. Singletary, 84 F.3d 1359 (11th Cir. 1996) (Psychological testing of a defendant without notice to counsel violated the Sixth Amendment).

Williams v. Turpin, 87 F.3d 1204 (11th Cir. 1996) (State that created a statutory right to a motion for new trial must afford counsel and an evidentiary hearing).

United States v. Ming He, 94 F.3d 782 (2d Cir. 1996) (Cooperating defendant had the right to have counsel present when attending a presentence debriefing).

Weeks v. Jones, 100 F.3d 124 (11th Cir. 1996) (Right to counsel in a habeas claim did not turn on the merits of the petition).

United States v. Keen, 104 F.3d 1111 (9th Cir. 1996) (Court did not sufficiently explain to a defendant the dangers of pro se representation).

Carlo v. Chino, 105 F.3d 493 (9th Cir.), cert. denied, 523 U.S. 1036 (1998) (State statutory right to post-booking phone calls was protected by federal due process).

United States v. Amlani, 111 F.3d 705 (9th Cir. 1997) (Prosecutor's repeated

disparagement of an attorney in front of his client, denied the defendant his right to chosen counsel).

United States v. Taylor, 113 F.3d 1136 (10th Cir.), cert. denied, 528 U.S. 904 (1999) (Court did not assure a proper waiver of counsel).

Blankenship v. Johnson, 118 F.3d 312 (5th Cir. 1997) (When the prosecution sought discretionary review, the defendant had a right to counsel).

United States v. Mills, 138 F.3d 928 (11th Cir.), modified, 152 F.3d 937, cert. denied, 525 U.S. 1003 (1998) (Defendant could not be made to share codefendant counsel's cross-examination of government witness).

United States v. Pollani, 146 F.3d 269 (5th Cir. 1998) (Pro se defendant's late request for counsel should have been honored).

Henderson v. Frank, 155 F.3d 159 (3rd Cir. 1998) (Defendant was denied counsel at suppression hearing).

United States v. Klat, 156 F.3d 1258 (D.C. Cir. 1999) (Counsel was required at competency hearing).

United States v. Iasiello, 166 F.3d 212 (3rd Cir. 1999) (Indigent defendant had right to appointed counsel at hearing).

United States v. Proctor, 166 F.3d 396 (1st Cir. 1999) (Ambiguous request for counsel tainted previous waiver).

United States v. Leon-Delfis, 203 F.3d 103 (1st Cir. 2000) (Questioning after polygraph violated defendant's right to counsel).

United States v. Hernandez, 203 F.3d 614 (9th Cir. 2000) (Defendant was denied self-representation at plea).

United States v. Russell, 205 F.3d 768 (5th Cir. 2000) (Absence of lawyer due to illness did not waive right to counsel).

United States v. Hayes, 231 F.3d 1132 (9th Cir. 2000) (Defendant did not voluntarily waive representation).

Buhl v. Cooksey, 233 F.3d 783 (3rd Cir. 2000) (Defendant did not voluntarily waive counsel at trial).

United States v. Boone, 245 F.3d 352 (4th Cir. 2001) (Two attorneys must be appointed

for defendant facing death-eligible crime).

United States v. Adelzo-Gonzalez, 268 F.3d 772 (9th Cir. 2001) (Court abused discretion denying substitution of counsel).

United States v. Davis, 269 F.3d 514 (5th Cir. 2001) (Judge must warn defendant of effects of hybrid counsel).

Moore v. Puckett, 275 F.3d 685 (8th Cir. 2001) (Court prevented lawyer and client from speaking during trial).

Manning v. Bowersox, 310 F.3d 571 (8th Cir. 2002) (Use of informants after defendant was charged violated right to counsel).

United States v. Midgett, 342 F.3d 321 (4th Cir. 2003) (Defendant should not have been forced to choose between right to lawyer and testifying in his own defense).

Cordova v. Baca, 346 F.3d 924 (9th Cir. 2003) (Reversal for a denial of counsel, without effective waiver, is automatic).

Caver v. Straub, 349 F.3d 340 (6th Cir. 2003) (Counsel was not present when jury received additional instructions).

United States v. Erskine, 355 F.3d 1161 (9th Cir. 2004) (Defendant did not knowingly and voluntarily waive counsel).

Robinson v. Ignacio, 360 F.3d 1044 (9th Cir. 2004) (There was a right to counsel at sentencing even after previous waiver).

United States v. Hamilton, 391 F.3d 1066 (9th Cir. 2004) (Court allowed testimony in absence of defense counsel).

In Re: Grand Jury Subpoena, 419 F.3d 329 (5th Cir. 2005) (Court improperly applied crime-fraud exception to attorney-client privilege).

Jones v. Jamrog, 414 F.3d 585 (6th Cir. 2005) (Defendant not adequately advised about self-representation).

United States v. Jones, 421 F.3d 359 (5th Cir. 2005) (Defendant did not intelligently waive counsel at trial).

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United States v. Collins, 430 F.3d 1260 (10th Cir. 2005) (Defendant was denied counsel at competency hearing when lawyer refused to participate pending motion to withdraw).

United States v. Tucker, 451 F.3d 1176 (10th Cir. 2006) (Request for self-representation should have been granted).

United States v. Jones, 452 F.3d 223 (3rd Cir. 2006) (Defendant did not unequivocally waive counsel).

United States v. Gonzalez-Lopez, 548 U.S. 140 (2006) (Denial of chosen counsel was structural error).

United States v. Sandoval-Mendoza, 472 F.3d 645 (9th Cir. 2006) (Court prohibited discussion between defendant and counsel during overnight recess).

Jones v. Walker, 496 F.3d 1216 (11th Cir. 2007) (Defendant had not clearly asserted waiver of counsel).

United States v. Ryals, 512 F.3d 416 (7th Cir. 2008) (Court erred by refusing to appoint new counsel after attorney withdrew).

United States v. Forrester, 512 F.3d 500 (9th Cir.), cert. denied, 129 S.Ct. 249 (2008) (Waiver of counsel was not knowing and voluntary).

### Discovery

United States v. Alzate, 47 F.3d 1103 (11th Cir. 1995) (A prosecutor withheld exculpatory evidence).

United States v. Barnes, 49 F.3d 1144 (6th Cir. 1995) (Request for discovery of extraneous evidence created a continuing duty to disclose).

United States v. Boyd, 55 F.3d 239 (7th Cir. 1995) (Government failed to disclose drug use and drug dealing by prisoner-witnesses).

United States v. Hanna, 55 F.3d 1456 (9th Cir. 1995) (Prosecutor should have learned of Brady material even if it was not in her possession).

Kyles v. Whitley, 514 U.S. 419 (1995) (Prosecution failed to turn over material and favorable evidence, sufficient to change result of case).

United States v. Wood, 57 F.3d 733 (9th Cir. 1995) (Government failed to disclose favorable FDA materials).

United States v. Camargo-Vergara, 57 F.3d 993 (11th Cir. 1995) (Government failed to disclose defendant's post-arrest statement).

In Re Grand Jury Investigation, 59 F.3d 17 (2d Cir. 1995) (Court properly required disclosure of documents subpoenaed by the grand jury).

United States v. O'Conner, 64 F.3d 355 (8th Cir.), cert. denied, 517 U.S. 1174 (1996) (Evidence of government witness threats and collaboration were not disclosed).

In Re Grand Jury, 111 F.3d 1083 (3rd Cir. 1997) (Government could not seek disclosure of phone conversations that were illegally recorded by a third party).

United States v. Arnold, 117 F.3d 1308 (11th Cir. 1997) (Prosecutor withheld exculpatory tapes of government witnesses).

United States v. Vozzella, 124 F.3d 389 (2d Cir. 1997) (Evidence of perjured testimony should have been disclosed).

United States v. Fernandez, 136 F.3d 1434 (11th Cir. 1998) (Court must hold hearing when defendant makes showing of a Brady violation).

United States v. Mejia-Mesa, 153 F.3d 925 (9th Cir. 1998) (Brady claim required hearing).

United States v. Scheer, 168 F.3d 445 (11th Cir. 1999) (Government failed to disclose it had intimidated key prosecution witness).

United States v. Ramos, 179 F.3d 1333 (11th Cir. 1999) (Defendant was denied opportunity to depose witness who was outside country).

United States v. Riley, 189 F.3d 802 (9th Cir. 1999) (Intentional destruction of notes of interview with informant violated Jencks Act).

Nuckols v. Gibson, 233 F.3d 1261 (10th Cir. 2000) (Government failed to disclose criminal allegations against key prosecution witness).

United States v. Abbott, 241 F.3d 29 (1st Cir. 2001) (Government was obligated to disclose linkage between plea agreements of defendant and his mother).

Mitchell v. Gibson, 262 F.3d 1036 (10th Cir.

2001) (Withholding exculpatory evidence that could have affected sentence).

Boss v. Pierce, 263 F.3d 734 (7th Cir.), cert. denied, 535 U.S. 1078 (2002) (Witness's statement were unavailable to defendant through due diligence).

Dilosa v. Cain, 279 F.3d 259 (5th Cir. 2002) (Failed to disclose hair sample on victim that was not defendant).

Benn v. Lambert, 283 F.3d 1040 (9th Cir.), cert. denied, 537 U.S. 942 (2002) (Prosecutor suppressed exculpatory evidence affecting witness's veracity).

Bailey v. Richardson, 339 F.3d 1107 (9th Cir. 2003) (Prosecutor should have disclosed exculpatory therapy records of victim).

In Re Grand Jury Subpoena (Torf), 357 F.3d 900 (9th Cir. 2004) (Work product doctrine applied to criminal defendant's attorney).

United States v. Sipe, 388 F.3d 471 (5th Cir. 2004) (Government failed to reveal witness's bias and criminal history).

Gantt v. Roe, 389 F.3d 908 (9th Cir. 2004) (Prosecutor failed to disclose exculpatory evidence).

Banks v. Dretke, 540 U.S. 668 (2004) (Defendant was denied exculpatory evidence).

United States v. Alvarez, 358 F.3d 1194 (9th Cir.), cert. denied, 543 U.S. 887 (2004) (Defendant entitled to impeaching evidence if material).

United States v. Rivas, 377 F.3d 195 (2d Cir. 2004) (Government failed to provide exculpatory evidence until after verdict).

United States v. Moussaoui, 382 F.3d 453 (4th Cir.), cert. denied, 544 U.S. 931 (2005) (Defendant may depose witnesses who have material favorable testimony when other access to testimony is unavailable).

United States v. Blanco, 392 F.3d 382 (9th Cir. 2004) (Government suppressed information about confidential informant).

Slutzker v. Johnson, 393 F.3d 373 (3rd Cir. 2004) (Prosecutor failed to disclose police reports).

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Horton v. Mayle, 408 F.3d 570 (9th Cir. 2004) (Prosecutor failed to disclose deal with key witness).

United States v. Bahamonde, 445 F.3d 1225 (9th Cir. 2006) (Homeland Security regulation requiring written explanation for subpoenaing officer violated due process).

Youngblood v. West Virginia, 547 U.S. 867 (2006) (Suppression of victim's note alleging sex was consensual denied defendant material exculpatory evidence).

Trammell v. McKune, 485 F.3d 546 (10th Cir. 2007) (Suppression of receipts which were material to show another was implicated in theft and murder violated Brady).

United States v. Jernigan, 492 F.3d 1050 (9th Cir. 2007) (Arrest of woman who resembled defendant should have been disclosed).

United States v. Rodriguez, 496 F.3d 221 (2d Cir. 2007) (Government must produce all evidence establishing its witness lied).

Tassin v. Cain, 517 F.3d 770 (5th Cir. 2008) (Prosecution failed to disclose witness's deal for leniency).

## Arrest

United States v. Lambert, 46 F.3d 1064 (10th Cir. 1995) (Defendant was seized while agents held his driver's license for over 20 minutes).

United States v. Little, 60 F.3d 708 (10th Cir. 1995) (Requiring a passenger to go to the baggage area restrained her liberty).

United States v. Mesa, 62 F.3d 159 (6th Cir. 1995) (Nervousness and inconsistencies did not validate continued traffic stop).

United States v. Buchanon, 72 F.3d 1217 (6th Cir. 1995) (Defendants were seized when the troopers separated them from their vehicle).

United States v. Roberson, 90 F.3d 75 (3rd Cir. 1996) (Anonymous call did not give officers reasonable suspicion to stop a defendant on the street merely because his clothes matched the caller's description).

United States v. Davis, 94 F.3d 1465 (10th Cir. 1996) (No reasonable suspicion for stop of a defendant known generally as a gang member and drug dealer).

Washington v. Lambert, 98 F.3d 1181 (9th Cir. 1996) (General description of two African-American males did not justify stop).

United States v. Jerez, 108 F.3d 684 (7th Cir. 1997) (Nighttime confrontation by police at the defendant's door was a seizure).

United States v. Miller, 146 F.3d 274 (5th Cir. 1998) (Leaving turn signal on violated no law and did not justify stop).

United States v. Jones, 149 F.3d 364 (5th Cir. 1998) (Agent lacked reasonable suspicion for investigatory immigration stop).

United States v. Acosta-Colon, 157 F.3d 9 (1st Cir. 1999) (Defendant's 30 minute handcuffed detention, preventing him from boarding flight, was not a lawful stop).

United States v. Salzano, 158 F.3d 1107 (10th Cir. 1999) (Cross country trip, nervousness, nor scent of evergreen, justified warrantless detention).

United States v. Dortch, 199 F.3d 193 (5th Cir.), amended, 203 F.3d 883 (2000) (Continued detention after traffic stop was unreasonable).

United States v. Freeman, 209 F.3d 464 (6th Cir. 2000) (Crossing lane-divider did not create probable cause for traffic stop).

United States v. Thomas, 211 F.3d 1186 (9th Cir. 2000) (Tip did not provide reasonable suspicion for stop).

United States v. Guevara-Martinez, 262 F.3d 751 (8th Cir. 2001) (Illegal arrest tainted later fingerprint evidence).

Northrop v. Trippett, 265 F.3d 372 (6th Cir.), cert. denied, 535 U.S. 955 (2002) (Anonymous tip of two black males wearing brand clothing and selling drugs did not justify detention).

Sparing v. Village of Olympia Fields, 266 F.3d 684 (7th Cir. 2001) (Entering screen door without consent caused an illegal arrest).

Burchett v. Kiefer, 310 F.3d 937 (6th Cir. 2002) (Defendant detained for three hours in police cruiser in 90-degree heat with no

ventilation was illegal seizure).

Ganwich v. Knapp, 319 F.3d 1115 (9th Cir. 2003) (Detaining employees of suspected organization was illegal).

United States v. Brown, 401 F.3d 588 (4th Cir. 2005) (Anonymous tip did not amount to reasonable suspicion to detain).

United States v. Flores-Sandoval, 422 F.3d 711 (8th Cir. 2005) (Lack of evidence supporting initial detention required suppression of statement).

United States v. Johnson, 427 F.3d 1053 (7th Cir. 2005) (There was no basis to detain defendant at his home).

United States v. Lopez, 443 F.3d 1280 (10th Cir. 2006) (Stopping defendant for identification was not a consensual encounter).

United States v. Brown, 448 F.3d 239 (3rd Cir. 2006) (No reasonable suspicion to detain pedestrians who shared only the same race as robbery suspects).

United States v. Manzo-Jurado, 457 F.3d 928 (9th Cir. 2006) (Presence of Hispanic work crew near Canadian border did not amount to reasonable suspicion).

United States v. Colonna, 511 F.3d 431 (4th Cir. 2007) (Defendant held in law enforcement vehicle for three hours was arrested and required warnings).

United States v. Tyler, 512 F.3d 405 (7th Cir. 2008) (Open container alone was insufficient to arrest for public intoxication).

## Search of Persons

United States v. Caicedo, 85 F.3d 1184 (6th Cir. 1996) (Record lacked evidence to support a finding of the defendant's consent to search).

United States v. Eustaquio, 198 F.3d 1068 (8th Cir. 1999) (No reasonable suspicion to search bulge on defendant's midriff).

United States v. Gray, 213 F.3d 998 (8th Cir. 2000) (No reasonable suspicion to stop defendant for protective frisk).

United States v. Burton, 228 F.3d 524 (4th Cir. 2000) (Officer's safety alone

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did not justify search of pocket).

*United States v. Miles*, 247 F.3d 1009 (9th Cir. 2001) (Manipulating small box in clothing exceeded pat-down search).

*Fontana v. Haskin*, 262 F.3d 871 (9th Cir. 2001) (Claim of sexual harassment by officer was allegation of illegal search).

*United States v. Hatcher*, 275 F.3d 689 (8th Cir. 2001) (A second pat-down was held illegal).

*United States v. Casadao*, 303 F.3d 440 (2d Cir. 2002) (Search of pocket was overly intrusive).

*United States v. Patterson*, 340 F.3d 368 (6th Cir. 2003) (Anonymous tip offered no reliable or meaningful information).

*United States v. Neely*, 345 F.3d 366 (5th Cir. 2003) (Defendant had expectation of privacy in clothing taken from hospital where he was patient).

*Doe v. Little Rock School*, 380 F.3d 349 (8th Cir. 2004) (Random, suspicion less searches of students, violated privacy).

*Bourgeois v. Peters*, 387 F.3d 1303 (11th Cir. 2004) (Unreasonable to require protesters to pass through metal detectors).

*United States v. Garcia-Beltran*, 389 F.3d 864 (9th Cir.), cert. denied, 549 U.S. 935 (2006) (Fingerprints taken for a criminal investigation may be subject to suppression).

*United States v. Sanders*, 424 F.3d 768 (8th Cir. 2005) (Defendant withdrew his consent).

*United States v. McKoy*, 428 F.3d 38 (1st Cir. 2005) (Parking and license violations did not justify pat down).

*United States v. Flatter*, 456 F.3d 1154 (9th Cir. 2006) (Officer had no reason to believe defendant was armed or dangerous for pat down).

*United States v. Wright*, 485 F.3d 45 (1st Cir. 2007) (Reasonable suspicion for the pat down search cannot be justified by discovery of weapon).

*United States v. Washington*, 490 F.3d 765 (9th Cir. 2007) (Initially consensual encounter can become illegal seizure by show of force).

*United States v. Holmes*, 505 F.3d 1288 (D.C. Cir. 2007) (Seizure of keys in pocket exceeded pat down and rendered items in locked car inadmissible).

*United States v. Barnes*, 506 F.3d 58 (1st Cir. 2007) (Body cavity search required reasonable suspicion contraband was hidden).

*United States v. Wilson*, 506 F.3d 488 (6th Cir. 2007) (Nervousness alone cannot justify pat down).

### Search of Private Vehicles

*United States v. Adams*, 46 F.3d 1080 (11th Cir. 1995) (Suppression of evidence seized from motor home was upheld).

*United States v. Chavis*, 48 F.3d 871 (5th Cir. 1995) (Court improperly placed the burden on the defendant to show a warrantless search occurred).

*United States v. Angulo-Fernandez*, 53 F.3d 1177 (10th Cir. 1995) (Confusion about who owned a stalled vehicle did not create probable cause for its search).

*Ornelas v. United States*, 517 U.S. 690 (1996) (Defendant's motion to suppress should be given de novo review by the court of appeals).

*United States v. Duguay*, 93 F.3d 346 (7th Cir.), cert. denied, 526 U.S. 1029 (1999) (Car could not be impounded for a later search unless the arrestee could not provide for its removal).

*United States v. Elliott*, 107 F.3d 810 (10th Cir. 1997) (Consent to look in trunk was not consent to open containers within).

*United States v. Chan-Jimenez*, 125 F.3d 1324 (9th Cir. 1997) (Defendant did not consent to search of truck).

*United States v. Cooper*, 133 F.3d 1394 (11th Cir. 1998) (Defendant had reasonable expectation of privacy in rental car four days after contract expired).

*United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998) (Continued detention of vehicle was not justified by articulable facts).

*United States v. Rodriguez-Rivas*, 151 F.3d 377 (5th Cir. 1998) (Vehicle stop lacked reasonable suspicion).

*United States v. Huguenin*, 154 F.3d 547 (6th Cir. 1998) (Checkpoint stop to merely look for drugs was unreasonable).

*United States v. Rivas*, 157 F.3d 364, rehearing denied, 166 F.3d 747 (5th Cir. 1999) (1. Drilling into trailer was not routine border search; 2. No evidence that drug dog's reaction was an alert).

*United States v. Iron Cloud*, 171 F.3d 587 (8th Cir. 1999) (Portable breath test results were inadmissible as evidence of intoxication).

*Knowles v. Iowa*, 525 U.S. 113 (1999) (Speeding ticket does not justify full search of vehicle).

*United States v. Payne*, 181 F.3d 781 (6th Cir. 1999) (Parole officer did not have reasonable suspicion to search defendant's trailer and truck).

*United States v. Lopez-Soto*, 205 F.3d 1101 (9th Cir. 2000) (No good faith mistake to warrantless car search).

*United States v. Wald*, 216 F.3d 1222 (10th Cir. 2000) (Odor of burnt methamphetamine in passenger compartment did not provide probable cause to search trunk).

*United States v. Baker*, 221 F.3d 438 (3rd Cir. 2000) (No reasonable suspicion to justify search of trunk).

*United States v. Jones*, 234 F.3d 234 (5th Cir. 2000) (Continued detention tainted search despite initial consent).

*United States v. Jones*, 242 F.3d 215 (4th Cir. 2001) (Anonymous tip did not justify investigatory stop of vehicle).

*United States v. Reinholz*, 245 F.3d 765 (8th Cir.), cert. denied, 534 U.S. 933 (2001) (Warrantless arrest lacked probable cause).

*United States v. Caro*, 260 F.3d 1209 (10th Cir. 2001) (Officer needed probable cause to look for VIN number inside door).

*United States v. Nee*, 261 F.3d 79 (1st Cir. 2001) (Suppression upheld when officers were found not to be credible about stop).

*United States v. Smith*, 263 F.3d 571 (6th Cir. 2001) (No reasonable suspicion for continued detention).

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United States v. Bishop, 264 F.3d 919 (9th Cir. 2001) (Admitting evidence from illegal stop was not harmless).

United States v. Holt, 264 F.3d 1215 (10th Cir. 2001) (Questioning about weapons exceeded stop).

United States v. Jones, 269 F.3d 919 (8th Cir. 2001) (Committing traffic violation after seeing police did not create probable cause to search vehicle).

United States v. Valdez, 267 F.3d 395 (5th Cir. 2001) (After computer check completed motorist should have been allowed to leave).

United States v. Gomez, 276 F.3d 694 (5th Cir. 2001) (Homeowner had expectation of privacy to vehicle of third party parked in driveway).

United States v. Chavez-Valenzuela, 279 F.3d 1062 (9th Cir. 2002) (Nervousness alone did not justify continued detention).

United States v. Sigmond-Ballesteros, 285 F.3d 1117, rehearing denied, 309 F.3d 545 (9th Cir. 2002) (Lacked reasonable suspicion to search car for undocumented aliens).

United States v. Mariscal, 285 F.3d 1127 (9th Cir. 2002) (No reasonable suspicion of traffic violation).

United States v. Townsend, 305 F.3d 537 (6th Cir. 2002) (Actions of occupants did not justify continued detention after stop).

United States v. Colin, 314 F.3d 439 (9th Cir. 2002) (No reasonable suspicion for traffic stop).

United States v. Green, 324 F.3d 375 (5th Cir.), cert. denied, 540 U.S. 823 (2003) (Firearm suppressed when defendant secured 25 feet from vehicle).

United States v. Golab, 325 F.3d 63 (1st Cir. 2003) (INS lacked reasonable suspicion to search vehicle).

United States v. Hoeker, 333 F.3d 1206 (10th Cir. 2003) (Driver of borrowed car had standing to contest search of vehicle).

United States v. Perkins, 348 F.3d 965 (11th Cir. 2003) (Detention exceeded purpose of traffic stop).

United States v. Richardson, 385 F.3d 625 (6th Cir. 2004) (Seizure of vehicle lacked reasonable suspicion).

United States v. Colletti, 387 F.3d 618 (7th Cir. 2004) (Illegal arrest voided vehicle search).

United States v. Hudson, 405 F.3d 425 (6th Cir. 2005) (No reasonable suspicion to detain vehicle).

United States v. Kennedy, 427 F.3d 1136 (8th Cir. 2005) (No probable cause to believe drugs were in car trunk).

United States v. Buckingham, 433 F.3d 508 (6th Cir. 2006) (Defendant may withdraw oral consent to search).

United States v. Edgerton, 438 F.3d 1043 (10th Cir. 2006) (Detention after purpose for stop ended was illegal and tainted consent to search).

United States v. Laughrin, 438 F.3d 1245 (10th Cir. 2006) (Poor driving record is not reasonable suspicion for stop).

United States v. Herrera, 444 F.3d 1238 (10th Cir. 2006) (Mistake that truck was a commercial vehicle, subject to inspection, was not saved by good faith).

United States v. Mosley, 454 F.3d 249 (3rd Cir. 2006) (All items seized from illegal traffic stop must be suppressed).

United States v. McDonald, 453 F.3d 958 (7th Cir. 2006) (Mistake of law did not excuse illegal traffic stop).

United States v. Andrews, 454 F.3d 919 (8th Cir.), on rehearing, 465 F.3d 346 (2006) (No objective basis to determine that car was following too closely).

United States v. Washington, 455 F.3d 824 (8th Cir. 2006) (Officer's mistake of law did not excuse illegal stop of vehicle).

United States v. Jenson, 462 F.3d 399 (5th Cir. 2006) (Illegal prolonged stop prevented voluntary consent to search vehicle).

United States v. Henderson, 463 F.3d 27 (1st Cir. 2006) (No basis to search passenger after traffic stop).

United States v. Spinner, 475 F.3d 356 (D.C. Cir. 2007) (Police did not have the reasonable suspicion defendant was armed and dangerous necessary to justify their search of his vehicle).

United States v. Martinez, 486 F.3d 855 (5th Cir. 2007) (Vehicle stop based on anonymous tip was not supported by reasonable suspicion, and later consent was tainted).

United States v. Virden, 488 F.3d 1317 (11th Cir. 2007) (Moving vehicle to location of drug dog without probable cause was an illegal seizure).

United States v. Espinoza, 490 F.3d 41 (1st Cir. 2007) (No reasonable suspicion to stop van for out-of-state plates and owner's previous investigation for human smuggling).

Brendlin v. California, 127 S.Ct. 2400 (2007) (Passenger may challenge traffic stop).

United States v. Proctor, 489 F.3d 1348 (D.C. Cir. 2007) (Impoundment of vehicle did not follow an established inventory policy).

United States v. Grigg, 498 F.3d 1070 (9th Cir. 2007) (Defendant's vehicle was improperly stopped on reasonable suspicion of past misdemeanor violation).

United States v. Reeves, 512 F.3d 123 (4th Cir. 2008) (Anonymous tip was not corroborated).

United States v. Urrieta, 520 F.3d 569 (6th Cir. 2008) (Extended detention of defendant following initial traffic stop was unlawful).

United States v. Blair, 524 F.3d 740 (6th Cir. 2008) (There was no basis to detain motorist beyond issuance of traffic citation).

United States v. Valadez-Valadez, 525 F.3d 987 (10th Cir. 2008) (Merely driving below speed limit does not give reasonable suspicion to stop vehicle).

## Search of Commercial Vehicles

United States v. Garzon, 119 F.3d 1446 (10th Cir. 1997) (1. Passenger did not abandon bag by leaving it on bus; 2. General warrantless search of all bus passengers by dog was illegal).

Bond v. United States, 529 U.S. 334 (2000) (Manipulation of bag found on bus was illegal search).

## 6 FEDERAL CONVICTIONS REVERSED

United States v. Stephens, 206 F.3d 914 (9th Cir. 2000) (Defendant was illegally seized and searched on bus).

United States v. Ellis, 330 F.3d 677 (5th Cir. 2003) (After a general immigration inspection officers may not detain bus passengers without individualized suspicion).

### Search of Packages

United States v. Doe, 61 F.3d 107 (1st Cir. 1995) (Warrantless testing of packages at an airport checkpoint lacked justification).

United States v. Ali, 68 F.3d 1468, modified, 86 F.3d 275 (2d Cir. 1996) (Checking whether the defendant had a valid export license was not a proper ground for seizure).

United States v. Odum, 72 F.3d 1279 (7th Cir. 1995) (Court was limited to facts at the time the stop occurred to evaluate reasonableness of the seizure).

United States v. Nicholson, 144 F.3d 632 (10th Cir. 1998) (feeling through sides of bag was a search; Abandonment of bag was involuntary).

United States v. Fultz, 146 F.3d 1102 (9th Cir. 1998) (Guest had expectation of privacy in boxes he stored at another's home).

United States v. Rouse, 148 F.3d 1040 (8th Cir. 1998) (Search of bags lacked probable cause).

United States v. Allen, 159 F.3d 832 (4th Cir. 1999) (Inevitable discovery doctrine did not apply to cocaine found in duffle bag later detected by dog and warrant).

United States v. Johnson, 171 F.3d 601 (8th Cir. 1999) (No reasonable suspicion to intercept delivery of package).

United States v. Osage, 235 F.3d 518 (10th Cir. 2000) (Consent to search suitcase did not extend to sealed can inside).

United States v. Runyan, 275 F.3d 449 (5th Cir.), cert. denied, 537 U.S. 888 (2002) (Police could not open closed container discovered by previous private search).

United States v. Hernandez, 279 F.3d 302 (5th Cir. 2002) (Manipulation of

luggage tainted consent to search).

United States v. Escobar, 389 F.3d 781 (8th Cir. 2004) (Consent to search bag was not voluntary).

United States v. Waller, 426 F.3d 838 (6th Cir. 2005) (Resident could not consent to search of defendant's zippered suitcase in closet).

United States v. Purcell, 526 F.3d 953 (6th Cir. 2008) (There were no exigent circumstances to search luggage and no one was present with apparent authority to consent).

### Search of Real Property

United States v. Hill, 55 F.3d 479 (9th Cir. 1995) (Remand was required to see if there was a truly viable independent source for the search).

United States v. Ford, 56 F.3d 265 (D.C. Cir. 1995) (Search under a mattress and behind a window shade exceeded a protective sweep).

United States v. Tovar-Rico, 61 F.3d 1529 (11th Cir. 1995) (Possibility that surveillance officer was observed, did not create exigency for warrantless search of apartment).

United States v. Cabassa, 62 F.3d 470 (2d Cir. 1995) (Exigent circumstances were not relevant to the inevitable discovery doctrine).

United States v. Mejia, 69 F.3d 309 (9th Cir. 1995) (Inevitable discovery doctrine did not apply where the police simply failed to get a warrant).

J.B. Manning Corp. v. United States, 86 F.3d 926 (9th Cir. 1996) (Good faith exception to the warrant requirement does not affect motions to return property).

United States v. Leake, 95 F.3d 409 (6th Cir. 1996) (Neither the independent source rule, nor the inevitable discovery rule, saved otherwise inadmissible evidence).

United States v. Madrid, 152 F.3d 1034, rehearing denied, 160 F.3d 502 (8th Cir. 1998) (Inevitable discovery doctrine did not save illegal search of house).

United States v. Ivy, 165 F.3d 397 (6th Cir. 1999) (Consent to enter home was not

shown to be voluntary).

United States v. Johnson, 170 F.3d 708 (7th Cir. 1999) (Officers lacked reasonable suspicion to prevent occupant from leaving home).

United States v. Kiyuyung, 171 F.3d 78 (2d Cir. 1999) (Firearms found during warrantless search were not in plain view).

Flippo v. West Virginia, 528 U.S. 11 (1999) (No crime scene exception to warrant requirement).

United States v. Sandoval, 200 F.3d 659 (9th Cir. 2000) (Defendant had reasonable expectation of privacy in tent on public land).

United States v. Vega, 221 F.3d 789 (5th Cir.), cert. denied, 531 U.S. 1155 (2000) (The police cannot create exigency for search of leased home).

United States v. Reid, 226 F.3d 1020 (9th Cir. 2000) (Guest did not have apparent authority to allow search of apartment).

United States v. Lewis, 231 F.3d 238 (6th Cir. 2000) (Absent probable cause, exigent circumstances did not permit entry to home).

United States v. Oaxaca, 233 F.3d 1154 (9th Cir. 2000) (Agents could not enter open door of garage).

United States v. Santa, 236 F.3d 662 (6th Cir. 2001) (Search of apartment lacked exigent circumstances).

United States v. Gamez-Orduno, 235 F.3d 453 (9th Cir. 2000) (Overnight guests had standing to challenge search).

United States v. Heath, 259 F.3d 522 (6th Cir. 2001) (Allowing officer to examine keys was not consent to open and enter apartment).

United States v. Limares, 269 F.3d 794 (7th Cir. 2001) (Failure to arrest suspect outside did not create exigency upon entry to home).

United States v. Diehl, 276 F.3d 32 (1st Cir.), cert. denied, 537 U.S. 834 (2002) (Curtilage need not have obvious boundary).

United States v. Jones, 286 F.3d 1146



## 7 FEDERAL CONVICTIONS REVERSED

(9th Cir. 2002) (Subpoena did not give authority to illegally enter premises, even for exigent circumstances).

*Loria v. Gorman*, 306 F.3d 1271 (2d Cir. 2002) (Police acted without probable cause or exigent circumstances).

*United States v. Gorman*, 314 F.3d 1105 (9th Cir. 2002) (No probable cause to search third-party residence).

*United States v. Davis*, 332 F.3d 1163 (9th Cir. 2003) (Overnight guest had expectation of privacy in bag under bed).

*United States v. Jones*, 335 F.3d 527 (6th Cir.), cert. denied, 127 S.Ct. 2902 (2007) (Handyman lacked actual or apparent authority to allow search of residence).

*United States v. Romero-Bustamente*, 337 F.3d 1104 (9th Cir. 2003) (Border agents did not have authority to search private real property).

*United States v. Hammond*, 351 F.3d 765 (6th Cir. 2003) (No evidence of informant's reliability for search).

*United States v. Carter*, 360 F.3d 1235 (10th Cir. 2004) (Protective sweep of garage was not justified).

*Hadley v. Williams*, 368 F.3d 747 (7th Cir. 2004) (False claim of a warrant voided consent).

*United States v. Washington*, 387 F.3d 1060 (9th Cir. 2004) (Officers illegally looked into defendant's hotel room).

*United States v. Chambers*, 395 F.3d 563 (6th Cir. 2005) (No emergency justifying warrantless search).

*United States v. Quaempts*, 411 F.3d 1046 (9th Cir. 2005) (Opening front door did not waive expectation of privacy).

*United States v. McGough*, 412 F.3d 1232 (11th Cir. 2005) (Warrantless search of apartment was illegal).

*United States v. Waldner*, 425 F.3d 514 (8th Cir. 2005) (Protective sweep did not include basement).

*United States v. Coles*, 437 F.3d 361 (3rd Cir. 2006) (Officers could not create their own exigency by attempting to enter hotel room).

*Georgia v. Randolph*, 547 U.S. 103

(2006) (Spouse could not consent to search when homeowner was present and refused).

*United States v. Howard*, 447 F.3d 1257 (9th Cir. 2006) (Parole condition did not allow to search home of defendant's acquaintance).

*United States v. Lakoskey*, 462 F.3d 965 (8th Cir.), cert. denied, 127 S.Ct. 1388 (2007) (Defendant did not impliedly consent to postal inspector entering his home).

*United States v. Walker*, 474 F.3d 1249 (10th Cir. 2007) (Protective sweep of home was not incident to arrest).

*United States v. Gomez-Moreno*, 479 F.3d 350 (5th Cir. 2007) (Government-created exigent circumstances to search home voided search and consent).

*United States v. Freeman*, 479 F.3d 743 (10th Cir. 2007) (No reasonable suspicion to search parolee's residence).

*United States v. Cos*, 498 F.3d 1115 (10th Cir. 2007) (Guest lacked apparent authority to allow search of home).

*United States v. Ellis*, 499 F.3d 686 (7th Cir. 2007) (Movement in home was not an exigent circumstance justifying warrantless entry).

*United States v. Collins*, 510 F.3d 697 (7th Cir. 2007) (Forcible entry to home lacked exigent circumstances).

*United States v. Troop*, 514 F.3d 405 (5th Cir. 2008) (No evidence that occupants needed medical assistance to create exigent circumstances).

*United States v. Mowatt*, 513 F.3d 395 (4th Cir. 2008) (No exigent circumstances justified the officers' demand that defendant open his apartment door).

*United States v. Murphy*, 516 F.3d 1117 (9th Cir. 2008) (When a co-tenant objects to a search and another party with common authority subsequently gives consent to that search in the absence of the first co-tenant, the search is invalid as to the objecting co-tenant).

*United States v. Castellanos*, 518 F.3d 965 (8th Cir. 2008) (Statute permitting immigration employees to conduct warrantless searches of persons seeking admission to the United States did not permit search of defendant's home during drug investigation).

*United States v. Reeves*, 524 F.3d 1161 (10th Cir. 2008) (Unlawful arrest in hotel room invalidated subsequent consent to search).

## Warrants

*United States v. Van Damme*, 48 F.3d 461 (9th Cir. 1995) (There was no list of items to be seized under the warrant).

*United States v. Mondragon*, 52 F.3d 291 (10th Cir. 1995) (Supplemental wiretap application failed to show necessity).

*United States v. Kow*, 58 F.3d 423 (9th Cir. 1995) (Warrant failed to identify business records with particularity, and good faith exception did not apply).

*United States v. Weaver*, 99 F.3d 1372 (6th Cir. 1996) (Bare bones, boilerplate affidavit, was insufficient to justify warrant).

*Marks v. Clarke*, 102 F.3d 1012 (9th Cir.), cert. denied, 522 U.S. 907 (1997) (Warrant to search two residences did not authorize the officers to search all persons present).

*United States v. Foster*, 104 F.3d 1228 (10th Cir. 1996) (Flagrant disregard for the specificity of a warrant required suppression of all found).

*United States v. McGrew*, 122 F.3d 847 (9th Cir. 1997) (Search warrant affidavit lacked particularity).

*United States v. Alvarez*, 127 F.3d 372 (5th Cir. 1997) (Warrant affidavit contained a false statement made in reckless disregard for the truth).

*United States v. Schroeder*, 129 F.3d 439 (8th Cir. 1997) (Warrant did not authorize a search of adjoining property).

*In Re Grand Jury Investigation*, 130 F.3d 853 (9th Cir. 1997) (Search warrant was over broad).

*United States v. Hotal*, 143 F.3d 1223 (9th Cir. 1998) (Anticipatory search warrant failed to identify triggering event for execution).

*United States v. Albrektsten*, 151 F.3d 951 (9th Cir. 1998) (Arrest warrant did not permit search of defendant's motel room).

## 8 FEDERAL CONVICTIONS REVERSED

United States v. Ford, 184 F.3d 566 (6th Cir.), cert. denied, 528 U.S. 1161 (2000) (Search warrant authorized broader search than reasonable).

United States v. Herron, 215 F.3d 812 (8th Cir. 2000) (No reasonable officer would have relied on such a deficient warrant).

United States v. Tuter, 240 F.3d 1292 (10th Cir.), cert. denied, 534 U.S. 886 (2001) (Anonymous tip lacked reliability to support warrant).

United States v. King, 244 F.3d 736 (9th Cir. 2001) (Officer's mistaken belief that ordinance was violated did not provide reasonable suspicion to stop).

Leveto v. Lapina, 258 F.3d 156 (3rd Cir. 2001) (Search warrant for home did not justify pat-down of owner).

United States v. Blackmon, 273 F.3d 1204 (9th Cir. 2001) (Police may not borrow information from previous wiretap warrant in another case).

United States v. Helton, 314 F.3d 812 (6th Cir. 2003) (Affidavit relying on confidential informant did not establish probable cause).

United States v. Deemer, 354 F.3d 1130 (9th Cir. 2004) (No emergency exception to warrant requirement when search was not related to 911 call).

United States v. Gonzales, 399 F.3d 1225 (10th Cir. 2005) (Warrant lacked probable cause and good faith did not apply).

United States v. Laughton, 409 F.3d 744 (6th Cir. 2005) (Affidavit lacked probable cause and no good faith exception).

United States v. Hython, 443 F.3d 480 (6th Cir. 2006) (Warrant was clearly stale and good faith exception did not apply).

United States v. Staffeldt, 451 F.3d 578 (9th Cir.), amended, 523 F.3d 983 (2008) (Wiretap application was facially deficient).

United States v. McPhearson, 469 F.3d 518 (6th Cir. 2006) (Possession of drugs outside home did not support warrant to search home, nor was there good faith reliance).

United States v. West, 520 F.3d 604 (6th

Cir. 2008) (Search warrant affidavits contained false statements).

United States v. Tate, 524 F.3d 449 (4th Cir. 2008) (A substantial showing that a search warrant affidavit contains falsity requires an evidentiary hearing).

### Defendant's Statements

United States v. Dudden, 65 F.3d 1461 (9th Cir. 1995) (Immunity agreement required a hearing on whether the defendant's statements were used to aid the government's case).

United States v. Tenorio, 69 F.3d 1103 (11th Cir. 1995) (Post-Miranda statements were improperly admitted).

United States v. Ali, 86 F.3d 275 (2nd Cir. 1996) (Custodial interrogation required warnings).

In Re Grand Jury Subpoena Dated April 9, 1996, 87 F.3d 1198 (11th Cir. 1996) (Custodian of records could not be compelled to testify as to the location of documents not in her possession when those documents incriminated her).

United States v. Trzaska, 111 F.3d 1019 (2d Cir. 1997) (Defendant's statement to probation officer was inadmissible).

United States v. D.F., 115 F.3d 413 (7th Cir. 1997) (Statements taken from a juvenile in a mental health facility were involuntary).

United States v. Abdi, 142 F.3d 566 (2d Cir. 1998) (Defendant's uncounseled statement was erroneously admitted).

United States v. Garibay, 143 F.3d 534 (9th Cir. 1998) (Defendant with limited English and low mental capacity did not voluntarily waive Miranda).

United States v. Chamberlain, 163 F.3d 499 (8th Cir. 1999) (Inmate under investigation was entitled to warnings).

United States v. Tyler, 164 F.3d 150 (3rd Cir.), cert. denied, 537 U.S. 858 (2002) (Police did not honor defendant's invocation of silence).

Pickens v. Gibson, 206 F.3d 988 (10th Cir. 2000) (Admission of confession was not harmless).

United States v. Martinez-Gaytan, 213 F.3d

890 (5th Cir. 2000) (Agent who did not speak Spanish could not introduce defendant's Spanish confession).

Dickerson v. United States, 530 U.S. 428 (2000) (Warnings are required by Fifth Amendment).

Gardner v. Johnson, 247 F.3d 551 (5th Cir. 2001) (Psychiatrist's warnings about self-incrimination were insufficient).

United States v. Pedroza, 269 F.3d 821 (7th Cir. 2001) (Agreement to speak to officer was not consent to later questioning).

United States v. Velarde-Gomez, 269 F.3d 1023 (9th Cir. 2001) (Post-arrest, pre-warning silence cannot be used to show demeanor).

United States v. Green, 272 F.3d 748 (5th Cir. 2001) (Defendant's actions in response to custodial interrogation were testimonial in nature).

Ghent v. Woodford, 279 F.3d 1121 (9th Cir. 2002) (Miranda applies to statements offered at capital sentencing).

Choi Chun Lam v. Kelchner, 304 F.3d 256 (3d Cir. 2002) (Statements made under threat of violence were involuntary).

United States v. San Juan-Cruz, 314 F.3d 384 (9th Cir. 2002) (Conflicting warnings left defendant unclear about his right to remain silent).

Kaupp v. Texas, 538 U.S. 626 (2003) (Statement taken after illegal arrest must be suppressed when there is no meaningful intervening event).

United States v. Robles-Ortega, 348 F.3d 679 (7th Cir. 2003) (Statement tainted by agents' illegal entry).

United States v. Perez-Lopez, 348 F.3d 839 (9th Cir. 2003) (Spanish warnings did not advise of right to counsel).

Taylor v. Maddox, 366 F.3d 992 (9th Cir.), cert. denied, 543 U.S. 1038 (2004) (Confession was involuntary).

Randolf v. California, 380 F.3d 1133 (9th Cir. 2004) (Statement elicited by informant violated right to counsel when defendant was represented).

## 9 FEDERAL CONVICTIONS REVERSED

United States v. Aguilar, 384 F.3d 520 (8th Cir. 2004) (Statement was a result of coercion).

Gibbs v. Frank, 387 F.3d 268 (3d Cir. 2004) (Unwarned statements to psychiatrist were improperly admitted).

Zappulla v. New York, 391 F.3d 462 (2d Cir.), cert. denied, 546 U.S. 957 (2005) (Involuntary confession should have been excluded).

United States v. Wesley, 417 F.3d 612 (6th Cir. 2005) (Defendant's statement he went to prison with accomplice was unfairly prejudicial).

United States v. Magluta, 418 F.3d 1166 (11th Cir.), cert. denied, 548 U.S. 903 (2006) (Statements made after conspiracy ended were inadmissible).

Arnold v. Runnels, 421 F.3d 859 (9th Cir. 2005) (No voluntary waiver after invocation of silence).

United States v. Williams, 435 F.3d 1148 (9th Cir. 2006) (Inadequate warnings were given).

United States v. Lopez, 437 F.3d 1059 (10th Cir. 2006) (Both of defendant's statements were involuntary).

United States v. Chen, 439 F.3d 1037 (9th Cir. 2006) (Immigration agent was required to warn alien of rights before questioning).

United States v. Ollie, 442 F.3d 1135 (8th Cir. 2006) (Warnings given after initial statement were deficient).

United States v. Brownlee, 454 F.3d 131 (3rd Cir. 2006) (Questioning of defendant in patrol car required warnings).

United States v. Brathwaite, 458 F.3d 376 (5th Cir. 2006) (No public safety exception for interrogation about firearms in home).

United States v. Olivares-Rangel, 458 F.3d 1104 (10th Cir. 2006) (Statements were result of illegal arrest).

United States v. Shaw, 464 F.3d 615 (6th Cir. 2006) (Statements made after illegal arrest were tainted).

United States v. Lafferty, 503 F.3d 293 (3rd Cir. 2007) (Defendant who invoked silence should not have been

interrogated with alleged accomplice and neither person's statements were admissible).

United States v. Revels, 510 F.3d 1269 (10th Cir. 2007) (Valid investigatory stop does not obviate need for verbal warnings).

Anderson v. Terhune, 516 F.3d 781 (9th Cir. 2008) (Petitioner's statement, "I plead the Fifth", and officer's response, "Plead the Fifth? What's that?", was an invocation of *Miranda* rights).

United States v. Rodriguez, 518 F.3d 1072 (9th Cir. 2008) (An officer must clarify the meaning of an ambiguous response to a *Miranda* warning before proceeding with general interrogation).

## Recusal

Bracy v. Gramley, 520 U.S. 899 (1997) (Petitioner could get discovery of trial judge's bias against him).

United States v. Jordan, 49 F.3d 152 (5th Cir. 1995) (Judge should have been recused because the defendant made claims against family friend of the judge).

United States v. Avilez-Reyes, 160 F.3d 258 (5th Cir. 1999) (Judge should have recused himself in case where attorney testified against judge in disciplinary hearing).

United States v. Scarfo, 263 F.3d 80 (3rd Cir. 2001) (Judge should have recused himself if he felt prejudiced by news article).

Clemmons v. Wolfe, 377 F.3d 322 (2d Cir. 2004) (Previous actions as state judge required recusal).

In Re Nettles, 394 F.3d 1001 (7th Cir. 2005) (Bombing plot involved threat to judge's safety).

Franklin v. McCaughtry, 398 F.3d 955 (7th Cir. 2005) (Record indicated judge's bias against defendant).

United States v. Amico, 486 F.3d 764 (2d Cir. 2007) (District judge's prior dealings with the government's main cooperating witness required recusal).

## Indictments

United States v. Holmes, 44 F.3d 1150 (2d Cir. 1995) (Money laundering and structuring counts based on the same transaction were multiplicitous).

United States v. Hairston, 46 F.3d 361 (4th Cir. 1995) (Multiple payments were part of the same offense).

United States v. Graham, 60 F.3d 463 (8th Cir. 1995) (Multiplicitous to charge the same false statement made on different occasions).

United States v. Kimbrough, 69 F.3d 723 (5th Cir.), cert. denied, 517 U.S. 1157 (1996) (Multiple possessions of child pornography should have been charged in a single count).

United States v. Cancelliere, 69 F.3d 1116 (11th Cir. 1995) (Court amended charging language of indictment during trial).

United States v. Johnson, 130 F.3d 1420 (10th Cir.), cert. denied, 525 U.S. 829 (1998) (Gun possession convictions for the same firearm were multiplicitous).

United States v. Du Bo, 186 F.3d 1177 (9th Cir. 1999) (Indictment did not allege mens rea).

United States v. Nunez, 180 F.3d 227 (5th Cir. 1999) (Indictment failed to charge an offense).

United States v. Dipentino, 242 F.3d 1090 (9th Cir. 2001) (Trial court constructively amended indictment).

United States v. Olson, 262 F.3d 795 (8th Cir. 2001) (Bank robbery indictment failed to allege a taking by force or intimidation).

United States v. Thompson, 287 F.3d 1244 (10th Cir. 2002) (Indictment dismissed when improper sealing caused defendant to innocently destroy documents necessary to his defense).

United States v. Allen, 406 F.3d 940 (8th Cir.), cert. denied, 127 S.Ct. 826 (2006) (Capital indictment requires allegation of mens rea and one statutory aggravating factor).

United States v. Savoires, 430 F.3d 376 (6th Cir. 2005) (Indictment charging both carrying and possessing firearm was duplicitous).

United States v. Buchanan, 485 F.3d 274 (5th Cir. 2007) (Four counts of child pornography were multiplicitous as the government did not offer proof of more than a single transaction).

*United States v. Shelief*, 507 F.3d 82 (2d Cir. 2007) (Tax counts and wire fraud counts should not have been joined).

*United States v. Abu-Shawish*, 507 F.3d 550 (7th Cir. 2007) (Indictment did not allege element that defendant defrauded the organization which he served as an agent).

*United States v. Zalapa*, 509 F.3d 1060 (9th Cir. 2007) (Court must dismiss multiplicitous counts).

## Limitation of Actions

*United States v. Li*, 55 F.3d 325 (7th Cir. 1995) (Statute of limitations ran from the day of deposit, not the day the deposit was processed).

*United States v. Spector*, 55 F.3d 22 (1st Cir. 1995) (Agreement to waive the statute of limitations was invalid because it was not signed by the government).

*United States v. Podde*, 105 F.3d 813 (2d Cir. 1997) (Statute of limitations barred the reinstatement of charges that were dismissed in a plea agreement).

*United States v. Manges*, 110 F.3d 1162 (5th Cir.), cert. denied, 523 U.S. 1106 (1998) (Conspiracy charge was barred by statute of limitations).

*United States v. Grimmett*, 236 F.3d 452 (8th Cir. 2001) (Statute of limitations had run since defendant's withdrawal from the conspiracy).

*United States v. Gunera*, 479 F.3d 373 (5th Cir. 2007) (Illegal re-entry case barred when government was on notice that defendant had been in U.S. for over 5 years).

## Venue

*United States v. Miller*, 111 F.3d 747 (10th Cir. 1997) (Court refused a jury instruction on venue in a multi-district conspiracy case).

*United States v. Carter*, 130 F.3d 1432, cert. denied, 523 U.S. 1041 (10th Cir. 1997) (Requested instruction on venue should have been given).

*United States v. Cabrales*, 524 U.S. 1 (1998) (Venue for money laundering was proper only where offenses were begun,

conducted and completed).

*United States v. Brennan*, 183 F.3d 139 (2d Cir. 1999) (Venue for mail fraud permissible only in districts where proscribed acts occurred).

*United States v. Hernandez*, 189 F.3d 785 (9th Cir.), cert. denied, 529 U.S. 1028 (1999) (Venue was improper for undocumented alien discovered in one district and tried in another).

*United States v. Williams*, 274 F.3d 1079 (6th Cir. 2001) (Sale to government informant did not bring the conspiracy within district's venue).

*United States v. Perez*, 280 F.3d 318 (3d Cir.), cert. denied, 537 U.S. (2002) (Venue should be decided by jury when challenged by defendant).

*United States v. Pace*, 314 F.3d 344 (9th Cir. 2002) (Essential conduct of wire fraud did not occur in district).

*United States v. Wood*, 364 F.3d 704 (6th Cir. 2004) (Venue for mail fraud is limited to districts where mail is deposited, passed, or received).

*United States v. Morgan*, 393 F.3d 192 (D.C. Cir. 2004) (Improper venue for receiving stolen property).

*United States v. Strain*, 396 F.3d 689 (5th Cir. 2005) (Harboring a fugitive was tried in wrong district).

*United States v. Ramirez*, 420 F.3d 134 (2d Cir.), cert. denied, 546 U.S. 1113 (2006) (Venue improper when essential conduct did not occur in district).

## Pretrial Procedure

*United States v. Ramos*, 45 F.3d 1519 (11th Cir. 1995) (Trial judge wrongly refused deposition without inquiring about testimony or its relevance).

*United States v. Smith*, 55 F.3d 157 (4th Cir. 1995) (Government's motion for dismissal should have been granted).

*United States v. Gonzalez*, 58 F.3d 459 (9th Cir. 1995) (Government's motion for dismissal should have been granted).

*United States v. Young*, 86 F.3d 944 (9th Cir.), cert. denied, 523 U.S. 1112 (1998) (Court improperly denied a hearing on a motion to compel the government to

immunize a witness).

*United States v. Mathurin*, 148 F.3d 68 (2d Cir. 1998) (Court improperly denied hearing on motion to suppress).

*United States v. Lothridge*, 324 F.3d 599 (8th Cir. 2003) (District Court failed to conduct de novo review of magistrate's findings when defendant objected).

*United States v. Romeo*, 360 F.3d 1248 (10th Cir. 2004) (Court abused discretion by not granting government's motion to dismiss charges).

*United States v. Salahuddin*, 509 F.3d 858 (7th Cir. 2007) (Court should have reviewed untimely motion to suppress when good cause for delay was present).

## Severance

*United States v. Breinig*, 70 F.3d 850 (6th Cir. 1995) (Severance should have been granted where the codefendant's defense included prejudicial character evidence regarding the defendant).

*United States v. Baker*, 98 F.3d 330 (8th Cir.), cert. denied, 520 U.S. 1179 (1997) (Evidence admissible against only one codefendant required severance).

*United States v. Jordan*, 112 F.3d 14 (1st Cir.), cert. denied, 523 U.S. 1041 (1998) (Charges should have been severed when a defendant wanted to testify regarding one count, but not others).

*United States v. Cobb*, 185 F.3d 1193 (11th Cir. 1999) (Court erroneously denied severance under Bruton).

*United States v. McCarter*, 316 F.3d 536 (5th Cir. 2002) (Counts for firearm possession and drug possession should have been severed).

*United States v. Sampson*, 385 F.3d 183 (2d Cir.), cert. denied, 544 U.S. 924 (2005) (Offenses occurring two years apart should have been severed).

*United States v. Tarango*, 396 F.3d 666 (5th Cir. 2005) (Defendant should not have been tried with absent codefendant).

## Conflicts

*United States v. Shorter*, 54 F.3d 1248 (7th Cir.), cert. denied, 516 U.S. 896 (1995) (Actual conflict when the defendant accused counsel of improper behavior).

*United States v. Malpiedi*, 62 F.3d 465 (2d Cir. 1995) (Conflict for counsel representing witness who gave damaging evidence against his defendant).

*United States v. Jiang*, 140 F.3d 124 (2d Cir. 1998) (Attorney's potential conflict required remand for hearing).

*United States v. Kliti*, 156 F.3d 150 (2d Cir. 1998) (Court should have held hearing on defense counsel's potential conflict).

*Perrillo v. Johnson*, 205 F.3d 775 (5th Cir. 2000) (Actual conflict existed in successive prosecutions of co-defendants).

*Lockhart v. Terhune*, 250 F.3d 1223 (9th Cir. 2001) (Counsel had actual conflict of interest).

*United States v. Schwarz*, 283 F.3d 76 (2d Cir. 2002) (Actual conflict between counsel and one defendant).

*United States v. Newell*, 315 F.3d 510 (5th Cir.), cert. denied, 546 U.S. 924 (2005) (Court failed to act when conflict arose during trial).

*United States v. Oberoi*, 331 F.3d 44 (2d Cir. 2003) (Federal Public Defender was entitled to withdraw when conflict arose).

*Harris v. Carter*, 337 F.3d 758 (6th Cir. 2003) (Court should have held hearing about apparent conflict).

*United States v. Salado*, 339 F.3d 285 (5th Cir. 2003) (Joint representation of two defendants required hearing).

*United States v. Williams*, 372 F.3d 96 (2d Cir. 2004) (Counsel who was connected to charges had actual conflict).

*Lewis v. Mayle*, 391 F.3d 989 (9th Cir. 2004) (Counsel had an actual conflict).

*United States v. Osborne*, 402 F.3d 626 (6th Cir. 2005) (Representing co-

defendants was actual conflict).

*Daniels v. Woodford*, 428 F.3d 1181 (9th Cir.), cert. denied, 127 S.Ct. 2876 (2007) (Court failed to resolve conflict between appointed lawyer and client).

*United States v. Nicholson*, 475 F.3d 241 (4th Cir. 2007) (Lawyer had actual conflict of interest representing witness who threatened defendant).

## Mental Health

*United States v. Mason*, 52 F.3d 1286 (4th Cir. 1995) (Court failed to apply a reasonable cause standard to competency hearing).

*Cooper v. Oklahoma*, 517 U.S. 348 (1996) (Court could not require a defendant to prove his incompetence by a higher standard than preponderance of evidence).

*United States v. Williams*, 113 F.3d 1155 (10th Cir. 1997) (Defendant's actions during trial warranted a competency hearing).

*United States v. Nevarez-Castro*, 120 F.3d 190 (9th Cir. 1997) (Court refused to hold a competency hearing).

*United States v. Haywood*, 155 F.3d 674 (3rd Cir.), cert. denied, 533 U.S. 924 (2001) (Defendant allegedly restored to competency required second hearing).

*United States v. Ramirez*, 304 F.3d 1033 (10th Cir. 2002) (Decision to deny competency examination was not based on either of the arguments the government presented).

*United States v. Rinaldi*, 351 F.3d 285 (7th Cir.), cert. denied, 128 S.Ct. 708 (2007) (Requirement of in-custody mental exam was error).

*United States v. Ghane*, 392 F.3d 317 (8th Cir. 2004) (No involuntary medication when only small chance of restored competence).

*United States v. Evans*, 404 F.3d 227 (4th Cir.), cert. denied, 127 S.Ct. 1162 (2007) (Involuntary medication was not justified).

*In Re: Hearn*, 418 F.3d 444 (5th Cir. 2005) (Defendant made prima facie showing of retardation without expert).

*United States v. Rivera-Guerrero*, 426 F.3d 1130 (9th Cir. 2005) (Abuse of discretion to deny continuance of hearing to forcibly administer anti-psychotic drugs).

*United States v. Allen*, 449 F.3d 1121 (10th Cir. 2006) (Insanity defense was improperly prohibited in firearm possession case).

## Privilege

*Ralls v. United States*, 52 F.3d 223 (9th Cir. 1995) (Fee information was inextricably intertwined with privileged communications).

*United States v. Sindel*, 53 F.3d 874 (8th Cir. 1995) (Fee information could not be released without disclosing other privileged information).

*United States v. Gertner*, 65 F.3d 963 (1st Cir. 1995) (IRS summons of attorney was just a pretext to investigate her client).

*In Re Richard Roe Inc.*, 68 F.3d 38 (2d Cir. 1995) (Court misapplied the crime-fraud exception).

*United States v. Rowe*, 96 F.3d 1294 (9th Cir. 1996) (In-house investigation by attorneys associated with the defendant/lawyer was covered by the attorney-client privilege).

*United States v. Bauer*, 132 F.3d 504 (9th Cir. 1997) (Questioning of defendant's bankruptcy attorney violated attorney-client privilege).

*United States v. Glass*, 133 F.3d 1356 (10th Cir. 1998) (Defendant's psychotherapist-patient privilege was violated).

*Swidler & Berlin v. United States*, 524 U.S. 399 (1998) (Attorney-client privilege survives client's death).

*United States v. Millard*, 139 F.3d 1200 (8th Cir.), cert. denied, 525 U.S. 949 (1998) (Statements during plea discussions were erroneously admitted).

*In re Sealed Case*, 146 F.3d 881 (D.C. Cir. 1998) (Documents prepared in anticipation of litigation were work product).

*Mitchell v. United States*, 526 U.S. 314 (1999) (Guilty plea does not waive privilege against self incrimination at sentencing).

*In Re Sealed Case*, 381 F.3d 1205 (D.C. Cir. 2004) (Subpoena should not have issued without weighing

psychotherapist privilege).

*United States v. Montgomery*, 384 F.3d 1050 (9th Cir. 2004) (Evidence violated marital privilege).

## Jeopardy / Estoppel

*United States v. Abcasis*, 45 F.3d 39 (2d Cir. 1995) (Government was estopped from convicting a person when its agents caused that person in good faith to believe they were acting under government authority).

*United States v. Weems*, 49 F.3d 528 (9th Cir. 1995) (Government was estopped from proving element previously decided in forfeiture case).

*United States v. Sammaripa*, 55 F.3d 433 (9th Cir. 1995) (Mistrial was not justified by manifest necessity).

*United States v. McLaurin*, 57 F.3d 823 (9th Cir. 1995) (Defendant could not be retried for bank robbery after conviction on the lesser included offense of larceny).

*Rutledge v. United States*, 517 U.S. 292 (1996) (Defendant could not be punished for both a conspiracy and a continuing criminal enterprise based upon a single course of conduct).

*Venson v. Georgia*, 74 F.3d 1140 (11th Cir. 1996) (Prosecutor's motion for mistrial was not supported by manifest necessity).

*United States v. Holloway*, 74 F.3d 249 (11th Cir. 1996) (Prosecutor's promise not to prosecute, made at a civil deposition, was the equivalent of use immunity for a related criminal proceeding).

*United States v. Hall*, 77 F.3d 398 (11th Cir.), cert. denied, 519 U.S. 849 (1996) (Possession of a firearm and its ammunition could only yield a single sentence).

*United States v. Garcia*, 78 F.3d 1517 (11th Cir. 1996) (Acquittal for knowingly conspiring barred a second prosecution for the substantive crime).

*Terry v. Potter*, 111 F.3d 454 (6th Cir. 1997) (When a defendant was charged in two alternate manners, and the jury reached a verdict as to only one, there was an implied acquittal on the other

offense to which jeopardy barred retrial).

*United States v. Stoddard*, 111 F.3d 1450 (9th Cir. 1997) (1. Second drug conspiracy prosecution was barred by double jeopardy; 2. Collateral estoppel barred false statement conviction, based upon drug ownership for which defendant had been previously acquitted).

*United States v. Romeo*, 114 F.3d 141 (9th Cir. 1997) (After an acquittal for possession, an importation charge was barred by collateral estoppel).

*United States v. Turner*, 130 F.3d 815 (8th Cir.), cert. denied, 524 U.S. 909 (1998) (Prosecution of count, identical to one previously dismissed, was barred).

*United States v. Downer*, 143 F.3d 819 (4th Cir. 1998) (Court's substitution of conviction for lesser offense, after reversal, violated Ex Post Facto Clause and Grand Jury Clause).

*United States v. Dunford*, 148 F.3d 385 (4th Cir. 1998) (Convictions for 6 firearms and ammunition was multiplicitous).

*United States v. Beckett*, 208 F.3d 140 (3rd Cir. 2000) (Sentences for robbery and armed robbery violated double jeopardy).

*United States v. Kithcart*, 218 F.3d 213 (3rd Cir. 2000) (Government could not relitigate suppression motion).

*United States v. Kramer*, 225 F.3d 847 (7th Cir. 2000) (Defendant was entitled to attack underlying state child support obligation).

*Morris v. Reynolds*, 264 F.3d 38 (2d Cir. 2001) (Jeopardy attaches at unconditional acceptance of guilty plea).

*Wilson v. Czerniak*, 355 F.3d 1151 (9th Cir. 2004) (Defendant could not be tried for aggravated murder after acquittal of simple murder).

*United States v. Ford*, 371 F.3d 550 (9th Cir. 2004) (Acquittal for controlling or managing a drug facility barred retrial for using or maintaining same).

*United States v. Toribio-Lugo*, 376 F.3d 33 (1st Cir. 2004) (Defendant did not consent to mistrial).

*United States v. Rivera*, 384 F.3d 49 (3rd Cir. 2004) (Declaration of mistrial lacked manifest necessity).

*Stow v. Murashige*, 389 F.3d 880 (9th Cir. 2004) (Acquittal barred retrial on lesser

charge).

*Smith v. Massachusetts*, 543 U.S. 462 (2005) (Mid-trial acquittal precluded reconsideration later in trial).

*United States v. Roy*, 408 F.3d 484 (8th Cir. 2005) (Two assault convictions for the same conduct in a single trial was double jeopardy).

*United States v. DeCarlo*, 434 F.3d 447 (6th Cir. 2006) (Defendant could not be convicted of interstate travel to, both, have illicit sexual conduct, and have sex with a child less than 12).

*United States v. Richardson*, 439 F.3d 421 (8th Cir. 2006) (A single possession of a firearm cannot yield convictions for being a felon and a drug user).

*United States v. Olmeda*, 461 F.3d 271 (2d Cir. 2006) (Charges for possessing same ammunition in two districts in same month were double jeopardy).

*United States v. Blanton*, 476 F.3d 767 (9th Cir. 2007) (Government could not appeal acquittal in bench trial).

*Brazzel v. State of Washington*, 491 F.3d 976 (9th Cir. 2007) (Implied acquittal of greater offense barred second prosecution for double jeopardy).

*United States v. Ohayon*, 483 F.3d 1281 (11th Cir. 2007) (Defendant's acquittal on a charge of an attempted drug offense collaterally estopped government from retrying defendant for conspiracy).

*United States v. Lara-Ramirez*, 519 F.3d 76 (1st Cir. 2008) (Absent defendant's consent or manifest necessity, mistrial barred a new trial under principles of double jeopardy).

*United States v. Davenport*, 519 F.3d 940 (9th Cir. 2008) (Possessing child pornography is a lesser included crime within receipt for double jeopardy).

## Plea Agreements

*United States v. Washman*, 66 F.3d 210 (9th Cir. 1995) (Defendant could have withdrawn his plea up until the time the court accepted the plea agreement).

*United States v. Levay*, 76 F.3d 671 (5th Cir. 1996) (Defendant could not be enhanced with a prior drug conviction

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when the government withdrew notice as part of a plea agreement).

*United States v. Dean*, 87 F.3d 1212 (11th Cir. 1996) (Judge could modify the forfeiture provisions of a plea agreement, when the forfeiture was unfairly punitive).

*United States v. Belt*, 89 F.3d 710 (10th Cir. 1996) (Failure to object to the government's breach of the plea agreement was not a waiver).

*United States v. Sandoval-Lopez*, 122 F.3d 797 (9th Cir. 1997) (Defendant could attack illegal conviction without fear that dismissed charges in plea agreement would be revived).

*United States v. Castaneda*, 162 F.3d 832 (5th Cir. 1999) (Government failed to prove defendant violated transactional immunity agreement).

*United States v. Nathan*, 188 F.3d 190 (3rd Cir. 1999) (Statement made after plea agreement was not stipulation).

*United States v. Frazier*, 213 F.3d 409 (7th Cir.), cert. denied, 531 U.S. 1015 (2000) (Government cannot unilaterally retreat from plea agreement without hearing).

*United States v. Baird*, 218 F.3d 221 (3rd Cir. 2000) (Plea agreement prevented use of information at any proceeding).

*United States v. Randolph*, 230 F.3d 243 (6th Cir. 2000) (Prosecution in second jurisdiction violated plea agreement).

*United States v. Fitch*, 282 F.3d 364 (6th Cir. 2002) (A material ambiguity should have been construed to defendant's benefit).

*United States v. Reyes*, 313 F.3d 1152 (9th Cir. 2002) (Court can only accept or reject a binding plea agreement, not modify it).

*United States v. Bradley*, 381 F.3d 641 (7th Cir. 2004) (There was a mutual misunderstanding of the agreement).

*United States v. Copeland*, 381 F.3d 1101 (11th Cir. 2004) (Conviction was barred by plea agreement).

*United States v. Floyd*, 428 F.3d 513 (3rd Cir. 2005) (Government cannot refuse to consider cooperation merely

because a charge bargain was more favorable to defendant than anticipated).

*United States v. Bradley*, 455 F.3d 453 (4th Cir. 2006) (Judge impermissibly participated in plea negotiations).

*United States v. Mink*, 476 F.3d 558 (8th Cir. 2007) (Waivers in plea agreement are strictly construed in defendant's favor).

*United States v. Newbert*, 504 F.3d 180 (1st Cir. 2007) (Motion for new trial based upon actual innocence did not breach plea agreement).

*United States v. Jordan*, 509 F.3d 191 (4th Cir. 2007) (Plea agreement barred defendant's subsequent prosecution on related conduct).

### Guilty Pleas

*United States v. Maddox*, 48 F.3d 555 (D.C. 1995) (A summary rejection of a guilty plea was improper).

*United States v. Ribas-Dominicce*, 50 F.3d 76 (1st Cir. 1995) (Court misstated the mental state required for the offense).

*United States v. Goins*, 51 F.3d 400 (4th Cir. 1995) (Court failed to admonish the defendant about the mandatory minimum punishment).

*United States v. Casallas*, 59 F.3d 1173 (11th Cir. 1995) (Trial judge improperly became involved in plea bargaining during colloquy).

*United States v. Smith*, 60 F.3d 595 (9th Cir. 1995) (Court failed to explain the nature of the charges to the defendant).

*United States v. Gray*, 63 F.3d 57 (1st Cir. 1995) (Defendant who did not understand the applicability of the mandatory minimum could withdraw his plea).

*United States v. Daigle*, 63 F.3d 346 (5th Cir. 1995) (Court improperly engaged in plea bargaining).

*United States v. Martinez-Molina*, 64 F.3d 719 (1st Cir. 1995) (Court failed to inquire whether the plea was voluntary or whether the defendant had been threatened or coerced).

*United States v. Showerman*, 68 F.3d 1524 (2d Cir. 1995) (Court failed to advise the defendant that he might be ordered to pay restitution).

*United States v. Tunning*, 69 F.3d 107 (6th Cir. 1995) (Government failed to recite evidence to prove allegations in an Alford plea).

*United States v. Guerra*, 94 F.3d 989 (5th Cir. 1996) (Plea was vacated when the court gave the defendant erroneous advice about enhancements).

*United States v. Cruz-Rojas*, 101 F.3d 283 (2d Cir. 1996) (Guilty pleas were vacated to determine whether factual basis existed for carrying a firearm).

*United States v. Siegel*, 102 F.3d 477 (11th Cir. 1996) (Failure to advise the defendant of the maximum and minimum mandatory sentences required that the defendant be allowed to withdraw his plea).

*United States v. Shepherd*, 102 F.3d 558 (DC Cir. 1996) (Court abused its discretion in rejecting the defendant's mid-trial guilty plea).

*United States v. Still*, 102 F.3d 118 (5th Cir.), cert. denied, 522 U.S. 806 (1997) (Court failed to admonish the defendant on the mandatory minimum).

*United States v. Amaya*, 111 F.3d 386 (5th Cir. 1997) (Defendant's plea was involuntary when the court promised to ensure a downward departure for cooperation).

*United States v. Gonzalez*, 113 F.3d 1026 (9th Cir. 1997) (Court should have held a hearing when the defendant claimed his plea was coerced).

*United States v. Brown*, 117 F.3d 471 (11th Cir. 1997) (Misinformation given to the defendant made his plea involuntary).

*United States v. Pierre*, 120 F.3d 1153 (11th Cir. 1997) (Plea was involuntary when defendant mistakenly believed he had preserved an appellate issue).

*United States v. Cazares*, 121 F.3d 1241 (9th Cir. 1997) (Plea to drug conspiracy was not an admission of an alleged overt act).

*United States v. Toothman*, 137 F.3d 1393 (9th Cir. 1998) (Plea could be withdrawn based upon misinformation about guideline range).

*United States v. Gobert*, 139 F.3d 436 (5th Cir. 1998) (Insufficient factual

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basis existed for defendant's guilty plea).

*United States v. Gigot*, 147 F.3d 1193 (10th Cir. 1998) (Failure to admonish defendant of elements of offense and possible penalties rendered plea involuntary).

*United States v. Thorne*, 153 F.3d 130 (4th Cir. 1998) (Court failed to advise defendant of the nature of supervised release).

*United States v. Suarez*, 155 F.3d 521 (5th Cir. 1998) (Defendant was not admonished as to nature of charges).

*United States v. Andrades*, 169 F.3d 131 (2d Cir. 1999) (Court failed to determine whether defendant understood basis for plea, and failed to receive sufficient factual basis).

*United States v. Gomez-Orozco*, 188 F.3d 422 (7th Cir. 1999) (Proof of citizenship required withdrawal of guilty plea to illegal re-entry charge).

*United States v. Blackwell*, 199 F.3d 623 (2d Cir. 1999) (Omissions during colloquy voided plea).

*United States v. Guess*, 203 F.3d 1143 (9th Cir. 2000) (Record did not support guilty plea to firearm charge).

*United States v. James*, 210 F.3d 1342 (11th Cir. 2000) (Plea colloquy did not cover elements of offense).

*United States v. Santo*, 225 F.3d 92 (1st Cir. 2000) (Court understated mandatory minimum at plea).

*United States v. Castro-Gomez*, 233 F.3d 684 (1st Cir. 2000) (Court did not inform defendant he was subject to mandatory life sentence).

*United States v. Markin*, 263 F.3d 491 (6th Cir. 2001) (Judge could not participate in negotiations once guilty plea is entered).

*United States v. Lujano-Perez*, 274 F.3d 219 (5th Cir. 2001) (Court must explain nature of the charges).

*United States v. Stubbs*, 281 F.3d 109 (3d Cir.), cert. denied, 535 U.S. 1028 (2002) (Waiver of counsel was insufficient).

*United States v. Yu*, 285 F.3d 192 (2d Cir. 2002) (Allocution must settle drug

quantity to satisfy *Apprendi*).

*United States v. Pena*, 314 F.3d 1152 (9th Cir. 2003) (Court failed to explain nature of charges).

*United States v. Villalobos*, 333 F.3d 1070 (9th Cir. 2003) (Failure to admonish defendant of drug quantity establishing statutory maximum rendered plea involuntary).

*United States v. Chavez-Salais*, 337 F.3d 1170 (10th Cir. 2003) (Plea colloquy did not waive possibility of later modification of sentence for extraordinary circumstances).

*United States v. Head*, 340 F.3d 628 (8th Cir.), cert. denied, 547 U.S. 1082 (2006) (Defendant must be allowed to withdraw guilty plea before plea is accepted by court).

*Waucaush v. United States*, 380 F.3d 251 (6th Cir. 2004) (Defendant's misunderstanding of law made plea involuntary).

*United States v. Bundy*, 392 F.3d 641 (4th Cir. 2004) (Court should not have accepted conditional plea when issue for appeal was not dispositive).

*United States v. Amaya-Portillo*, 423 F.3d 427 (4th Cir. 2005) (Court failed to determine if defendant was fit to plead guilty).

*United States v. Davis*, 428 F.3d 802 (9th Cir. 2005) (Lawyer's misrepresentation of potential sentence was just reason to withdraw plea).

*United States v. Bailon-Santana*, 429 F.3d 1258 (9th Cir. 2005) (Court failed to determine factual basis for plea).

*Hanson v. Phillips*, 442 F.3d 789 (2d Cir. 2006) (Colloquy failed to show plea was voluntary or upon advice of counsel).

*United States v. Mastrapa*, 509 F.3d 652 (4th Cir. 2007) (Plea to drug conspiracy lacked factual basis).

*United States v. Sura*, 511 F.3d 654 (7th Cir. 2007) (Judge was required to admonish defendant of appeal waiver).

### Timely Prosecution

*United States v. Verderame*, 51 F.3d 249 (11th Cir.), cert. denied, 516 U.S. 954 (1995) (Trial court denied repeated, unopposed motions for continuance in drug conspiracy case, with only 34 days to prepare).

*United States v. Jones*, 56 F.3d 581 (5th Cir. 1995) (Open-ended continuance violated the Speedy Trial Act).

*United States v. Mejia*, 69 F.3d 309 (9th Cir. 1995) (Court denied a one-day continuance of trial, preventing live evidence on suppression issue).

*United States v. Foxman*, 87 F.3d 1220 (11th Cir. 1996) (Trial court was required to decide whether the government had delayed indictment to gain a tactical advantage).

*United States v. Johnson*, 120 F.3d 1107 (10th Cir. 1997) (Continuance because of court conflict violated Speedy Trial Act).

*United States v. Lloyd*, 125 F.3d 1263 (9th Cir. 1997) (112-day continuance was not justified).

*United States v. Hay*, 122 F.3d 1233 (9th Cir. 1997) (48-day recess for jurors' vacations was abuse of discretion).

*United States v. Graham*, 128 F.3d 372 (6th Cir. 1997) (Eight-year delay between indictment and trial violated the Sixth Amendment).

*United States v. Gonzales*, 137 F.3d 1431 (10th Cir. 1998) ("Ends of justice" continuance could not be retroactive).

*United States v. Barnes*, 159 F.3d 4 (1st Cir. 1999) (Open-ended continuance violated speedy trial).

*United States v. Hall*, 181 F.3d 1057 (9th Cir. 1999) (Continuances for co-defendants violated Speedy Trial Act).

*United States v. Moss*, 217 F.3d 426 (6th Cir. 2000) (Unnecessary delay while motion was pending required dismissal with prejudice).

*United States v. Ramirez-Cortez*, 213 F.3d 1149 (9th Cir. 2000) (Failure to make "ends of justice" findings for speedy trial exclusion).

*United States v. Hardeman*, 249 F.3d 826 (9th Cir. 2001) (Delay to arraign co-defendant violated speedy trial).

*United States v. Nguyen*, 262 F.3d 998 (9th Cir. 2001) (Court did not explain denial of continuance when defendant asked for new counsel).

*United States v. Novaton*, 271 F.3d 968



(11th Cir.), cert. denied, 535 U.S. 1120 (2002) (Four-day mid-trial continuance for co-defendant's medical condition violated defendant's rights).

United States v. Bergfeld, 280 F.3d 486 (5th Cir. 2002) (Five-year government delay in filing prosecution justified presumption of prejudice).

Stogner v. California, 539 U.S. 607 (2003) (Extending a statute of limitations to include previously time-barred cases violates the Ex Post Facto Clause).

United States v. Ingram, 446 F.3d 1332 (11th Cir. 2006) (Two-year delay violated Sixth Amendment Speedy Trial).

Zedner v. United States, 547 U.S. 489 (2006) (A prospective waiver of the Speedy Trial Act is ineffective).

United States v. Stephens, 489 F.3d 647 (5th Cir. 2007) (Neither a codefendant's guilty plea nor defendant's own severance motion rendered time excludable from the speedy trial clock).

United States v. Garner, 507 F.3d 399 (6th Cir. 2007) (Continuance should have been granted to allow defendant to investigate late discovery).

United States v. Lopez-Valenzuela, 511 F.3d 487 (5th Cir. 2007) (Speedy trial clock begins at initial appearance or from filing of information or indictment, whichever is later).

United States v. Williams, 511 F.3d 1044 (10th Cir. 2007) (Court could not make retroactive ends-of-justice exclusion to speedy trial).

United States v. Grenier, 513 F.3d 632 (6th Cir. 2008) (False statements charge exceeded statute of limitations).

United States v. Mendoza, 530 F.3d 758 (9th Cir. 2008) (Defendant's Sixth Amendment right to speedy trial was violated by ten-year delay between indictment and trial caused by government neglect).

United States v. Mendoza, 530 F.3d 758 (9th Cir. 2008) (Ten-year delay between indictment and trial violated Sixth Amendment speedy trial).

United States v. Young, 528 F.3d 1294 (11th Cir. 2008) (Filing superseding indictment for an additional charge did

not reset speedy trial clock).

## Jury Selection

Cochran v. Herring, 43 F.3d 1404 (11th Cir.), modified, 61 F.3d 20, cert. denied, 516 U.S. 1073 (1996) (Batson claim should have been granted).

United States v. Jackman, 46 F.3d 1240 (2d Cir. 1995) (Selection procedure resulted in an under-representation of minorities in jury pool).

United States v. Beckner, 69 F.3d 1290 (5th Cir. 1995) (Defendant established prejudicial pretrial publicity that could not be cured by voir dire).

United States v. Annigoni, 96 F.3d 1132 (9th Cir. 1996) (Court's erroneous denial of a defendant's proper peremptory challenge required automatic reversal).

Tankleff v. Senkowski, 135 F.3d 235 (2d Cir. 1998) (Race-based peremptory challenges were not subject to harmless error review).

United States v. Ovalle, 136 F.3d 1092 (6th Cir. 1998) (Plan which resulted in removal of 1 in 5 blacks from panel, violated Jury Selection and Service Act).

United States v. Tucker, 137 F.3d 1016 (8th Cir. 1998) (Evidence of juror bias and misconduct required evidentiary hearing).

Campbell v. Louisiana, 523 U.S. 392 (1998) (White defendant could challenge discrimination against black grand jurors).

United States v. Blotcher, 142 F.3d 728 (4th Cir. 1998) (Court improperly denied defendant's race neutral peremptory challenge).

Dyer v. Calderon, 151 F.3d 970 (9th Cir.), cert. denied, 523 U.S. 1033 (1998) (Juror's lies raised presumption of bias).

United States v. Herndon, 156 F.3d 629 (6th Cir. 1998) (Denial of hearing on potentially biased juror).

United States v. McFerron, 163 F.3d 952 (6th Cir. 1999) (Defendant did not have burden of persuasion on neutral explanation for peremptory strike).

United States v. Serino, 163 F.3d 91 (1st Cir. 1999) (Defendant gave valid neutral reason for striking juror).

Jordan v. Lefevre, 206 F.3d 196 (2d Cir.

2000) (Merely finding strike of juror was rational does not determine whether there was purposeful discrimination).

United States v. Gonzalez, 214 F.3d 1109 (9th Cir. 2000) (Juror who equivocated about fairness to sit in drug case should have been excused).

McClain v. Prunty, 217 F.3d 1209 (9th Cir. 2000) (Judge must investigate whether purposeful jury selection discrimination occurred).

United States v. Nelson, 277 F.3d 164 (2d Cir.), cert. denied, 537 U.S. 835 (2002) (Defendant cannot be forced to trade for consent to seat biased juror).

Fernandez v. Roe, 286 F.3d 1073 (9th Cir.), cert. denied, 537 U.S. 1000 (2002) (Statistical disparities in use of strikes are prima facie evidence of racial discrimination).

United States v. Thomas, 320 F.3d 315 (2d Cir. 2003) (Court must make credibility findings to support striking minority jurors).

Wilson v. Beard, 426 F.3d 653 (3rd Cir. 2005) (Prosecutor struck all African-Americans).

Miller-El v. Dretke, 545 U.S. 231 (2005) (Prosecutor's strikes were purposely discriminatory).

United States v. Rodriguez-Lara, 421 F.3d 932 (9th Cir. 2005) (Court abused discretion by denying court-appointed expert to show racial disparity of venire).

White v. Mitchell, 431 F.3d 517 (6th Cir.), cert. denied, 127 S.Ct. 581 (2006) (Juror admitting bias should have been struck).

Williams v. Runnels, 432 F.3d 1102 (9th Cir. 2006) (Claim of racial discrimination was unrefuted).

Kesser v. Cambra, 465 F.3d 351 (9th Cir. 2006) (Prosecutor struck jurors based on race).

United States v. Littlejohn, 489 F.3d 1335 (D.C. Cir. 2007) (Venire were told not to mention family or friends in law enforcement unless it prevented them from being fair).

United States v. Odeneal, 517 F.3d 406

(6th Cir. 2008) (Prosecutor's race-neutral reasons for exercising peremptory strike against African-American prospective juror were pretext for race discrimination).

*Snyder v. Louisiana*, 128 S.Ct. 1203 (Prosecutor's proffered reasons for striking black prospective juror were pretext for racial discrimination).

## Closure

*United States v. Doe*, 63 F.3d 121 (2d Cir. 1995) (Court summarily denied a defendant's request to close the trial for his safety).

*Okonkwo v. Lacy*, 104 F.3d 21 (2d Cir.), cert. denied, 524 U.S. 958 (1998) (Record did not support closure of proceedings during testimony of undercover officer).

*Pearson v. James*, 105 F.3d 828 (2d Cir.), cert. denied, 524 U.S. 958 (1998) (Closure of courtroom denied the right to a public trial).

*Judd v. Haley*, 250 F.3d 1308 (11th Cir. 2001) (Total closure of courtroom violated right to public trial).

*United States v. Alcantara*, 396 F.3d 189 (2d Cir. 2005) (Closure lacked notice to public and sufficient findings on the record).

*United States v. Thunder*, 438 F.3d 866 (8th Cir. 2006) (Closure of courtroom denied public trial).

## Jury Trial

*United States v. Robertson*, 45 F.3d 1423 (10th Cir.), cert. denied, 516 U.S. 844 (1995) (No evidence that the defendant intelligently and voluntarily waived a jury trial).

*United States v. Ajmal*, 67 F.3d 12 (2d Cir. 1995) (Jurors should not question witnesses as a matter of course).

*United States v. Duarte-Higareda*, 113 F.3d 1000 (9th Cir. 1997) (Court failed to question a non-English speaking defendant over a jury waiver).

*United States v. Iribe-Perez*, 129 F.3d 1167 (10th Cir. 1997) (Jury was erroneously told that the defendant would plead guilty before start of trial).

*United States v. Saenz*, 134 F.3d 697 (5th Cir. 1998) (Court's questioning of a witness gave appearance of partiality).

*United States v. Tilghman*, 134 F.3d 414 (D.C. Cir. 1998) (Court's questioning of defendant denied him a fair trial).

*United States v. Mortimer*, 161 F.3d 240 (3rd Cir. 1998) (Trial judge was absent during defense closing).

*United States v. Weston*, 206 F.3d 9 (D.C. Cir. 2000) (Use of anti-psychotic medication was not supported by evidence of danger to defendant or others).

*United States v. Gomez-Lepe*, 207 F.3d 623 (9th Cir. 2000) (Magistrate Judge could not preside over polling jury in felony case).

*United States v. Durham*, 287 F.3d 1297 (11th Cir. 2002) (Defendant was forced to wear "stun belt" during trial).

*Miller v. Dormire*, 310 F.3d 600 (8th Cir. 2002) (Defendant did not waive right to jury trial).

*United States v. Curbelo*, 343 F.3d 273 (4th Cir. 2003) (Court may not proceed with eleven jurors over defendant's objection).

*Ruimveld v. Birkett*, 404 F.3d 1006 (6th Cir. 2005) (Defendant was shackled during trial).

*Wisehart v. Davis*, 408 F.3d 321 (7th Cir. 2005) (Hearing was needed to determine bias of juror who knew Defendant took polygraph).

*United States v. Nickl*, 427 F.3d 1286 (10th Cir. 2005) (Judge's comments were the equivalent of testimony for government).

*Bradley v. Harris*, 428 F.3d 811 (9th Cir.), amended, 518 F.3d 657 (2008) (Defendant improperly excluded from in camera conference).

*United States v. Bailon-Santana*, 429 F.3d 1258 (9th Cir. 2005) (Court must directly question Spanish-speaking defendant about jury waiver).

*United States v. Robinson*, 430 F.3d 537 (2d Cir. 2005) (Court had discretion to grant new trial when witness identifying defendant had been impeached).

*United States v. Nunez*, 432 F.3d 573 (4th Cir. 2005) (Court abused discretion by allowing government to reopen after summation).

*United States v. Vitale*, 459 F.3d 190 (2d Cir. 2006) (Court failed to conduct post-trial hearing on juror bias discovered during trial).

*Lyell v. Renico*, 470 F.3d 1177 (6th Cir. 2006) (Judge's abuse and insults to defense counsel denied due process).

*Cunningham v. California*, 549 U.S. 270 (2007) (Placing sentence-elevating factfinding within the judge's province, violates a defendant's right to trial by jury).

*United States v. Razmilovic*, 507 F.3d 130 (2d Cir. 2007) (There was no manifest necessity for mistrial and defendant did not consent).

*United States v. Mannie*, 509 F.3d 851 (7th Cir. 2007) (Co-defendant's courtroom disruption prejudiced trial).

*United States v. Rojas*, 520 F.3d 876 (8th Cir. 2008) (When victim recanted, trial court should have held hearing on motion for new trial).

## Confrontation

*United States v. Hamilton*, 46 F.3d 271 (3rd Cir. 1995) (Prosecution witnesses were not unavailable when they could have testified under government immunity).

*United States v. Lachman*, 48 F.3d 586 (1st Cir. 1995) (Government exhibits were properly excluded on grounds of confusion and waste).

*United States v. Strother*, 49 F.3d 869 (2d Cir. 1995) (A statement, inconsistent with the testimony of a government witness, should have been admitted).

*United States v. Forrester*, 60 F.3d 52 (2d Cir. 1995) (Agent improperly commented on the credibility of another witness).

*United States v. Paguio*, 114 F.3d 928 (9th Cir. 1997) (Missing witness's self-incriminating statement should have been admitted).

*United States v. Lis*, 120 F.3d 28 (4th Cir. 1997) (Ledger connecting another to the crime was not hearsay).

*United States v. Beydler*, 120 F.3d 985 (9th Cir. 1997) (Unavailable witness's

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statement, incriminating the defendant, was inadmissible hearsay).

*United States v. Foster*, 128 F.3d 949 (6th Cir. 1997) (Exculpatory grand jury testimony should have been admitted at trial).

*United States v. Williams*, 133 F.3d 1048 (7th Cir. 1998) (Statements by informant to agent were hearsay).

*United States v. Lowery*, 135 F.3d 957 (5th Cir. 1998) (Court erroneously excluded defendant's evidence that he encouraged witnesses to tell the truth).

*United States v. Moses*, 137 F.3d 894 (6th Cir. 1998) (Allowing child-witness to testify by video violated right to confrontation).

*United States v. Marsh*, 144 F.3d 1229 (9th Cir. 1998) (Admission of complaints by defendant's customers denied confrontation).

*United States v. Mitchell*, 145 F.3d 572 (3rd Cir. 1998) (Anonymous note incriminating defendant was inadmissible hearsay).

*United States v. Cunningham*, 145 F.3d 1385 (D.C. Cir.), cert. denied, 525 U.S. 1059 (1998) (Unredacted tapes violated confrontation).

*United States v. Sanchez-Lima*, 161 F.3d 545 (9th Cir. 1999) (Exclusion of deposition denied right to put on defense).

*United States v. Saenz*, 179 F.3d 686 (9th Cir. 1999) (Defendant was entitled to show his knowledge of victim's prior acts of violence to support self-defense).

*United States v. Torres-Ortega*, 184 F.3d 1128 (10th Cir. 1999) (Admission of grand jury testimony violated confrontation).

*United States v. Samaniego*, 187 F.3d 1222 (10th Cir. 1999) (There was no foundation for admission of business records).

*United States v. Sumner*, 204 F.3d 1182 (8th Cir. 2000) (Child's statement to psychologist was hearsay).

*United States v. Byrd*, 208 F.3d 592 (7th Cir. 2000) (Defendant was prevented from introducing shackles and restraints in which he was held during alleged

assault on officers).

*LaJoie v. Thompson*, 217 F.3d 663 (9th Cir. 2000) (Notice requirement of rape shield law violated right of confrontation).

*United States v. Rhynes*, 218 F.3d 310 (4th Cir. 2000) (Sequestered defense witness should not have been excluded for violating rule).

*Schaal v. Gammon*, 233 F.3d 1103 (8th Cir. 2000) (Admission of videotape of victim's statements violated confrontation).

*Agnew v. Leibach*, 250 F.3d 1308 (7th Cir. 2001) (Bailiff was improperly called to testify about defendant's confession).

*United States v. Wells*, 262 F.3d 455 (5th Cir. 2001) (Witness could not testify to contents of destroyed business records).

*Brumley v. Wingard*, 269 F.3d 629 (6th Cir. 2001) (Videotape should not have been admitted without showing witness was unavailable).

*Cook v. McKune*, 323 F.3d 825 (10th Cir. 2003) (State did not make reasonable effort to locate key witness).

*McKenzie v. Smith*, 326 F.3d 721 (6th Cir.), cert. denied, 540 U.S. 1158 (2005) (Uncorroborated hearsay did not support conviction).

*United States v. Lopez*, 340 F.3d 169 (3d Cir. 2003) (Conviction based upon inadmissible hearsay).

*United States v. Casas*, 356 F.3d 104 (1st Cir.), clarified 359 F.3d 627, cert. denied, 541 U.S. 1069 (2004) (Drug conviction based upon inadmissible hearsay from agent).

*United States v. Turning Bear*, 357 F.3d 730 (8th Cir. 2004) (Testimony via closed circuit television violated confrontation).

*Chia v. Cambra*, 360 F.3d 997 (9th Cir.), cert. denied, 544 U.S. 919 (2005) (Court improperly used hearsay rule to exclude defendant's evidence).

*United States v. Silva*, 380 F.3d 1018 (7th Cir. 2004) (Conviction was based on hearsay).

*Fischetti v. Johnson*, 384 F.3d 140 (3rd Cir. 2004) (No showing that witnesses were unavailable).

*United States v. Cromer*, 389 F.3d 662 (6th Cir. 2004) (Statements by unavailable

witness denied confrontation).

*United States v. Rodriguez-Marrero*, 390 F.3d 1 (1st Cir.), cert. denied, 544 U.S. 912 (2005) (Admitting confession of absent declarant violated confrontation).

*United States v. Gilbert*, 391 F.3d 882 (7th Cir. 2004) (Admission of statements by unavailable witness violated confrontation).

*Crawford v. Washington*, 541 U.S. 36 (2004) (Admission of testimonial statement, that was not subject to cross-examination, violates confrontation).

*United States v. Kenyon*, 397 F.3d 1071 (8th Cir. 2005) (Testimony of physician's assistant was inadmissible hearsay).

*United States v. Bordeaux*, 400 F.3d 548 (8th Cir. 2005) (Defendant denied ability to confront sexual abuse accuser).

*Murillo v. Frank*, 402 F.3d 786 (7th Cir. 2005) (Murder conviction based upon hearsay).

*United States v. Vega-Molina*, 407 F.3d 511 (1st Cir.), cert. denied, 546 U.S. 919 (2005) (Court should have given limiting instruction on co-defendant's confession).

*Madrigal v. Bagley*, 413 F.3d 548 (6th Cir. 2005) (Admission of accomplice's confession violated confrontation).

*United States v. Yates*, 438 F.3d 1307 (11th Cir. 2006) (Two-way video testimony denied confrontation).

*Fulcher v. Motley*, 444 F.3d 791 (6th Cir. 2006) (Admission of wife's statements violated confrontation).

*Davis v. Washington*, 547 U.S. 813 (2006) (Witness affidavit was testimonial evidence and violated confrontation).

*United States v. Jimenez*, 464 F.3d 555 (5th Cir. 2006) (Defendant was not allowed to cross-examine officer about location during surveillance).

*Vasquez v. Jones*, 496 F.3d 564 (6th Cir. 2007) (Confrontation requires ability to impeach witness with prior convictions).

Winzer v. Hall, 494 F.3d 1192 (9th Cir. 2007) (Officer's hearsay testimony violated Confrontation).

United States v. Yida, 498 F.3d 945 (9th Cir. 2007) (Government was barred from admitting former testimony of a witness it deported without deposition).

United States v. Hearn, 500 F.3d 479 (6th Cir. 2007) (Introduction of confidential informant's statement denied Confrontation).

United States v. Becker, 502 F.3d 122 (2d Cir. 2007) (Introduction of co-defendants' plea allocutions violated Confrontation).

United States v. Bercier, 506 F.3d 625 (8th Cir. 2007) (Doctor's testimony about what victim said violated Confrontation).

United States v. Conrad, 507 F.3d 424 (6th Cir. 2007) (Court failed to find hearsay statement was made in furtherance of conspiracy).

United States v. Alvarado-Valdez, 521 F.3d 337 (5th Cir. 2008) (Admission of co-defendant's statement made during police interrogation violated confrontation).

## Impeachment

United States v. Cooks, 52 F.3d 101 (5th Cir. 1995) (Court refused to allow government witness to be questioned about jeopardy from same charges).

United States v. Acker, 52 F.3d 509 (4th Cir. 1995) (Prior consistent statements were not admissible because they were made prior to the witness having a motive to fabricate).

United States v. Tory, 52 F.3d 207 (9th Cir. 1995) (Witness' statement that the robber wore sweat pants was inconsistent with prior statement that he wore white pants).

United States v. Rivera, 61 F.3d 131 (2d Cir.), cert. denied, 520 U.S. 1132 (1997) (Court should not have admitted an attached factual stipulation when allowing defendant to impeach a witness with a plea agreement).

United States v. Blum, 62 F.3d 63 (2d Cir. 1995) (Court excluded evidence relevant to the witness' motive to

testify).

United States v. Platero, 72 F.3d 806 (10th Cir. 1995) (Court excluded cross examination of a sexual assault victim's relationship with a third party).

United States v. Landerman, 109 F.3d 1053 (5th Cir.), modified, 116 F.3d 119, cert. denied, 522 U.S. 1033 (1997) (The defendant should have been allowed to question a witness about a pending state charge).

United States v. Mulinelli-Nava, 111 F.3d 983 (1st Cir. 1997) (Court limited cross examination regarding theory of defense).

United States v. James, 169 F.3d 1210 (9th Cir. 1999) (Records of victim's violence were relevant to self-defense).

Schledwitz v. United States, 169 F.3d 1003 (6th Cir. 1999) (Defendant could expose bias of witness involved in investigation).

United States v. Manske, 186 F.3d 770 (7th Cir. 1999) (Defendant could cross-examine witness about his threats to other witnesses about their testimony).

United States v. Beckman, 222 F.3d 512 (8th Cir. 2000) (Limiting defense cross violated confrontation).

United States v. Doherty, 233 F.3d 1275 (11th Cir. 2000) (Court should have admitted evidence of agent's threat against defense witness).

Wilkerson v. Cain, 233 F.3d 886 (5th Cir. 2000) (Limit on questioning eye witness violated confrontation).

Redmond v. Kingston, 240 F.3d 590 (7th Cir. 2001) (Defendant was prohibited from cross examining rape victim about prior false claim).

United States v. Howell, 285 F.3d 1263 (10th Cir. 2002) (Court barred introduction of witnesses' prior felonies without first finding prejudice).

United States v. Adamson, 291 F.3d 606 (9th Cir. 2002) (Restricting cross-examination of key witness was error).

United States v. Chandler, 326 F.3d 210 (3d Cir. 2003) (Court unduly limited defendant's right of cross-examination).

United States v. Love, 329 F.3d 981 (8th Cir. 2003) (Court improperly limited cross-examination of witness about his mental illness and lack of memory).

Cotto v. Herbert, 331 F.3d 217 (2d Cir. 2003) (Defendant was prevented from cross-examining the only eye witness).

Ortega v. Duncan, 333 F.3d 102 (2d Cir. 2003) (Perjured testimony required new trial).

United States v. Buffalo, 358 F.3d 519 (8th Cir. 2004) (Defendant was prevented from calling impeachment witnesses).

United States v. Stephens, 365 F.3d 967 (11th Cir. 2004) (Defendant was prevented from calling witnesses that undermined government's case).

United States v. Wilmore, 381 F.3d 868 (9th Cir. 2004) (Court restricted cross of government witness).

United States v. Schoneberg, 396 F.3d 1036 (9th Cir. 2004) (Court prevented lawyer from cross-examining witness).

Howard v. Walker, 406 F.3d 114 (2d Cir. 2005) (Court limited defense cross of expert).

## Co-Defendant's Statements

United States v. Montilla-Rivera, 115 F.3d 1060 (1st Cir. 1997) (Exculpatory affidavits of co-defendants, who claimed Fifth Amendment privilege, were newly discovered evidence regarding a motion for new trial).

United States v. Glass, 128 F.3d 1398 (10th Cir. 1997) (Introduction of a co-defendant's incriminating statement violated Bruton).

United States v. Peterson, 140 F.3d 819 (9th Cir. 1998) (Bruton violation occurred).

Gray v. Maryland, 523 U.S. 185 (1998) (Bruton prohibited redacted confession, which obviously referred to defendant).

Lilly v. Virginia, 527 U.S. 116 (1999) (Admission of accomplice confession denied confrontation).

United States v. McCleskey, 228 F.3d 640 (6th Cir. 2000) (Admission of non-testifying co-defendant's statement denied confrontation).

United States v. Reynolds, 268 F.3d 572

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(8th Cir. 2001) (Evidence against co-defendant was inadmissible when he admitted underlying crime).

*Stapleton v. Wolfe*, 288 F.3d 863 (6th Cir. 2002) (Accomplice statements had no indicia of reliability).

*Hill v. Hofbauer*, 337 F.3d 706 (6th Cir. 2003) (Co-defendant's statement establishing defendant's malice should have been excluded).

*Ortiz v. Stevens*, 465 F.3d 1229 (5th Cir. 2006) (Admission of accomplice's confession violated confrontation).

### Misconduct

*United States v. Flores-Chapa*, 48 F.3d 156 (5th Cir. 1995) (Prosecutor referred to excluded evidence).

*United States v. Kallin*, 50 F.3d 689 (9th Cir. 1995) (Prosecutor commented upon the defendant's failure to come forward with an explanation).

*United States v. Gaston-Brito*, 64 F.3d 11 (1st Cir. 1995) (Hearing was necessary to determine if an agent improperly gestured toward defense table in front of the jury).

*United States v. Tenorio*, 69 F.3d 1103 (11th Cir. 1995) (Prosecutor commented upon the defendant's silence).

*United States v. Roberts*, 119 F.3d 1006 (1st Cir. 1997) (Prosecutor commented on defendant's failure to testify and misstated burden of proof).

*United States v. Rudberg*, 122 F.3d 1199 (9th Cir. 1997) (Prosecutor vouched for a witness' credibility in closing argument).

*United States v. Johnston*, 127 F.3d 380 (5th Cir.), cert. denied, 522 U.S. 1152 (1998) (Prosecutor commented on the defendant's failure to testify and asked questions highlighting defendant's silence).

*United States v. Wilson*, 135 F.3d 291 (4th Cir.), cert. denied, 523 U.S. 1143 (1998) (Prosecutor's argument that defendant was a murderer prejudiced drug case).

*United States v. Vavages*, 151 F.3d 1185 (9th Cir. 1998) (Prosecutor coerced defense witness into refusing to testify).

*United States v. Maddox*, 156 F.3d 1280 (D.C. Cir. 1999) (Prosecutor's argument referred to matters not in evidence).

*United States v. Rodrigues*, 159 F.3d 439, amended, 170 F.3d 881 (D.C. Cir. 1999) (Improper closing by prosecutor).

*United States v. Richardson*, 161 F.3d 728 (D.C. Cir. 1999) (Improper remarks by prosecutor).

*United States v. Golding*, 168 F.3d 700 (4th Cir. 1999) (Prosecutor threatened defense witness with prosecution if she testified).

*United States v. Francis*, 170 F.3d 546 (6th Cir. 1999) (Cumulative acts of prosecutorial misconduct).

*Smith v. Groose*, 205 F.3d 1045 (8th Cir.), cert. denied, 531 U.S. 985 (2000) (Prosecution argued contradictory facts in two different but related trials).

*United States v. Cabrera*, 222 F.3d 590 (9th Cir. 2000) (Repeated references to "Cuban drug dealers").

*United States v. Beeks*, 224 F.3d 741 (8th Cir. 2000) (Prosecutor's questioning violated prior in limine ruling).

*United States v. LaPage*, 231 F.3d 488 (9th Cir. 2000) (Prosecutor used perjured testimony).

*Sandoval v. Calderon*, 241 F.3d 765 (9th Cir.), cert. denied, 534 U.S. 847 (2001) (Prosecution referred to religious authority for sentence).

*United States v. Adkinson*, 247 F.3d 1289 (11th Cir. 2001) (Bad faith inclusion of bank fraud charge warranted reimbursement of attorney's fees).

*United States v. Rodriguez*, 260 F.3d 416 (5th Cir. 2001) (Prosecutor argued jury could infer guilt from post-arrest silence).

*Killian v. Poole*, 282 F.3d 1204 (9th Cir.), cert. denied, 537 U.S. 1179 (2003) (Reliance on perjury in argument).

*United States v. Conrad*, 320 F.3d 851 (8th Cir. 2003) (Prosecutor's argument about purpose of ban on sawed-off shotguns was prejudicial).

*United States v. Danielson*, 325 F.3d 1054 (9th Cir. 2003) (Government deliberately interfered with attorney-client relations by obtaining trial strategy form informant).

*United States v. Brown*, 327 F.3d 867 (9th Cir. 2003) (Prosecutor improperly referred to inadmissible prior acts in closing).

*United States v. Rutherford*, 371 F.3d 634 (9th Cir. 2004) (IRS conduct may have intimidated jurors).

*United States v. Moore*, 375 F.3d 259 (3rd Cir. 2004) (Calling defendant a terrorist in closing was plain error).

*United States v. Earle*, 375 F.3d 1159 (D.C. Cir. 2004) (Prosecutor implied defense acted improperly).

*Hayes v. Brown*, 399 F.3d 972 (9th Cir. 2005) (Prosecutor knowingly presented false evidence).

*United States v. Holmes*, 413 F.3d 770 (8th Cir. 2005) (Prosecutor argued defendant's case was "smoke and mirrors, red herrings").

*Hodge v. Hurley*, 426 F.3d 368 (6th Cir. 2005) (Prosecutor made improper argument).

*Ben-Yisrayl v. Davis*, 431 F.3d 1043 (7th Cir. 2005) (Prosecutor commented on defendant's silence).

*Earp v. Ornoski*, 431 F.3d 1158 (9th Cir.), cert. denied, 547 U.S. 1159 (2006) (Evidentiary hearing required for claim that prosecutor threatened witness).

*Weaver v. Bowersox*, 438 F.3d 832 (8th Cir.), cert. denied, 550 U.S. 598 (2007) (Prosecutor argued own personal belief).

*United States v. Carpenter*, 494 F.3d 13 (1st Cir. 2007) (Prosecutor's repeated disparagement of defendant warranted new trial).

*United States v. Azubike*, 504 F.3d 30 (1st Cir. 2007) (Prosecutor's misquoting of defendant was prejudicial).

*United States v. Jenkins*, 504 F.3d 694 (9th Cir. 2007) (Prosecuting defendant for admissions made during trial reflected un rebutted vindictiveness).

*United States v. Caruto*, 532 F.3d 822 (9th Cir. 2008) (Prosecutor's argument that defendant's initial statement contained omissions violated her subsequent invocation of silence).

## Extraneous Evidence

*United States v. Rodriguez*, 45 F.3d 302 (9th Cir. 1995) (Evidence of flight a month after crime was inadmissible to prove an intent to possess).

*United States v. Blackstone*, 56 F.3d 1143 (9th Cir. 1995) (Drug use was improperly admitted in felon in possession case).

*United States v. Moorehead*, 57 F.3d 875 (9th Cir. 1995) (Evidence that the defendant was a drug dealer should not have been admitted in firearms case).

*United States v. Aguilar-Aranceta*, 58 F.3d 796 (1st Cir. 1995) (Prior misdemeanor drug conviction was more prejudicial than probative in a distribution case).

*United States v. McDermott*, 64 F.3d 1448 (10th Cir. 1995) (Evidence that the defendant threatened a witness should not have been admitted because it was not clear the defendant knew the person was a witness).

*United States v. Vizcarra-Martinez*, 66 F.3d 1006 (9th Cir. 1995) (Evidence of personal use of methamphetamine at the time of the defendant's arrest was inadmissible).

*United States v. Elkins*, 70 F.3d 81 (10th Cir. 1995) (Evidence of the defendant's gang membership was improperly elicited).

*United States v. Irvin*, 87 F.3d 860 (7th Cir.), cert. denied, 519 U.S. 903 (1997) (Court should have excluded testimony that the defendant was in a motorcycle gang).

*United States v. Utter*, 97 F.3d 509 (11th Cir. 1996) (In arson case, it was error to admit evidence that the defendant threatened to burn his tenant's house or that the defendant's previous residence had burned).

*United States v. Lecompte*, 99 F.3d 274 (8th Cir. 1996) (Evidence of prior contact with alleged victims did not show plan or preparation).

*United States v. Jobson*, 102 F.3d 214 (6th Cir. 1996) (Court failed to adequately limit evidence of the defendant's gang affiliation).

*United States v. Murray*, 103 F.3d 310 (3rd Cir. 1997) (Evidence that an alleged murderer had killed before was improperly admitted in a CCE case).

*United States v. Fulmer*, 108 F.3d 1486 (1st Cir. 1997) (Allowing testimony about bombing of federal building was prejudicial).

*United States v. Paguio*, 114 F.3d 928 (9th Cir. 1997) (Evidence that the defendant previously applied for a loan was prejudicial).

*Old Chief v. United States*, 519 U.S. 172 (1997) (Court abused its discretion by refusing to accept the defendant's offer to stipulate that he was a felon, in a trial for being a felon in possession of a firearm).

*United States v. Sumner*, 119 F.3d 658 (8th Cir. 1997) (When defendant denied the crime occurred, prior acts to prove intent were not admissible).

*United States v. Millard*, 139 F.3d 1200 (8th Cir.), cert. denied, 525 U.S. 949 (1998) (Prior drug convictions erroneously admitted).

*United States v. Mulder*, 147 F.3d 703 (8th Cir. 1998) (Bank's routine practice was irrelevant to fraud prosecution).

*United States v. Ellis*, 147 F.3d 1131 (9th Cir. 1998) (Testimony about destructive power of explosives was prejudicial).

*United States v. Merino-Balderrama*, 146 F.3d 758 (9th Cir. 1998) (Pornographic films should not have been displayed in light of defendant's offer to stipulate).

*United States v. Spinner*, 152 F.3d 950 (D.C. Cir. 1998) (Letter containing evidence of prior bad acts should not have been admitted).

*United States v. Polasek*, 162 F.3d 878 (5th Cir. 1999) (Convictions of defendant's associates should not have been admitted).

*United States v. Jean-Baptiste*, 166 F.3d 102 (2d Cir. 1999) (Admission of prior bad act was plain error absent evidence it actually occurred).

*United States v. Lawrence*, 189 F.3d 838 (9th Cir. 1999) (Testimony regarding defendant's marriage was more prejudicial than probative).

*United States v. Heath*, 188 F.3d 916 (7th Cir. 1999) (Previous arrest was not admissible prior bad act).

*United States v. Anderson*, 188 F.3d 886 (7th Cir. 1999) (Prior bad act was more than 10 years old).

*United States v. Walton*, 217 F.3d 443 (7th Cir. 2000) (Evidence of prior unsolved theft was irrelevant).

*United States v. Jimenez*, 214 F.3d 1095 (9th Cir. 2000) (Description of defendant's prior conviction involving firearm was not harmless).

*United States v. Varoudakis*, 233 F.3d 113 (1st Cir. 2000) (Evidence of previous fire was more prejudicial than probative).

*United States v. Grimes*, 244 F.3d 375 (5th Cir. 2001) (Narratives found on defendant's computer should not have been introduced in child porn case).

*United States v. Haywood*, 280 F.3d 715 (6th Cir. 2002) (Evidence of previous possession had no bearing on alleged sale).

*Garceau v. Woodford*, 281 F.3d 919 (9th Cir.), cert. denied, 513 U.S. 848 (1994) (Jury instruction drew attention to prior unrelated crimes).

*United States v. Jenkins*, 345 F.3d 928 (6th Cir. 2003) (Evidence that defendant smoked crack was improperly admitted in distribution case).

*United States v. Johnson*, 388 F.3d 96 (3d Cir. 2004) (Prior theft should not have been admitted in carjacking conspiracy).

*United States v. Gonzalez-Flores*, 418 F.3d 1093 (9th Cir. 2005) (Evidence that smuggled aliens suffered heatstroke was unfairly prejudicial).

*United States v. Owens*, 424 F.3d 649 (7th Cir. 2005) (Suggestion of prior bank robbery was error).

*United States v. Johnson*, 439 F.3d 884 (8th Cir. 2006) (Admission of written stories of child rape was error in child pornography case).

*United States v. Cunningham*, 462 F.3d 708 (7th Cir. 2006) (Basis for wiretaps improperly bolstered government's evidence).

*United States v. Curtin*, 489 F.3d 935 (9th Cir. 2007) (Government could not

selectively excerpt pornographic stories in defendant's possession at time of arrest).

United States v. Simpson, 479 F.3d 492 (7th Cir. 2007) (Evidence of unrelated drug sales was inadmissible).

United States v. Curtin, 489 F.3d 935 (9th Cir. 2007) (Court should not have admitted lewd stories written by defendant without first reading them in their entirety).

United States v. Bell, 516 F.3d 432 (6th Cir. 2008) (Defendant's prior drug convictions were not admissible as showing absence of mistake or accident).

## Identification

United States v. Emanuele, 51 F.3d 1123 (3rd Cir. 1995) (Identification, made after seeing the defendant in court, and after a failure to identify him before, should have been suppressed).

Lyons v. Johnson, 99 F.3d 499 (2d Cir. 1996) (Court denied the defendant the right to display a witness in support of a misidentification defense).

United States v. Montgomery, 100 F.3d 1404 (8th Cir. 1996) (Co-defendants should have been required to try on clothing, after defendant had to, when the government put ownership at issue).

United States v. Rogers, 387 F.3d 925 (7th Cir. 2004) (Suggestive line-up tainted courtroom identification).

United States v. Pugh, 405 F.3d 390 (6th Cir. 2005) (Officer could not testify about what was said at out-of-court identification).

## Expert Testimony

United States v. Boyd, 55 F.3d 667 (D.C. Cir. 1995) (Officer relied upon improper hypothetical in drug case).

United States v. Shay, 57 F.3d 126 (1st Cir. 1995) (Defense expert should have been allowed to explain that the defendant had a disorder that caused him to lie).

United States v. Posado, 57 F.3d 428 (5th Cir. 1995) (Per se rule prohibiting polygraph evidence was abolished by Daubert).

United States v. Childress, 58 F.3d 693 (D.C. Cir.), cert. denied, 516 U.S. 1098 (1996) (Defense expert should have been allowed to testify on the defendant's inability to form intent).

United States v. Velasquez, 64 F.3d 844 (3rd Cir. 1995) (Defense expert should have been allowed to testify on the limitations of handwriting analysis).

Rupe v. Wood, 93 F.3d 1434 (9th Cir.), cert. denied, 519 U.S. 1142 (1997) (Exclusion of a witness' failed polygraph results denied due process).

United States v. Hall, 93 F.3d 1337 (7th Cir. 1996) (Expert testimony that the defendant had a disorder that may have caused him to make a false confession should have been admitted).

Calderon v. U.S. District Court, 107 F.3d 756 (9th Cir.), cert. denied, 522 U.S. 907 (1997) (CJA funds for expert could be used to exhaust a state claim).

United States v. Morales, 108 F.3d 1031 (9th Cir. 1997) (The court should not have excluded a defense expert on bookkeeping).

Lindh v. Murphy, 124 F.3d 899 (7th Cir.), cert. denied, 522 U.S. 1069 (1998) (Defendant was prevented from examining the state's psychiatrist about allegations of sexual improprieties with patients).

United States v. Word, 129 F.3d 1209 (11th Cir. 1997) (Lay testimony of abuse to defendant was admissible).

United States v. Dixon, 185 F.3d 393 (5th Cir. 1999) (Court improperly refused instruction on insanity based upon expert testimony).

United States v. Barnette, 211 F.3d 803 (4th Cir. 2000) (Defendant was prevented from presenting expert to answer government's rebuttal expert testimony).

United States v. Smithers, 212 F.3d 306 (6th Cir. 2000) (Court excluded expert on identification without a hearing).

United States v. Velarde, 214 F.3d 1204 (10th Cir. 2000) (Court failed to make reliability determination about government's expert testimony).

United States v. Henke, 222 F.3d 633 (9th Cir. 2000) (Lay witness could not testify to what defendant knew about regulatory scheme).

United States v. Vallejo, 237 F.3d 1008, amended, 246 F.3d 1150 (9th Cir. 2001) (Exclusion of defense experts regarding defendant's ability to communicate in English).

United States v. Watson, 260 F.3d 301 (3rd Cir. 2001) (Drug agents could not give opinion about defendant's intent).

United States v. McGowan, 274 F.3d 1251 (9th Cir. 2001) (Testimony about nature of drug trafficking organizations was inadmissible).

United States v. Varela-Rivera, 279 F.3d 1174 (9th Cir. 2002) (Erroneous admission of testimony about general operation of drug trafficking).

United States v. Pineda-Torres, 287 F.3d 860 (9th Cir.), cert. denied, 537 U.S. 1066 (2002) (Error to allow expert testimony on structure of drug organizations).

United States v. Finley, 301 F.3d 1000 (9th Cir. 2002) (Expert on defendant's atypical belief system improperly excluded).

United States v. Bennett, 363 F.3d 947 (9th Cir.), cert. denied, 543 U.S. 950 (2004) (Officer's testimony about global positioning device violated best evidence rule).

United States v. Hardin, 437 F.3d 463 (5th Cir. 2006) (Court refused to appoint drug expert for indigent defendant).

United States v. Lopez-Medina, 461 F.3d 724 (6th Cir. 2006) (Agent should not have been allowed to give expert testimony without cautionary instruction).

United States v. Kaplan, 490 F.3d 110 (2d Cir. 2007) (District court erred in admitting lay opinion testimony regarding defendant's and other's knowledge of the fraud).

Ferensic v. Birkett, 501 F.3d 469 (6th Cir. 2007) (Exclusion of defense expert for discovery violation denied right to present a defense).

Parle v. Runnels, 505 F.3d 922 (9th Cir. 2007) (Cumulative error resulted from erroneous admission of damaging cross of defense expert).

United States v. Cohen, 510 F.3d 1114

(9th Cir. 2007) (Defense psychiatrist should have been allowed to testify about personality disorder affecting defendant's ability to form intent).

United States v. Hasan, 526 F.3d 653 (10th Cir. 2008) (Defendant should have been provided interpreter when called to testify before grand jury).

## Entrapment

United States v. Reese, 60 F.3d 660 (9th Cir. 1995) (Entrapment instruction failed to tell the jury that the government must prove beyond a reasonable doubt that the defendant was predisposed).

United States v. Bradfield, 113 F.3d 515 (5th Cir. 1997) (Evidence supported an instruction on entrapment).

United States v. Duran, 133 F.3d 1324 (10th Cir. 1998) (Entrapment instruction failed to place burden on government).

United States v. Thomas, 134 F.3d 975 (9th Cir. 1998) (Defendant may present good prior conduct to support entrapment defense).

United States v. Sligh, 142 F.3d 761 (4th Cir. 1998) (Court failed to give instruction on entrapment).

United States v. Burt, 143 F.3d 1215 (9th Cir. 1998) (Entrapment instruction failed to place proper burden on government).

United States v. Gamache, 156 F.3d 1 (1st Cir. 1998) (Jury should have been instructed on entrapment).

United States v. Poehlman, 217 F.3d 692 (9th Cir. 2000) (Defendant was entrapped as matter of law).

United States v. Brooks, 215 F.3d 842 (8th Cir. 2000) (Drug defendant was entrapped as matter of law).

Bradley v. Duncan, 315 F.3d 1091 (9th Cir.), cert. denied, 540 U.S. 963 (2003) (Refusal to give entrapment instruction was error).

United States v. Gurolla, 333 F.3d 944 (9th Cir.), cert. denied, 540 U.S. 995 (2003) (Court improperly denied defendant ability to pursue entrapment defense).

United States v. Luisi, 482 F.3d 43 (1st Cir. 2007) (Supplemental instructions, which foreclosed the jury from considering the defendant's superior's role in the asserted government entrapment of defendant, were erroneous).

## Defenses

United States v. Tory, 52 F.3d 207 (9th Cir. 1995) (Defense was prevented from arguing that an absence of evidence implied that evidence did not exist).

United States v. Ruiz, 59 F.3d 1151 (11th Cir.), cert. denied, 516 U.S. 1133 (1996) (Defendant has the right to have the jury instructed on his theory of defense).

United States v. Hall, 77 F.3d 398 (11th Cir. 1996) (Defendant's counsel was improperly prohibited from addressing general principles of reasonable doubt in closing).

United States v. Otis, 127 F.3d 829 (9th Cir.), cert. denied, 523 U.S. 1066 (1998) (Duress instruction was omitted).

United States v. Benally, 146 F.3d 1232 (10th Cir. 1998) (Defendant was entitled to instructions on self-defense and lesser included offense).

United States v. Sanchez-Lima, 161 F.3d 545 (9th Cir. 1999) (Self-defense instruction should have been given).

United States v. Smith, 217 F.3d 746 (9th Cir. 2000) (Court failed to instruct upon defendant's theory of the case).

United States v. Chanthadara, 230 F.3d 1237 (10th Cir.), cert. denied, 534 U.S. 992 (2001) (Judge said that defense was a "smoke screen").

United States v. Crowley, 236 F.3d 104 (2d Cir. 2000) (Jury should have been charged on voluntary intoxication).

United States v. Miguel, 338 F.3d 995 (9th Cir. 2003) (Defendant was prevented from arguing theory of the case).

United States v. Chin, 371 F.3d 31 (2d Cir. 2004) (Receipts offered in support of alibi were improperly excluded).

United States v. Boulware, 384 F.3d 794 (9th Cir. 2004) (Court excluded state judgement that contradicted prosecution case).

Jackson v. Edwards, 404 F.3d 612 (2d Cir.

2005) (Court refused justification defense to manslaughter).

United States v. Burt, 410 F.3d 1100 (9th Cir. 2005) (Border agent's statements raised public authority defense).

United States v. Biggs, 441 F.3d 1069 (9th Cir. 2006) (Self defense does not require showing no reasonable alternatives).

Holmes v. South Carolina, 547 F.3d 319 (2006) (State may not prohibit evidence that a third party committed offense).

United States v. Veach, 455 F.3d 628 (6th Cir. 2006) (Defendant was entitled to present defenses of voluntary intoxication or diminished capacity).

United States v. Moran, 493 F.3d 1002 (9th Cir. 2007) (District court erroneously excluded one defendant's testimony as hearsay that would have comprised a critical element of defendants' good faith defense).

United States v. Canty, 499 F.3d 729 (7th Cir. 2007) (Failure to give notice of public authority defense did not justify barring defendant's testimony of his state of mind).

## Jury Instructions

Smith v. Singletary, 61 F.3d 815 (11th Cir.), cert. denied, 516 U.S. 1140 (1996) (Court failed to give mitigating instruction in a capital case).

United States v. Birbal, 62 F.3d 456 (2d Cir. 1995) (Jurors were instructed they "may" acquit, rather than they "must" acquit, if the government did not meet its burden).

United States v. Hairston, 64 F.3d 491 (9th Cir. 1995) (Alibi instruction was required when evidence of alibi was introduced in the government's case).

United States v. Ahmad, 101 F.3d 386 (5th Cir. 1996) (Jury instructions in a pollution case implied strict liability rather than the requirement of knowledge).

United States v. Rodgers, 109 F.3d 1138 (6th Cir. 1997) (If a court allows a jury to review trial testimony, there must be a cautionary instruction not to place upon it undue emphasis).



United States v. Bancalari, 110 F.3d 1425 (9th Cir. 1997) (Instruction omitted the element of intent).

United States v. Doyle, 130 F.3d 523 (2d Cir. 1997) (Erroneous instructions stated that presumption of innocence and reasonable doubt were to protect only the innocent).

United States v. Wilson, 133 F.3d 251 (4th Cir. 1997) (Jury instructions did not adequately impose burden of proving knowledge).

United States v. Romero, 136 F.3d 1268 (10th Cir. 1998) ("Law of the case" required element named in jury instruction to be proven).

United States v. Rossomando, 144 F.3d 197 (2d Cir. 1998) (Ambiguous jury instruction misled jurors).

United States v. Lampkin, 159 F.3d 607 (D.C. Cir.), cert. denied, 526 U.S. 1140 (1999) (Jury improperly instructed that government could not prosecute juvenile witnesses).

United States v. Prawl, 168 F.3d 622 (2d Cir. 1999) (Court refused to instruct jury not to consider co-defendants guilty plea).

Jenkins v. Huchinson, 221 F.3d 679 (4th Cir. 2000) (Reasonable doubt instruction improperly indicated it was only advisory).

United States v. Gardner, 244 F.3d 784 (10th Cir. 2001) (Failure to instruct on uncorroborated accomplice testimony).

United States v. Brown, 287 F.3d 965 (10th Cir. 2002) (Defendant should have been given instruction on lesser included offense).

Davis v. Mitchell, 318 F.3d 682 (6th Cir. 2003) (Instructions left jurors with the impression that a life sentence required unanimity).

Powell v. Galaza, 328 F.3d 558 (9th Cir. 2003) (Court's instruction improperly removed element of specific intent).

Ho v. Carey, 332 F.3d 587 (9th Cir. 2003) (Court improperly instructed on general intent regarding a specific intent crime).

United States v. Combs, 369 F.3d 925 (6th Cir. 2004) (Instructions

impermissibly amended indictment).

United States v. Narog, 372 F.3d 1243 (11th Cir. 2004) (Instruction constructively amended indictment).

United States v. Trujillo, 390 F.3d 1267 (10th Cir. 2004) (Defendant did not have to abandon a defense in exchange for favorable instruction).

Smith v. Texas, 543 U.S. 37 (2004) (Death penalty instruction failed to adequately instruct on mitigation evidence).

United States v. Dobson, 419 F.3d 231 (3rd Cir. 2005) (Fraud instruction did not require a culpable mental state).

United States v. Alferhin, 433 F.3d 1148 (9th Cir. 2006) (When materiality is an element, jury must be instructed so).

United States v. Quattrone, 441 F.3d 153 (2d Cir. 2006) (Instruction omitted intent to obstruct justice).

Stark v. Hickman, 455 F.3d 1070 (9th Cir. 2006) (Instruction that presumed defendant's sanity was error).

United States v. Gaines, 457 F.3d 238 (2d Cir. 2006) (Instruction that defendant had motive to testify falsely was improper).

United States v. Hurwitz, 459 F.3d 463 (4th Cir. 2006) (Instruction denied physician good faith defense to distributing prescription pain medicines).

United States v. Arnt, 474 F.3d 1159 (9th Cir. 2007) (Court refused to give an involuntary manslaughter instruction in murder case involving intoxication).

United States v. Hernandez, 476 F.3d 791 (9th Cir. 2007) (Defendant was entitled to instruction on lesser included crime of mere possession).

United States v. Tobin, 480 F.3d 53 (1st Cir. 2007) (Instruction equating harassment with repeated phone calls made in bad faith was overly broad).

United States v. Kayser, 488 F.3d 1070 (9th Cir. 2007) (Defendant is due a charge on his theory of defense despite the strength or weakness of the evidence).

## Deliberations

United States v. Berroa, 46 F.3d 1195 (D.C. Cir. 1995) (Allen charge varied from ABA

standard).

United States v. Harber, 53 F.3d 236 (9th Cir. 1995) (Case agent's report was taken into the jury room).

United States v. Burgos, 55 F.3d 933 (4th Cir. 1995) (Allen charge asked jurors to think about giving up firmly held beliefs).

United States v. Araujo, 62 F.3d 930 (7th Cir. 1995) (Verdict was taken from eleven jurors when the twelfth was delayed by car trouble).

United States v. Ottersburg, 76 F.3d 137 (7th Cir.), clarified, 81 F.3d 657 (1996) (Plain error to allow alternate jurors to deliberate with the jury).

United States v. Manning, 79 F.3d 212 (1st Cir.), cert. denied, 519 U.S. 853 (1996) (Court should have given a "yes or no" answer to a deadlocked jury's question, rather than refer them to the testimony).

United States v. Berry, 92 F.3d 597 (7th Cir.), cert. denied, 523 U.S. 1143 (1998) (Jury improperly considered a transcript, rather than the actual tape).

United States v. Benedict, 95 F.3d 17 (8th Cir. 1996) (Trial court should not have accepted partial verdicts).

United States v. Thomas, 116 F.3d 606 (2d Cir. 1997) (Juror should not have been dismissed when he did not admit to refusing to follow the law during deliberations).

United States v. Hall, 116 F.3d 1253 (8th Cir. 1997) (Exposure of jury to unrelated, but prejudicial matters, required new trial).

United States v. Keating, 147 F.3d 895 (9th Cir. 1998) (Reasonable probability of juror prejudice required new trial).

United States v. Lampkin, 159 F.3d 607 (D.C. Cir.), cert. denied, 526 U.S. 1140 (1999) (Jury was allowed to consider tapes not in evidence).

United States v. Beard, 161 F.3d 1190 (9th Cir. 1999) (Error to substitute alternates for jurors after deliberations began).

United States v. Spence, 163 F.3d 1280 (11th Cir. 1999) (Juror dismissed during deliberations without just

cause).

*United States v. Eastern Medical Billing, Inc.*, 230 F.3d 600 (3rd Cir. 2000) (Allen charge was coercive).

*United States v. Lloyd*, 269 F.3d 228 (3rd Cir. 2001) (Court overstepped authority to inquire into juror's decision).

*United States v. McElhiney*, 275 F.3d 928 (10th Cir. 2001) (Allen instruction was coercive).

*French v. Jones*, 332 F.3d 430 (6th Cir.), cert. denied, 540 U.S. 1018 (2003) (Jury deliberations were a critical stage of trial that required counsel to be present for note from deadlocked jury).

*United States v. Alvarez-Farfan*, 338 F.3d 1043 (9th Cir. 2003) (Jury should have been allowed to compare handwriting samples).

*United States v. Peters*, 349 F.3d 842 (5th Cir. 2003) (Judge's ex parte communication with juror was error).

*Caliendo v. Warden of California Men's Colony*, 365 F.3d 691 (9th Cir.), cert. denied, 543 U.S. 927 (2000) (Prejudice was presumed from detective's 20-minute conversation with jurors).

*United States v. Lentz*, 383 F.3d 191 (4th Cir. 2004) (Evidence that had not been admitted was considered by jury).

*Cannon v. Mullin*, 383 F.3d 1152 (10th Cir. 2004) (Improper contact between jury and government witnesses).

*United States v. Yarborough*, 400 F.3d 17 (D.C. 2005) (Judge's comments to jury coerced conviction).

*United States v. Southwell*, 432 F.3d 1050 (9th Cir. 2005) (Court failed to respond to note concerning the affect of defendant's sanity on verdict).

*United States v. Ginyard*, 444 F.3d 648 (D.C. Cir. 2006) (Court made inadequate findings to support dismissing hold-out juror).

*United States v. Vasquez-Ruiz*, 502 F.3d 700 (7th Cir. 2007) (Unrebutted presumption of prejudice occurred when juror's notes had "Guilty" written).

*United States v. Richard*, 504 F.3d 1109 (9th Cir. 2007) (Replaying tape upon

jury request required instruction not to overemphasize that evidence).

*United States v. Jones*, 504 F.3d 1218 (11th Cir. 2007) (Charge to deadlocked jury was coercive).

## Variance

*United States v. Gilbert*, 47 F.3d 1116 (11th Cir.), cert. denied, 516 U.S. 851 (1995) (Proof of failure to comply with a directive of a federal officer was in variance with the original charge).

*United States v. Johansen*, 56 F.3d 347 (2d Cir. 1995) (Variance when none of the conspiracies alleged were proven).

*United States v. Tsinhna hijinnie*, 112 F.3d 988 (9th Cir. 1997) (Fatal variance between pleading and proof of date of offense).

*United States v. Mohrbacher*, 182 F.3d 1041 (9th Cir. 1999) (Variance between charge of transporting child pornography and proof of mere receipt).

*United States v. Ramirez*, 182 F.3d 544 (7th Cir. 1999) (Variance between charge and proof in firearm case).

*United States v. Morales*, 185 F.3d 74 (2nd Cir.), cert. denied, 529 U.S. 1010 (2000) (Racketeering enterprise did not last for duration alleged in indictment).

*United States v. Shipsey*, 190 F.3d 1081 (9th Cir. 1999) (Court's instruction to jury constructively amended indictment).

*United States v. Pigeo*, 197 F.3d 879 (7th Cir.), cert. denied, 530 U.S. 1269 (2000) (Jury instruction constructively amended indictment).

*United States v. McDermott*, 245 F.3d 133 (2d Cir. 2001) (Variance between conspiracy charged and proof at trial).

*United States v. Collins*, 350 F.3d 773 (8th Cir. 2003) (Jury instruction constructively amended indictment).

*United States v. Ross*, 412 F.3d 771 (7th Cir. 2005) (Substantial variance between date charged and proof at trial).

*United States v. Hoover*, 467 F.3d 496 (5th Cir. 2006) (Judge's instruction allowed jury to convict for different false statement than charged).

*United States v. Swafford*, 512 F.3d 833 (6th

Cir. 2008) (There were multiple conspiracies with different participants alleged as a single conspiracy).

## Speech / Assembly

*United States v. Popa*, 187 F.3d 672 (D.C. Cir. 1999) (Conviction for harassing AUSA with racial epithets violated first amendment).

*United States v. Baugh*, 187 F.3d 1037 (9th Cir. 1999) (Assembly at national park could not be conditioned on promise not to trespass).

*United States v. Frandsen*, 212 F.3d 1231 (11th Cir. 2000) (Requiring permit to make public expression of views was illegal prior restraint).

*United States v. Poocha*, 259 F.3d 1077 (9th Cir. 2001) (Use of profanity to a park ranger was not disturbing the peace).

*United States v. Scarfo*, 263 F.3d 80 (3d Cir. 2001) (Prohibiting counsel's extrajudicial statements violated free speech).

*McCoy v. Stewart*, 282 F.3d 626 (9th Cir. 2002) (Gang members statements to one another were protected by First Amendment).

*In Re Boston Herald*, 321 F.3d 174 (1st Cir. 2003) (Newspaper could not get defendant's financial affidavit under CJA).

## Interstate Commerce

*United States v. Box*, 50 F.3d 345 (5th Cir.), cert. denied, 516 U.S. 918 (1995) (Extortion of interstate travelers did not involve interstate commerce).

*United States v. Cruz*, 50 F.3d 714 (9th Cir. 1995) (Shipment of firearm in interstate commerce must occur after the firearm is stolen).

*United States v. Quigley*, 53 F.3d 909 (8th Cir. 1995) (Liquor store robbery did not affect interstate commerce).

*United States v. Grey*, 56 F.3d 1219 (10th Cir. 1995) (Use of currency did not involve interstate commerce).

*United States v. Lopez*, 514 U.S. 549 (1995) ("Gun-free school zone" law

found unconstitutional).

United States v. Barone, 71 F.3d 1442 (9th Cir. 1995) (False checks did not involve interstate commerce).

United States v. Denalli, 90 F.3d 444 (11th Cir. 1996) (Arson of neighbor's home did not involve interstate commerce).

United States v. Gaydos, 108 F.3d 505 (3rd Cir. 1997) (Insufficient evidence that arson involved interstate commerce).

United States v. Izydore, 167 F.3d 213 (5th Cir. 1999) (No evidence that phone calls crossed state lines for wire fraud interstate nexus).

United States v. Wilson, 182 F.3d 737 (10th Cir. 1999) (Insufficient evidence of child pornography shipped in interstate commerce).

United States v. Spinner, 180 F.3d 514 (3rd Cir. 1999) (Indictment failed to allege element of interstate commerce).

United States v. Causey, 185 F.3d 407 (5th Cir.), cert. denied, 530 U.S. 1277 (2000) (No federal nexus shown regarding communication).

Jones v. United States, 529 U.S. 848 (2000) (Residence that was not used for commercial purpose did not involve interstate commerce in arson case).

United States v. Wang, 222 F.3d 234 (6th Cir. 2000) (Robbery of cash did not have sufficient impact on interstate commerce).

United States v. King, 227 F.3d 732 (6th Cir. 2000) (Arson did not affect interstate commerce).

United States v. Corp, 236 F.3d 325 (6th Cir. 2001) (Photos of child taken by defendant did not have sufficient connection to interstate commerce).

United States v. Johnson, 246 F.3d 749 (5th Cir. 2001) (Plea lacked factual basis for connection to interstate commerce).

United States v. Carr, 271 F.3d 172 (4th Cir. 2001) (Admission to arson of mobile home that served as a church did not satisfy interstate commerce prong).

United States v. Turner, 272 F.3d 380, amended, 280 F.3d 1078 (6th Cir. 2002)

(Robbery of individual who ran illegal lottery did not affect interstate commerce).

United States v. Chance, 306 F.3d 356 (6th Cir. 2002) (Obstruction of state laws to facilitate illegal gambling had insufficient nexus to interstate commerce).

United States v. Jackson, 313 F.3d 231 (5th Cir. 2002) (Insufficient evidence that city received over \$10K of federal funding under theft statute).

United States v. Perrotta, 313 F.3d 33 (2d Cir. 2002) (Intended victim was only an employee of company participating in interstate commerce).

United States v. Burton, 324 F.3d 768 (5th Cir. 2003) (Government failed to prove vehicle was manufactured out of state).

United States v. Lamont, 330 F.3d 1249 (9th Cir. 2003) (Church arson had no federal nexus).

Scheidler v. NOW, Inc., 547 U.S. 9 (2006) (Acts affecting commerce that are neither robbery nor extortion are not covered by Hobbs Act).

United States v. Craft, 484 F.3d 922 (7th Cir. 2007) (Motorcycle club was not in interstate commerce for arson prosecution).

United States v. Schaefer, 501 F.3d 1197 (10th Cir. 2007) (Use of Internet is not alone sufficient proof of interstate commerce).

## Conspiracy

United States v. Newton, 44 F.3d 913 (11th Cir.), cert. denied, 516 U.S. 857 (1995) (Leasing residence for a drug dealer did not prove the defendant's participation in a conspiracy).

United States v. Lluessa, 45 F.3d 408 (11th Cir. 1995) (Proof of conspiracy to export stolen vehicles was insufficient against defendant who did odd jobs for midlevel conspirator).

United States v. Flores-Chapa, 48 F.3d 156 (5th Cir. 1995) (Defendant's beeper and personal use of drugs was not proof of conspiracy).

United States v. Lewis, 53 F.3d 29 (4th Cir. 1995) (Court failed to instruct the jury that conspiring with a government agent alone required an acquittal).

United States v. Ross, 58 F.3d 154 (5th

Cir.), cert. denied, 516 U.S. 954 (1995) (Defendant was not a conspirator merely because he sold drugs at same location as conspirators).

United States v. Kim, 65 F.3d 123 (9th Cir. 1995) (To be guilty of conspiracy, the defendant must have known of the illegal structuring).

United States v. Lopez-Ramirez, 68 F.3d 438 (11th Cir. 1995) (Insufficient evidence of conspiracy as to defendant who was present in home where 65 kilos of cocaine was delivered and then seized).

United States v. Palazzolo, 71 F.3d 1233 (6th Cir. 1995) (Verdict form failed to distinguish the object of the conspiracy).

United States v. Martinez, 83 F.3d 371 (11th Cir.), cert. denied, 519 U.S. 998 (1997) (Defendant's conviction for conspiracy to possess cocaine was reversed because there was no evidence beyond defendant's intent to help co-conspirators steal money).

United States v. Thomas, 114 F.3d 403 (3rd Cir. 1997) (Insufficient evidence of a conspiracy, when it was not shown that defendant knew cocaine was in bag he was to retrieve).

United States v. Jensen, 141 F.3d 830 (8th Cir. 1998) (Insufficient evidence of drug conspiracy).

United States v. Paul, 142 F.3d 836 (5th Cir. 1998) (Insufficient evidence of conspiracy to import).

United States v. Toler, 144 F.3d 1423 (11th Cir. 1998) (Insufficient evidence that defendant participated in conspiracy).

United States v. Thomas, 150 F.3d 743 (7th Cir. 1998) (Defendant was entitled to instruction that buyer/seller relationship is not itself a conspiracy).

United States v. Garcia, 151 F.3d 1243 (9th Cir. 1998) (Gang relationship alone did not support conspiracy).

United States v. Gore, 154 F.3d 34 (2d Cir. 1998) (Buyer/seller relationship did not establish conspiracy).

United States v. Idowu, 157 F.3d 265 (3rd Cir. 1999) (Insufficient evidence that defendant knew purpose of drug

conspiracy).

United States v. Meyer, 157 F.3d 1067 (7th Cir.), cert. denied, 526 U.S. 1070 (1999) (Court should have instructed that mere buyer/seller relationship did not establish conspiracy).

United States v. Morillo, 158 F.3d 18 (1st Cir. 1999) (Insufficient evidence of drug conspiracy).

United States v. Dekle, 165 F.3d 826 (11th Cir. 1999) (Insufficient evidence that doctor conspired to illegally distribute drugs).

United States v. Mercer, 165 F.3d 1331 (11th Cir. 1999) (Insufficient evidence of a drug conspiracy).

United States v. Vaghela, 169 F.3d 729 (11th Cir. 1999) (Insufficient evidence of conspiracy to obstruct justice).

United States v. Torres-Ramirez, 213 F.3d 978 (7th Cir. 2000) (Purchase of drugs and knowledge of conspiracy did not make defendant a co-conspirator).

United States v. Estrada-Macias, 218 F.3d 1064 (9th Cir. 2000) (Mere presence and knowledge of a conspiracy were insufficient to convict).

United States v. Fuchs, 218 F.3d 957 (9th Cir. 2000) (No instruction that conspiracy must have occurred during statute of limitations).

United States v. Rivera, 273 F.3d 751 (7th Cir.), cert. denied, 540 U.S. 922 (2003) (Mere buyer/seller relationship was not conspiracy).

United States v. Garcia-Torres, 280 F.3d 1 (1st Cir. 2002) (Defendant involved in kidnapping and murder did not know he was aiding drug conspiracy).

United States v. Thomas, 284 F.3d 746 (7th Cir. 2002) (Two sales did not prove membership in conspiracy).

United States v. Cruz, 285 F.3d 692 (8th Cir. 2002) (Insufficient evidence of conspiracy to distribute methamphetamine).

United States v. Culps, 300 F.3d 1069 (9th Cir. 2002) (The number of days used for multiplying against the average amount of drugs sold overestimated the amount of time of continuous drug activity related to the conspiracy).

United States v. Hernandez, 301 F.3d 886 (8th Cir. 2002) (Defendant was not proven to be part of methamphetamine conspiracy).

United States v. Shi, 317 F.3d 715 (7th Cir. 2003) (Buyer-seller relationship alone is not a conspiracy).

United States v. Fitz, 317 F.3d 878 (8th Cir. 2003) (Failed to show defendant was aware of conspiracy or knowingly agreed to join it).

United States v. Banuelos, 322 F.3d 700 (9th Cir. 2003) (Jury must find conduct that increases statutory maximum).

United States v. Ceballos, 340 F.3d 115 (2d Cir. 2003) (Insufficient evidence that defendant joined bribery conspiracy).

United States v. Cartwright, 359 F.3d 281 (3d Cir. 2004) (Insufficient evidence that the defendant knew the identity of the substance charged in the drug conspiracy).

United States v. Mann, 389 F.3d 869 (9th Cir.), cert. denied, 544 U.S. 955 (2005) (Firearms found in locked safe were not shown to be in furtherance of conspiracy).

United States v. Mendoza-Larios, 416 F.3d 872 (8th Cir. 2005) (Lacking ownership of car containing drugs, there was insufficient evidence of conspiracy).

United States v. Johnson, 440 F.3d 1286 (11th Cir.), cert. denied, 128 S.Ct. 262 (2007) (Insufficient evidence of money laundering conspiracy).

United States v. Arbane, 446 F.3d 1223 (11th Cir. 2006) (Agreement with government informant alone was not a conspiracy).

United States v. Brown, 459 F.3d 509 (5th Cir.), cert. denied, 127 S.Ct. 2249 (2007) (Defendant who was absent from critical communications was not guilty in fraud conspiracy).

United States v. Korey, 472 F.3d 89 (3rd Cir. 2007) (Defendant must share goal of conspiracy, not merely commit overt act).

United States v. Wexler, 522 F.3d 194 (2d Cir. 2008) (Writing a prescription did not constitute conspiracy to distribute a controlled substance).

## Firearms

Staples v. United States, 511 U.S. (1994) (When defendant was prohibited from

possessing a particular kind of firearm, it must be proven he knew that he possessed that type of firearm).

United States v. Herron, 45 F.3d 340 (9th Cir. 1995) (Defendant whose civil rights were restored was not prohibited from possessing a firearm).

United States v. Caldwell, 49 F.3d 251 (6th Cir. 1995) (Licensed dealer who sold firearm away from business was not guilty of unlicensed sale).

United States v. Anderson, 59 F.3d 1323 (D.C. Cir.), cert. denied, 516 U.S. 999 (1995) (Multiple §924 (c) convictions must be based on separate predicate offenses).

Bailey v. United States, 516 U.S. 137 (1995) (Passive possession of firearm was insufficient to prove "use" of firearm during drug trafficking crime).

United States v. Kelly, 62 F.3d 1215 (9th Cir. 1995) (Defendant whose civil rights were restored was not prohibited from possessing a firearm).

United States v. Hayden, 64 F.3d 126 (3rd Cir. 1995) (Defendant should have been allowed to introduce evidence of his low intelligence and illiteracy to rebut allegations that he knew he was under indictment when buying a firearm).

United States v. Edwards, 90 F.3d 199 (7th Cir. 1996) (Defendant must be shown to know his shotgun is shorter than 18 inches in length in order to be liable for failure to register the weapon).

United States v. Rogers, 94 F.3d 1519 (11th Cir.), cert. denied, 522 U.S. 252 (1998) (Government failed to prove a defendant knew that he possessed a fully automatic weapon).

United States v. Atcheson, 94 F.3d 1237 (9th Cir.), cert. denied, 519 U.S. 1140 (1997) (Each §924 (c) conviction must be tied to a separate predicate crime).

United States v. Indelicato, 97 F.3d 627 (1st Cir.), cert. denied, 522 U.S. 835 (1997) (Defendant who did not lose his civil rights could not be felon in possession).

United States v. Casterline, 103 F.3d 76 (9th Cir.), cert. denied, 522 U.S. 835 (1997) (Felon in possession charge may

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not proven solely by ownership).

United States v. Paul, 110 F.3d 869 (2d Cir. 1997) (Court failed to give duress instruction in a felon in possession case).

United States v. Taylor, 113 F.3d 1136 (10th Cir. 1997) (Firearm found in shared home was not shown to be possessed by the defendant).

United States v. Stephens, 118 F.3d 479 (6th Cir. 1997) (Separate caches of cocaine possessed on the same day, did not support two separate gun enhancements).

United States v. Westmoreland, 122 F.3d 431 (7th Cir. 1997) (Agent's presentation of inoperable firearm to defendant, immediately before arrest, did not support possession of a firearm in relation to drug crime).

United States v. Gonzalez, 122 F.3d 1383 (11th Cir. 1997) (Evidence did not support possession of a firearm while a fugitive from justice).

United States v. Norman, 129 F.3d 1393 (10th Cir. 1997) (Felon whose civil rights had been restored was not illegally in possession of firearm).

United States v. Perez, 129 F.3d 1340 (9th Cir. 1997) (Jury should have been required to decide the type of firearm).

United States v. Graves, 143 F.3d 1185 (9th Cir. 1998) (Accessory to felon in possession had to know co-defendant was a felon and possessed firearm).

United States v. Spinner, 152 F.3d 950 (D.C. Cir. 1998) (Failure to show firearm was semiautomatic assault weapon).

United States v. Benboe, 157 F.3d 1181 (9th Cir. 1999) (Firearm conviction not supported by evidence).

United States v. Sanders, 157 F.3d 302 (5th Cir. 1999) (Insufficient evidence that defendant carried firearm).

United States v. Mount, 161 F.3d 675 (11th Cir. 1999) (Weapon found in stairwell was not carried).

United States v. Gilliam, 167 F.3d 628 (D.C.), cert. denied, 526 U.S. 1164 (1999) (Failed to prove prior conviction in felon in possession).

United States v. Aldrich, 169 F.3d 526

(8th Cir. 1999) (Vacating related gun count required entire new trial on others).

United States v. Meza-Corrales, 183 F.3d 1116 (9th Cir. 1999) (Felon had civil rights restored and could possess firearms).

United States v. Martin, 180 F.3d 965 (8th Cir. 1999) (Insufficient evidence of constructive possession of a firearm).

United States v. Fowler, 198 F.3d 808 (11th Cir. 1999) (Restoration of rights by state allowed firearms possession).

United States v. Howard, 214 F.3d 361 (2d Cir.), cert. denied, 531 U.S. 909 (2000) (Jury could not infer defendant knew firearm was stolen merely because he was felon, or that firearm was found next to one with obliterated serial number).

United States v. Adams, 214 F.3d 724 (6th Cir. 2000) (Simultaneous possession of firearm and ammunition may result in only one conviction).

United States v. Coleman, 208 F.3d 786 (9th Cir. 2000) (Insufficient evidence that defendant knew co-defendant had a firearm for armed bank robbery conviction).

United States v. Moerman, 233 F.3d 379 (6th Cir. 2000) (Defendant merely brandished firearm, not otherwise used).

United States v. Mason, 233 F.3d 619 (D.C. Cir. 2000) (Felon could get instruction that firearm was briefly possessed for legal purpose).

United States v. Hishaw, 235 F.3d 565 (10th Cir.), cert. denied, 533 U.S. 908 (2001) (Insufficient evidence that defendant possessed firearm found under his car seat).

United States v. Sanders, 240 F.3d 1279 (10th Cir. 2001) (Evidence did not prove defendant knew that weapon had silencer).

United States v. Finley, 245 F.3d 199 (2d Cir.), cert. denied, 534 U.S. 1144 (2002) (Single gun could not be used for two possessions during a drug trafficking crime).

United States v. Laskie, 258 F.3d 1047 (9th Cir. 2001) ("Honorable discharge" of drug offense in Nevada counts as a set aside of the prior conviction).

United States v. Osborne, 262 F.3d 486 (5th Cir. 2001) (Civil rights were restored even though state law was later changed).

United States v. Fix, 264 F.3d 532 (5th Cir.

2001) (Granting new trial for state conviction removed disability to possess firearm).

United States v. Gayle, 342 F.3d 89 (2d Cir.), cert. denied, 544 U.S. 1026 (2005) (Felon in possession of a firearm must have been previously convicted in the United States).

United States v. Rawlings, 341 F.3d 657 (7th Cir. 2003) (Without ability to control firearm defendant did not have constructive possession).

United States v. Jones, 371 F.3d 363 (7th Cir. 2004) (Accompanying straw purchaser did not prove knowledge).

United States v. Hammond, 371 F.3d 776 (11th Cir. 2004) (Cardboard tube containing gunpowder was not explosive device).

United States v. Augustin, 376 F.3d 135 (3rd Cir. 2004) (Insufficient evidence that defendant was drug user while possessing firearm).

United States v. Rodriguez, 392 F.3d 539 (2d Cir. 2004) (Insufficient evidence of drug distribution).

United States v. Jones, 393 F.3d 107 (2d Cir. 2004) (Drug and firearms convictions were based on insufficient evidence).

United States v. Harris, 397 F.3d 404 (6th Cir. 2005) (Jury did not find firearm was semiautomatic for crime of use during a drug offense).

United States v. Orellana, 405 F.3d 360 (5th Cir. 2005) (Defendant with temporary immigration status was not a prohibited person).

Small v. United States, 544 U.S. 385 (2005) (Defendant previously convicted in foreign country was not prohibited person).

United States v. Simpson, 442 F.3d 737 (9th Cir. 2006) (Defendant is not prohibited person once civil rights are restored).

United States v. Elrawy, 448 F.3d 309 (5th Cir. 2006) (Alien whose visa had expired was improperly charged for possession after entering with non-immigrant visa).

United States v. Brown, 449 F.3d 154

(D.C. Cir.), amended 463 F.3d 1 (2006) (Accidental discharge was not in furtherance of drug trafficking).

United States v. Rios, 449 F.3d 1009 (9th Cir. 2006) (Mere possession of firearm at residence was not in furtherance of drug trafficking).

United States v. Frechette, 456 F.3d 1 (1st Cir. 2006) (Prior conviction for domestic violence did have valid jury trial waiver).

United States v. Palmer, 456 F.3d 484 (5th Cir. 2006) (Insufficient evidence to support plea for possessing firearm in furtherance of drug trafficking).

United States v. Chenowith, 459 F.3d 635 (5th Cir. 2006) (Defendant whose civil rights had been restored could possess firearm).

United States v. Nobriga, 474 F.3d 561 (9th Cir. 2006) (Reckless offense did not meet definition of domestic violence).

United States v. Introcaso, 506 F.3d 260 (3rd Cir.), cert. denied, 128 S.Ct. 1324 (2008) (Rule of lenity applies to whether unregistered firearm was an antique).

Parker v. Renico, 506 F.3d 444 (6th Cir. 2007) (Mere presence as passenger in vehicle was insufficient to establish possession of firearm).

United States v. Hill, 539 F.3d 1213 (10th Cir. 2008) (Defendant was not a felon when prior never put him in jeopardy to receive a sentence greater than one year).

United States v. Daniel, 518 F.3d 205 (3d Cir. 2008) (Proof of lack of authorization to possess firearm did not constitute proof of lack of authorization to possess ammunition).

## Extortion

United States v. Tomblin, 46 F.3d 1369 (5th Cir. 1995) (Private citizen did not act under color of official right).

United States v. Scotti, 47 F.3d 1237 (2d Cir. 1995) (Facilitating payment of a debt was not extortion).

United States v. Delano, 55 F.3d 720 (2d Cir. 1995) (Services or labor were not property within the meaning of a statute used as a predicate for RICO).

United States v. Wallace, 59 F.3d 333 (2d Cir. 1995) (Demanding payment from fraudulent check scheme was not extortion).

United States v. Allen, 127 F.3d 260 (2d Cir. 1997) (Insufficient evidence of extortionate credit when terms of loan were consensual).

United States v. Saadey, 393 F.3d 669 (6th Cir. 2005) (Extortion not under color of official right).

## Drugs

United States v. Jones, 44 F.3d 860 (10th Cir. 1995) (Car passenger was not shown to have knowledge of the drugs).

United States v. Johnson, 46 F.3d 1166 (D.C. Cir. 1995) (Government failed to prove distribution within 1000 feet of a school).

United States v. Valerio, 48 F.3d 58 (1st Cir. 1995) (Insufficient evidence that the drugs were intended for distribution).

United States v. Andujar, 49 F.3d 16 (1st Cir. 1995) (There was no more evidence than mere presence).

United States v. Jones, 49 F.3d 628 (10th Cir. 1995) (Inferences derived from standing near open trunk did not prove knowledge).

United States v. Polk, 56 F.3d 613 (5th Cir. 1995) (Use of the defendant's car and home were insufficient to show participation).

United States v. Horsley, 56 F.3d 50 (11th Cir. 1995) (Distribution of cocaine is lesser included offense of distribution of cocaine within a 1,000 feet of a school, and the jury should be charged accordingly).

United States v. Kitchen, 57 F.3d 516 (7th Cir. 1995) (Momentarily picking up a kilo for inspection was not possession).

United States v. Kearns, 61 F.3d 1422 (9th Cir. 1995) (Brief sampling of marijuana was not possession).

United States v. Lucien, 61 F.3d 366 (5th Cir. 1995) (Instruction on simple possession should have been given in a drug distribution case).

United States v. Applewhite, 72 F.3d 140 (D.C. Cir.), cert. denied, 517 U.S. 1227 (1996) (Government failed to prove distribution within a 1000 feet of a school).

United States v. Derose, 74 F.3d 1177 (11th Cir. 1996) (Insufficient evidence that the

defendant took possession of marijuana when he did not have key to car where drugs were stored).

United States v. Wozniak, 126 F.3d 105 (2d Cir. 1997) (Charge on marijuana impermissibly amended indictment alleging cocaine and methamphetamine).

United States v. Hunt, 129 F.3d 739 (5th Cir. 1997) (There was insufficient evidence of an intent to distribute).

United States v. Soto-Silva, 129 F.3d 340 (5th Cir. 1997) (Deliberate ignorance instruction was not warranted for charge of maintaining premises for drug distribution).

United States v. Brito, 136 F.3d 397 (5th Cir.), cert. denied, 523 U.S. 1128 (1998) (Evidence that defendant was asked to find drivers did not prove constructive possession of hidden marijuana).

United States v. Lombardi, 138 F.3d 559 (5th Cir. 1998) (Evidence did not support conviction for using juvenile to commit drug offense).

United States v. Leonard, 138 F.3d 906 (11th Cir.), cert. denied, 526 U.S. 1059 (1999) (Insufficient evidence that passenger of vehicle possessed drugs or gun hidden in car).

United States v. Sampson, 140 F.3d 585 (4th Cir. 1998) (Insufficient evidence that drug offense occurred within 1000 feet of a playground or public housing).

United States v. Delagarza-Villarreal, 141 F.3d 133 (5th Cir. 1997) (Insufficient evidence of possession of marijuana where defendant never took control).

United States v. Ortega-Reyna, 148 F.3d 540 (5th Cir. 1998) (Insufficient evidence that drugs hidden in borrowed truck were defendant's).

United States v. Quintanar, 150 F.3d 902 (8th Cir. 1998) (No evidence that defendant exercised control over contraband).

United States v. Valadez-Gallegos, 162 F.3d 1256 (10th Cir. 1999) (Passenger was not linked to contraband in vehicle).

United States v. Edwards, 166 F.3d

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1362 (11th Cir. 1999) (Insufficient evidence of drug possession where defendant merely picked up package).

United States v. Orduno-Aguilera, 183 F.3d 1138 (9th Cir. 1999) (Insufficient evidence that substance was illegal steroid).

United States v. Monger, 185 F.3d 574 (9th Cir. 1999) (Court should have instructed on lesser offense of simple possession).

United States v. Garcia-Sanchez, 189 F.3d 1143 (9th Cir. 1999) (Drug quantities not supported by evidence where defendant did not agree to sell from specific location).

United States v. Bryce, 208 F.3d 346 (2d Cir.), cert. denied, 537 U.S. 884 (2002) (Uncorroborated admissions were insufficient to establish possession or distribution).

United States v. Corral-Gastelum, 240 F.3d 1181 (9th Cir. 2001) (Mere proximity to drugs did not prove possession).

United States v. Noble, 246 F.3d 946 (7th Cir. 2001) (Failure to charge drug quantity was plain error).

United States v. Huerto-Orozco, 272 F.3d 561 (8th Cir. 2001) (Insufficient evidence that defendant possessed drugs in bag found in cab).

United States v. Thomas, 274 F.3d 655 (2d Cir. 2001) (Failure to plead and prove amount of crack limits punishment to lowest statutory maximum).

United States v. Henry, 282 F.3d 242 (3d Cir. 2002) (Drug quantity raising statutory maximum must be pleaded and proven to jury).

United States v. Bennafield, 287 F.3d 320 (4th Cir.), cert. denied, 537 U.S. 961 (2002) (Simultaneous possession of multiple packages was a single crime).

United States v. Allen, 302 F.3d 1260 (11th Cir. 2002) (Jury must decide type and quantity of drugs when it affects maximum punishment).

United States v. Velasco-Heredia, 319 F.3d 1080 (9th Cir. 2003) (Judge could not make drug quantity finding that increased statutory maximum

punishment).

United States v. Hodge, 321 F.3d 429 (3rd Cir. 2003) (Wax/flour mixture cannot be prosecuted as drug analogue).

United States v. Cabaccang, 332 F.3d 622 (9th Cir. 2003) (Flying drugs between points in the U.S. is not importation even if traveling into international airspace).

United States v. Cartwright, 359 F.3d 281 (3rd Cir. 2004) (Insufficient evidence that defendant participated in drug transaction).

United States v. Trujillo, 390 F.3d 1267 (10th Cir. 2004) (Defendant was entitled to lesser charge of simple possession).

United States v. Byfield, 391 F.3d 277 (D.C. Cir. 2004) (Government failed to rebut defense that weight of drugs was partly of sugar).

United States v. Rodriguez, 392 F.3d 539 (2d Cir. 2004) (Insufficient evidence of drug possession).

United States v. Jones, 393 F.3d 107 (2d Cir. 2004) (Insufficient evidence of drug distribution).

United States v. Selwyn, 398 F.3d 1064 (8th Cir. 2005) (Enhanced drug quantity was not submitted to jury).

United States v. Caseer, 399 F.3d 828 (6th Cir. 2005) (No fair notice that Khat contained controlled substance).

United States v. Collins, 401 F.3d 212 (4th Cir. 2005) (Enhanced drug quantity was not submitted to jury).

United States v. Moncivais, 401 F.3d 751 (6th Cir. 2005) (Enhanced drug quantity was not submitted to jury).

United States v. Dunmire, 403 F.3d 722 (10th Cir. 2005) (Insufficient evidence of charged drug quantity).

United States v. Scofield, 433 F.3d 580 (8th Cir.), cert. denied, 547 U.S. 1215 (2006) (Mere proximity to drugs is insufficient evidence of possession).

United States v. Rojas Alvarez, 451 F.3d 320 (5th Cir. 2006) (Insufficient evidence spouse knew drugs were in home).

United States v. Hall, 473 F.3d 1295 (10th Cir. 2007) (Insufficient proof defendant possessed drugs on charged date).

United States v. Stephens, 482 F.3d 669 (4th Cir. 2007) (Evidence was insufficient to corroborate defendant's statement and establish his guilt of drug crimes).

United States v. Esquivel-Ortega, 484 F.3d 1221 (9th Cir. 2007) (Insufficient evidence that passenger had knowledge of concealed drugs).

United States v. Lopez-Vanegas, 493 F.3d 1305 (11th Cir. 2007) (Discussing drug crime to occur abroad does not violate U.S. law).

United States v. Powell, 503 F.3d 147 (D.C. Cir.), cert. denied, 128 S.Ct. 1103 (2008) (Drug distribution within proximity to a school applies only to certain defined schools).

United States v. Brooks, 524 F.3d 529 (4th Cir. 2008) (Jury, not judge, must make drug quantity findings to determine statutory minimums and maximums).

## CCE / RICO

United States v. Barona, 56 F.3d 1087 (9th Cir.), cert. denied, 516 U.S. 1092 (1996) (Insufficient to find a CCE when there were persons who could not be legally counted as supervisees).

United States v. Witek, 61 F.3d 819 (11th Cir.), cert. denied, 516 U.S. 1060 (1996) (Mere buyer-seller relationship did not satisfy management requirement for conviction of engaging in continuing criminal enterprise).

United States v. Russell, 134 F.3d 171 (3rd Cir. 1998) (CCE instruction omitted unanimity requirement).

United States v. To, 144 F.3d 737 (11th Cir. 1998) (Insufficient evidence of RICO and Hobbs Act violations).

United States v. Polanco, 145 F.3d 536 (2d Cir.), cert. denied, 525 U.S. 1071 (1999) (Insufficient evidence that defendant murdered victim to maintain position in CCE).

Richardson v. United States, 526 U.S. 813 (1999) (Jury must agree on specific violations).

United States v. Frega, 179 F.3d 793 (9th Cir.), cert. denied, 528 U.S. 1191 (2000) (Court's instruction failed to

identify potential predicate acts in RICO case).

*United States v. Glover*, 179 F.3d 1300 (11th Cir.), cert. denied, 533 U.S. 936 (2001) (Role as organizer or leader must be based on managing persons, not merely assets).

*United States v. McSwain*, 197 F.3d 472 (10th Cir.), cert. denied, 529 U.S. 1138 (2000) (Conspiracy to manufacture and distribute are lesser offenses of CCE).

*United States v. Brown*, 202 F.3d 691 (4th Cir. 2000) (Omission of instruction requiring unanimity on specific violations reversed CCE conviction).

*United States v. Desena*, 260 F.3d 150 (2d Cir. 2001) (Talk of "war" and "grabbing shirts" did not support CCE).

*Williams v. Obstfeld*, 314 F.3d 1270 (11th Cir. 2002) (Absent a joint enterprise defendant could not be vicariously liable for acts of others).

*Soto-Negron v. Taber Partners I*, 339 F.3d 35 (1st Cir. 2003) (Series of improperly cashed checks were not RICO predicates).

*United States v. Cummings*, 395 F.3d 392 (7th Cir. 2005) (Insufficient evidence of RICO crimes).

## Fraud / Theft

*United States v. Cannon*, 41 F.3d 1462 (11th Cir.), cert. denied, 516 U.S. 823 (1995) (Proof of false documents to elicit payment on government contracts was insufficient when documents did not contain false information).

*United States v. Manarite*, 44 F.3d 1407 (9th Cir.), cert. denied, 516 U.S. 851 (1995) (Mailings were not related to scheme to defraud).

*United States v. Altman*, 48 F.3d 96 (2d Cir. 1995) (Mailings were too remote to be related to the fraud).

*United States v. Hammoude*, 51 F.3d 288 (D.C. Cir.), cert. denied, 515 U.S. 1128 (1995) (Composite stamp did not make a visa a counterfeit document).

*United States v. Wilbur*, 58 F.3d 1291 (8th Cir. 1995) (Physician who stole drugs did not obtain them by deception).

*United States v. Klingler*, 61 F.3d 1234 (6th Cir. 1995) (Customs broker's misappropriation of funds did not involve money of the United States).

*United States v. Valentine*, 63 F.3d 459 (6th Cir. 1995) (Government agent must convert more than \$5000 in a single year to violate 18 U.S.C. § 666).

*United States v. Campbell*, 64 F.3d 967 (5th Cir. 1995) (Bank officers did not cause a loss to the bank).

*United States v. Lewis*, 67 F.3d 225 (9th Cir. 1995) (State chartered foreign bank was not covered by the bank fraud statute).

*United States v. Johnson*, 71 F.3d 139 (4th Cir. 1995) (Court improperly instructed the jury that a credit union was federally insured).

*United States v. Mueller*, 74 F.3d 1152 (11th Cir. 1996) (Filing a misleading affidavit to delay a civil proceeding involving a bank was not bank fraud).

*United States v. Morris*, 81 F.3d 131 (11th Cir. 1996) (Sale of a phone that disguised its identity was not fraud in connection with an access device).

*United States v. Allen*, 88 F.3d 765 (9th Cir.), cert. denied, 520 U.S. 1202 (1997) (Government failed to prove that a credit union was federally insured).

*United States v. Wester*, 90 F.3d 592 (1st Cir. 1996) (Loan's face value was not the proper amount of loss when collateral was pledged).

*United States v. McMinn*, 103 F.3d 216 (1st Cir. 1997) (Defendant was not in the business of selling stolen goods unless he sold goods stolen by others).

*United States v. Czubinski*, 106 F.3d 1069 (1st Cir. 1997) (Merely browsing confidential computer files was not wire fraud or computer fraud).

*United States v. Tencer*, 107 F.3d 1120 (5th Cir.), cert. denied, 522 U.S. 960 (1997) (Insurance checks that were not tied to fraudulent claims were insufficient proof of mail fraud).

*United States v. Todd*, 108 F.3d 1329 (11th Cir. 1997) (Defendant was improperly prohibited from introducing evidence that employees implicitly agreed that pension funds could be used to save the company).

*United States v. Cochran*, 109 F.3d 660 (10th Cir. 1997) (There was insufficient proof of mail fraud without evidence of misrepresentation).

*United States v. Parsons*, 109 F.3d 1002 (4th Cir. 1997) (Money that defendant legitimately spent as postal employee could not be counted toward fraud).

*United States v. Grossman*, 117 F.3d 255 (5th Cir. 1997) (Personal use of funds from business loan was not bank fraud).

*United States v. Cross*, 128 F.3d 145 (3rd Cir.), cert. denied, 523 U.S. 1076 (1998) (Fixing cases was not mail fraud just because court mailed disposition notices).

*United States v. LaBarbara*, 129 F.3d 81 (2nd Cir. 1997) (Government failed to show use of mails in a fraud case).

*United States v. DeFries*, 129 F.3d 1293 (D.C. Cir. 1997) (The court should have given an advice of counsel instruction on an embezzlement count).

*United States v. Baird*, 134 F.3d 1276 (6th Cir. 1998) (Instruction failed to charge jury that contractor was only liable for falsity of costs it claimed to have incurred).

*United States v. Adkinson*, 135 F.3d 1363 (11th Cir. 1998) (Dismissal of underlying bank fraud undermined convictions for conspiracy, mail and wire fraud schemes, and money laundering).

*United States v. Rodriguez*, 140 F.3d 163 (2nd Cir. 1998) (Insufficient evidence of bank fraud).

*United States v. Ely*, 142 F.3d 1113 (9th Cir. 1997) (Government failed to prove defendant was a bank director as charged in the indictment).

*United States v. D'Agostino*, 145 F.3d 69 (2nd Cir. 1998) (Diverted funds were not taxable income for purposes of tax evasion).

*United States v. Schnitzer*, 145 F.3d 721 (5th Cir. 1998) (Impermissible theory of fraud justified new trial).

*United States v. Shotts*, 145 F.3d 1289 (11th Cir.), cert. denied, 525 U.S. 1177 (1999) (Bail bond license was not property within meaning of mail fraud).



statute).

*United States v. Hughey*, 147 F.3d 423 (5th Cir.), cert. denied, 525 U.S. 1030 (1998) (Passing bad checks was not unauthorized use of an access device).

*United States v. Evans*, 148 F.3d 477 (5th Cir.), cert. denied, 525 U.S. 1112 (1999) (No evidence that mailings advanced fraudulent scheme).

*United States v. Blasini-Lluberas*, 169 F.3d 57 (1st Cir. 1999) (There was no misapplication of bank funds on a debt not yet due).

*United States v. Silkman*, 156 F.3d 833 (8th Cir. 1998) (Administrative tax assessment was not conclusive proof of tax deficiency).

*United States v. Adkinson*, 158 F.3d 1147 (11th Cir. 1998) (Insufficient evidence of fraud).

*United States v. Rodrigues*, 159 F.3d 439 (9th Cir.), amended, 170 F.3d 881 (1999) (Insufficient evidence of fraud and theft).

*United States v. Hanson*, 161 F.3d 896 (5th Cir. 1999) (Factual questions about bank fraud should have been decided by jury).

*United States v. Laljie*, 184 F.3d 180 (2d Cir. 1999) (No evidence that checks were altered, that signatures were not genuine, or that they were intended to victimize bank).

*United States v. Lindsay*, 184 F.3d 1138 (10th Cir. 1999) (Insufficient evidence that bank was FDIC insured).

*United States v. Hartsel*, 199 F.3d 812 (6th Cir.), cert. denied, 529 U.S. 1070 (2000) (Receipt of mailed bank statements was not a fraudulent use of mails).

*United States v. Principe*, 203 F.3d 849 (5th Cir. 2000) (Possession of counterfeit document should not have been sentenced under trafficking guidelines).

*United States v. Tucker*, 217 F.3d 960 (8th Cir. 2000) (Loss to IRS occurred when taxes were due, not when conspiracy began).

*Cleveland v. United States*, 531 U.S. 12 (2000) (Victim must actually receive the item for there to be mail fraud).

*United States v. Gee*, 226 F.3d 885 (7th Cir. 2000) (Insufficient evidence of mail and wire fraud where defendant did not conceal material facts).

*United States v. Rahseparian*, 231 F.3d 1267 (10th Cir.), cert. denied, 532 U.S. 974 (2001) (Jury could not reasonably infer that father knew of son's fraudulent business scheme).

*United States v. Odiodio*, 244 F.3d 398 (5th Cir. 2001) (No bank fraud when bank not subject to civil liability).

*United States v. Howerter*, 248 F.3d 198 (3rd Cir. 2001) (Person authorized to write checks did not commit bank larceny by cashing checks payable to himself).

*United States v. Ali*, 266 F.3d 1242 (9th Cir. 2001) (FDIC insurance at time of trail did not prove bank was insured at time of fraud).

*United States v. La Mata*, 266 F.3d 1275 (11th Cir.), cert. denied, 535 U.S. 989 (2002) (Ex post facto application of bank fraud statute).

*United States v. Maung*, 267 F.3d 1113 (11th Cir. 2001) (Defendant was not in the business of selling stolen property).

*United States v. Thomas*, 315 F.3d 190 (3d Cir. 2002) (Insufficient evidence of bank fraud when there was no loss and no intent to steal from a bank).

*United States v. Bobo*, 344 F.3d 1076 (11th Cir. 2003) (Insufficient evidence of health care fraud).

*United States v. Habegger*, 370 F.3d 441 (4th Cir. 2004) (Insufficient evidence of trafficking in counterfeit goods).

*United States v. Chandler*, 388 F.3d 796 (11th Cir. 2004) (Promotional games were not mail fraud).

*United States v. Cacho-Bonilla*, 404 F.3d 84 (1st Cir.), cert. denied, 546 U.S. 956 (2005) (Insufficient evidence of false statement).

*United States v. Cassese*, 428 F.3d 92 (2d Cir. 2005) (A defendant's interest in a transaction is insufficient to prove insider trading).

*United States v. Ligon*, 440 F.3d 1182 (9th Cir. 2006) (Archaeological value alone is not value for purposes of a theft).

*United States v. Ingles*, 445 F.3d 830 (5th

Cir. 2006) (Insured had no knowledge or arson and was not guilty of mail fraud).

*United States v. Hunt*, 456 F.3d 1255 (10th Cir. 2006) (Checks signed with authority were not forged securities).

*United States v. Turner*, 465 F.3d 667 (6th Cir. 2006) (Mail fraud cannot be based upon the fact that official received a salary).

*United States v. Jones*, 471 F.3d 478 (3rd Cir. 2006) (Employee's theft of funds did not affect delivery or payment of health care benefits).

*United States v. Milwitt*, 475 F.3d 1150 (9th Cir. 2007) (Bankruptcy fraud must be proven by showing identifiable victims or class).

*United States v. Thompson*, 484 F.3d 877 (7th Cir. 2007) (Absent a tangible benefit, or evidence of a corrupt motive, steering of a contract for political reasons, was not fraud).

*United States v. Ratcliff*, 488 F.3d 639 (5th Cir. 2007) (Deceiving voting public to get re-elected was not mail fraud).

*United States v. Spirk*, 503 F.3d 619 (7th Cir. 2007) (Testimony that witness probably received letter did not establish a mailing).

*United States v. Urciuoli*, 513 F.3d 290 (1st Cir. 2008) (Instructions allowed consideration of non-criminal behavior of a legislator as a deprivation of honest services).

*United States v. Howard*, 517 F.3d 731 (5th Cir. 2008) (An erroneous instruction on fraud tainted a remaining count for falsifying books).

## Money Laundering

*United States v. Newton*, 44 F.3d 913 (11th Cir. 1995) (Proof of aiding and abetting money laundering conspiracy was insufficient against defendant who leased house on behalf of conspirator).

*United States v. Rockelman*, 49 F.3d 418 (8th Cir. 1995) (Evidence failed to show the transaction was intended to conceal illegal proceeds).

*United States v. Torres*, 53 F.3d 1129

(10th Cir.), cert. denied, 516 U.S. 883 (1995) (Buying a car with drug proceeds was not money laundering).

*United States v. Willey*, 57 F.3d 1374 (5th Cir.), cert. denied, 516 U.S. 1029 (1995) (Transferring money between accounts was insufficient evidence of an intent to conceal).

*United States v. Wynn*, 61 F.3d 921 (D.C. Cir.), cert. denied, 516 U.S. 1015 (1995) (Insufficient evidence that the defendant knew his structuring was unlawful).

*United States v. Nelson*, 66 F.3d 1036 (9th Cir. 1995) (Defendant's eagerness to complete the transaction was not sufficient to prove an attempt).

*United States v. Kramer*, 73 F.3d 1067 (11th Cir.), cert. denied, 519 U.S. 1011 (1996) (Transaction that occurred outside of the United States was not money laundering).

*United States v. Phipps*, 81 F.3d 1056 (11th Cir. 1996) (Not money laundering to deposit a series of checks that are less than \$10K each).

*United States v. Pipkin*, 114 F.3d 528 (5th Cir.), cert. denied, 519 U.S. 821 (1996) (Defendant did not knowingly structure a currency transaction).

*United States v. High*, 117 F.3d 464 (11th Cir. 1997) (Money laundering instruction omitted the element of willfulness).

*United States v. Garza*, 118 F.3d 278 (5th Cir. 1997) (Money laundering proof was insufficient where defendants neither handled nor disposed of drug proceeds).

*United States v. Christo*, 129 F.3d 578 (11th Cir. 1997) (Check kiting scheme was not money laundering).

*United States v. Shoff*, 151 F.3d 889 (8th Cir. 1998) (Purchase with proceeds of fraud was not money laundering).

*United States v. Calderon*, 169 F.3d 718 (11th Cir. 1999) (Insufficient evidence of money laundering).

*United States v. Zvi*, 168 F.3d 49 (2d Cir.), cert. denied, 528 U.S. 872 (1999) (Charging domestic and international money laundering based on the same transactions was multiplicitous).

*United States v. Brown*, 186 F.3d 661 (5th Cir. 1999) (Insufficient evidence of money laundering when no proof checks were connected to fraud).

*United States v. Anderson*, 189 F.3d 1201 (10th Cir. 1999) (Titling vehicle in mother's name did not prove money laundering).

*United States v. Messer*, 197 F.3d 330 (9th Cir. 1999) (Coded language did not support money laundering conviction).

*United States v. Miranda*, 197 F.3d 1357 (11th Cir. 1999) (Ex post facto application of money laundering conspiracy statute).

*United States v. Olaniyi-Oke*, 199 F.3d 767 (5th Cir. 1999) (Purchase of computers for personal use was not money laundering).

*United States v. Loe*, 248 F.3d 449 (5th Cir.), cert. denied, 534 U.S. 974 (2001) (When legitimate and illegal funds were commingled, government had to prove illegal funds were laundered).

*United States v. Marshall*, 248 F.3d 525 (6th Cir.), cert. denied, 534 U.S. 925 (2001) (Purchase of personal property was not money laundering).

*United States v. Braxton-Brown-Smith*, 278 F.3d 1348 (D.C. Cir.), cert. denied, 536 U.S. 932 (2002) (No presumption that money drawn from commingled funds is unclean).

*United States v. Corchado-Peralta*, 318 F.3d 255 (1st Cir. 2003) (Insufficient evidence defendant knew the character of the money).

*United States v. Carucci*, 364 F.3d 339 (1st Cir. 2004) (No connection shown between alleged unlawful activity and financial transactions).

## Aiding and Abetting

*United States v. de la Cruz-Paulino*, 61 F.3d 986 (1st Cir. 1995) (Moving packages of contraband and statements about police was not aiding and abetting).

*United States v. Luciano-Mosquero*, 63 F.3d 1142 (1st Cir.), cert. denied, 517 U.S. 1234 (1996) (No evidence that the defendant took steps to assist in the use of a firearm).

*United States v. Beckner*, 134 F.3d 714 (5th Cir. 1998) (Lawyer was not shown to have knowledge of client's fraud for aiding and abetting).

*United States v. Nelson*, 137 F.3d 1094 (9th Cir.), cert. denied, 525 U.S. 901 (1999) (Evidence did not support aiding and abetting use and carrying of a firearm during crime of violence).

*United States v. Stewart*, 145 F.3d 273 (5th Cir. 1998) (Insufficient evidence that passenger aided and abetted drug possession without intent to distribute).

*United States v. Garcia-Guizar*, 160 F.3d 511 (9th Cir. 1999) (Insufficient evidence of aiding and abetting when no money found on defendant and was not present at sale).

*United States v. Wilson*, 160 F.3d 732 (D.C. Cir.), cert. denied, 528 U.S. 828 (1999) (Insufficient evidence of aiding and abetting murder or retaliation where defendant only told shooter of victim's location).

*United States v. Barnett*, 197 F.3d 138 (5th Cir.), cert. denied, 529 U.S. 1111 (2000) (Insufficient evidence of conspiring or aiding and abetting murder for hire when defendant did not share intent with principal).

*United States v. Yakou*, 428 F.3d 241 (D.C. Cir. 2005) (Cannot aid and abet from outside United States).

*United States v. Staples*, 435 F.3d 860 (8th Cir.), cert. denied, 127 S.Ct. 148 (2007) (Causing a legitimate check to be issued was not aiding and abetting bank fraud).

*United States v. Penaloza-Duarte*, 473 F.3d 575 (5th Cir. 2006) (Defendant did not knowingly associate with drug trafficking venture).

*United States v. Gardner*, 488 F.3d 700 (6th Cir. 2007) (Driver of car did not aid or abet possession of firearms by other occupants).

## Perjury

*United States v. Hairston*, 46 F.3d 361 (4th Cir.), cert. denied, 516 U.S. 840 (1995) (Ambiguity in the question to the defendant was insufficient for perjury conviction).

*United States v. Dean*, 55 F.3d 640 (D.C. Cir.), cert. denied, 516 U.S. 1184 (1996) (Statement that was literally true did not support a perjury conviction).

United States v. Jaramillo, 69 F.3d 388 (9th Cir. 1995) (Defendant charged with perjury by inconsistent statements must have made both under oath).

United States v. Shotts, 145 F.3d 1289 (11th Cir.), cert. denied, 525 U.S. 1177 (1999) (Evasive, but true, answer was not perjury).

## False Statements

United States v. Gaudin, 515 U.S. 506 (1995) (Materiality is an element of a false statement case).

United States v. Bush, 58 F.3d 482 (9th Cir. 1995) (No material false statements or omissions were made to receive union funds).

United States v. Rothhammer, 64 F.3d 554 (10th Cir. 1995) (Contractual promise to pay was not a factual assertion).

United States v. Campbell, 64 F.3d 967 (5th Cir. 1995) (Defendant's misrepresentations to a bank were not material).

United States v. McCormick, 72 F.3d 1404 (9th Cir. 1995) (Defendant who did not read documents before signing them was not guilty of making a false statement).

United States v. Barrett, 111 F.3d 947 (D.C.), cert. denied, 522 U.S. 867 (1997) (Defendant's misrepresentation to court was not a material false statement).

United States v. Farmer, 137 F.3d 1265 (10th Cir. 1998) (Answer to ambiguous question did not support conviction for false declaration).

United States v. Hodge, 150 F.3d 1148 (9th Cir. 1998) (Insufficient evidence of false statements when no certification made on documents).

United States v. Sorenson, 179 F.3d 823 (9th Cir. 1999) (Defendant's false statements were contained in an unsigned loan application).

United States v. Walker, 191 F.3d 326 (2d Cir.), cert. denied, 529 U.S. 1080 (2000) (Insufficient proof that defendant was responsible for more than 100 false immigration documents).

United States v. Good, 326 F.3d 589 (4th

Cir. 2003) (Regulation that was basis for alleged false statement was not effective at time statement was made).

United States v. Cacioppo, 460 F.3d 1012 (8th Cir. 2006) (Failure to make disclosure was not false statement when defendant did not know requirement).

United States v. Horvath, 492 F.3d 1075 (9th Cir. 2007) (Presentence interview may not be used to prosecute materially false statement to federal government).

United States v. Robison, 505 F.3d 1208 (11th Cir. 2007) (Statements to agency must be made knowingly false).

Boulware v. United States, 128 S.Ct. 1168 (2008) (Defendant was not required to show that either he or the corporation that distributed funds to him intended a capital return when the distribution occurred, for the purpose of defeating the tax deficiency element of the tax evasion offense).

## Contempt

United States v. Mathews, 49 F.3d 676 (11th Cir. 1995) (Certification of contempt must be filed by the judge who witnessed the alleged contempt).

United States v. Forman, 71 F.3d 1214 (6th Cir. 1995) (Attorney was not in contempt for releasing grand jury materials in partner's case).

United States v. Brown, 72 F.3d 25 (5th Cir. 1995) (Lawyer's comments on a judge's trial performance were not reckless).

United States v. Mottweiler, 82 F.3d 769 (7th Cir. 1996) (Defendant must have acted willfully to be guilty of criminal contempt).

United States v. Grable, 98 F.3d 251 (6th Cir.), cert. denied, 519 U.S. 1059 (1997) (Contempt order could not stand in light of incorrect advice about Fifth Amendment privilege).

Bingman v. Ward, 100 F.3d 653 (9th Cir.), cert. denied, 520 U.S. 1188 (1997) (Magistrate judge did not have the authority to hold a litigant in criminal contempt).

United States v. Neal, 101 F.3d 993 (4th Cir. 1996) (Plain error for a judge to prosecute and preside over a contempt action).

United States v. Vezina, 165 F.3d 176 (2d Cir. 1999) (Insufficient evidence of criminal contempt of a TRO dealing with a third

party).

United States v. Harris, 314 F.3d 608 (D.C. Cir. 2002) (No competent evidence that defendant refused to testify at grand jury).

In Re Smothers, 322 F.3d 438 (6th Cir. 2003) (Proper notification was not followed).

United States v. Murphy, 326 F.3d 501 (4th Cir. 2003) (An outburst in court could only be charged as a single count of contempt).

In re Troutt, 460 F.3d 887 (7th Cir. 2006) (Criminal contempt of attorney did not follow rules of criminal procedure).

United States v. Rangolan, 464 F.3d 321 (2d Cir. 2006) (Approaching juror in cafeteria did not support contempt conviction).

## Immigration

United States v. Bahena-Cardenas, 70 F.3d 1071 (9th Cir. 1995) (Alien who was not served with warrant of deportation, was not guilty of illegal reentry).

United States v. Dieguimde, 119 F.3d 933 (11th Cir. 1997) (Order of deportation did not consider defendant's request for political asylum).

United States v. Gallardo-Mendez, 150 F.3d 1240 (10th Cir. 1998) (Prior guilty plea did not prevent defendant from contesting noncitizen status).

United States v. Pacheco-Medina, 212 F.3d 1162 (9th Cir. 2000) (Defendant who was captured a few yards from border did not enter United States).

United States v. Rodriguez-Fernandez, 234 F.3d 498 (8th Cir. 2000) (Without detention order in place, defendant did not escape from INS).

United States v. Ruiz-Lopez, 234 F.3d 445 (9th Cir. 2000) (Presence at border is not the same as being found in the United States).

United States v. Matsumaru, 244 F.3d 1092 (9th Cir. 2001) (Insufficient evidence that attorney set up practice to evade immigration laws).

United States v. Herrera-Ochoa, 245 F.3d 495 (5th Cir. 2001) (Defendant's presence at trial could not be evidence that he had previously entered United States).

United States v. Ubaldo-Figueroa, 364 F.3d 1042 (9th Cir. 2004) (Defendant denied due process when previous removal proceeding was not translated into Spanish).

United States v. Sosa, 387 F.3d 131 (2d Cir. 2004) (Procedural defect at deportation hearing voided illegal re-entry conviction).

United States v. Bello-Bahena, 411 F.3d 1083 (9th Cir. 2005) (Defendant placed in official restraint upon entering country was not "found in U.S.>").

United States v. Zavala-Mendez, 411 F.3d 1116 (9th Cir. 2005) (Alien who proceeded directly to border station was not "found in the U.S.>").

United States v. Smith-Baltiher, 424 F.3d 913 (2005) (Defendant entitled to present defense of mistaken citizenship).

United States v. Lombera-Valdivinos, 429 F.3d 927 (9th Cir. 2005) (Deported alien who only intended to be surrender was not guilty of attempted illegal reentry).

United States v. El Shami, 434 F.3d 659 (4th Cir. 2005) (Prior deportation was undermined by lack of notice and reasonable probability of relief).

United States v. Lopez-Perera, 438 F.3d 932 (9th Cir. 2006) (Alien at secondary inspection had not "entered" United States).

United States v. Lopez, 445 F.3d 90 (2d Cir. 2006) (Deportation was defective in that defendant had been falsely told he had no grounds for relief).

United States v. Camacho-Lopez, 450 F.3d 928 (9th Cir. 2006) (Defendant who had been eligible for discretionary relief was improperly deported).

United States v. Charleswell, 456 F.3d 347 (3rd Cir. 2006) (Deportation was subject to attack over failure to inform defendant of right to appeal).

United States v. Ozcelik, 527 F.3d 88 (3rd Cir. 2008) (Explaining to an alien how to avoid detection was not

harboring, concealing or shielding him).

## Pornography

United States v. McKelvey, 203 F.3d 66 (1st Cir. 2000) (Single film strip with three images was not "3 or more matters" under child porn statute).

United States v. Henriques, 234 F.3d 263 (5th Cir. 2000) (At least three images must travel in interstate commerce for child pornography conviction).

United States v. Runyan, 290 F.3d 223 (5th Cir.), cert. denied, 537 U.S. 888 (2002) (Insufficient evidence that some of the images were tied to Internet).

United States v. Ellyson, 326 F.3d 522 (4th Cir. 2003) (Government failed to show computer images involved an actual child).

United States v. Pearl, 324 F.3d 1210 (10th Cir.), cert. denied, 539 U.S. 934 (2004) (Convictions for materials that appeared depict minors were unconstitutional).

## Violent Crimes

United States v. Main, 113 F.3d 1046 (9th Cir. 1997) (In an involuntary manslaughter case, the harm must have been foreseeable within the risk created by the defendant).

United States v. Wicklund, 114 F.3d 151 (10th Cir. 1997) (Murder for hire required a receipt or promise of pecuniary value).

United States v. Yoakum, 116 F.3d 1346 (10th Cir. 1997) (Defendant's interest in a business, and his presence near time of fire, did not support arson conviction).

United States v. Spruill, 118 F.3d 221 (4th Cir.), cert. denied, 522 U.S. 1006 (1997) (Insufficient evidence that a threat would be carried out by fire or explosive).

Smith v. Horn, 120 F.3d 400 (3rd Cir.), cert. denied, 522 U.S. 1109 (1998) (First degree murder instruction failed to require specific intent).

United States v. Bordeaux, 121 F.3d 1187 (8th Cir. 1997) (Jury instruction in an abusive sexual contact case failed to require force).

United States v. Estrada-Fernandez, 150 F.3d 491 (5th Cir. 1998) (Simple assault is lesser included offense of assault with deadly weapon).

United States v. Guerrero, 169 F.3d 933 (5th Cir. 1999) (Inconclusive identification did not support bank robbery conviction).

Jones v. United States, 526 U.S. 227 (1999) (Jury must decide whether carjacking resulted in serious bodily injury or death).

United States v. Wood, 207 F.3d 1222 (10th Cir. 2000) (Doctor's injection of drug to treat patient did not prove premeditated murder).

United States v. Shumpert, 210 F.3d 660 (6th Cir. 2000) (Assault without verbal threat was minor rather than aggravated).

United States v. Baker, 262 F.3d 124 (2d Cir. 2001) (Instruction allowed conviction without proving elements of murder with intent to obstruct justice).

United States v. Peters, 277 F.3d 963 (7th Cir. 2002) (Victim's intoxication and disdain for the defendant did not prove lack of consent to sexual act).

United States v. Glenn, 312 F.3d 58 (2d Cir. 2002) (Insufficient evidence of murder during drug conspiracy).

Patterson v. Haskins, 316 F.3d 596 (6th Cir.), cert. denied, 128 S.Ct. 90 (2007) (Instruction on involuntary manslaughter omitted requirement of proximate cause).

United States v. Odom, 329 F.3d 1032 (9th Cir. 2003) (Inadvertent display of a firearm was not armed bank robbery).

Bunkley v. Florida, 538 U.S. 835 (2003) (Legally possessed pocketknife could not support armed burglary conviction).

United States v. Hampton, 346 F.3d 813 (8th Cir. 2003) (Losing control of vehicle was not an intentional assault on official victim).

United States v. Bellew, 369 F.3d 450 (5th Cir. 2004) (Bank robbery requires actual intimidation).

United States v. Frampton, 382 F.3d 213 (2d Cir.), cert. denied, 543 U.S. 1037 (2004) (Insufficient evidence of murder-for-hire).

United States v. Davies, 394 F.3d 182 (3rd Cir. 2005) (Insufficient evidence of

arson of church).

*United States v. Harris*, 420 F.3d 467 (5th Cir. 2005) (No evidence of intent to kill or harm victim during carjacking).

*United States v. Burton*, 425 F.3d 1008 (5th Cir. 2005) (Insufficient evidence that robbery involved a bank).

*United States v. Sandles*, 469 F.3d 508 (6th Cir.), cert. denied, 128 S.Ct. 229 (2007) (Bank investigator did not have personal knowledge of FDIC insurance).

*United States v. Banks*, 514 F.3d 959 (9th Cir. 2008) (Violence in aid of a racketeering enterprise required more than an incidental motive to maintain membership in gang).

*United States v. Salgado*, 519 F.3d 411 (7th Cir. 2008) (Statute criminalizing robbing money belonging to the United States was not violated when victim was believed to be private actor and he had no such money).

## Assimilative Crimes

*United States v. Devenport*, 131 F.3d 604 (7th Cir. 1997) (Violation of a state civil provision was not covered by Assimilative Crimes Act).

*United States v. Sylve*, 135 F.3d 680 (9th Cir. 1998) (Deferred prosecution was available for charge under Assimilative Crimes Act).

*United States v. Waites*, 198 F.3d 1123 (9th Cir. 2000) (Conduct that was regulated federally should not have been prosecuted under Assimilative Crimes Act).

*United States v. Provost*, 237 F.3d 934 (8th Cir.), cert. denied, 533 U.S. 960 (2001) (Federal government cannot prosecute state crime occurring on lands that are no longer in Indian hands).

*United States v. Prentiss*, 273 F.3d 1277 (10th Cir. 2001) (Parties could not stipulate victim was Indian when they were not).

*United States v. Martinez*, 274 F.3d 897 (5th Cir. 2001) (Federal sentence that was three times longer was not like state sentence).

*United States v. Bruce*, 394 F.3d 1215 (9th Cir. 2005) (Defendant should have

been charged under statute for Indian Lands).

## Miscellaneous Crimes

*United States v. Rodriguez*, 45 F.3d 302 (9th Cir. 1995) (Possessing an object designed to be used as a weapon, while in prison, was a specific intent crime).

*United States v. Alkhabaz*, 104 F.3d 1492 (6th Cir. 1997) (Transmission of e-mail messages of torture, rape and murder did not fall within federal statute without public availability).

*United States v. Grigsby*, 111 F.3d 806 (11th Cir. 1997) (Importation of prohibited wildlife products fell under exceptions to statute).

*United States v. Nyemaster*, 116 F.3d 827 (9th Cir. 1997) (Insufficient evidence of being under the influence of alcohol in a federal park).

*United States v. Cooper*, 121 F.3d 130 (3rd Cir. 1997) (Evidence did not support conviction for tampering with a witness).

*United States v. King*, 122 F.3d 808 (9th Cir. 1997) (Crime of mailing threatening communication required a specific intent to threaten).

*United States v. Valenzano*, 123 F.3d 365 (6th Cir. 1997) (Obtaining a credit report without permission was not a crime).

*United States v. Farrell*, 126 F.3d 484 (3rd Cir. 1997) (Urging a witness to “take the Fifth” was not witness tampering).

*United States v. Rapone*, 131 F.3d 188 (D.C. Cir. 1997) (Evidence was insufficient to show retaliation).

*United States v. Romano*, 137 F.3d 677 (1st Cir. 1998) (Law prohibiting sale of illegally taken wildlife did not cover the act of securing guide services for hunting trip).

*United States v. Cottman*, 142 F.3d 160 (3rd Cir. 1998) (Government is not a victim under Victim Witness Protection Act).

*United States v. Copeland*, 143 F.3d 1439 (11th Cir. 1998) (Government contractor was not bribed under federal statute).

*United States v. Walker*, 149 F.3d 238 (3rd Cir. 1998) (Prison worker was not a corrections officer).

*United States v. Truesdale*, 152 F.3d 443

(5th Cir. 1998) (Insufficient evidence of illegal gambling).

*United States v. Davis*, 197 F.3d 662 (3rd Cir. 1999) (Insufficient evidence of obstruction of justice and conspiracy without proof of knowledge of pending proceeding).

*United States v. Bad Wound*, 203 F.3d 1072 (8th Cir. 2000) (Defendant not liable for acts of coconspirators prior to entering conspiracy).

*United States v. Naiman*, 211 F.3d 40 (2d Cir. 2000) (Receipt of the funds is a jurisdictional element of commercial bribery).

*United States v. Neuhausser*, 241 F.3d 460 (6th Cir.), cert. denied, 534 U.S. 879 (2001) (Insufficient evidence to support Travel Act conviction).

*United States v. Ortlieb*, 274 F.3d 871 (5th Cir. 2001) (Obstruction of justice requires wrongful intent).

*United States v. Leveque*, 283 F.3d 1098 (9th Cir. 2002) (Lacey Act requires defendant know taking game was illegal).

*United States v. Mulero–Joubert*, 289 F.3d 168 (1st Cir. 2002) (For trespassing, government must prove defendant had actual or constructive notice that presence was illegal).

*United States v. Cohen*, 301 F.3d 152 (3rd Cir. 2002) (Failure to prove agent intended to obstruct justice by misappropriating money).

*Wallace v. Nash*, 311 F.3d 140 (2d Cir. 2002) (Item that was not designed to be weapon must be used in order for its possession to be prohibited in a prison).

*United States v. Hathaway*, 318 F.3d 1001 (10th Cir. 2003) (Assault on federal officer defines three offenses and each must be charged separately).

*United States v. Murphy*, 323 F.3d 102 (3rd Cir. 2003) (Bribery Act does not criminalize ordinary patronage).

*United States v. Leftenant*, 341 F.3d 338 (4th Cir.), cert. denied, 540 U.S. 1160 (2004) (Single act of counterfeiting did not justify multiple counts of conviction).

*United States v. Lincoln*, 403 F.3d 703

(9th Cir. 2005) (Predicting the President would be harmed by others was not a threat).

Arthur Anderson L.L.P. v. United States, 544 U.S. 696 (2005) (Obstruction of justice requires proof of conscious wrongdoing).

United States v. Cassel, 408 F.3d 622 (9th Cir. 2005) (Threat must be intended as such by speaker).

United States v. Norris, 428 F.3d 907 (9th Cir. 2005) (Evidence of sexual contact was insufficient when defendant's statement was uncorroborated).

Valdes v. United States, 475 F.3d 1319 (D.C. Cir. 2007) (Search on law enforcement computer was not official act for bribery).

United States v. Reddest, 512 F.3d 1067 (8th Cir. 2008) (Evidence of sexual abuse involving penetration was insufficient).

United States v. Villanueva-Sotelo, 515 F.3d 1234 (8th Cir. 2008) (The aggravated identity theft statute requires that the government must prove the defendant actually knew the identification in question belonged to someone else).

United States v. Mitchell, 518 F.3d 230 (4th Cir. 2008) (False driver's license offered as identification did not identify a specific real individual as required to convict for aggravated identity theft).

United States v. Madera, 528 F.3d 852 (11th Cir. 2008) (It was not a crime to failure to register as a sex offender between the time of the statute's enactment and the promulgation of enforcing regulation).

## Ineffective Assistance of Counsel

Esslinger v. Davis, 44 F.3d 1515 (11th Cir. 1995) (Counsel failed to determine that the defendant was a habitual offender before plea).

United States v. Cook, 45 F.3d 388 (10th Cir. 1995) (Court infringed on counsel's professional judgement).

United States v. Hansel, 70 F.3d 6 (2d Cir. 1995) (Counsel failed to raise

statute of limitations).

Upshaw v. Singletary, 70 F.3d 576 (11th Cir. 1995) (Claim of ineffective assistance of counsel at plea was not waived even though not raised on direct appeal).

United States v. Streater, 70 F.3d 1314 (D.C. 1995) (Counsel gave bad legal advice about pleading guilty).

Sager v. Maass, 84 F.3d 1212 (9th Cir. 1996) (Counsel was found ineffective for not objecting to inadmissible evidence).

United States v. Del Muro, 87 F.3d 1078 (9th Cir. 1996) (Prejudice was presumed when trial counsel was forced to prove his own ineffectiveness at a hearing).

Baylor v. Estelle, 94 F.3d 1321 (9th Cir.), cert. denied, 520 U.S. 1151 (1997) (Counsel was ineffective for failing to follow up on lab reports suggesting that the defendant was not the rapist).

Huynh v. King, 95 F.3d 1052 (11th Cir. 1996) (Lawyer's failure to raise a suppression issue was grounds for remand).

Martin v. Maxey, 98 F.3d 844 (5th Cir. 1996) (Failure to file a motion to suppress could be grounds for ineffectiveness claim).

United States v. Kauffman, 109 F.3d 186 (3rd Cir. 1997) (Failure to investigate insanity defense was ineffective assistance of counsel).

Williamson v. Ward, 110 F.3d 1508 (10th Cir. 1997) (Failure to investigate the defendant's mental illness was ineffective assistance of counsel).

United States v. Gaviria, 116 F.3d 1498 (D.C. Cir.), cert. denied, 522 U.S. 1082 (1997) (Counsel was ineffective for giving incorrect sentencing information in contemplation of plea).

United States v. Taylor, 139 F.3d 924 (D.C. Cir. 1998) (Counsel was ineffective for failing to inform client of advice of counsel defense).

Tejeda v. Dubois, 142 F.3d 18 (1st Cir. 1998) (Counsel's fear of trial judge hindered defense).

United States v. Kliti, 156 F.3d 150 (2d Cir. 1998) (Defense counsel who witnessed exculpatory statement had conflict).

United States v. Moore, 159 F.3d 1154 (9th Cir. 1999) (Irreconcilable conflict between

defendant and lawyer).

United States v. Alvarez-Tautimez, 160 F.3d 573 (9th Cir. 1999) (Counsel ineffective for failing to withdraw plea after co-defendant's suppression motion granted).

United States v. Granados, 168 F.3d 343 (8th Cir. 1999) (Counsel was ineffective for failure to challenge breach of plea agreement).

United States v. Hall, 200 F.3d 962 (6th Cir. 2000) (Despite waiver, dual representation denied effective assistance of counsel).

Combs v. Coyle, 205 F.3d 269 (6th Cir.), cert. denied, 531 U.S. 1035 (2000) (Counsel failed to object to post arrest statement, or to investigate defense expert witness).

United States v. Patterson, 215 F.3d 812 (8th Cir. 2000) (Absences of counsel during trial denied effective assistance).

United States v. McCoy, 215 F.3d 102 (D.C. Cir. 2000) (But for counsel's deficient performance, defendant would not have pled guilty).

Washington v. Hofbauer, 228 F.3d 689 (6th Cir. 2000) (Counsel's failure to object to prosecutor's misconduct was ineffective assistance).

Cossel v. Miller, 229 F.3d 649 (7th Cir. 2000) (Counsel was ineffective for failing to object to suggestive in-court identification).

United States v. Davis, 239 F.3d 283 (2d Cir. 2001) (Counsel was ineffective by threatening to withhold services to encourage plea).

Wanatee v. Ault, 259 F.3d 700 (8th Cir. 2001) (Counsel failed to advise client of affect of felony-murder rule).

Glover v. Miro, 262 F.3d 268 (4th Cir. 2001) (Overworked attorney did not spend enough time with client).

Burdine v. Johnson, 262 F.3d 336 (5th Cir.), cert. denied, 535 U.S. 1120 (2002) (Attorney slept through portions of trial).

Burns v. Gammon, 260 F.3d 892 (8th Cir. 2001) (Failure to raise objection to prosecutor's misconduct during closing argument).

## 37 FEDERAL CONVICTIONS REVERSED

Hunt v. Mitchell, 261 F.3d 575 (6th Cir. 2001) (Defendant denied right to confer with new counsel ten minutes before trial).

Magana v. Hofbauer, 263 F.3d 542 (6th Cir. 2001) (Counsel misinformed defendant about effect of plea agreement).

Dixon v. Snyder, 266 F.3d 693 (7th Cir. 2001) (Counsel misunderstood admissibility of witness statements).

Manning v. Huffman, 269 F.3d 720 (6th Cir. 2001) (Failure to object to participation of deliberation by alternate jurors).

Fisher v. Gibson, 282 F.3d 1283 (10th Cir. 2002) (Counsel failed to adequately argue against weak prosecution case).

Haynes v. Cain, 298 F.3d 375 (5th Cir. 2002) (Counsel conceded defendant's guilt on several counts over objection).

Pirtle v. Morgan, 313 F.3d 1160 (9th Cir.), cert. denied, 539 U.S. 916 (2003) (Counsel failed to request diminished capacity jury instruction).

Catalan v. Cockrell, 315 F.3d 491 (5th Cir. 2002) (Failure to prepare for trial and reliance on conflicted counsel).

Mitchell v. Mason, 325 F.3d 732 (6th Cir.), cert. denied, 543 U.S. 1080 (2005) (Period of pretrial investigation and consultation is a critical stage of trial).

United States v. Leonti, 326 F.3d 1111 (9th Cir. 2003) (Failing to assist client in cooperation with government can be ineffective assistance of counsel).

Joshua v. Dewitt, 341 F.3d 430 (6th Cir. 2003) (Failure to challenge probable cause was ineffective assistance of counsel).

United States v. Leibach, 347 F.3d 219 (7th Cir. 2003) (Counsel was ineffective for failing to investigate exculpatory evidence and not keeping promises made in opening statement).

Moore v. Bryant, 348 F.3d 238 (7th Cir. 2003) (Counsel gave inaccurate advice to induce guilty plea).

Reagan v. Norris, 365 F.3d 616 (8th Cir. 2004) (Ineffective assistance of counsel for failing to object to charge omitting essential element).

Soffar v. Dretke, 368 F.3d 441 (5th Cir. 2004) (Defense counsel failed to interview exculpatory witness).

United States v. Levy, 377 F.3d 259 (2d Cir. 2004) (Counsel's overall performance was ineffective).

Miller v. Webb, 385 F.3d 666 (6th Cir. 2004) (Counsel was ineffective at jury selection).

Owens v. United States, 387 F.3d 607 (7th Cir. 2004) (Failure to move to suppress evidence was ineffective).

Turner v. Bagley, 401 F.3d 718 (6th Cir. 2005) (Counsel's actions caused loss of ability to appeal).

United States v. Jones, 403 F.3d 604 (8th Cir. 2005) (Counsel failed to challenge multiplicitous indictment).

Henry v. Poole, 409 F.3d 48 (2d Cir.), cert. denied 547 U.S. 1040 (2006) (Counsel elicited alibi for wrong time period).

Tenny v. Dretke, 416 F.3d 404 (5th Cir. 2005) (Failure to investigate evidence of self-defense).

Martin v. Grosshans, 424 F.3d 588 (7th Cir. 2005) (Counsel failed to move for mistrial).

Rompilla v. Beard, 545 U.S. 374 (2005) (Counsel failed to examine file of prior conviction).

Thomas v. Varner, 428 F.3d 491 (3rd Cir.), cert. denied, 127 S.Ct. 928 (2007) (Counsel did not move to suppress unreliable identification).

Rolan v. Vaughn, 445 F.3d 671 (3rd Cir. 2006) (Counsel failed to call self defense witness).

Virgil v. Dretke, 446 F.3d 598 (5th Cir. 2006) (Counsel failed to challenge potential jurors who stated they could not be fair).

Adams v. Bertrand, 453 F.3d 428 (7th Cir. 2006) (Failure to locate witness who saw defendant and alleged victim before sexual encounter was ineffective).

Dando v. Yukins, 461 F.3d 791 (6th Cir. 2006) (Failure to investigate Battered Woman's Syndrome defense was ineffective).

Stewart v. Wolfenbarger, 468 F.3d 338 (6th Cir. 2006) (Failure to give notice of alibi and failure to subpoena witness).

Raygoza v. Hulick, 474 F.3d 958 (7th Cir.), cert. denied, 128 S.Ct 613 (2007) (Defense counsel's performance was deficient for failure to investigate alibi).

Thompson v. United States, 504 F.3d 1203 (11th Cir. 2007) (Counsel did not adequately consult with defendant on his right to appeal).

Ramonez v. Berghuis, 490 F.3d 482 (6th Cir. 2007) (Decision not to interview potential beneficial witnesses was ineffective).

United States v. Santiago, 495 F.3d 27 (2d Cir. 2007) (Anders brief and letter were not sufficient notice to illiterate client).

United States v. Weathers, 493 F.3d 229 (D.C. Cir. 2007) (Failure to object to multiplicitous counts was ineffective).

Julian v. Bartley, 495 F.3d 487 (7th Cir. 2007) (Counsel's misstatement of potential sentence to defendant before trial was ineffective).

United States v. Mooney, 497 F.3d 397 (4th Cir. 2007) (Failure to spot potential justification defense for firearm possession was ineffective).

Bell v. Miller, 500 F.3d 149 (2d Cir. 2007) (Failure to consult medical expert on eye witness's ability to perceive was ineffective).

Girts v. Yanai, 501 F.3d 743 (6th Cir.), cert. denied, 129 S.Ct. 92 (2008) (Counsel failed to object to prosecutor's repeated improper comments).

Editor: Alexander Bunin  
Federal Public Defender  
Northern New York  
39 North Pearl Street, 5<sup>th</sup> Floor  
Albany, NY 12207  
(518) 436-1850  
(518) 436-1780 FAX  
[alex.bunin@fd.org](mailto:alex.bunin@fd.org)