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 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.

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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).
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. Hernandez, 278 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. 1999) (Neither the independent source rule, nor the inevitable discovery rule, saved otherwise inadmissible evidence).


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).


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. 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. Limita, 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
Federal Convictions Reversed

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

United States v. Marks, 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. 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).

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. 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. 2009) (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).

In Re Grand Jury Subpoena Dated April 9, 1996, 87 F.3d 1198 (11th Cir. 1996) (Custodial interrogation required warnings).


United States v. Tzaska, 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. Caribay, 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 (9th Cir. 1999) (Inmate under investigation was entitled to warnings).


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. 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).

Kaufp 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 890 (9th 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).
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. LaFerty, 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


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. McCarthey, 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 multiplicitious).

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 multiplicitious).

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

United States v. Buchanan, 485 F.3d 274 (5th Cir. 2007) (Four counts of child pornography were multiplicitious as the government did not offer proof of more than a single transaction).
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United States v. Shellef, 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. Cabrera, 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. 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. Strain, 396 F.3d 689 (5th Cir. 2005) (Harboring a fugitive was tried in wrong 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. 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 Bruston).

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 co-defendant).
Conflicts


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. 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. 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. 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 (6th Cir. 1997) (Court refused to hold a competency 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. 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).


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).


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. 1996) (Prosecutor’s promise to not to prosecute, made at a civil deposition, was the equivalent of use immunity for a related criminal proceeding).

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

Torry 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. 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).


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 761 (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
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. Baird, 218 F.3d 221 (3rd Cir.2000) (Plea agreement prevented use of information at any proceeding).


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. Ribas-Dominice, 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. 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
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. 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. Penn, 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).

Waucaus 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).


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).


United States v. Stephens, 489 F.3d 647 (5th Cir. 2007) (Neither a co-defendant’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).


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


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. Lefere, 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) (Jury 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).


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 show striking minority jurors).


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 mentioned family or friends in law enforcement unless it prevented them from being fair).

United States v. Odeneal, 517 F.3d 406
(6th Cir. 2009) (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).


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-Higarenda, 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. 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).


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. Paganino, 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
United States v. Foster, 128 F.3d 949 (6th Cir. 1997) (Excusalatory 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. 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).


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. 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).


Fulcher v. Motley, 444 F.3d 791 (6th Cir. 2006) (Admission of wife's statements 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. Bercier, 506 F.3d 625 (8th Cir. 2007) (Doctor's testimony about what victim said violated Confrontation).


United States v. Black, 509 F.3d 1036 (9th Cir. 2005) (Court limited defense cross-examining the only eye witness).

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).

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

United States v. Denzer, 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).

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

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

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


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 (11th Cir. 2001) (Court limited defense cross of expert).

Co-Defendant’s Statements

United States v. Montilla-Rivera, 115 F.3d 1372 (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. Toro, 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, 118 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. Mulineili-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).

Wilkeren 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).
(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. Hobbauer, 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 upon 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. 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. 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).


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

United States v. Becks, 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).


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).


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”).


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


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 unrebutted 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-Arcaneta, 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. Piquio, 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. 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. Millard, 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
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. 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).


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. 1066 (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. Valentine, 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. Finley, 301 F.3d 1000 (9th Cir. 2002) (Expert on defendant’s atypical belief system improperly excluded).


United States v. Hardin, 437 F.3d 463 (6th 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).

**Defenses**

**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. Gamachez, 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) (Refusals to give entrapment instruction was error).


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).

**Jury Instructions**


United States v. Birbal, 62 F.3d 456 (2nd 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. Rossomando, 144 F.3d 197 (2d Cir. 1998) (Ambiguous jury instruction misled jurors).


United States v. Prawl, 168 F.3d 622 (2d Cir. 1999) (Court refused to instruct jury not to consider co-defendants guilty plea).

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. Trujillo, 390 F.3d 1267 (10th Cir. 2004) (Defendant did not have to abandon a defense in exchange for favorable instruction).


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).

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. 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. Benedict, 95 F.3d 17 (8th Cir. 1999) (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. McElhinney, 275 F.3d 928 (10th Cir. 2001) (Allen instruction was coercive).

French v. Jones, 332 F.3d 403 (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).

Caliondo 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

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. Tsinnhahijinnie, 112 F.3d 988 (9th Cir. 1995) (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 coercively amended indictment).


United States v. McDermott, 245 F.3d 133 (2d Cir. 2001) (Variance between conspiracy charged and proof at trial).


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. 2009) (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 (3rd 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. Cruz, 50 F.3d 714 (9th Cir. 1999) (Shipments 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).

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<td>United States v. Burton, 324 F.3d 768 (5th Cir. 2003) (Government failed to prove vehicle was manufactured out of state).</td>
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<td>United States v. Lamont, 330 F.3d 1249 (9th Cir. 2003) (Church arson had no federal nexus).</td>
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<td>United States v. Craft, 484 F.3d 922 (7th Cir. 2007) (Motorcycle club was not in interstate commerce for arson prosecution).</td>
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<tr>
<td>United States v. Schaefer, 501 F.3d 1197 (10th Cir. 2007) (Use of Internet is not alone sufficient proof of interstate commerce).</td>
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**Conspiracy**

| United States v. Lluesma, 45 F.3d 408 (11th Cir. 1995) (Proof of conspiracy to export stolen cocaine 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. 1999) (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. 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. 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. Fuchi, 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. 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. 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. Wezler, 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. 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. 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) (Felons in possession charge may
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 stool was not carried).


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. 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. 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. 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

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_unregisterred 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. Tomlin, 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).

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. Sampson, 140 F.3d 585 (4th Cir. 1999) (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 when 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
1362 (11th Cir. 1999) (Insufficient evidence of drug possession where defendant merely picked up package).

United States v. Ordonez-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. 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. 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. Selwyn, 398 F.3d 1064 (8th Cir. 2005) (Enhanced drug quantity was not submitted to jury).


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. 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. To, 144 F.3d 737 (11th Cir. 1998) (Insufficient evidence of RICO and Hobbs Act 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. Cummings, 395 F.3d 150 (8th Cir. 2002) (Personal use of funds from business loan was not bank fraud).

United States v. Desena, 260 F.3d 150 (2d Cir. 2001) (Talk of "war" and "grabbing shirts" did not support CCE).


Soto-Negron v. Taber Partners I, 339 F.3d 35 (1st Cir. 2003) (Series of improperly cashed checks were not RICO predicates).


**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. 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. 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. 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 (6th 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. 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. 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.
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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. 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. 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. Hartael, 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. Odiodio, 244 F.3d 398 (5th Cir. 2001) (No bank fraud when bank was not subject to civil liability).

United States v. Howerton, 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 trial did not prove bank was insured at time of fraud).


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. Chandler, 388 F.3d 796 (11th Cir. 2004) (Promotional games were not mail fraud).


United States v. Cassee, 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).


**Money Laundering**

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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
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(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. 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).

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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).

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United States v. Olaniyi-Oke, 199 F.3d 767 (5th Cir. 1999) (Purchase of computers for personal use was not money laundering).

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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. 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. 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).

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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).


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