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**Northern District of Florida**

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FEDERAL PUBLIC DEFENDER  
**NORTHERN DISTRICT OF FLORIDA**

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A Newsletter for Panel Attorneys

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***For the Record:***

We will publish a newsletter containing items of interest to federal criminal defense attorneys on an occasional basis. You may submit items of interest at any time.

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***FIERCE AND UNEQUAL  
BATTLE***

Happy New Year. Hope it brings you a rewarding year in the courts.

As all of you probably know, I'm new to the job, having begun this past November. My background is in the state public defender's office, here, in Tallahassee, having spent twenty years in the Leon County Circuit Court trying cases. I hope to continue to try cases, and work the administrative end of the job as well. I'm looking forward to learning some new law, and joining the fray in Federal Court.

Bob Vossler did a wonderful job over the years, and I feel very fortunate to have inherited a fine staff, talented lawyers, and three well run offices. His

dedication has given me the luxury of casting about and looking into what I can do to assist the panel attorneys. At the Federal Public Defender's Conference in Ft. Lauderdale, which was held this past December, there was a lot of talk about panel newsletters and panel education. The rebirth of this newsletter is the product of my trip to Ft. Lauderdale. My expectation is that we will mail it out, not so much on a regular basis, but whenever we have enough material to justify one. I'd like to shoot for three or four issues a year.

I'd like to know what suggestions you have for your newsletter. Please call me at 850-942-8818, email me at [fdpubdef@polaris.net](mailto:fdpubdef@polaris.net), or come by and see me. Please let me know too what interest in or suggestions you have for panel education.

few weeks ago I met with Judge Vinson and he has suggested that we review the Criminal Justice Act Plan. I've asked Bill Clark, of our Tallahassee office, in conjunction with Tom Keith from the Pensacola office, and Tom Miller from our Gainesville office, to assume primary responsibility for that task. Bill tells me that the existing version of the plan was proposed by Judge Paul back in 1994, but never actually adopted by the other judges. We'll start with that document, make whatever revisions we think are appropriate, and will circulate it to you for your review and thoughts. From there I anticipate meeting with Judge Vinson, presumably with some panel lawyers, to discuss our proposals. In the meantime please let us know of your suggestions. If you don't have a copy of the 1994 plan, please call me and we'll send one to you.

*Criminal Justice  
Act Plan*

When I was in Pensacola a

*Hourly Rate  
Increase*

In this newsletter you'll find

essentially two items. The first is a summary prepared by the Defender Services Division of the Administrative Office of the United States Courts of what's being done to improve your hourly rate. The push is for an across the board \$75 an hour rate. The information about the rate hike also includes an article that provides you with some background information on the issue.

#### *Reversible Error*

The second item is a collection of cases prepared by the Federal Defenders Organization of the Southern District of Alabama. The cases listed are those in which, between 1995 and 1998, a criminal defendant received relief from a United States Court of Appeals or the United States Supreme Court. Be cautioned that if the case is preceded by an asterisk, it means the opinion has been criticized by another panel of that circuit or by another circuit.

Last month when we held the ceremony in which Judge Hatchett administered the oath of office to me, I closed with a quote that some of you may wish to use as you head off to your next courtroom contest with the government. It's from the famous novel by Cervantes, *Don Quixote*. The Don was about to begin his legendary battle with the windmills, something akin to practicing criminal defense, when he turned and said to Sancho: "Those are giants, and if you are afraid, turn aside and pray for me whilst I enter into fierce and unequal battle with them."

With best wishes to all of you as you fearlessly enter into the year's fierce and unequal

battles,

Randy Murrell

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### **CAMPAIGN TO SEEK FULL IMPLEMENTATION OF THE \$75 HOURLY RATE BY FISCAL YEAR 2000**

At its May 1998 meeting, the Committee on Defender Services adopted a resolution stating that the failure to increase compensation for Criminal Justice Act panel attorneys is "leading towards a crisis." The Committee agreed to abandon the unsuccessful strategy of seeking incremental increases of \$5 per hour after Fiscal Year 1999 and to seek full funding of the \$75 per hour rate in all authorized districts in Fiscal Year 2000. (The congressional appropriation report language for Defender Services denied the requested \$5 per hour increase for Fiscal Year 1999.) Efforts to enlist the support of the Economy Subcommittee and the Budget Committee in seeking full implementation of the Judicial Conference approved rates were successful and the United States Judicial Conference, at its September 1998 Session, approved a Fiscal Year 2000 budget request that includes funding for the \$75 rate as of April 1, 2000.

On December 9, 1998, the joint session of the Committee, federal defenders, and panel attorney members of the Defender Services Advisory Group, was devoted to the \$75 rate issue. At the joint session, and at the Committee meeting the following day, Michael W.

Blommer, Assistant Director, Office of Legislative Affairs, and George H. Schafer, Deputy Assistant Director, Office of Finance and Budget, discussed means of informing and educating members of Congress of the need for the \$75 rate. Committee Chair Judge Robin J. Cauthron has further acknowledged the importance of the \$75 per hour rate initiative by asking Committee member Judge Pattie B. Saris to lead the Committee's \$75 rate liaison efforts, along with Committee members Judge Charles R. Wolle and Judge John J. Hughes.

Recognizing that the judiciary needs to support the request to Congress for the \$75 rate with empirical evidence about the impact of compensation rates on panel attorneys and the courts, the Defender Services Division has just conducted a survey in November 1998 of district court chief judges and CJA panel managers. The chief judges were asked questions regarding the timeliness and quality of panel services, and the panel managers were questioned regarding the timeliness of panel appointments, the availability of qualified counsel, and the effect of rates of pay on panel administration. There are also plans to survey panel and non-panel attorneys early next year, to collect data on the reasonableness and adequacy of panel attorney compensation rates and the impact of the compensation rates on the ability to recruit and appoint qualified counsel.

A number of public and private organizations have expressed support for the \$75

rate. The Administrative Office's Magistrate Judges Advisory Group passed a resolution urging funding of the \$75 rate for districts authorized to receive it, and the Chiefs Advisory Council (Probation and Pretrial Services System) issued a memorandum expressing concern for the quality of court-appointed counsel if the \$75 rate is not implemented. A resolution drafted by Terry MacCarthy, Federal Defender (IL-N), was unanimously adopted by the American Bar Association's (ABA) House of Delegates and approved by its Criminal Justice Section. The resolution urges the judiciary to seek, and Congress to authorize, full funding of the \$75 hourly rate as well as annual cost-of-living increases. The National Association of Criminal Defense Lawyers also passed a resolution that supports and joins the ABA's statement. Most recently, a letter of support was received from the Federal Magistrate Judges Association.

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## **THE FACTS**

**Current Hourly Rates.** Private "panel" attorneys are paid hourly rates of \$65 in-court and \$45 out-of-court in most judicial districts, despite the Judicial Conference's having approved, subject to the availability of funds and pursuant to its statutory authority under the CJA, 18 U.S.C. 3006A, a \$75 rate for in-court and out-of-court work in 93 of the 94 districts.

### **History of the Rate**

• **1984** - although Congress doubled the hourly rates to \$60 in-court/\$40 out-of-court, this raise, the first since 1970, did not keep pace with the greater than 150% increase in the cost of living during that 14 year period.

• **1986** - the Criminal Justice Act was amended to permit the Judicial Conference to increase the in-court and out-of-court rates to \$75, and to approve a cost-of-living adjustment mechanism beginning in 1990 (subsection (d)(1) of the CJA).

• **1990** - the Judicial Conference implemented the \$75 rate in 8 districts and partially in an additional 8 districts. The Judicial Conference also approved, subject to the availability of funds, increasing the maximum hourly rate by an amount not to exceed annual raises given to federal employees.

• **1995** - Congress denied judiciary requests to implement higher rates up to \$75 from fiscal years 1992 through 1995. By the end of 1995, the Judicial Conference had approved the \$75 rate, subject to the availability of funds, in 93 of the 94 districts.

• **1996** - the judiciary embarked on a seven-year, incremental strategy of seeking a \$5 per year increase to the \$60/\$40 rates to reach the \$75 rate for in-court and out-of-court work by 2002. The Judicial Conference implemented a congressionally authorized \$5 increase to the \$60/\$40 rates to \$65/\$45, but congressional appropriations committees subsequently denied funding to increase these rates by \$5 in fiscal years 1997 - 1999.

• **1998** - at its May 1998 meeting, the Judicial

Conference Committee on Defender Services adopted a resolution in favor of full implementation of the \$75 rate in fiscal year 2000. At its September 1998 session, the Judicial Conference approved seeking funding to implement the \$75 rate in fiscal year 2000 (beginning on April 1, 2000).

### **Fairness and Economics of the \$75 Rate.**

Most panel attorneys have received only one \$5 increase since the provision authorizing the \$60 in-court/\$40 out-of-court rates was enacted in 1984, 14 years ago. By fiscal year 2000, it is projected that the \$75 rate will have the purchasing power of only \$49 as expressed in 1986 dollars, the year in which the Criminal Justice Act was amended to authorize the Judicial Conference to implement the \$75 rate. (The \$75 rate is substantially lower than the approximately \$100 per hour rate which would be authorized if the annual federal pay increases, approved by the Judicial Conference for CJA rates, were applied.) The buying power of the current \$65/\$45 rates relative to 1984 dollars is the equivalent of only \$42 per in-court and \$29 per out-of-court hour. Thus, panel attorney pay has effectively been reduced by nearly 35%.

### **Cost of Implementing the \$75 Rate.**

The current cost estimate to implement the \$75 rate in fiscal year 2000 is \$17.2 million with an April 1, 2000 implementation date.

**Comparison of CJA Rates to Other Federal Programs and Overhead Costs.** Of 59 federal agencies listed as paying for private counsel in a 1992 General Accounting Office fact sheet, Information on the Federal Government's Use of Private Attorneys (GAO/GDD-93-17S), panel rates are among the lowest by a substantial margin. Panel rates today are below even the **initial \$75** rate standard established by the Equal Access to Justice Act (28 U.S.C. 2412 (d)(2)(A)) **in 1980** for awarding attorney fees to litigants who prevail in a civil action against the United States. That rate was increased to \$125 by the Contract with America Advancement Act of 1996. Indeed, as part of the fiscal year 1998 appropriations act for the judiciary, Congress enacted legislation permitting defendants in criminal cases to be reimbursed at the \$125 rate for fees paid to retained counsel, where the prosecution is determined to be vexatious, frivolous, or in bad faith (Pub. L. No. 105-119).

The March 1993 Report of the Judicial Conference of the United States on the Federal Defender Program formally embraced the fundamental notion that panel attorneys providing representation under the CJA should receive compensation that covers "reasonable overhead and a fair hourly fee." Nevertheless, data taken from The 1997 Survey of Law Firm Economics (Altman Weil Pensa, 1997) indicates that the average **overhead** cost for law firm associates is approximately \$58 per hour, excluding certain items, such as paralegal costs, which are

reimbursable under the CJA. Attorneys in districts which pay the \$65/\$45 rates earn an average of \$48 per hour (based on the ratio of six out-court hours to each in-court hour in those districts).

### Implementation of Criminal Justice Act Alternative Hourly Attorney Rates

The Criminal Justice Act (CJA) hourly attorney compensation rates of \$60 for in-court work and \$40 for out-of-court work have been increased \$5 to \$65 and \$45, respectively, for work performed on or after January 1, 1996 (except in the District of Rhode Island, where the rate increase applies to work performed on or after April 24, 1996). The Judicial Conference has approved an hourly rate of \$75 for in-court and out-of-court work for 93 of the 94 judicial districts (except the District of Rhode Island, with an approved rate of \$65/\$45), but the \$75 rate has not been implemented, except as shown below, due to the unavailability of funds. The alternative rates in the chart below, applicable in 16 judicial districts, have been in effect since January 1, 1990.

Districts/Court Locations	Current Rates (In-Court/Out-of-Court)
Alaska	\$75
California (N)	\$75
California (C)	\$75
California (S)	\$75
District of Columbia	\$75
New Jersey	\$75
New York (E)	\$75
New York (S)	\$75
Hawaii*	\$70
Oregon*,+	\$60 out-of-court
California (E)*,# (Sacramento & Fresno only)	\$75
Michigan (E)*, # (Detroit only)	\$75

New Mexico*, # (Las Cruces only)	\$75
Washington (W)*, # (Seattle only)	\$75
Arizona*, # (Phoenix & Tucson only)	\$70
Nevada*,+, # (Las Vegas & Reno only)	\$60 out-of-court

\* A \$75 alternative rate has been approved by the Judicial Conference for all court locations in the district, but has not been implemented in all locations due to the unavailability of funds.

+ The CJA hourly attorney compensation rate for in-court work performed on or after January 1, 1996, is \$65 in the District of Oregon and the Las Vegas and Reno court locations in the District of Nevada.

# The CJA hourly attorney compensation rate is \$65 for in-court work and \$45 for out-of-court work for all other court locations in the district for work performed on or after January 1, 1996.

## REVERSIBLE ERRORS 1995-1998

### Release

\*United States v. Goosens, 84 F.3d 697 (4th Cir. 1996) (Prohibiting a defendant from active cooperation with the police was an abuse of discretion).

United States v. Porotsky, 105 F.3d 69 (2nd Cir. 1997) (The court did not make findings sufficient to deny travel request).

United States v. Swanquist, 125 F.3d 573 (7th Cir. 1997) (A court failed to give reasons for denying release on appeal).

United States v. Fisher, 137 F.3d 1158 (9th Cir. 1998) (Defendant did not fail to appear for trial that had been continued).

United States v. Baker, 155 F.3d 392 (4th Cir. 1998) (Cannot put conditions of release on person acquitted by reason of insanity who is not a danger).

## Counsel

United States v. Cash, 47 F.3d 1083 (11th Cir. 1995) (Defendant could not waive counsel without proper findings by court).

United States v. D'Amore, 56 F.3d 1202 (9th Cir. 1995) (The defendant was denied the retained counsel of his choice at revocation hearing).

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

United States v. McDermott, 64 F.3d 1448 (10th Cir.), cert. denied, 116 S.Ct. 930 (1996) (Barring the defendant from sidebars with stand-by counsel denied self-representation).

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

United States v. Duarte-Higareda, 68 F.3d 369 (9th Cir. 1995) (Failure to appoint counsel for evidentiary hearing on §2255 petition).

Delguidice v. Singletary, 84 F.3d 1359 (11th Cir. 1996) (The psychological testing of a defendant without notice to counsel violated the sixth amendment).

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

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

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

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

\*Carlo v. Chino, 105 F.3d 493 (9th Cir. 1997) (A state statutory right to post-booking phone calls was protected by federal due process).

United States v. Amlani, 111 F.3d 705 (9th Cir. 1997) (A prosecutor's repeated disparagement of an attorney in front of his client, denied the defendant his right to chosen counsel).

United States v. Taylor, 113 F.3d 1136 (10th Cir. 1997) (The court did not assure a proper waiver of counsel).

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

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

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

## Discovery

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

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

\*United States v. Hanna, 55 F.3d 1456 (9th Cir. 1995) (The prosecutor must learn of *Brady* material even if it was not in her possession).

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

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

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

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

United States v. O'Conner, 64 F.3d 355 (8th Cir.), cert. denied, 116 S.Ct. 1581 (1996) (Evidence of government witness threats and collaboration were not disclosed).

United States v. Steinberg, 99 F.3d 1486 (9th Cir. 1996) (Exculpatory evidence, discovered by the government nine months after trial, required new trial under *Brady*).

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

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

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

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

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

## Arrests

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

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

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

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

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

United States v. Davis, 94 F.3d 1465 (10th Cir. 1996) (There was no reasonable suspicion for stop of a defendant known generally as a gang

member and drug dealer).

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

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

Parretti v. United States, 122 F.3d 758 (9th Cir. 1997) (Arrest under international treaty required probable cause).

United States v. Chan-Jimenez, 125 F.3d 1324 (9th Cir. 1997) (A defendant was seized without reasonable suspicion).

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

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

## Warrantless Searches

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

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

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

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) (A search under a mattress and behind a window shade exceeded a protective sweep).

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

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 (2nd Cir. 1995) (Exigent circumstances were not relevant to the inevitable discovery doctrine).

United States v. Ali, 68 F.3d 1468 (2nd Cir. 1995) (Checking whether the defendant had a valid export license was not a proper ground for seizure).

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

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

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

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

J.B. Manning Corp. v. United States, 86 F.3d 926 (9th Cir. 1996) (The good faith exception to the warrant requirement does not affect motions to return property under F.R.Cr.P. 41 (e)).

United States v. Duguay, 93 F.3d 346 (7th Cir. 1996) (A car could not be impounded for a later search unless the arrestee could not provide for its removal).

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

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

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).

United States v. Ramos-Oseguera, 120 F.3d 1028 (9th Cir. 1997) (Inventory of pants found in vehicle was illegal).

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

\*United States v. Castro, 129 F.3d 752 (5th Cir.), rehearing granted, (1998). (Inventory search could not be used as ruse to investigate).

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

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

United States v. Kylo, 140 F.3d 1249 (9th Cir. 1998) (Warrantless use of thermal imager to scan a home violated fourth amendment).

United States v. Nicholson, 144 F.3d 632 (10th Cir. 1998) (1. Feeling through sides of bag was a search; 2. Abandonment of bag was involuntary).

United States v. Guapi, 144 F.3d 1393 (11th Cir. 1998) (Bus passenger did not voluntarily consent to search).

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

United States v. Washington, 151 F.3d 1354 (11th Cir. 1998) (Bus passenger was searched without voluntary consent).

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

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

## 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) (A supplemental wiretap application failed to show necessity).

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

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

Marks v. Clarke, 102 F.3d 1012 (9th Cir.), cert. denied, 118 S.Ct. 264 (1997) (A 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) (A flagrant disregard for the specificity of a warrant required suppression of all found).

United States v. Castillo-Garcia, 117 F.3d 1179 (10th Cir.), cert. denied, 118 S.Ct. 395 (1997) (The government failed to show the necessity for wiretaps).

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

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

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

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

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).

## Knock and Announce

Wilson v. Arkansas, 514 U.S. 927 (1995) ("Knock and announce" rule implicated the fourth amendment).

United States v. Zermeno, 66 F.3d 1058 (9th Cir. 1995) (The officers failed to knock and announce during a drug search).

United States v. Bates, 84 F.3d 790 (6th Cir. 1996) (Officers did not have the right to break down an apartment door without first knocking and announcing their presence).

Richards v. Wisconsin, 117 S.Ct. 1416 (1997) (There was no blanket drug exception to the knock and announce requirement).

## Statements

United States v. Dudden, 65 F.3d 1461 (9th Cir. 1995) (An 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) (Improper admission of post-*Miranda* statements).

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

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

United States v. Trazaska, 111 F.3d

1019 (2nd 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. Soliz, 129 F.3d 499 (9th Cir. 1997) (Questioning should have stopped when defendant invoked right to silence).

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

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

## Recusal

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

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

\*United States v. Antar, 53 F.3d 568 (3rd Cir. 1995) (A judge who stated he wanted to get money back for the victims, should have been recused).

## Indictments

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

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

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

United States v. Kimbrough, 69 F.3d 723 (5th Cir.), cert. denied, 116 S.Ct. 1547 (1996) (Multiple possessions of

child pornography should be 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. 1997) (Gun possession convictions for the same firearm were multiplicitous).

## Limitation of Actions

United States v. Li, 55 F.3d 325 (7th Cir. 1995) (The 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 (2nd Cir. 1997) (The 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, 118 S.Ct. 1675 (1998) (Conspiracy charge was barred by statute of limitations).

United States v. Grimmett, 150 F.3d 958 (8th Cir. 1998) (Withdrawal from conspiracy, outside statute of limitations, bars prosecution).

## Venue

United States v. Palma-Ruedas, 121 F.3d 841 (3rd Cir. 1997) (No venue in state where defendant neither used nor carried the firearm).

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

United States v. Carter, 130 F.3d 1432 (10th Cir. 1997) (A requested instruction on venue should have been given).

United States v. Cabrales, 118 S.Ct. 1772 (1998) (Venue for money laundering was proper only where offenses were begun, conducted and

completed).

## 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) (The government's motion for dismissal should have been granted).

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

\*United States v. Young, 86 F.3d 944 (9th Cir. 1996) (A court could not deny a hearing on a motion to compel the government to immunize a witness).

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

## Severance

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

\*United States v. Baker, 98 F.3d 330 (8th Cir.), cert. denied, 117 S.Ct. 1456 (1997) (Evidence admissible against only one codefendant required severance).

United States v. Jordan, 112 F.3d 14 (1st Cir.), cert. denied, 118 S.Ct. 318 (1998) (Charges should have been severed when a defendant wanted to testify regarding one count, but not others).

## Conflicts

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

Ciak v. United States, 59 F.3d 296 (2nd Cir. 1995) (There was an actual conflict for attorney who had previously represented a witness against the defendant).

United States v. Malpiedi, 62 F.3d 465 (2nd Cir. 1995) (Counsel represented witness who gave damaging evidence against his defendant).

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

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

## Competency / Sanity

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

Cooper v. Oklahoma, 116 S.Ct. 1373 (1996) (A state could not require a defendant to prove his incompetence by a higher standard than preponderance of evidence).

United States v. Davis, 93 F.3d 1286 (6th Cir. 1996) (A court did not have the statutory authority to order a mental examination of a defendant who wished to raise the defense of diminished capacity).

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

\*Martinez-Villareal v. Stewart, 118 F.3d 628 (9th Cir. 1997) (Successive writ regarding incompetency to be executed was not barred by statute).

United States v. Nevarez-Castro, 120 F.3d 190 (9th Cir. 1997) (The court refused a competency hearing).

## 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 (2nd Cir. 1995) (The court misapplied the crime-fraud exception).

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

Mockaitis v. Harclerod, 104 F.3d 1522 (9th Cir. 1997) (Clergy-communicant privilege was upheld).

United States v. Ramos-Oseguera, 120 F.3d 1028 (9th Cir. 1997) (Defendant was forced to choose between testifying against her husband or contempt).

United States v. Kuku, 129 F.3d 1435 (11th Cir. 1997) (A defendant retains his privilege against self-incrimination, through sentencing).

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).

Swinder & Berlin v. United States, 118 S.Ct. 2081 (1998) (Attorney-client privilege survives client's death).

United States v. Millard, 139 F.3d 1200 (8th Cir. 1998) (Statements during plea discussions erroneously admitted).

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

## Jeopardy / Estoppel

United States v. Alcasis, 45 F.3d 39 (2nd Cir. 1995) (The government is estopped from convicting a person when its agents have caused that person in good faith to believe they are acting under government authority).

United States v. Weems, 49 F.3d 528 (9th Cir. 1995) (The government was estopped from proving element

previously decided in forfeiture case).

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

United States v. McLaurin, 57 F.3d 823 (9th Cir. 1995) (A 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) (A defendant could not be punished for both a conspiracy and a continuing criminal enterprise based upon a single course of conduct).

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

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

United States v. Hall, 77 F.3d 398 (11th Cir.), cert. denied, 117 S.Ct. 139 (1996) (Possession of a firearm and its ammunition could only yield a single sentence).

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

Terry v. Potter, 111 F.3d 454 (6th Cir. 1997) (When a defendant was charged in two alternate manners, and the jury reaches a verdict as to only one, there was an implied acquittal on the other offense to which jeopardy bars 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. Romero, 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. 1997) (Prosecution of count, identical to one previously dismissed, was barred).

United States v. Boyd, 131 F.3d 951 (11th Cir. 1997) (Convictions for conspiracy and CCE could not both stand).

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).

## Plea Agreements

United States v. Clark, 55 F.3d 9 (1st Cir. 1995) (The government breached the agreement by arguing against acceptance of responsibility).

United States v. Laday, 56 F.3d 24 (5th Cir. 1995) (The government breached the agreement by failing to give the defendant an opportunity to cooperate).

United States v. Washman, 66 F.3d 210 (9th Cir. 1995) (The defendant could withdraw his plea up until the time the court accepted the plea agreement).

United States v. Levay, 76 F.3d 671 (5th Cir. 1996) (A defendant could not be enhanced with a prior drug conviction when the government withdrew notice as part of a plea agreement).

United States v. Taylor, 77 F.3d 368 (11th Cir. 1996) (The defendant could withdraw his guilty plea when the government failed to unequivocally recommend a sentence named in the agreement).

United States v. Carrero, 77 F.3d 11 (1st Cir. 1996) (An agreement to recommend no enhancement was breached by the government's neutral position at sentencing).

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

unfairly punitive).

United States v. Kummer, 89 F.3d 1536 (11th Cir. 1996) (Defendants who pleaded guilty to accepting a gratuity under plea agreements could withdraw their pleas when they were sentenced under bribery guidelines).

United States v. Ritsema, 89 F.3d 392 (7th Cir. 1996) (A court could not ignore a previously adopted plea agreement at resentencing).

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. Beltran-Ortiz, 91 F.3d 665 (4th Cir. 1996) (Failure to debrief the defendant, thus preventing him from benefiting from the safety valve, violated the plea agreement).

United States v. Hawley, 93 F.3d 682 (10th Cir. 1996) (The government violated its plea agreement not to oppose credit for acceptance of responsibility).

United States v. Thournout, 100 F.3d 590 (8th Cir. 1996) (The government breached an agreement from another district to recommend concurrent time).

United States v. Paton, 110 F.3d 562 (8th Cir. 1997) (The government's breach of plea agreement was a ground for downward departure).

\*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. Wolff, 127 F.3d 84 (D.C. Cir.), cert. denied, 118 S.Ct. 2325 (1998) (Government's failure to argue for acceptance of responsibility breached agreement and required entire sentence to be reconsidered).

United States v. Gilchrist, 130 F.3d 1131 (3rd Cir. 1997) (A plea agreement was breached by imposing a higher term of supervised release).

United States v. Johnson, 132 F.3d 628 (11th Cir. 1998) (Prosecutor violated plea agreement by urging higher drug quantity).

United States v. Mitchell, 136 F.3d 1192 (8th Cir. 1998) (Failure to adhere to unconditional promise to move for downward departure violated plea agreement).

\*United States v. Isaac, 141 F.3d 477 (3rd Cir. 1998) (Plea agreements referring to substantial assistance departures are subject to contract law).

United States v. Byre, 146 F.3d 1207 (10th Cir. 1998) (Government's opposition to downward departure breached plea agreement).

## Guilty Pleas

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

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

United States v. Goins, 51 F.3d 400 (4th Cir. 1995) (The 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) (The court failed to explain the nature of the charges to the defendant).

\*United States v. Gray, 63 F.3d 57 (1st Cir. 1995) (A 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) (The court improperly engaged in plea bargaining).

United States v. Martinez-Molina, 64 F.3d 719 (1st Cir. 1995) (The 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 (2nd Cir. 1995) (The court failed to advise the defendant that he might be ordered to pay restitution).

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

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

\*United States v. Quinones, 97 F.3d 473 (11th Cir. 1996) (The court failed to ensure that the defendant understood the nature of the charges).

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

United States v. Cruz-Rojas, 101 F.3d 283 (2nd 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) (A 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, 118 S.Ct. 43 (1997) (The court failed to admonish the defendant on the mandatory minimum).

\*Thompson v. United States, 111 F.3d 109 (11th Cir. 1997) (Failure to admonish a defendant about right to appeal was per se error).

United States v. Amaya, 111 F.3d 386 (5th Cir. 1997) (The 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) (A 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 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. Odedo, 154 F.3d 937 (9th Cir. 1998) (Defendant not admonished about nature of charges).

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

## Continuance

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

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

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

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

## Timely Prosecution

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

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

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

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

United States v. Graham, 128 F.3d 372 (6th Cir. 1997) (An eight-year delay between indictment and trial violated the sixth amendment).

## Jury Selection

Cochran v. Herring, 43 F. 1404 (11th Cir. 1995) (*Batson* claim).

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

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

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

Turner v. Marshall, 121 F.3d 1248 (9th Cir. 1997) (A prosecutor's stated reason for striking a Black juror was pretextual).

United States v. Underwood, 122 F.3d 389 (7th Cir. 1997) (Court's explanation of selection procedure confused counsel and prevented intelligent exercise of strikes).

Tankleff v. Senkowski, 135 F.3d 235 (2nd Cir. 1998) (Race-based peremptory challenges are 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 African-Americans from panel, violated Jury Selection and Service Act).

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

Campbell v. Louisiana, 118 S.Ct. 1419 (1998) (White defendant could challenge discrimination against black grand jurors).

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

United States v. Martinez-Salazar, 146 F.3d 653 (9th Cir. 1998) (Juror prejudiced toward government should have been stricken for cause).

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

## Closure

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

\*Okonkwo v. Lacy, 104 F.3d 21 (2nd Cir. 1997) (Record did not support closure of proceedings during testimony of undercover officer).

\*Pearson v. James, 105 F.3d 828 (2nd Cir. 1997) (Closure of courtroom denied the right to a public trial).

## Trial Procedure

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

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. Gaston-Brito, 64 F.3d 11 (1st Cir. 1995) (A hearing was necessary to determine if an agent

improperly gestured toward defense table in front of the jury).

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

Old Chief v. United States, 519 U.S. 172 (1997) (A 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. Duarte-Higareda, 113 F.3d 1000 (9th Cir. 1997) (The court failed to question a non-English speaking defendant over a jury waiver).

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

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

United States v. Iribe-Perez, 129 F.3d 1167 (10th Cir. 1997) (Jury was 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. 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. Vavages, 151 F.3d 1185 (9th Cir. 1998) (Prosecutor coerced defense witness into refusing to testify).

## Confrontation

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

charges).

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

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

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

United States v. Montgomery, 100 F.3d 1404 (8th Cir. 1996) (Codefendants should have been required to try on clothing, after defendant had to, when the government put ownership at issue).

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

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

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

Lindh v. Murphy, 124 F.3d 899 (7th Cir. 1997) (A defendant was not allowed to examine the state's psychiatrist about allegations of sexual improprieties with patients).

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

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. Mills, 138 F.3d 928 (11th Cir.), *modified*, 152 F.3d 937 (1998) (Defendant could not be made to share codefendant counsel's cross-examination of government witness).

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

Gray v. Maryland, 118 S.Ct. 1151(1998) (*Bruton* prohibited redacted confession, that obviously referred to defendant).

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

United States v. Cunningham, 145 F.3d 1385 (D.C. Cir. 1998) (Unredacted tapes violated confrontation).

United States v. Edwards, 154 F.3d 915 (9th Cir. 1998) (Defendant was denied confrontation when prosecutor became potential witness during trial).

## Hearsay

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

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

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

United States v. Rivera, 61 F.3d 131 (2nd Cir.), *cert. denied*, 117 S.Ct. 1282 (1997) (The court should not have admitted an attached factual stipulation when allowing defendant to impeach a witness with a plea agreement).

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

United States v. Beydler, 120 F. 3d 985 (9th Cir. 1997) (Unavailable witness incriminating the defendant was inadmissible hearsay).

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

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

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

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

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

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

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

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

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

United States v. Irvin, 87 F.3d 860 (7th Cir.), cert. denied, 117 S.Ct. 259 (1997) (The 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 an 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) (The court failed to adequately limit evidence of the defendant's gang affiliation).

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

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

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

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

United States v. Millard, 139 F.3d 1200 (8th Cir. 1998) (Prior drug convictions erroneously admitted).

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

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

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

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

## Identification

United States v. Emanuele, 51 F.3d 1123 (3rd Cir. 1995) (An 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 (2nd Cir. 1996) (The court denied the defendant the right to display a witness in support of a misidentification defense).

## Expert Testimony

United States v. Boyd, 55 F.3d 667 (D.C. Cir. 1995) (Officer relied upon improper hypothetical in drug case).

United States v. Shay, 57 F.3d 126 (1st Cir. 1995) (Defense expert should have been allowed to explain that the defendant had a disorder that caused him to lie).

United States v. Posado, 57 F.3d 428 (5th Cir. 1995) (The 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) (A defense expert should have been allowed to testify on the defendant's inability to form intent).

United States v. Valasquez, 64 F.3d 844 (3rd Cir. 1995) (A defense expert should have been allowed to testify on the limitations of handwriting analysis).

Rupe v. Wood, 93 F.3d 1434 (9th Cir.), cert. denied, 117 S.Ct. 1017 (1997) (Exclusion of a witness' failed polygraph results at the death penalty phase of trial, denied due process).

United States v. Hall, 93 F.3d 1337 (7th Cir. 1996) (Expert testimony that the defendant had a disorder that may have caused him to make a false confession should have been admitted).

Calderon v. U.S. District Court, 107 F.3d 756 (9th Cir.), cert. denied, 118 S.Ct. 265 (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).

\*United States v. Word, 129 F.3d

1209 (11th Cir. 1997) (Lay testimony of abuse to defendant was admissible).

## Entrapment

United States v. Reese, 60 F.3d 660 (9th Cir. 1995) (An entrapment instruction failed to tell the jury that the government must prove beyond a reasonable doubt that the defendant was predisposed).

United States v. Bradfield, 113 F.3d 515 (5th Cir. 1997) (Evidence supported an instruction on entrapment).

United States v. Duran, 133 F.3d 1324 (10th Cir. 1998) (Entrapment instruction failed to place burden on government).

United States v. Thomas, 134 F.3d 975 (9th Cir. 1998) (Defendant may present good prior conduct to support entrapment defense).

United States v. Sligh, 142 F.3d 761 (4th Cir. 1998) (Court failed to give instruction on entrapment).

United States v. Burt, 143 F.3d 1215 (9th Cir. 1998) (Entrapment instruction failed to place proper burden on government).

United States v. Gamache, 156 F.3d 1 (1st Cir. 1998) (Jury should have been instructed on entrapment).

## Jury Instructions

United States v. Lewis, 53 F.3d 29 (4th Cir. 1995) (The court failed to instruct the jury that conspiring with a government agent alone required an acquittal).

United States v. Ruiz, 59 F.3d 1151 (11th Cir.), cert. denied, 516 U.S. 1133 (1996) (Defendant has the right to have the jury instructed on his theory of defense).

United States v. Lucien, 61 F.3d 366 (5th Cir. 1995) (An instruction on simple possession should have been given in a drug distribution case).

Smith v. Singletary, 61 F.3d 815 (11th Cir.), cert. denied, 516 U.S. 1140 (1996) (The court failed to give

mitigating instruction in a capital case).

\*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. Perez, 67 F.3d 1371 (9th Cir. 1995) (A §924 (c) instruction omitted "in relation to").

United States v. Johnson, 71 F.3d 139 (4th Cir. 1995) (The court improperly instructed the jury that a credit union was federally insured).

United States v. Palazzolo, 71 F.3d 1233 (6th Cir. 1995) (Verdict form failed to distinguish the object of the conspiracy).

United States v. Talbott, 78 F.3d 1183 (7th Cir. 1996) (A jury instruction could not shift the burden to the defendant on the issue of self-defense).

\*United States v. Webster, 84 F.3d 1056 (8th Cir. 1996) (Jury instructions that did not distinguish between "carry" and "use" were defective in a §924 (c) trial).

\*United States v. Medina, 90 F.3d 459 (11th Cir. 1996) (The court failed to submit a jury instruction on whether a ship was subject to the jurisdiction of the United States).

\*United States v. Randolph, 93 F.3d 656 (9th Cir. 1996) (Carjacking is a specific intent crime to cause death or serious bodily injury).

United States v. Baron, 94 F.3d 1312 (9th Cir.), cert. denied, 117 S.Ct. 624 (1996) (A court committed plain error by giving a deliberate ignorance instruction when there was no evidence that the defendant knew, or avoided learning, of secreted drugs).

\*United States v. Ahmad, 101 F.3d 386 (5th Cir. 1996) (The 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. Paul, 110 F.3d 869 (2nd Cir. 1997) (The court failed to give duress instruction in a felon in possession case).

United States v. Bancalari, 110 F.3d 1425 (9th Cir. 1997) (Instruction omitted the element of intent).

United States v. Cooke, 110 F.3d 1288 (7th Cir. 1997) (Jury instructions treating "carry" and "use" interchangeably were defective).

United States v. Perez, 116 F.3d 840 (9th Cir. 1997) (Failure to instruct jury on use of firearm, in relation to, drugtrafficking was plain error).

United States v. Kubosh, 120 F.3d 47 (5th Cir. 1997) (Jury instruction failing to require active employment of firearm was plain error).

\*Smith v. Horn, 120 F.3d 400 (3rd Cir. 1997) (A 1st degree murder instruction failed to require specific intent).

United States v. Bordeaux, 121 F.3d 1187 (8th Cir. 1997) (Jury instruction in an abusive sexual contact case failed to require force).

United States v. Wozniak, 126 F.3d 105 (2nd Cir. 1997) (Charge on marijuana impermissibly amended indictment alleging cocaine and methamphetamine).

United States v. Otis, 127 F.3d 829 (9th Cir. 1997) (Duress instruction was omitted).

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. 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. Doyle, 130 F.3d 523 (2nd 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. Russell, 134 F.3d 171 (3rd Cir. 1998) (CCE instruction omitted unanimity requirement).

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. Romero, 136 F.3d 1268 (10th Cir. 1998) ("Law of the case" required element named in jury instruction to be proven).

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

United States v. Benally, 146 F.3d 1232 (10th Cir. 1998) (Defendant was entitled to instructions on self-defense and lesser included offense).

United States v. Thomas, 150 F.3d 743 (7th Cir. 1998) (Defendant was entitled to instruction that buyer/seller relationship is not itself a conspiracy).

## Argument

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

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

United States v. Tory, 52 F.3d 207 (9th Cir. 1995) (The defense was prevented from arguing that an absence of evidence implied that evidence did not exist).

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

United States v. Hall, 77 F.3d 398 (11th Cir. 1996) (Defendant's counsel was improperly prohibited from

addressing general principles of reasonable doubt in closing).

United States v. Cannon, 88 F.3d 1495 (8th Cir. 1996) (A prosecutor's reference to African-American defendants, who were not from North Dakota, as "bad people," was not harmless).

Agard v. Portuondo, 117 F.3d 696 (2nd Cir. 1997) (Prosecutor implied it was wrong for defendant to remain in courtroom during testimony).

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

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

United States v. Johnston, 127 F.3d 380 (5th Cir. 1997) (A prosecutor commented on the defendant's failure to testify and asked questions highlighting defendant's silence).

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

Agardu v. Portuondo, 159 F.3d 98 (2nd Cir. 1998) (Prosecutor claimed that defendant was less credible without arguing any facts in support).

## Deliberations

United States v. Berroa, 46 F.3d 1195 (D.C. Cir. 1995) (*Allen* charge varied from ABA standard).

United States v. Harber, 53 F.3d 236 (9th Cir. 1995) (The 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) (A 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) (It was plain error to allow

alternate jurors to deliberate with the jury).

United States v. Manning, 79 F.3d 212 (1st Cir.), *cert. denied*, 117 S.Ct. 147 (1996) (The court should have given a "yes or no" answer to a deadlocked jury's question, rather than refer them to the testimony).

United States v. Berry, 92 F.3d 597 (7th Cir. 1996) (A jury improperly considered a transcript, rather than the actual tape).

United States v. Benedict, 95 F.3d 17 (8th Cir. 1996) (The trial court should not have accepted partial verdicts).

United States v. Thomas, 116 F.3d 606 (2nd 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).

## Variance

United States v. Johanssen, 56 F.3d 347 (2nd Cir. 1995) (There was a variance when none of the conspiracies alleged were proven).

United States v. Tsinhnahijinnie, 112 F.3d 988 (9th Cir. 1997) (There was a fatal variance between pleading and proof of date of offense).

## Interstate Commerce

United States v. Box, 50 F.3d 345 (5th Cir.), *cert. denied*, 516 U.S. 714 (1996) (Extortion of interstate travelers did not involve interstate commerce).

United States v. Cruz, 50 F.3d 714 (9th Cir. 1995) (Shipment of firearm in interstate commerce must occur after the firearm is stolen).

\*United States v. Quigley, 53 F.3d 909 (8th Cir. 1995) (Liquor store robbery did not affect interstate

commerce).

United States v. Grey, 56 F.3d 1219 (10th Cir. 1995) (Use of currency did not involve interstate commerce).

United States v. Lopez, 514 U.S. 549 (1995) ("Gun-free school zone" law found unconstitutional).

\*United States v. Walker, 59 F.3d 1196 (11th Cir.), cert. denied, 516 U.S. 1002 (1995) (Conviction under "gun-free school zone" law was plain error).

United States v. Barone, 71 F.3d 1442 (9th Cir. 1995) (False checks did not involve interstate commerce).

United States v. Denalli, 90 F.3d 444 (11th Cir. 1996) (Arson of neighbor's home did not involve interstate commerce).

United States v. Gaydos, 108 F.3d 505 (3rd Cir. 1997) (There was insufficient evidence that arson involved interstate commerce).

## Firearms

Staples v. United States, 511 U.S. (1994) (When a 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) (A defendant whose civil rights were restored was not prohibited from possessing a firearm).

United States v. Caldwell, 49 F.3d 251 (6th Cir. 1995) (Licensed dealer who sold firearm away from business was not guilty of unlicensed sale).

United States v. Anderson, 59 F.3d 1323 (D.C. Cir.), cert. denied, 516 U.S. 999 (1995) (Multiple §924 (c) convictions must be based on separate predicate offenses).

Bailey v. United States, 516 U.S. 137 (1995) (Passive possession of firearm was insufficient to prove "use" of firearm during drug trafficking crime).

United States v. Kelly, 62 F.3d 1215 (9th Cir. 1995) (A defendant whose civil rights were restored was not prohibited from possessing a firearm).

\*United States v. Hayden, 64 F.3d 126 (3rd Cir. 1995) (A 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. Jones, 67 F.3d 320 (D.C. Cir. 1995) (The jury should not have been told nature of the defendant's prior conviction when the defendant offered to stipulate that he was a felon).

United States v. Edwards, 90 F.3d 199 (7th Cir. 1996) (A defendant must be shown to know his shotgun is shorter than 18 inches in length in order to be liable for failure to register the weapon).

United States v. Rogers, 94 F.3d 1519 (11th Cir.), cert. denied, 118 S.Ct. 1179 (1998) (The government failed to prove a defendant knew that he possessed a fully automatic weapon).

United States v. Atcheson, 94 F.3d 1237 (9th Cir.), cert. denied, 117 S.Ct. 1096 (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, 117 S.Ct. 1013 (1997) (A 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, 118 S.Ct. 106 (1997) (A felon in possession charge may not proven solely by ownership).

United States v. Taylor, 113 F.3d 1136 (10th Cir. 1997) (A 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) (Two 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) (An 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. Qualls, 140 F.3d 824 (9th Cir. 1998) (Partial restoration of civil rights reversed felon in possession conviction).

United States v. Graves, 143 F.3d 1185 (9th Cir. 1998) (Accessory to felon in possession had to know codefendant was a felon and possessed firearm).

Bousley v. United States, 118 S.Ct. 1604 (1998) (Guilty plea did not bar *Bailey* claim. Claim was not *Teague*-barred).

United States v. Hellbusch, 147 F.3d 782 (8th Cir. 1998) (Guilty plea did not foreclose *Bailey* claim).

United States v. Spinner, 152 F.3d 950 (D.C. Cir. 1998) (Failure to show firearm was semiautomatic assault weapon).

## Extortion

United States v. Tomblin, 46 F.3d 1369 (5th Cir. 1995) (A private citizen did not act under color of official right).

United States v. Scotti, 47 F.3d 1237 (2nd Cir. 1995) (Facilitating payment of a debt was not extortion).

United States v. Delano, 55 F.3d 720 (2nd 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 (2nd Cir. 1995) (Demanding payment from fraudulent check scheme was not extortion).

United States v. Allen, 127 F.3d 260 (2nd Cir. 1997) (Insufficient evidence

of extortionate credit).

## Drugs

United States v. Newton, 44 F.3d 913 (11th Cir.), cert. denied, 516 U.S. 857 (1995) (Leasing residence for a drug dealer did not prove the defendant's participation in a conspiracy).

United States v. Jones, 44 F.3d 860 (10th Cir. 1995) (A car passenger was not shown to have knowledge of the drugs).

\*United States v. Johnson, 46 F.3d 1166 (D.C. Cir. 1995) (The government failed to prove distribution within 1000 feet of a school).

United States v. Medjuck, 48 F.3d 1107 (9th Cir. 1995) (The government failed to show a nexus to U.S. territory).

United States v. Valerio, 48 F.3d 58 (1st Cir. 1995) (There was insufficient evidence that the drugs were intended for distribution).

United States v. Flores-Chapa, 48 F.3d 156 (5th Cir. 1995) (The defendant's beeper and personal use of drugs was not proof of conspiracy).

United States v. Andujar, 49 F.3d 16 (1st Cir. 1995) (There was no more evidence than mere presence).

United States v. Jones, 49 F.3d 628 (10th Cir. 1995) (Inferences derived from standing near open trunk did not prove knowledge).

United States v. Polk, 56 F.3d 613 (5th Cir. 1995) (Use of the defendant's car and home were insufficient to show participation).

\*United States v. Barona, 56 F.3d 1087 (9th Cir.), cert. denied, 516 U.S. 1092 (1996) (It was insufficient to find a CCE when there were persons who could not be legally counted as supervisees).

United States v. Horsley, 56 F.3d 50 (11th Cir. 1995) (Distribution of cocaine is lesser included offense of distribution of cocaine within a 1,000 feet of a school, and the jury should be charged accordingly).

United States v. Kitchen, 57 F.3d 516

(7th Cir. 1995) (Momentarily picking up a kilo for inspection was not possession).

United States v. Ross, 58 F.3d 154 (5th Cir.), cert. denied, 516 U.S. 954 (1995) (The defendant was not a conspirator merely because he sold drugs at same location as conspirators).

United States v. Witek, 61 F.3d 819 (11th Cir.), cert. denied, 516 U.S. 1060 (1996) (Mere buyer-seller relationship did not satisfy management requirement for conviction of engaging in continuing criminal enterprise).

United States v. Kearns, 61 F.3d 1422 (9th Cir. 1995) (A brief sampling of marijuana was not possession).

United States v. Lopez-Ramirez, 68 F.3d 438 (11th Cir. 1995) (Insufficient evidence of possession and conspiracy as to defendant who was present in home where 65 kilos of cocaine was delivered and then seized).

\*United States v. Applewhite, 72 F.3d 140 (D.C. Cir.), cert. denied, 517 U.S. 1227 (1996) (The government failed to prove distribution within a 1000 feet of a school).

United States v. Derose, 74 F.3d 1177 (11th Cir. 1996) (Insufficient evidence that the defendant took possession of marijuana).

United States v. Martinez, 83 F.3d 371 (11th Cir.), cert. denied, 117 S.Ct. 998 (1997) (A defendant's conviction for conspiracy to possess cocaine was reversed because there was no evidence beyond defendant's intent to help coconspirators 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. Cruz, 127 F.3d 791 (9th Cir. 1997) (A defendant could not join a conspiracy that was already completed).

United States v. Hunt, 129 F.3d 739 (5th Cir. 1997) (There was insufficient evidence of an intent to distribute).

United States v. Brito, 136 F.3d 397 (5th Cir. 1998) (Evidence that defendant was asked to find drivers did not prove constructive possession of hidden marijuana).

United States v. Lombardi, 138 F.3d 559 (5th Cir. 1998) (Evidence did not support conviction for using juvenile to commit drug offense).

United States v. Leonard, 138 F.3d 906 (11th Cir. 1998) (Insufficient evidence that passenger of vehicle possessed drugs or gun hidden in car).

United States v. Sampson, 140 F.3d 585 (4th Cir. 1998) (Insufficient evidence that drug offense occurred within 1000 feet of a playground or public housing).

United States v. Delagarza-Villarreal, 141 F.3d 133 (5th Cir. 1997) (Insufficient evidence of possession of marijuana).

United States v. Jensen, 141 F.3d 830 (8th Cir. 1998) (Insufficient evidence of drug conspiracy).

United States v. Paul, 142 F.3d 836 (5th Cir. 1998) (Insufficient evidence of conspiracy to import).

United States v. Toler, 144 F.3d 1423 (11th Cir. 1998) (Insufficient evidence that defendant participated in conspiracy).

United States v. 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. Gore, 154 F.3d 34 (2nd Cir. 1998) (Buyer/seller relationship did not establish conspiracy).

## 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. Lluesma, 45 F.3d 408 (11th Cir. 1995) (Proof of conspiracy to export stolen vehicles was insufficient against defendant who did odd jobs for midlevel conspirator).

United States v. Altman, 48 F.3d 96 (2nd Cir. 1995) (Mailings were too remote to be related to the fraud).

United States v. Hammoude, 51 F.3d 288 (D.C. Cir.), cert. denied, 515 U.S. 1128 (1995) (A composite stamp did not make a visa a counterfeit document).

United States v. Wilbur, 58 F.3d 1291 (8th Cir. 1995) (A physician who stole drugs did not obtain them by deception).

United States v. Klingler, 61 F.3d 1234 (6th Cir. 1995) (A customs broker's misappropriation of funds did not involve money of the United States).

\*United States v. Valentine, 63 F.3d 459 (6th Cir. 1995) (A government agent must convert more than \$5000 in a single year to violate 18 U.S.C. §666).

\*United States v. Campbell, 64 F.3d 967 (5th Cir. 1995) (Bank officers did not cause a loss to the bank).

United States v. Lewis, 67 F.3d 225 (9th Cir. 1995) (A 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, 117 S.Ct. 1565 (1997) (The government failed to prove that a credit union was federally insured).

United States v. Wester, 90 F.3d 592 (1st Cir. 1996) (A 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) (A defendant was not in the business of selling stolen goods unless he sold goods stolen by others).

\*United States v. Czubinski, 106 F.3d 1069 (1st Cir. 1997) (Merely browsing confidential computer files was not wire fraud or computer fraud).

United States v. Tencer, 107 F.3d 1120 (5th Cir.), cert. denied, 118 S.Ct. 390 (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) (A 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. 1997) (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. Adkinson, 135 F.3d 1363 (11th Cir. 1998) (Dismissal of underlying bank fraud undermined convictions for conspiracy, mail and wire fraud schemes, and money laundering).

United States v. Rodriguez, 140 F.3d 163 (2nd Cir. 1998) (Insufficient evidence of bank fraud).

United States v. Ely, 142 F.3d 1113 (9th Cir. 1997) (Government failed to prove defendant was a bank director as charged in the indictment).

\*United States v. D'Agostino, 145 F.3d 69 (2nd Cir. 1998) (Diverted funds were not taxable income for purposes of tax evasion).

United States v. Schnitzer, 145 F.3d 721 (5th Cir. 1998) (Impermissible theory of fraud justified new trial).

United States v. Shotts, 145 F.3d 1289 (11th Cir. 1998) (Bail bond license was not property within meaning of mail fraud statute).

United States v. Hughey, 147 F.3d 423 (5th Cir. 1998) (Passing bad checks was not unauthorized use of an access device).

United States v. Evans, 148 F.3d 477 (5th Cir. 1998) (No evidence that mailings advanced fraudulent scheme).

## Money Laundering

United States v. Newton, 44 F.3d 913 (11th Cir. 1995) (Proof of aiding and abetting money laundering conspiracy was insufficient against defendant who leased house on behalf of conspirator).

\*United States v. Rockelman, 49 F.3d 418 (8th Cir. 1995) (The evidence failed to show the transaction was intended to conceal illegal proceeds).

\*United States v. Hove, 52 F.3d 233 (9th Cir. 1995) (Failure to instruct the jury that the defendant must know his structuring was illegal, was plain error).

United States v. Torres, 53 F.3d 1129 (10th Cir.), cert. denied, 516 U.S. 883 (1995) (Buying a car with drug proceeds was not money laundering).

United States v. Wiley, 57 F.3d 1374 (5th Cir.), cert. denied, 516 U.S. 1029 (1995) (Transferring money between accounts was insufficient evidence of an intent to conceal).

\*United States v. Wynn, 61 F.3d 921 (D.C. Cir.), cert. denied, 516 U.S. 1015 (1995) (There was insufficient evidence that the defendant knew his

structuring was unlawful).

United States v. Dobbs, 63 F.3d 391 (5th Cir. 1995) (Undisguised money used for family needs was not money laundering).

United States v. Kim, 65 F.3d 123 (9th Cir. 1995) (To be guilty of conspiracy, the defendant must have known of the illegal structuring).

United States v. Nelson, 66 F.3d 1036 (9th Cir. 1995) (The 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, 117 S.Ct. 516 (1996) (A transaction that occurred outside of the United States was not money laundering).

United States v. Phipps, 81 F.3d 1056 (11th Cir. 1996) (It was not money laundering to deposit a series of checks that are less than \$10K each).

United States v. Pipkin, 114 F.3d 504 (5th Cir. 1997) (The defendant did not knowingly structure a currency transaction).

\*United States v. High, 117 F.3d 464 (11th Cir. 1997) (A 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) (A 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).

## **Aiding and Abetting**

United States v. de la Cruz-Paulino, 61 F.3d 986 (1st Cir. 1995) (Moving packages of contraband and statements about police was insufficient evidence).

United States v. Luciano-Mosquero, 63 F.3d 1142 (1st Cir.), cert. denied, 517 U.S. 1234 (1996) (There was no

evidence that the defendant took steps to assist in the use of a firearm).

\*United States v. Fulbright, 105 F.3d 443 (9th Cir.), cert. denied, 117 S.Ct. 1836 (1997) (The government failed to prove anyone committed the principle crime with requisite intent).

United States v. Beckner, 134 F.3d 714 (5th Cir. 1998) (Lawyer was not shown to have knowledge of client's fraud for aiding and abetting).

United States v. Nelson, 137 F.3d 1094 (9th Cir. 1998) (Evidence did not support aiding and abetting use and carrying of a firearm during crime of violence).

United States v. Stewart, 145 F.3d 273 (5th Cir. 1998) (Insufficient evidence that passenger aided and abetted drug possession).

## **Perjury**

United States v. Hairston, 46 F.3d 361 (4th Cir. 1995) (Ambiguity in the question to the defendant was insufficient for perjury conviction).

United States v. Dean, 55 F.3d 640 (D.C. Cir.), cert. denied, 116 S.Ct. 1288 (1996) (A statement that was literally true did not support a perjury conviction).

United States v. Jaramillo, 69 F.3d 388 (9th Cir. 1995) (A defendant charged with perjury by inconsistent statements must have made both under oath).

United States v. Shotts, 145 F.3d 1289 (11th Cir. 1998) (Evasive, but true, answer was not perjury).

## **False Statements**

United States v. Gaudin, 515 U.S. 506 (1995) (Materiality is an element of a false statement case).

United States v. Bush, 58 F.3d 482 (9th Cir. 1995) (No material false statements or omissions were made to receive union funds).

United States v. Rothhammer, 64 F.3d 554 (10th Cir. 1995) (A contractual promise to pay was not a factual assertion).

United States v. Campbell, 64 F.3d 967 (5th Cir. 1995) (The defendant's misrepresentations to a bank were not material).

United States v. McCormick, 72 F.3d 1404 (9th Cir. 1995) (A defendant who did not read documents before signing them was not guilty of making a false statement).

United States v. Barrett, 111 F.3d 947 (D.C.), cert. denied, 118 S.Ct. 176 (1997) (A defendant's misrepresentation to a court was not a material false statement).

United States v. Farmer, 137 F.3d 1265 (10th Cir. 1998) (Answer to ambiguous question did not support conviction for false declaration).

United States v. Hodge, 150 F.3d 1148 (9th Cir. 1998) (Insufficient evidence of false statements).

## **Contempt**

United States v. Mathews, 49 F.3d 676 (11th Cir. 1995) (Certification of contempt must be filed by the judge who witnessed the alleged contempt).

United States v. Forman, 71 F.3d 1214 (6th Cir. 1995) (An attorney was not in contempt for releasing grand jury materials in partner's case).

United States v. Brown, 72 F.3d 25 (5th Cir. 1995) (A lawyer's comments on a judge's trial performance were not reckless).

United States v. Mottweiler, 82 F.3d 769 (7th Cir. 1996) (A defendant must have acted willfully to be guilty of criminal contempt).

United States v. Grable, 98 F.3d 251 (6th Cir.), cert. denied, 117 S.Ct. 691 (1997) (Contempt order could not stand in light of incorrect advice about fifth amendment privilege).

Bingman v. Ward, 100 F.3d 653 (9th Cir.), cert. denied, 117 S.Ct. 1473 (1997) (Magistrate Judge did not have the authority to hold a litigant in criminal contempt).

United States v. Neal, 101 F.3d 993 (4th Cir. 1996) (It was plain error for a judge to prosecute and judge a contempt action).

## Miscellaneous Crimes

United States v. Rodriguez, 45 F.3d 302 (9th Cir. 1995) (Possessing an object designed to be used as a weapon, while in prison, was a specific intent crime).

United States v. 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. Bahena-Cardenas, 70 F.3d 1071 (9th Cir. 1995) (Alien who was not served with warrant of deportation, was not guilty of illegal reentry).

United States v. Alkhabaz, 104 F.3d 1492 (6th Cir. 1997) (Transmission of e-mail messages of torture, rape and murder did not fall within federal statute without public availability).

United States v. Grigsby, 111 F.3d 806 (11th Cir. 1997) (Importation of prohibited wildlife products fell under exceptions to statute).

United States v. Main, 113 F.3d 1046 (9th Cir. 1997) (In an involuntary manslaughter case, the harm must have been foreseeable within the risk created by the defendant).

\*United States v. Wicklund, 114 F.3d 151 (10th Cir. 1997) (A murder for hire required a receipt or promise of pecuniary value).

United States v. Yoakum, 116 F.3d 1346 (10th Cir. 1997) (A defendant's interest in a business, and his presence near time of fire, did not support arson conviction).

United States v. Nyemaster, 116 F.3d 827 (9th Cir. 1997) (Insufficient evidence of being under the influence of alcohol in a federal park).

United States v. Spruill, 118 F.3d 221 (4th Cir. 1997) (There was insufficient evidence that a threat would be carried out by fire or explosive under 18 U.S.C. §844 (e)).

United States v. Cooper, 121 F.3d 130 (3rd Cir. 1997) (Evidence did not support conviction for tampering with a witness).

United States v. King, 122 F.3d 808 (9th Cir. 1997) (Crime of mailing threatening communication required a specific intent to threaten).

United States v. Valenzano, 123 F.3d 365 (6th Cir. 1997) (It did not violate the Federal Credit Reporting Act or the Consumer Credit Act by obtaining a credit report without permission).

\*United States v. Farrell, 126 F.3d 484 (3rd Cir. 1997) (Urging a witness to "take the fifth" was not witness tampering).

United States v. Devenport, 131 F.3d 604 (7th Cir. 1997) (A violation of a state civil provision was not covered by Assimilative Crimes Act).

United States v. Rapone, 131 F.3d 188 (D.C. Cir. 1997) (Evidence was insufficient to show retaliation).

United States v. Sylve, 135 F.3d 680 (9th Cir. 1998) (Deferred prosecution was available for charge under Assimilative Crimes Act).

United States v. Romano, 137 F.3d 677 (1st Cir. 1998) (Law prohibiting sale of illegally taken wildlife did not cover the act of securing guide services for hunting trip).

United States v. Cottman, 142 F.3d 160 (3rd Cir. 1998) (The government is not a victim under Victim Witness Protection Act).

United States v. Copeland, 143 F.3d 1439 (11th Cir. 1998) (Government contractor was not bribed under federal statute).

United States v. To, 144 F.3d 737 (11th Cir. 1998) (Insufficient evidence of RICO and Hobbs Act violations).

United States v. Polanco, 145 F.3d 536 (2nd Cir. 1998) (Insufficient evidence that defendant murdered victim to maintain position in CCE).

United States v. Walker, 149 F.3d 238 (3rd Cir. 1998) (Prison worker was not a corrections officer).

United States v. Gallardo-Mendez, 150 F.3d 1240 (10th Cir. 1998) (Prior guilty plea did not prevent defendant from contesting noncitizen status).

United States v. Estrada-Fernandez, 150 F.3d 491 (5th Cir. 1998) (Simple assault is lesser included offense of assault with deadly weapon).

United States v. Garcia, 151 F.3d 1243 (9th Cir. 1998) (Gang relationship alone did not support conspiracy).

United States v. Truesdale, 152 F.3d 443 (5th Cir. 1998) (Insufficient evidence of illegal gambling).

## Juveniles

United States v. Juvenile Male #1, 47 F.3d 68 (2nd Cir. 1995) (A court properly refused transfer of a juvenile for adult proceedings).

United States v. Juvenile Male PWM, 121 F.3d 382 (8th Cir. 1997) (1. Court imposed sentence beyond comparable guideline for adults; 2. Court considered pending unadjudicated charges).

Impounded Juvenile I.H., Jr., 120 F.3d 457 (3rd Cir. 1997) (Failure to provide juvenile records barred transfer to adult status).

United States v. Male Juvenile, 148 F.3d 468 (5th Cir. 1998) (Certification for juvenile by AUSA was invalid).

## Sentencing - General

United States v. Rivera, 58 F.3d 600 (11th Cir. 1995) (Defendant was sentenced on the wrong count).

United States v. Knowles, 66 F.3d 1146 (11th Cir.), cert. denied, 516 U.S. 1149 (There was no proof the conspiracy extended to the date when guidelines became effective).

Page v. United States, 69 F.3d 482 (11th Cir. 1995) (The court failed to require the parties to state objections at the sentencing hearing).

\*United States v. Petty, 80 F.3d 1384 (9th Cir. 1996) (The record should have shown that the defendant read the presentence report and supplements).

United States v. Torres, 81 F.3d 900 (9th Cir. 1996) (A disparity in coconspirators' sentences was not

justified, due to inconsistent factual findings).

United States v. Burke, 80 F.3d 314 (8th Cir. 1996) (A presentence report could not be used as evidence when the defendant disputed the facts therein).

United States v. Ivy, 83 F.3d 1266 (10th Cir.), cert. denied, 117 S.Ct. 253 (1996) (The government's failure to object to a presentence report waived its complaint).

\*United States v. Graham, 83 F.3d 1466 (D.C.Cir.), cert. denied, 117 S.Ct. 993 (1997) (Adoption of the presentence report is not the same as express findings).

United States v. Versaglio, 85 F.3d 943 (2nd Cir.), modified, 96 F.3d 637 (1996) (A criminal contempt offense cannot be punished by both fine and incarceration).

United States v. Moskovits, 86 F.3d 1303 (3d Cir.), cert. denied, 117 S.Ct. 968 (1997) (A court improperly considered a defendant's decision to go to trial rather than accept a plea offer).

United States v. Tabares, 86 F.3d 326 (3rd Cir. 1996) (Erroneous information did not justify a sentence at the top of the range).

United States v. Farnsworth, 92 F.3d 1001 (10th Cir.), cert. denied, 117 S.Ct. 596 (1996) (Adoption of the presentence report does not resolve disputed matters).

United States v. Dieguimde, 119 F.3d 933 (11th Cir. 1997) (Order of deportation did not consider defendant's request for political asylum).

United States v. Romero, 122 F.3d 1334 (10th Cir. 1997) (A court may not resolve factual disputes by merely adopting the presentence report).

United States v. Ross, 131 F.3d 970 (11th Cir. 1997) (When a defendant is convicted of a conspiracy count with multiple objects, the court must find beyond a reasonable doubt that a particular object was proven before applying that guideline section).

United States v. Kennedy, 133 F.3d 53 (D.C. Cir. 1998) (Court cannot refuse to group counts in order to give defendant a higher sentence).

United States v. Renteria, 138 F.3d 1328 (10th Cir. 1998) (Lying at suppression hearing invoked accessory after fact guideline not perjury).

United States v. Marmolejos, 140 F.3d 488 (3rd Cir. 1998) (Clarifying amendment to guideline section justified post-sentence relief).

United States v. Washington, 146 F.3d 219 (4th Cir. 1998) (Court should not have relied upon statements made pursuant to plea agreement).

United States v. Meyers, 150 F.3d 459 (5th Cir. 1998) (Defendant denied right of allocution).

United States v. Davenport, 151 F.3d 1325 (11th Cir. 1998) (Defendant did not waive right to review presentence report by absconding).

United States v. Glover, 154 F.3d 1291 (11th Cir. 1998) (Time credited toward a sentence does not lengthen total sentence).

## Grouping

United States v. DiDomenico, 78 F.3d 294 (7th Cir.), cert. denied, 117 S.Ct. 507 (1996) (Unconvicted, unstipulated crimes could not be used to determine a combined offense level under §3D1.4).

United States v. Haltom, 113 F.3d 43 (5th Cir. 1997) (Mail fraud and tax fraud counts should have been grouped).

United States v. Emerson, 128 F.3d 557 (7th Cir. 1997) (Money laundering and mail fraud should have been grouped).

United States v. Thomas, 155 F.3d 833 (7th Cir. 1998) (Court failed to group counts).

## Consecutive/ Concurrent

United States v. Greer, 91 F.3d 996 (7th Cir. 1996) (Sentences at two proceedings on the same day were at

the same time for guideline calculations).

United States v. Fuentes, 107 F.3d 1515 (11th Cir. 1997) (A federal sentence which calculates a state sentence into the base offense level must be concurrent to the state sentence).

\*United States v. Corona, 108 F.3d 565 (5th Cir. 1997) (Duplicious sentences were not purely concurrent where each received a separate special assessment).

United States v. Kikuyama, 109 F.3d 536 (9th Cir. 1997) (Court cannot rely on need for mental health treatment in fashioning a consecutive sentence).

\*United States v. Nash, 115 F.3d 1431 (9th Cir. 1997) (Multiplicious counts must be sentenced concurrently and may not receive separate special assessments).

United States v. Mendez, 117 F.3d 480 (11th Cir. 1997) (Simultaneous acts of possessing stolen mail and assaulting a mail carrier with intent to steal mail, could not receive cumulative punishments).

McCarthy v. Doe, 146 F.3d 118 (2nd Cir. 1998) (BOP could designate state institution in order to implement presumptively concurrent sentence).

## Retroactivity

\*United States v. Vazquez, 53 F.3d 1216 (11th Cir. 1995) (Case remanded to determine retroactive effect of favorable guideline, that became effective after sentencing).

\*United States v. Felix, 87 F.3d 1057 (9th Cir. 1996) (An amendment to the guidelines, which required a sentence based on a lower, negotiated quantity of drugs, was retroactive).

United States v. Etherton, 101 F.3d 80 (9th Cir. 1996) (A retroactive amendment could be used to reduce supervised release).

\*United States v. Ortland, 109 F.3d 539 (9th Cir.), cert. denied, 118 S.Ct. 141 (1997) (Since mail fraud is not a continuing offense, an act committed after the date of an increase to

guidelines did not require all counts to receive increased guidelines).

United States v. Zagari, 111 F.3d 307 (2nd Cir. 1997) (Use of guidelines effective after conduct violated Ex Post Facto Clause).

United States v. Armistead, 114 F.3d 504 (5th Cir.), cert. denied, 118 S.Ct.315 (1997) (There was an ex post facto application of a guideline provision).

United States v. Aguilar-Ayala, 120 F.3d 176 (9th Cir. 1997) (Defendant was entitled to sentence reduction to mandatory minimum because of retroactive guideline amendment, regardless of whether safety valve applied).

United States v. Bowen, 127 F.3d 9 (1st Cir. 1997) (Amendment defining hashish oil was applied ex post facto).

United States v. Mussari, 152 F.3d 1156 (9th Cir. 1998) (Ex post facto application of criminal penalties).

United States v. Comstock, 154 F.3d 845 (8th Cir. 1998) (Using guideline effective after commission of offense violated ex post facto).

## Sentencing - Drug Quantities

United States v. Lawrence, 47 F.3d 1559 (11th Cir. 1995) (Insufficient findings to support drug quantities).

United States v. Hansley, 54 F.3d 709 (11th Cir.), cert. denied, 516 U.S. 998 (1995) (Individual findings were needed to hold defendant responsible for all drugs in conspiracy).

United States v. Reese, 67 F.3d 902 (11th Cir.), cert. denied, 517 U.S. 1228 (1996) (Drugs were not reasonably foreseeable to the defendant, nor within scope of agreed joint criminal activity).

United States v. Lee, 68 F.3d 1267 (11th Cir. 1995) (There were inadequate findings to support drug quantities. Crack abusers' credibility was questioned).

United States v. Levay, 76 F.3d 671 (5th Cir. 1996) (A defendant could challenge drug quantity calculations, based upon excludable material, by

§2255 petition.

United States v. Berrios, 77 F.3d 206 (7th Cir. 1996) (A government agent's sale of drugs to an informant could not be counted as the defendant's relevant conduct).

United States v. Hill, 79 F.3d 1477 (6th Cir.), cert. denied, 117 S.Ct. 158 (1996) (Different transactions almost two years apart, with the sole similarity being the type of drug, were not relevant conduct).

\*United States v. Howard, 80 F.3d 1194 (7th Cir. 1996) (The district court could not rely upon the probation officer's estimates of drug quantities without corroborating evidence).

United States v. Hamilton, 81 F.3d 652 (6th Cir. 1996) (To be culpable for manufacturing a quantity of drugs, the defendant must have been personally able to make that quantity).

United States v. Graham, 83 F.3d 1466 (D.C. Cir.), cert. denied, 117 S.Ct. 993 (1997) (The court failed to make individualized findings of drug quantities).

United States v. Byrne, 83 F.3d 984 (8th Cir. 1996) (Drugs seized after the defendant was in custody could not be counted toward sentence).

United States v. Acosta, 85 F.3d 275 (7th Cir. 1996) (The drug quantity finding was insufficient).

United States v. Caldwell, 88 F.3d 522 (8th Cir.), cert. denied, 117 S.Ct. 625 (1996) (Extrapolation of drug quantities was error).

United States v. Frazier, 89 F.3d 1501 (11th Cir.), cert. denied, 117 S.Ct. 1719 (1997) (Sentencing findings did not support drug quantities attributed to the defendant).

United States v. Tucker, 90 F.3d 1135 (6th Cir. 1996) (A court did not make individualized findings as to each defendant in a drug conspiracy).

United States v. Nesbitt, 90 F.3d 164 (6th Cir. 1996) (A court failed to resolve whether amounts of drugs were attributable during the time of the conspiracy).

United States v. Hernandez-Santiago, 92 F.3d 97 (2nd Cir. 1996) (A court failed to make a finding as to the scope of the defendant's agreement).

\*United States v. Copus, 93 F.3d 269 (7th Cir. 1996) (The court's estimate of drug quantity lacked a sufficient indicia of reliability).

United States v. Gutierrez-Hernandez, 94 F.3d 582 (9th Cir. 1996) (There was no presumption that three drug manufacturers were equally culpable).

United States v. Chalarca, 95 F.3d 239 (2nd Cir. 1996) (When negotiated drug amount was not foreseeable, the court should use the lowest possible quantity).

United States v. Jinadu, 98 F.3d 239 (6th Cir.), cert. denied, 117 S.Ct. 1455 (1997) (Court could not rely on drug quantities alleged in indictment to determine a mandatory minimum).

United States v. Agis-Meza, 99 F.3d 1052 (11th Cir. 1996) (Extrapolation of drug amounts was not a sufficient basis for findings).

United States v. Randolph, 101 F.3d 607 (8th Cir. 1996) (The trial court inadequately explained its drug quantity findings).

\*United States v. Shonubi, 103 F.3d 1085 (2nd Cir. 1997) (Multiplying quantity of seized drugs by number of previous trips was an inadequate measure).

In Re Sealed Case, 108 F.3d 372 (D.C. Cir. 1997) (A court failed to make findings attributing all drugs to the defendant).

\*United States v. Milledge, 109 F.3d 312 (6th Cir. 1997) (Evidence did not justify drug quantity finding).

United States v. Rodriguez, 112 F.3d 374 (8th Cir. 1997) (Insufficient evidence of drug quantities).

United States v. Jackson, 115 F.3d 843 (11th Cir. 1997) (Package containing 1% cocaine and 99% sugar was not a mixture under the guidelines).

United States v. Granados, 117 F.3d

1089 (8th Cir. 1997) (The court failed to make specific drug quantity findings).

\*United States v. Patel, 131 F.3d 1195 (7th Cir. 1997) (Evidence was insufficient that seized money could support cocaine quantities).

United States v. Whitecotton, 142 F.3d 1194 (9th Cir. 1998) (Later drug sales were not foreseeable to defendant).

United States v. Perulena, 146 F.3d 1332 (11th Cir. 1998) (Defendant was not responsible for marijuana imported before he joined conspiracy).

United States v. Wyss, 147 F.3d 631 (7th Cir. 1998) (Drugs for personal use could not be counted toward distribution quantity).

United States v. Bacallao, 149 F.3d 717 (7th Cir. 1998) (No showing prior cocaine transactions were relevant conduct).

United States v. Gore, 154 F.3d 34 (2nd Cir. 1998) (Possession and distribution of the same drugs may only be punished once).

## Sentencing - Marijuana

\*United States v. Foree, 43 F.3d 1572 (11th Cir. 1995) (Seedlings and cuttings do not count as marijuana plants).

United States v. Smith, 51 F.3d 980 (11th Cir. 1995) (Weight of wet marijuana was improperly counted).

\*United States v. Antonietti, 86 F.3d 206 (11th Cir. 1996) (Counting seedlings as marijuana plants to calculate the base offense level was plain error).

United States v. Agis-Meza, 99 F.3d 1052 (11th Cir. 1996) (The court had an insufficient basis to calculate a quantity of marijuana based upon cash and money wrappers seized).

\*United States v. Carter, 110 F.3d 759 (11th Cir. 1997) (The court abused its discretion in denying a motion for a reduction of a sentence over weight of wet marijuana).

\*United States v. Makiewicz, 122 F.3d 399 (7th Cir. 1997) (Marijuana that

was rejected by defendants should not have been counted).

## Sentencing - Meth.

\*United States v. Ramsdale, 61 F.3d 825 (11th Cir. 1995) (Improperly sentenced for D-methamphetamine rather than "L").

United States v. McMullen, 86 F.3d 135 (8th Cir. 1996) (A judge could not determine the type of methamphetamine based upon the judge's experience, the price, or where the drugs came from).

United States v. Cole, 125 F.3d 654 (8th Cir. 1997) (A defendant's testimony about his ability to manufacture was relevant).

United States v. O'Bryant, 136 F.3d 980 (5th Cir. 1998) (Government has burden of proving more serious form of methamphetamine).

## Sentencing - Crack

United States v. Chisolm, 73 F.3d 304 (11th Cir. 1996) (There was no factual basis that the defendant knew powder would be converted to crack).

\*United States v. James, 78 F.3d 851 (3rd Cir.), cert. denied, 117 S.Ct. 128 (1996) (There was not proof that the cocaine base was crack for enhanced penalties to apply).

## Sentencing - Firearms

United States v. Bernadine, 73 F.3d 1078 (11th Cir. 1996) (The government failed to prove the defendant was a marijuana user, and thus he was not a prohibited person under U.S.S.G. §2K2.1 (a) (6)).

United States v. Mendoza-Alvarez, 79 F.3d 96 (8th Cir. 1996) (Simply carrying a firearm in one's car was not otherwise unlawful use).

United States v. Roxborough, 94 F.3d 213 (6th Cir.), amended, 99 F.3d 212 (1996) (Obliterating serial numbers on a firearm was not be relevant conduct to justify an increase).

\*United States v. Barton, 100 F.3d 43 (6th Cir. 1996) (Enhancement under §2K2.1(a) (1) relating to prior convictions covered only those before the instant offense).

United States v. Moit, 100 F.3d 605 (8th Cir. 1996) (Possession of shotguns and hunting rifles qualified for "sporting or collection" reduction).

United States v. Willis, 106 F.3d 966 (11th Cir. 1997) (A defendant who previously pleaded nolo contendere in a Florida state court was not convicted for purposes of being a felon in possession of a firearm).

\*United States v. Cooper, 111 F.3d 845 (11th Cir. 1997) (Firearm that was not possessed at the site of drug offense did not justify 2-level enhancement).

United States v. Knobloch, 131 F.3d 366 (3rd Cir. 1997) (Court could not impose an increase for a firearm when there was a consecutive gun count).

## Sentencing - Money Laundering

United States v. Jenkins, 58 F.3d 611 (11th Cir. 1995) ("Rule of lenity" precluded counting money laundering transactions under \$10,000).

\*United States v. Allen, 76 F.3d 1348 (5th Cir.), cert. denied, 117 S.Ct. 121 (1996) (Money laundering guidelines should have been based on the amount of money laundered, not the loss in a related fraud).

United States v. Gabel, 85 F.3d 1217 (7th Cir. 1996) (Robberies and burglaries were not relevant conduct in a money laundering case).

\*United States v. Wilson, 98 F.3d 281 (7th Cir. 1996) (Money laundering and mail fraud should have been grouped together).

United States v. Morales, 108 F.3d 1213 (10th Cir. 1997) (Drug mandatory minimum did not apply to money laundering offense).

## Sentencing - Pornography

United States v. Cole, 61 F.3d 24

(11th Cir.), cert. denied, 116 S.Ct. 1052 (1996) (Insufficient evidence of child pornography depicting minors under twelve).

United States v. Ketcham, 80 F.3d 789 (3rd Cir. 1996) (Enhancement for exploitation of a minor was reversed in a child pornography case for insufficient evidence).

\*United States v. Surratt, 87 F.3d 814 (6th Cir. 1996) (Defendant's sexual abuse, unrelated to receiving child pornography did not prove a pattern of activity to increase the offense level).

United States v. Kemmish, 120 F.3d 937 (9th Cir. 1997) (The defendant did not engage in a pattern of exploitation).

## Sentencing - Fraud / Theft

\*United States v. Maurello, 76 F.3d 1304 (3rd Cir. 1996) (Loss to a fraud victim was mitigated by the value received by the defendant's actions).

\*United States v. Millar, 79 F.3d 338 (2nd Cir. 1996) (Adjustment for affecting a financial institution was limited to money received by the defendant).

United States v. Eyoun, 84 F.3d 1004 (7th Cir.), cert. denied, 117 S.Ct. 326 (1996) (The fair market value, rather than the smuggler's price, should have been used to calculate the value of illegally smuggled wildlife).

United States v. Strevel, 85 F.3d 501 (11th Cir. 1996) (In determining the amount of loss, the court could not rely solely on stipulated amounts).

United States v. King, 87 F.3d 1255 (11th Cir. 1996) (Without proof the defendant committed the burglary, other stolen items, not found in his possession, could not be calculated toward loss).

United States v. Sung, 87 F.3d 194 (7th Cir. 1996) (Findings did not establish reasonable certainty that the defendant intended to sell the base level quantity of counterfeit goods).

United States v. Allen, 88 F.3d 765 (9th Cir.), cert. denied, 117 S.Ct. 1565 (1997) (Collateral recovered to secure a loan, and the interest paid, was not

subtracted from loss in a fraud case).

United States v. Cowart, 90 F.3d 154 (6th Cir. 1996) (A common modus operandi alone, did not make robberies part of a common scheme).

United States v. Krenning, 93 F.3d 1257 (4th Cir. 1996) (The value of rented assets bore no reasonable relationship to the victim's loss).

United States v. Comer, 93 F.3d 1271 (6th Cir. 1996) (An acquitted theft was not sufficiently proven to include in loss calculations).

United States v. Coffman, 94 F.3d 330 (7th Cir.), cert. denied, 117 S.Ct. 1426 (1997) (A previous fraud using the same worthless stock was not relevant conduct).

United States v. Olbres, 99 F.3d 28 (1st Cir. 1996) (Adoption of PSI was not a finding of tax loss).

United States v. Peterson, 101 F.3d 375 (5th Cir. 1996) (Violation of fiduciary duty was not necessarily criminal conduct for application of relevant conduct).

United States v. Kohli, 110 F.3d 1475 (9th Cir. 1997) (There was insufficient evidence of the quantity of fraud attributed).

United States v. Sepulveda, 115 F.3d 882 (11th Cir. 1997) (Evidence did not support the alleged volume of unauthorized calls).

United States v. Rutgard, 116 F.3d 1270 (9th Cir. 1997) (That the defendant's business was "permeated with fraud" was too indefinite a finding).

United States v. Arnous, 122 F.3d 321 (6th Cir. 1997) (Food stamp fraud should have been valued by lost profits, not the face value of the stamps).

United States v. Sublett, 124 F.3d 693 (5th Cir. 1997) (Loss during contract fraud did not include legitimate services actually provided).

\*United States v. McIntosh, 124 F.3d 1330 (10th Cir. 1997) (Failure to disclose his interest in a residence that the defendant did not own was not

bankruptcy fraud).

United States v. Barnes, 125 F.3d 1287 (9th Cir. 1997) (Services that were satisfactorily performed should have been subtracted from loss).

United States v. Monus 128 F.3d 380 (6th Cir. 1997) (A court did not adequately explain loss findings).

United States v. Cain, 128 F.3d 1249 (8th Cir. 1997) (Sales made before defendant was hired were not relevant conduct toward fraud).

\*United States v. Word, 129 F.3d 1209 (11th Cir. 1997) (Fraud, before defendant joined conspiracy, was not relevant conduct).

United States v. Melton, 131 F.3d 1400 (10th Cir. 1997) (Unforeseeable acts of fraud could not be attributed to defendant).

United States v. Desantis, 134 F.3d 760 (6th Cir. 1998) (Neither defendant's business failure, nor state administrative findings, were relevant to fraud case).

United States v. Cihak, 137 F.3d 252 (5th Cir. 1998) (Fraud of coconspirators must be foreseeable to defendant to be relevant conduct).

United States v. Tatum, 138 F.3d 1344 (11th Cir. 1998) (Application note governing fraudulent contract procurement should have been applied rather than theft guideline).

United States v. Plath, 144 F.3d 146 (1st Cir. 1998) (Depositing counterfeit checks and withdrawing money did not require more than minimal planning).

## Enhancements- General

United States v. Tapia, 59 F.3d 1137 (11th Cir.), cert. denied, 516 U.S. 953 (1995) (Using phone to call codefendant was not more than minimal planning).

United States v. Miller, 77 F.3d 71 (4th Cir. 1996) (Enhancement for manufacturing counterfeit notes did not apply to those so obviously counterfeit that they are unlikely to be accepted).

United States v. Torres, 81 F.3d 900 (9th Cir. 1996) (The government must prove sentencing enhancements by a preponderance of evidence).

United States v. Tavares, 93 F.3d 10 (1st Cir.), cert. denied, 117 S.Ct. 373 (1996) (A finding that an aggravated assault occurred was inconsistent with a finding of no serious bodily injury).

United States v. Kraig, 99 F.3d 1361 (6th Cir. 1996) (There was insufficient evidence that the defendant employed sophisticated means).

United States v. Brazel, 102 F.3d 1120 (11th Cir.), cert. denied, 118 S.Ct. 78 (1997) (A sentence could not be enhanced with convictions that were not final).

\*United States v. Carrozzella, 105 F.3d 796 (2nd Cir. 1997) (An enhancement for violation of a judicial order did not apply to every perceived abuse of judicial process).

United States v. Eshkol, 108 F.3d 1025 (9th Cir.), cert. denied, 118 S.Ct. 120 (1997) (Only existing counterfeit bills could be counted toward upward adjustment).

United States v. DeMartino, 112 F.3d 75 (2nd Cir. 1997) (Court was without authority to increase a sentence that was not mere clerical error).

United States v. Shaddock, 112 F.3d 523 (1st Cir. 1997) (There was no proof that a defendant violated a judicial order during a course of fraud).

United States v. Zelaya, 114 F.3d 869 (9th Cir. 1997) (An express threat of death was not foreseeable to the accomplice-defendant).

United States v. Calozza, 125 F.3d 687 (9th Cir. 1997) (Identical enhancements for separately grouped counts was double-counting).

United States v. Rogers, 126 F.3d 655 (5th Cir. 1997) (An attempted drug crime did not support career offender enhancement).

\*United States v. Barakat, 130 F.3d 1448 (11th Cir. 1997) (Enhancement for sophisticated means could not be based on acquitted conduct).

United States v. Hickman, 151 F.3d 446 (5th Cir. 1998) (Pointing firearm was not restraint).

## Enhancements- Drug Crimes

United States v. Ruiz-Castro, 92 F.3d 1519 (10th Cir. 1996) (A court failed to inquire whether the defendant had notice of the government's intent to seek an enhanced sentence with a prior drug conviction).

\*United States v. Ekinci, 101 F.3d 838 (2nd Cir. 1996) (Unlawful dispensing of drugs by a doctor was not subject to an enhancement for proximity to a school).

United States v. Mikell, 102 F.3d 470 (11th Cir.), cert. denied, 117 S.Ct. 1459 (1997) (A defendant who was subject to an enhanced sentence under 21 U.S.C. §841, could collaterally attack a prior conviction).

United States v. Chandler, 125 F.3d 892 (5th Cir. 1997) (Enhancement for drug sale near school only applies when it is charged by indictment).

United States v. Hudson, 129 F.3d 994 (8th Cir. 1997) (A firearm enhancement was not proven).

United States v. Sanchez, 138 F.3d 1410 (11th Cir. 1998) (Court must hold a hearing if defendant challenges validity of a prior drug conviction used for statutory enhancement).

United States v. Saavedra, 148 F.3d 1311 (11th Cir. 1998) (Defendant could not receive increase for selling drugs near school unless so charged).

United States v. Hass, 150 F.3d 443 (5th Cir. 1998) (Nonfinal state conviction could not be basis for statutory enhancement of drug sentence).

United States v. Schmalzried, 152 F.3d 354 (5th Cir. 1998) (Government failed to connect firearm to drug offense).

## Enhancements- Violent Crimes

United States v. Murray, 82 F.3d 361 (10th Cir. 1996) (In an assault case, an enhancement for discharging a

firearm did not apply to shots fired after the assault).

United States v. Rivera, 83 F.3d 542 (1st Cir. 1996) (There was insufficient evidence that a rape involved serious bodily injury).

\*United States v. Alexander, 88 F.3d 427 (6th Cir. 1996) (A note indicating the presence of a bomb, and a request to cooperate to prevent harm, during a bank robbery, was not an express threat of death).

United States v. Shenberg, 89 F.3d 1461 (11th Cir.), cert. denied, 117 S.Ct. 961 (1997) (More than minimal planning increase did not apply to plan to assault a fictitious informant).

United States v. Triplett, 104 F.3d 1074 (8th Cir.), cert. denied, 117 S.Ct. 1346 (1997) (A threat of death adjustment was double counting in 18 U.S.C. §924 (c) case).

United States v. Reyes-Oseguera, 106 F.3d 1481 (9th Cir. 1997) (Flight on foot was insufficient for reckless endangerment enhancement).

United States v. Dodson, 109 F.3d 486 (8th Cir. 1997) (There lacked proof of bodily injury for enhancement).

United States v. Sawyer, 115 F.3d 857 (11th Cir. 1997) (Enhancement for bodily injury was not supported by alleged psychological injury).

United States v. Drapeau, 121 F.3d 344 (8th Cir. 1997) (Enhancement for assaulting a government official applicable only when official is victim of the offense).

United States v. Sovie, 122 F.3d 122 (2nd Cir. 1997) (Evidence to support enhancement for intending to carry out threat was insufficient).

United States v. Bourne, 130 F.3d 1444 (11th Cir. 1997) (Applying both brandishing weapon and threat of death enhancements was double counting).

United States v. Hayes, 135 F.3d 435 (6th Cir. 1998) (Enhancements for reckless endangerment, and assault, during flight, were double counting).

United States v. Tolen, 143 F.3d 1121 (8th Cir. 1998) (Putting hand in pocket and warning to cooperate or “no one will get hurt” was not express threat of death).

United States v. Kushmaul, 147 F.3d 498 (6th Cir. 1998) (Holding baseball bat was not “otherwise used”).

United States v. Hickman, 151 F.3d 446 (5th Cir. 1998) (Pointing firearm was not restraint).

## Enhancements- Immigration

\*United States v. Fuentes-Barahona, 111 F.3d 651 (9th Cir. 1997) (Conviction occurring before effective date of guideline amendment was not considered as aggravated felony).

United States v. Herrera-Solano, 114 F.3d 48 (5th Cir. 1997) (A prior probated felony was not an aggravated felony in an illegal reentry case).

United States v. Reyna-Espinosa, 117 F.3d 826 (5th Cir. 1997) (A prior conviction for being an alien in unlawful possession of a firearm was not an aggravated felony).

United States v. Viramontes-Alvarado, 149 F.3d 912 (9th Cir. 1998) (Noncitizen’s priors were not aggravated felonies).

## Career Enhancements

United States v. Murphy, 107 F.3d 1199 (6th Cir. 1997) (Two prior robberies were a single episode under Armed Career Criminal Act).

United States v. Bennett, 108 F.3d 1315 (10th Cir. 1997) (There was no proof that a prior burglary involved a dwelling or physical force under career offender provisions).

United States v. Hicks, 122 F.3d 12 (7th Cir. 1997) (Burglary of a building was not a crime of violence for career offender enhancement).

United States v. Covington, 133 F.3d 639 (8th Cir. 1998) (Evidence did not show imprisonment within last 15 years on predicate offense used for career offender enhancement).

United States v. Gottlieb, 140 F.3d 865

(10th Cir. 1998) (Defendant established that no firearm or dangerous weapon was used in prior conviction defeating Three Strikes enhancement).

United States v. Dahler, 143 F.3d 1084 (7th Cir. 1998) (Defendant whose rights were restored was not armed career criminal).

## Cross References

United States v. Lagasse, 87 F.3d 18 (1st Cir. 1996) (There was no link between a knife-point robbery of a coconspirator, and the charged drug conspiracy, to justify an increase in sentence).

\*United States v. Aderholt, 87 F.3d 740 (5th Cir. 1996) (Murder guidelines were improperly applied in a mail fraud conspiracy because murder was not an object of the conspiracy).

United States v. Meacham, 115 F.3d 1488 (10th Cir. 1997) (Transportation of a child, not involving prostitution or production of a visual depiction, required cross reference to lower base level for sexual contact).

United States v. Jackson, 117 F.3d 533 (11th Cir. 1997) (A police officer convicted of theft should not have been sentenced under civil rights guidelines).

United States v. Cross, 121 F.3d 234 (6th Cir. 1997) (Torture was not relevant conduct in a drug case).

## Abuse of Trust

United States v. Jolly, 102 F.3d 46 (2nd Cir. 1996) (Corporate principal could not get abuse of trust enhancement for defrauding lenders).

United States v. Long, 122 F.3d 1360 (11th Cir. 1997) (Abuse of trust enhancement did not apply to prison employee who brought in contraband).

United States v. Garrison, 133 F.3d 831 (11th Cir. 1998) (Owner of a health care provider did not occupy position of trust with Medicare).

United States v. Burt, 134 F.3d 997 (10th Cir. 1998) (Deputy sheriff’s drug dealing did not merit abuse of trust or

special skills enhancements).

United States v. Reccko, 151 F.3d 29 (1st Cir. 1998) (Police switchboard operator did not occupy position of trust).

United States v. Wadena, 152 F.3d 831 (8th Cir. 1998) (Money laundering, unrelated to defendant’s position, did not warrant abuse of trust).

## Obstruction of Justice

United States v. Williams, 79 F.3d 334 (2nd Cir. 1996) (In order to justify an obstruction of justice enhancement, the court had to find the defendant knowingly made a false statement under oath).

\*United States v. Strang, 80 F.3d 1214 (7th Cir. 1996) (Perjury in another case did not warrant an obstruction of justice enhancement in the instant case).

United States v. Medina-Estrada, 81 F.3d 981 (10th Cir. 1996) (A court must have found all elements of perjury are proven to give enhancement for obstruction of justice).

United States v. Hernandez, 83 F.3d 582 (2nd Cir. 1996) (Staring at a witness and calling them “the devil,” did not justify enhancement for intimidation).

United States v. Sisti, 91 F.3d 305 (2nd Cir. 1996) (Obstruction of justice was only proper for conduct related to the conviction).

United States v. Ruggiero, 100 F.3d 284 (2nd Cir. 1996) (A judge properly refused to apply an obstruction of justice enhancement).

\*United States v. Draves, 103 F.3d 1328 (7th Cir.), cert. denied, 117 S.Ct. 2528 (1997) (Fleeing from a police car was not obstruction of justice).

United States v. Harris, 104 F.3d 1465 (5th Cir.), cert. denied, 118 S.Ct. 103 (1997) (Actions of accessory after the fact did not justify obstruction enhancement when those same acts supported the substantive offense).

United States v. Zagari, 111 F.3d 307

(2nd Cir. 1997) (There was no finding to support obstruction enhancement).

United States v. Tackett, 113 F.3d 603 (6th Cir. 1997) (The court failed to find that government resources were wasted for obstruction enhancement).

United States v. Sawyer, 115 F.3d 857 (11th Cir. 1997) (Sentencing increase for reckless endangerment only applied to defendant fleeing law enforcement officer, not civilians).

United States v. Sassanelli, 118 F.3d 495 (6th Cir. 1997) (Obstruction findings did not specify which statements were materially untruthful).

United States v. Solono-Godines, 120 F.3d 957 (9th Cir. 1997) (A misrepresentation by the defendant did not obstruct justice).

United States v. Wester, 125 F.3d 1024 (7th Cir. 1997) (A finding that the defendant testified falsely lacked specificity).

United States v. Senn, 129 F.3d 886 (7th Cir. 1997) (Lying about minor details to grand jury was not obstruction).

United States v. Norman, 129 F.3d 1393 (10th Cir. 1997) (Concealing drugs at scene of crime was not obstruction).

## **Vulnerable Victim**

United States v. Castellanos, 81 F.3d 108 (9th Cir. 1996) (Merely because a fraud scheme used Spanish language media, did not justify an enhancement for victims particularly susceptible to fraud).

\*United States v. Stover, 93 F.3d 1379 (8th Cir. 1996) (Persons' desire to adopt children did not make them vulnerable victims of an adoption agency).

United States v. Shumway, 112 F.3d 1413 (10th Cir. 1997) (Prehistoric skeletal remains were not vulnerable victims).

\*United States v. Robinson, 119 F.3d 1205 (5th Cir.), cert. denied, 118 S.Ct. 118 S.Ct. 1104 (1998) (Asian-American merchants were not vulnerable victims).

United States v. Hogan, 121 F.3d 370 (8th Cir. 1997) (Victims must have been targeted in order to be considered vulnerable).

United States v. Monostra, 125 F.3d 183 (3rd Cir. 1997) (A victim's vulnerability must facilitate the crime in some manner).

## **Aggravating Role**

United States v. Ivy, 83 F.3d 1266 (10th Cir.), cert. denied, 117 S.Ct. 253 (1996) (There were insufficient findings for a managerial role).

United States v. Lozano-Hernandez, 89 F.3d 785 (11th Cir. 1996) (Leadership role in drug conspiracy was not proven).

United States v. Patasnik, 89 F.3d 63 (2nd Cir. 1996) (A management role had to be based on managing people, not assets).

United States v. Wester, 90 F.3d 592 (1st Cir. 1996) (The court failed to make findings there were five or more participants).

United States v. Miller, 91 F.3d 1160 (8th Cir. 1996) (The lack of evidence that the defendant controlled others precluded a leadership role).

\*United States v. Albers, 93 F.3d 1469 (10th Cir. 1996) (A leadership role had to be based upon leadership, and not the defendant's importance to the success of the conspiracy).

United States v. Delpit, 94 F.3d 1134 (8th Cir. 1996) (A murder-for-hire scheme had less than five participants).

United States v. Avila, 95 F.3d 887 (9th Cir. 1996) (A defendant who was the sole contact between a buyer and a seller was not an organizer).

United States v. DeGovanni, 104 F.3d 43 (3rd Cir. 1997) (A corrupt police sergeant was not a supervisor merely because of his rank).

United States v. Jobe, 101 F.3d 1046 (5th Cir.), cert. denied, 118 S.Ct. 81 (1997) (Defendant's position as bank director did not justify managerial role when he did not manage or supervise others).

United States v. Eidson, 108 F.3d 1336 (11th Cir.), cert. denied, 118 S.Ct. 248 (1997) (Clean Water Act violation lacked five participants for role adjustment).

United States v. Gort-Didonato, 109 F.3d 318 (6th Cir. 1997) (To impose an upward role adjustment, the defendant must have supervised at least one person).

United States v. Bryson, 110 F.3d 575 (8th Cir. 1997) (Facts did not support upward adjustment for role).

United States v. Logan, 121 F.3d 1172 (8th Cir. 1997) (Record did not support upward role adjustment).

United States v. Makiewicz, 122 F.3d 399 (7th Cir. 1997) (Defendant was not a leader for asking his father to accompany informant to motel).

United States v. Del Toro-Aguilar, 138 F.3d 340 (8th Cir. 1998) (Occasionally fronting drugs to coconspirators did not justify upward role adjustment).

United States v. Alred, 144 F.3d 1405 (11th Cir. 1998) (Defendant was not an organizer).

United States v. Lopez-Sandoval, 146 F.3d 712 (9th Cir. 1998) (Defendant was not an organizer).

United States v. Ginton, 154 F.3d 1245 (11th Cir. 1998) (No managerial role for defendant who did not supervise or control others).

## **Mitigating Role**

United States v. Moeller, 80 F.3d 1053 (5th Cir. 1996) (No leadership role for a government official who inherited an historically corrupt system, but the defendant's lack of understanding of the entire scheme justified a minimal role adjustment).

United States v. Miranda-Santiago, 96 F.3d 517 (1st Cir. 1996) (There was an insufficient basis to deny a minor role reduction).

\*United States v. Haut, 107 F.3d 213 (3rd Cir.), cert. denied, 117 S.Ct. 2528 (1997) (Arson defendants who worked at direction of others were minimal participants).

United States v. Campbell, 139 F.3d 820 (11th Cir. 1998) (Defendant's status as a drug courier was not basis to deny minor role).

United States v. Snoddy, 139 F.3d 1224 (8th Cir. 1998) (Sole charged defendant may receive minor role when justified by relevant conduct).

## Acceptance of Responsibility

United States v. Fells, 78 F.3d 168 (5th Cir.), cert. denied, 117 S.Ct. 134 (1996) (A defendant making a statutory challenge, could still qualify for acceptance of responsibility).

United States v. Patino-Cardenas, 85 F.3d 1133 (5th Cir. 1996) (There was no basis to deny credit when the defendant did not falsely deny relevant conduct).

United States v. Garrett, 90 F.3d 210 (7th Cir. 1996) (A defendant could not be denied acceptance when he filed an uncounseled, pro se motion to withdraw plea after his attorney died).

United States v. Flores, 93 F.3d 587 (9th Cir. 1996) (A defendant should have received credit for his written statement).

\*United States v. Atlas, 94 F.3d 447 (8th Cir.), cert. denied, 117 S.Ct. 1276 (1997) (A defendant who timely accepted responsibility must be given the additional one-level downward adjustment).

United States v. Ruggiero, 100 F.3d 284 (2nd Cir. 1996) (A single false denial did not bar credit for acceptance of responsibility).

United States v. McPhee, 108 F.3d 287 (11th Cir. 1997) (A defendant who qualified should not have been given less than the full three-point reduction for accepting responsibility).

\*United States v. Guerrero-Cortez, 110 F.3d 647 (8th Cir.), cert. denied, 118 S.Ct. 604 (1998) (Defendant's pretrial statements of acceptance justified reduction though case was tried).

United States v. Marroquin, 136 F.3d 220 (1st Cir. 1998) (Creation of a lab report was not the type of trial preparation to deny extra point off for accepting responsibility).

United States v. Fisher, 137 F.3d 1158 (9th Cir. 1998) (Despite not guilty plea, admission in open court could be acceptance).

United States v. McKittrick, 142 F.3d 1170 (9th Cir. 1998) (Defendant who does not contest facts at trial may be eligible for acceptance).

## Safety Valve

United States v. Shrestha, 86 F.3d 935 (9th Cir. 1996) (Eligibility for the safety valve did not depend on acceptance of responsibility).

United States v. Real-Hernandez, 90 F.3d 356 (9th Cir. 1996) (To be eligible for safety valve, a defendant did not need to give information to a specific agent).

United States v. Flanagan, 87 F.3d 121 (5th Cir. 1996) (On remand, the sentencing court could withdraw a leadership role so the defendant could qualify for safety valve).

United States v. Beltran-Ortiz, 91 F.3d 665 (4th Cir. 1996) (Failure to debrief the defendant, thus preventing him from benefitting from the safety valve, violated the plea agreement).

United States v. Miranda-Santiago, 96 F.3d 517 (1st Cir. 1996) (The government had to rebut the defendant's version in order to deny safety valve).

United States v. Sherpa, 97 F.3d 1239 (9th Cir.), amended, 110 F.3d 656 (1997) (Even a defendant who claimed innocence was eligible if he meets requirements).

United States v. Wilson, 105 F.3d 219 (5th Cir.), cert. denied, 118 S.Ct. 133 (1997) (A coconspirator's use of a firearm did not bar application of the safety valve).

United States v. Osei, 107 F.3d 101 (2nd Cir. 1997) (Two-level safety valve adjustment applied regardless of mandatory minimum).

\*United States v. Clark, 110 F.3d 15 (6th Cir. 1997) (Safety Valve applied to cases that were on appeal at effective date).

United States v. Mertilus, 111 F.3d 870

(11th Cir. 1997) (Safety valve applied to a telephone count).

\*United States v. Mihm, 134 F.3d 1353 (8th Cir. 1998) (Court failed to consider safety valve at resentencing).

United States v. Carpenter, 142 F.3d 333 (6th Cir. 1998) (Refusal to testify did not bar safety valve).

\*United States v. Kang, 143 F.3d 379 (8th Cir. 1998) (Defendant could not be denied safety valve because government claimed he was untruthful absent supporting evidence).

United States v. Gama-Bastidas, 142 F.3d 1233 (10th Cir. 1998) (Court failed to make findings regarding applicability of safety valve).

## Criminal History

\*United States v. Spell, 44 F.3d 936 (11th Cir. 1995) (Judgement could be the only conclusive proof of prior convictions).

United States v. Talbott, 78 F.3d 1183 (7th Cir. 1996) (Under the Armed Career Criminal Act guidelines, "felon in possession" was not a crime of violence).

United States v. Douglas, 81 F.3d 324 (2nd Cir.), cert. denied, 116 S.Ct. 2514 (1996) (A juvenile sentence, more than five years old, was incorrectly applied).

United States v. Cox, 83 F.3d 336 (10th Cir. 1996) (It was proper to attack a guidelines sentence by a §2255 petition when prior convictions, used in the criminal history calculation, were later successfully attacked).

United States v. Sparks, 87 F.3d 276 (9th Cir. 1996) (An attempted home invasion was not a violent felony under the Armed Career Criminal Act).

United States v. Parks, 89 F.3d 570 (9th Cir. 1996) (No criminal history points could be attributed to a defendant when indigence prevented payment of fines).

United States v. Flores, 93 F.3d 587

(9th Cir. 1996) (The court erroneously twice counted a single probation revocation to increase two prior convictions).

United States v. Ortega, 94 F.3d 764 (2nd Cir. 1996) (An uncounseled misdemeanor was improperly counted).

United States v. Easterly, 95 F.3d 535 (7th Cir. 1996) (Fish and game violation should not have been counted).

\*United States v. Pettiford, 101 F.3d 199 (1st Cir. 1996) (A prisoner could file a §2255 petition to attack a federal sentence based on state convictions that were later overturned).

United States v. Gilcrist, 106 F.3d 297 (9th Cir. 1997) (Sentence, upon which parole began over 15 years ago, could not be counted toward criminal history).

United States v. Rector, 111 F.3d 503 (7th Cir. 1997) (Counting state conviction, for same conduct, toward criminal history, was plain error).

United States v. Huskey, 137 F.3d 283 (5th Cir. 1998) (Prior convictions in same information were related cases for counting criminal history).

United States v. Walker, 142 F.3d 103 (2nd Cir. 1998) (Prior convictions for offenses that were calculated into offense level should not have gotten criminal history points).

United States v. Hernandez, 145 F.3d 1433 (11th Cir. 1998) (Arrest warrant did not determine nature of prior conviction).

## Upward Departures

United States v. Thomas, 62 F.3d 1332 (11th Cir.), cert. denied, 516 U.S. 1166 (1996) (Consequential damages did not justify an upward departure unless it was substantially in excess of typical fraud case).

United States v. Henderson, 75 F.3d 614 (11th Cir. 1996) (An upward departure for multiple weapons in a drug case was improper when the defendant was also convicted under 18 U.S.C. §924 (c)).

United States v. Blackwell, 81 F.3d 945 (10th Cir. 1996) (Rule 35 does not give a court jurisdiction to increase a sentence later).

United States v. Harrington, 82 F.3d 83 (5th Cir. 1996) (A court should not have upwardly departed for a defendant's status as an attorney without first considering application of abuse of trust).

\*United States v. Sherwood, 98 F.3d 402 (9th Cir. 1996) (Just because victims were almost vulnerable, did not justify an upward departure).

United States v. LeCompte, 99 F.3d 274 (8th Cir. 1996) (Defendant did not get notice of departure, and justification was based on an amendment after offense).

United States v. Valentine, 100 F.3d 1209 (6th Cir. 1996) (The difference between seven and five offenses did not justify multiple count departure).

United States v. Mangone, 105 F.3d 29 (1st Cir.), cert. denied, 117 S.Ct. 2424 (1997) (Failure to give notice of upward departure was plain error).

United States v. Otis, 107 F.3d 487 (7th Cir. 1997) (Failure to give notice of an upward departure was plain error).

United States v. Arce, 118 F.3d 335 (5th Cir. 1997) (Manufacturing firearms was not a basis for upward departure).

United States v. White, 118 F.3d 739 (11th Cir. 1997) (The Sentencing Commission's "undervaluation" of a guideline range was not a ground for upward departure).

United States v. DePace, 120 F.3d 233 (11th Cir. 1997) (An upward departure was without notice).

United States v. Johnson, 121 F.3d 1141 (8th Cir. 1997) (Defendant did not get notice of upward departure).

United States v. Stein, 127 F.3d 777 (9th Cir. 1997) (Upward departure based on more than minimal planning and multiple victims was unwarranted).

United States v. Corrigan, 128 F.3d 330 (6th Cir. 1997) (Neither, number of victims, number of schemes, nor

amount of loss, supported upward departure).

United States v. Candelario-Cajero, 134 F.3d 1246 (5th Cir. 1998) (Absent an upward departure, grouped counts cannot receive consecutive sentences).

United States v. Terry, 142 F.3d 702 (4th Cir. 1998) (Extent of upward departure was not supported by findings).

United States v. Hinojosa-Gonzales, 142 F.3d 1122 (9th Cir. 1998) (Defendant did not get adequate notice of upward departure).

\*United States v. G.L., 143 F.3d 1249 (9th Cir. 1998) (Lenient theft guidelines did not justify upward departure).

United States v. Almaguer, 146 F.3d 474 (7th Cir. 1998) (Use of firearm was included in guideline and did not justify upward departure).

United States v. Nagra, 147 F.3d 875 (9th Cir. 1998) (Upward departure based upon factor considered by guidelines was double counting).

United States v. Van Metre, 150 F.3d 339 (4th Cir. 1998) (Commentary Note on grouping did not provide basis for upward departure).

United States v. Johnson, 152 F.3d 553 (6th Cir. 1998) (Arson was within heartland of cases and did not justify upward departure).

## Downward Departures

United States v. Rodriguez, 64 F.3d 638 (11th Cir. 1995) (A downward departure was allowed to give credit for acceptance of responsibility on consecutive sentences).

United States v. Grandmaison, 77 F.3d 555 (1st Cir. 1996) (A downward departure for aberrant behavior should not have been denied without examining the totality of the circumstances).

United States v. Workman, 80 F.3d 688 (2nd Cir.), cert. denied, 117 S.Ct. 319 (1996) (A downward departure was permissible for prearrest rehabilitation).

Koon v. United States, 518 U.S. 81 (1996) (A district court could depart from the guidelines if (1) the reason was not specifically prohibited by the guidelines; (2) the reason was discouraged by the guidelines but exceptional circumstances apply; and (3) the reason was neither prohibited nor discouraged, and the reason was not previously addressed by the applicable guideline provisions in that case).

United States v. Conway, 81 F.3d 15 (1st Cir. 1996) (A court could not refuse a downward departure based upon information received as part of a cooperation agreement).

United States v. Lindia, 82 F.3d 1154 (1st Cir. 1996) (A court could depart downward from the career offender guidelines).

United States v. Graham, 83 F.3d 1466 (10th Cir.), cert. denied, 117 F.3d 993 (1997) (Extreme vulnerability to abuse in prison could justify a downward departure).

United States v. Walters, 87 F.3d 663 (5th Cir.), cert. denied, 117 S.Ct. 498 (1996) (A downward departure was approved for a defendant who did not personally benefit from money laundering).

United States v. Cubillos, 91 F.3d 1342 (9th Cir. 1996) (A basis for downward departure could no longer be categorically rejected after *Koon*).

\*United States v. Jaroszenko, 92 F.3d 486 (7th Cir. 1996) (Remorse could be considered as a ground for downward departure).

United States v. Sanders, 97 F.3d 856 (6th Cir. 1996) (Downward departure was available for an Armed Career Criminal).

United States v. Olbres, 99 F.3d 28 (1st Cir. 1996) (A court could grant departure for effect on innocent employees of the defendant).

United States v. Etherton, 101 F.3d 80 (9th Cir. 1996) (The court had authority to reduce the sentence after a revocation of supervised release when the guidelines were later amended to provide for a lower range).

United States v. Williams, 103 F.3d 57 (8th Cir. 1996) (The court could reduce a sentence for a retroactive amendment even after a reduction under Rule 35).

United States v. Lopez, 106 F.3d 309 (9th Cir. 1997) (Prosecutors' violation of ethical rule in meeting with an indicted defendant justified a downward departure).

United States v. Brock, 108 F.3d 31 (4th Cir. 1997) (Rehabilitation was a proper basis for downward departure).

United States v. Wallace, 114 F.3d 652 (7th Cir. 1997) (A court should not have limited a downward departure just because the defendant already received credit for accepting responsibility).

United States v. Alvarez, 115 F.3d 839 (11th Cir. 1997) (A 5K1.1 motion rewards assistance prior to sentencing, while a Rule 35 (b) motion rewards assistance after sentencing. Forcing a defendant to choose when the government would seek a reduction was error).

United States v. McBroom, 124 F.3d 533 (3rd Cir. 1997) (Reduced mental capacity was a basis for downward departure in a child porn case).

United States v. Core, 125 F.3d 74 (2nd Cir. 1997) (Postconviction rehabilitation could justify sentence reduction).

United States v. Rounsavall, 128 F.3d 665 (8th Cir. 1997) (Defendant was entitled to an evidentiary hearing to determine if the government's failure to move for a reduced sentence was irrational, in bad faith, or unconstitutionally motivated).

United States v. Clark, 128 F.3d 122 (2nd Cir. 1997) (Downward departure for a lesser harm was available in a felon in possession case).

United States v. O'Hagan, 139 F.3d 641 (8th Cir. 1998) (A court could depart downward to credit time served on an expired state sentence for the same conduct).

United States v. Kaye, 140 F.3d 86 (2nd Cir. 1998) (Court can depart downward based on assistance to

state law enforcement without motion by government).

United States v. Campo, 140 F.3d 415 (2nd Cir. 1998) (Judge could not refuse to depart solely because he did not like USA's policy about not recommending a specific sentence).

United States v. Whitecotton, 142 F.3d 1194 (9th Cir. 1998) (Court could depart based on entrapment and diminished capacity).

United States v. Faulks, 143 F.3d 133 (3rd Cir. 1998) (Agreement not to contest forfeitures may be basis for downward departure).

United States v. Crouse, 145 F.3d 786 (6th Cir. 1998) (Civic involvement justified downward departure).

United States v. Rhodes, 145 F.3d 1375 (D.C. Cir. 1998) (Post-conviction rehabilitation can justify downward departure).

United States v. Whitaker, 152 F.3d 1238 (10th Cir. 1998) (Post-offense drug rehabilitation can justify downward departure).

## Fines / Restitution

\*United States v. Remillong, 55 F.3d 572 (11th Cir. 1995) (Restitution order reversed for a defendant with no ability to pay and no future prospects).

United States v. Ledesma, 60 F.3d 750 (11th Cir. 1995) (Restitution order could only be applied to charges of conviction).

\*United States v. Mullens, 65 F.3d 1560 (11th Cir.), cert. denied, 517 U.S. 1112 (1996) (Record lacked findings to support restitution).

United States v. Maurello, 76 F.3d 1304 (3rd Cir. 1996) (The court had to make findings in support of a restitution order).

United States v. Reed, 80 F.3d 1419 (9th Cir.), cert. denied, 117 S.Ct. 211 (1996) (Restitution order had to be limited to conduct of conviction).

United States v. Blake, 81 F.3d 498 (4th Cir. 1996) (Restitution could only be based on the loss directly related to the offense, and the court had to

make findings that the defendant can pay that amount without undue hardship).

United States v. Giwah, 84 F.3d 109 (2nd Cir. 1996) (A restitution order failed to indicate that all statutory factors were considered).

United States v. Sharma, 85 F.3d 363 (8th Cir. 1996) (No reason was given for an upward departure on a fine).

United States v. Hines, 88 F.3d 661 (8th Cir. 1996) (In assessing fine and restitution, the court should have considered the defendant's familial obligations of his recent marriage).

United States v. Santos, 93 F.3d 761 (11th Cir.), cert. denied, 117 S.Ct. 1437 (1997) (A defendant could not be ordered to pay restitution for money taken in a robbery for which he was not convicted).

United States v. Upton, 91 F.3d 677 (5th Cir.), cert. denied, 117 S.Ct. 1818 (1997) (No restitution was available to victims not named in the indictment).

United States v. Sablan, 92 F.3d 865 (9th Cir. 1996) (Consequential expenses could not be included in a restitution order).

United States v. Jaroszenko, 92 F.3d 486 (7th Cir. 1996) (The court failed to fully consider the defendant's ability to pay restitution).

\*United States v. Sanders, 95 F.3d 449 (6th Cir. 1996) (A court was not required to order restitution).

\*United States v. Monem, 104 F.3d 905 (7th Cir. 1997) (A court did not make sufficient factual findings to justify the fine of a defendant who claimed inability to pay).

\*United States v. McMillan, 106 F.3d 322 (10th Cir. 1997) (A court could reduce a fine pursuant to Rule 35 (b)).

United States v. Messner, 107 F.3d 1448 (10th Cir. 1997) (Restitution had to be based on actual loss).

United States v. McArthur, 108 F.3d 1350 (11th Cir. 1997) (A defendant could not be ordered to pay restitution for acquitted conduct).

United States v. Eidson, 108 F.3d 1336 (11th Cir.), cert. denied, 118 S.Ct. 248 (1997) (Facts did not support restitution order).

United States v. Hodges, 110 F.3d 250 (5th Cir. 1997) (Fine was not justified for a defendant with a negative net worth).

United States v. Hodges, 110 F.3d 250 (5th Cir. 1997) (There lacked specific findings about ability to pay fine).

Blaik v. United States, 117 F.3d 1288 (11th Cir. 1997) (Restitution was limited to offense of conviction).

United States v. Khawaja, 118 F.3d 1454 (11th Cir. 1997) (The government was not a victim for purposes of awarding restitution).

\*United States v. Gottesman, 122 F.3d 150 (11th Cir. 1997) (A defendant's promise to pay back-taxes did not authorize court-ordered restitution).

\*United States v. Baggett, 125 F.3d 1319 (9th Cir. 1997) (Restitution must be based upon a specific statute).

United States v. Mayer, 130 F.3d 338 (8th Cir. 1997) (Restitution should not have been higher than the loss stipulated in the plea agreement).

United States v. Drinkwine, 133 F.3d 203 (2nd Cir. 1998) (Insufficient evidence that defendant could pay a fine).

United States v. Menza, 137 F.3d 533 (7th Cir. 1998) (Defendant did not have to pay restitution for amount greater than losses).

United States v. Riley, 143 F.3d 1289 (9th Cir. 1998) (Defendant could not be ordered to pay restitution on loan unrelated to fraud).

United States v. Stoddard, 150 F.3d 1140 (9th Cir. 1998) (Restitution could not exceed actual loss).

United States v. Siegel, 153 F.3d 1256 (11th Cir. 1998) (Court must consider defendant's ability to pay restitution).

## Appeals

United States v. Byerley, 46 F.3d 694 (7th Cir. 1996) (The government

waived argument by inconsistent position at sentencing).

United States v. Caraballo-Cruz, 52 F.3d 390 (1st Cir. 1995) (The government defaulted on double jeopardy claim).

\*United States v. Carillo-Bernal, 58 F.3d 1490 (10th Cir. 1995) (The government failed to timely file certification for appeal).

United States v. Petty, 80 F.3d 1384 (9th Cir. 1996) (Waiver of appeal of an unanticipated error was not enforceable).

\*United States v. Ready, 82 F.3d 551 (2nd Cir. 1996) (Waiver of appeal did not cover issue of restitution and was not waived).

United States v. Thompson, 82 F.3d 700 (6th Cir. 1996) (Technicalities that did not prejudice the government were not cause to deny a motion to extend time to file an appeal).

\*United States v. Agee, 83 F.3d 882 (7th Cir. 1996) (A waiver of appeal, not discussed at the plea colloquy, was invalid).

United States v. Webster, 84 F.3d 1056 (11th Cir. 1996) (When a law was clarified between trial and appeal, a point of appeal was preserved as plain error).

\*United States v. Allison, 86 F.3d 940 (9th Cir. 1996) (Remand was proper even though the district court could still impose the same sentence).

United States v. Sanchez, 88 F.3d 1243 (D.C. Cir. 1996) (Failure to advise the defendant of his right to appeal was per se error).

\*United States v. Perkins, 89 F.3d 303 (6th Cir. 1996) (Orally raising an issue at sentencing preserved it for appeal).

United States v. Stover, 93 F.3d 1379 (8th Cir. 1996) (Under the ex post facto clause, an appellate court refused to use a substantive change to the guidelines to uphold a sentence that was improper at the time imposed).

United States v. Londono, 100 F.3d

236 (2nd Cir. 1996) (The defendant's deportation did not moot his appeal).

United States v. Alexander, 106 F.3d 874 (9th Cir. 1997) (Rule of the case barred reconsideration of a suppression order after remand).

United States v. Zink, 107 F.3d 716 (9th Cir. 1997) (Waiver of appeal of sentence did not cover a restitution order).

United States v. Saldana, 109 F.3d 100 (1st Cir. 1997) (A defendant had a jurisdictional basis to appeal a denial of a downward departure).

Sanders v. United States, 113 F.3d 184 (11th Cir. 1997) (A pro se petitioner's out-of-time appeal was treated as a motion for extension of time).

United States v. Arteaga, 117 F.3d 388 (9th Cir. 1997) (Evidence that was precluded at trial could not support convictions on appeal).

In Re Grand Jury Subpoena, 123 F.3d 695 (1st Cir. 1997) (A third party may appeal the denial of a motion to quash without risking a contempt citation).

United States v. Martinez-Rios, 143 F.3d 662 (2nd Cir. 1998) (Vague appeal waiver was void).

## Resentencing

\*United States v. Moore, 131 F.3d 595 (6th Cir. 1997) (A limited remand did not allow a new enhancement at resentencing).

\*United States v. Wilson, 131 F.3d 1250 (7th Cir. 1997) (The government waived the issue of urging additional relevant conduct at resentencing).

United States v. Rapal, 146 F.3d 661 (9th Cir. 1998) (Higher sentence presumed vindictiveness).

## Supervised Release / Probation

United States v. Doe, 53 F.3d 1081 (9th Cir. 1995) (An unadjudicated juvenile could not be sentenced to supervised release).

United States v. Doe, 79 F.3d 1309 (2nd Cir. 1996) (Occupational restriction was not supported by the court's findings).

\*United States v. Blake, 88 F.3d 824 (9th Cir. 1996) (When a defendant's sentence of imprisonment was reduced below his time already served, his supervised release began from the day he should have been released).

United States v. Edgin, 92 F.3d 1044 (10th Cir.), cert. denied, 117 S.Ct. 714 (1997) (A court failed to provide adequate reasons to bar a defendant from seeing his son while on supervised release).

United States v. Wright, 92 F.3d 502 (7th Cir. 1996) (Simple possession of drugs was a Grade C, not a Grade A violation, of supervised release).

United States v. Leaphart, 98 F.3d 41 (2nd Cir. 1996) (A misdemeanor did not justify a two year term of supervised release).

United States v. Myers, 104 F.3d 76 (5th Cir.), cert. denied, 117 S.Ct. 1709 (1997) (A court could not impose consecutive sentences of supervised release).

United States v. Ooley, 116 F.3d 370 (9th Cir. 1997) (A probationer was entitled to a hearing over a warrantless search).

\*United States v. Collins, 118 F.3d 1394 (9th Cir. 1997) (Illegal ex post facto application of rule allowing additional term of release after revocation).

United States v. Dozier, 119 F.3d 239 (3rd Cir. 1997) (Ex post facto application of additional term of supervised release).

United States v. Romeo, 122 F.3d 941 (11th Cir. 1997) (A court could not order deportation as a condition of supervised release).

United States v. Aimufa, 122 F.3d 1376 (11th Cir. 1997) (A court lacked authority to modify conditions of release after revocation).

\*United States v. Patterson, 128 F.3d 1259 (8th Cir. 1997) (Failure to provide

allocation at supervised release revocation was plain error).

United States v. Pierce, 132 F.3d 1207 (8th Cir. 1997) (Probation revocation for a drug user does not require a prison sentence; treatment is an option).

\*United States v. Lominac, 144 F.3d 308 (4th Cir. 1998) (Additional supervised release was applied ex post facto).

United States v. Bonanno, 146 F.3d 502 (7th Cir. 1998) (Court improperly delegated discretion over drug testing to probation officer).

United States v. Biro, 143 F.3d 1421 (11th Cir. 1998) (Deportation could not be condition of supervised release).

United States v. Balogun, 146 F.3d 141 (2nd Cir. 1998) (Court could not order supervised release tolled while defendant out of country).

United States v. Giraldo-Prado, 150 F.3d 1328 (11th Cir. 1998) (Deportation cannot be condition of supervised release).

United States v. Evans, 155 F.3d 245 (3rd Cir. 1998) (Cannot make reimbursement for court-appointed counsel a condition of supervised release).

United States v. Havier, 155 F.3d 1090 (9th Cir. 1998) (Motion to revoke must specifically identify charges).

## Ineffective Assistance of Counsel

Jackson v. Herring, 42 F.3d 1350 (11th Cir.), cert. denied, 116 S.Ct. 38 (1995) (Trial counsel presented no mitigation evidence in capital case).

Esslinger v. Davis, 44 F.3d 1515 (11th Cir. 1995) (Counsel failed to determine that the defendant was a habitual offender before plea).

United States v. Cook, 45 F.3d 388 (10th Cir. 1995) (The court ordered defendant's counsel to advise a government witness to comply with her plea agreement).

\*Finch v. Vaughn, 67 F.3d 909 (11th Cir. 1995) (Counsel failed to correct state trial judge's misstatements that state sentence could run concurrent with potential federal sentence).

\*United States v. Stearns, 68 F.3d 328 (9th Cir. 1995) (A counsel failed to file notice of appeal).

Montemoino v. United States, 68 F.3d 416 (11th Cir. 1995) (Failure to file notice of appeal after request by defendant).

United States v. Hansel, 70 F.3d 6 (2nd Cir. 1995) (Counsel failed to raise statute of limitations).

Upshaw v. Singletary, 70 F.3d 576 (11th Cir. 1995) (Claim of ineffective assistance of counsel at plea was not waived even though not raised on direct appeal).

United States v. Streater, 70 F.3d 1314 (D.C. 1995) (Counsel gave bad legal advice about pleading guilty).

Martin v. United States, 81 F.3d 1083 (11th Cir. 1996) (Counsel failed to file a notice of appeal when requested to do so by the defendant).

Sager v. Maass, 84 F.3d 1212 (9th Cir. 1996) (Counsel was found ineffective for not objecting to inadmissible evidence).

Glock v. Singletary, 84 F.3d 385 (11th Cir.), cert. denied, 117 S.Ct. 616 (1996) (Counsel's failure to discover and present mitigating evidence at the sentencing proceeding required an evidentiary hearing).

United States v. McMullen, 86 F.3d 135 (8th Cir. 1996) (Counsel's bad sentencing advice required remand).

United States v. Del Muro, 87 F.3d 1078 (9th Cir. 1996) (Prejudice was presumed when trial counsel was forced to prove his own ineffectiveness at a hearing).

Baylor v. Estelle, 94 F.3d 1321 (9th Cir.), cert. denied, 117 S.Ct. 1329 (1997) (Counsel was ineffective for failing to follow up on lab reports suggesting that the defendant was not the rapist).

Huynh v. King, 95 F.3d 1052 (11th Cir.

1996) (A lawyer's failure to raise a suppression issue was grounds for remand).

United States v. Baramdyka, 95 F.3d 840 (9th Cir.), cert. denied, 117 S.Ct. 1282 (1997) (An appeal waiver did not bar a claim of ineffective assistance of counsel).

\*United States v. Glover, 97 F.3d 1345 (10th Cir. 1996) (It was ineffective for counsel to fail to object to the higher methamphetamine range).

Martin v. Maxey, 98 F.3d 844 (5th Cir. 1996) (Failure to file a motion to suppress could be grounds for ineffectiveness claim).

Fern v. Gramley, 99 F.3d 255 (7th Cir. 1996) (Prejudice could be presumed from an attorney's failure to file an appeal upon the defendant's request).

Griffin v. United States, 109 F.3d 1217 (7th Cir. 1997) (Counsel's advice to dismiss appeal to file motion to reduce a sentence was prima facie evidence of ineffective assistance of counsel).

United States v. Kauffman, 109 F.3d 186 (3rd Cir. 1997) (Failure to investigate insanity defense was ineffective assistance of counsel).

Williamson v. Ward, 110 F.3d 1508 (10th Cir. 1997) (Failure to investigate the defendant's mental illness was ineffective assistance of counsel).

Williamson v. Ward, 110 F.3d 1508 (10th Cir. 1997) (Failure to investigate the defendant's mental illness was ineffective assistance of counsel).

United States v. Gaviria, 116 F.3d 1498 (D.C. Cir. 1997) (Counsel was ineffective for giving incorrect sentencing information in contemplation of plea).

United States v. Soto, 132 F.3d 56 (D.C. Cir. 1997) (Counsel was ineffective for failing to urge downward role adjustment).

United States v. Taylor, 139 F.3d 924 (D.C. Cir. 1998) (Counsel was ineffective for failing to inform client of advice of counsel defense).

Smith v. Stewart, 140 F.3d 1263 (9th Cir. 1998) (Failure to investigate

mitigating evidence was ineffective).

Tejeda v. Dubois, 142 F.3d 18 (1st Cir. 1998) (Counsel's fear of trial judge hindered defense).

Robbins v. Smith, 152 F.3d 1062 (9th Cir. 1997) (*Anders* brief that did not review possible grounds for appeal was ineffective).

## Parole

John v. United States Parole Commission, 122 F.3d 1278 (9th Cir. 1997) (A parolee had a due process right to a hearing and to call witnesses).

Gambino v. Morris, 134 F.3d 156 (3rd Cir. 1998) (There was no rational basis to deny parole).

Strong v. United States Parole Commission, 140 F.3d 429 (2nd Cir. 1998) (Prisoner could not be reparaoled to special parole after revocation of original special parole).

Robles v. United States, 146 F.3d 1098 (9th Cir. 1998) (Parole Commission could not impose second special term of parole).

Whitney v. Booker, 147 F.3d 1280 (10th Cir. 1998) (Prisoner could not be reparaoled to special parole after revocation of original special parole).

