

## Lite Summer Edition

### 18 U.S.C. §201

Most of you have heard that a panel of the Tenth Circuit found that 18 U.S.C. §201 (c) (2) prohibited any party, including the United States, from offering anything of value to a witness for testimony. *United States v. Singleton*, 144 F.3d 1343 (10th Cir. 1998). That opinion was later withdrawn pending *en banc* consideration.

However, even though the case was withdrawn, and even though it was not precedent in this circuit, the statute still exists. Recently, District Judge William J. Zloch, Southern District of Florida, came to the same conclusion as the Tenth Circuit panel, in a 31-page opinion.

Judge Zloch found that the language of the statute to be unambiguous and that no precedent allowed an inference that the government is exempt from its breadth. The judge found that any more expansive

interpretation of the law would simply be judicial activism -- a concept Judge Zloch holds in the lowest regard.

Therefore, until the Eleventh Circuit holds otherwise, or Congress amends the law, lawyers are free to move to suppress the testimony of government witnesses who expect to receive anything of value, including motions for downward departure under §5K1.1 and Rule 35.

### Personnel Change

On August 14, 1998, Legal Research and Writing Specialist, Carol Elewski, will be leaving this office to accept a teaching position with the University of Georgia School of Law. Carol and Carlos Williams recently won a major victory for lawyers in this circuit in *United States v. Guapi*, 144 F.3d 1393 (11th Cir. 1998). That case held that officers boarding a bus and requesting consent to search must tell passengers they have a right to refuse a search of their bags.

On September 14, 1998, Christopher Knight will assume Carol's old position. Chris comes to us from Legal Services Corporation of

Alabama.

### Reversible Errors

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

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. Kaye, 140 F.3d 86 (2d Cir. 1998) (Court can depart downward based on assistance to state law enforcement without motion by government).

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

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

United States v. Campo, 140 F.3d 415 (2d Cir. 1998) (Judge could not refuse to depart solely because he did not

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like USA's policy about not recommending a specific sentence).

United States v. Millard, 139 F.3d 1200 (8th Cir. 1998) (1. Prior drug convictions erroneously admitted; 2. Statements during plea discussions erroneously admitted).

United States v. Gobert, 139 F.3d 436 (5th Cir. 1998) (Insufficient factual basis for defendant's guilty plea).

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

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

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. Qualls, 140 F.3d 824 (9th Cir. 1998) (Partial restoration of civil rights reversed felon in possession conviction).

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

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. Taylor, 139 F.3d 924 (D.C. Cir. 1998) (Counsel was ineffective for failing to inform client of advice of counsel defense).

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

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

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

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

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

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

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

United States v. Cottman, 142 F.3d 160 (3d Cir.

1998) (The government is not a victim under Victim Witness Protection Act).

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

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

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