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COMMENDATIONS

Assistant United States Attorney DAVID L. ALLRED, Middle District of Alabama, has been commended by Ronald C. Reese, Regional Inspector General for Investigations, for his excellent handling of an intensive investigation involving fraud by public officials in the handling of the school lunchroom program in Bullock County, Alabama.

Assistant United States Attorneys CHARLES L. CASTEEL and NANCY E. RICE, District of Colorado, have been commended by G.L. Mihlbachler, District Director, Internal Revenue Service, for their successful prosecution of the net worth case relating to Cushman D. King.

Assistant United States Attorney C. SCOTT CRABTREE, District of Colorado, has been commended by Norm Alverson, Director, Veterans Administration, for his excellent and capable services in the case McGurran vs. the Veterans Administration.

Assistant United States Attorney STAFFORD HUTCHINSON, Northern District of Texas, has been commended by Edward W. Norton, General Counsel of the Small Business Administration, for his extraordinary service in handling the case Reagan v. Small Business Administration, et. al.

Assistant United States Attorney PATRICIA KENNEY, District of Columbia, has been commended by William R. Cummings, Assistant General Counsel for Insurance of the Federal Emergency Management Agency, for her fine work in Ron-Com Photo Supply, Inc., v. John W. Macey, Director, Federal Emergency Management, et. al.

First Assistant United States Attorney ANTHONY P. NUGENT and Assistant United States Attorney KEN JOSEPHSON, Western District of Missouri, have been commended by John J. Foy, Chief, Criminal Investigation Division of Internal Revenue Service, for their fine efforts regarding the recent trial and conviction of Mr. Jack Terrell, Ramon Terrell, and Mr. Richard Williams of St. Joseph, Missouri.

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EXECUTIVE OFFICE FOR U.S. ATTORNEYS
William P. Tyson, Acting Director

POINTS TO REMEMBER

Department of Justice Identification Badges

Only Department law enforcement employees who are authorized by law to carry firearms and make arrests as part of their official duties may be issued or carry on their persons law enforcement identification badges. Authorized badges will remain the property of the U.S. Government, and will be controlled and protected against unauthorized use, using the same guidelines that are established for identification documents.

(Justice Management Division)

Processing of New Condemnation Cases

A review of the procedures followed by the Administrative Unit of the Land Acquisition Section, Land and Natural Resources Division, in processing new condemnation cases suggests that a considerable amount of time is consumed in the certification process.

When the initial request for condemnation is received from the acquiring agency, a carbon copy of the request is pulled and forwarded to the Main Building where the official departmental seal is affixed. It is not unusual for the Administrative Unit to experience 3 or 4 days delay in this process. This is not a satisfactory arrangement, and the problem will become more accute once the computer conversion commences.

In order to facilitate timely data entry and transmission of the case to the United States Attorneys' Offices, it is imperative that the present procedures be modified by transmitting an uncertified copy. (Since the letters are no longer filed in Court, the need for certification no longer exists). It should be noted that the Land Acquisition Section will provide a certified copy, upon written request, in those instances wherein its validity is challenged and the United States Attorney feels a need for the certification.

(Land and Natural Resources Division)

Implementation of Amended Drug Enforcement Administration Domestic Operations Guidelines

At the direction of the then Deputy Attorney General Civiletti, a senior level team from the Criminal Division, Drug Enforcement Administration (DEA), and the Deputy's Office undertook in 1979 the first comprehensive review of the Domestic Operations Guidelines for the DEA since they were issued by Attorney General Levi in 1976. After on-site review of DEA files at a number of offices and interviews of DEA personnel and federal prosecutors, recommendations were made to amend certain guidelines and to revise related procedures. The amended DEA Domestic Operations Guidelines, and the changed procedures, were effective on April 7, 1980.

Summary of Major Changes

The amended guidelines and changes in procedures are designed to meet three objectives: (1) to assure adequate oversight and guidance of domestic drug law enforcement activities, (2) to target investigations against major traffickers and organizations, and (3) to regulate legally and operationally significant investigative practices.

For prosecutors, the following changes are the most important:

(1) DEA must report "investigations" to the U.S. Attorney in specified situations, according to schedules set by the U.S. Attorney and the DEA Special Agent in Charge in each district.

(2) DEA supervisors are made expressly responsible for ensuring that contacts with informants and defendant-informants are documented on a regular and timely basis.

(3) Use of individuals with prior drug felony convictions as informants must be approved expressly by the SAIC.

(4) The U.S. Attorney, or other prosecutor, must be informed on a continuing basis of the cooperation or use of a defendant-informant.

(5) DEA's promises in return for cooperation of a defendant-informant must be documented in writing; the U.S. Attorney has the sole authority expressly to determine [and implicitly to make representations concerning] whether a defendant-informant will be prosecuted.

(6) DEA Agents must document in writing the substance and circumstances of the advice given to informants and defendant-informants pursuant to those Guidelines governing undercover operations.

Implementation of the Guidelines

The Deputy Attorney General has directed that the United States Attorney or a designated senior AUSA shall meet with the senior DEA official in the district to discuss implementation of the Guidelines. This meeting should take place as soon as possible and it should be initiated by the United States Attorney.

It is strongly recommended that this meeting take place by May 15th. DEA SAIC's and RAIC's will be expecting these meetings, which should establish clearly what is expected from DEA regarding the Guidelines, and the form of documentation which will be required. The procedures should be unambiguous and the lines of communication should be clear. The responsibility of the United States Attorney should also be outlined.

The results of the meeting shall be summarized and reported in writing to the Chief of the Narcotic and Dangerous Drug Section of the Criminal Division. It is requested that these reports be received by June 1st. Copies of these reports will be made available to DEA Headquarters (Office of Enforcement).

Investigation and Resolution of Alleged Violations

Investigation and resolution of alleged violations of the Guidelines must receive priority attention. DEA has a field review capability to check compliance with the Guidelines, and personnel to investigate claimed violations of the Guidelines. Any allegation of violations or questions of interpretation of the Guidelines from the United States Attorneys should be forwarded to the Narcotic and Dangerous Drug Section of the Criminal Division. Any allegations of violation of the Guidelines which have ethical or public integrity implications will be referred to the Office of Professional Responsibility or to DEA's Office of Internal Security, as appropriate.

DEA will inform the Narcotic and Dangerous Drug Section of the result of the investigation and the actions taken. The United States Attorneys will be advised of these matters by the Section.

Conclusion

DEA Domestic Operations Guidelines present an opportunity to the United States Attorneys to refine the partnership with DEA in successful investigation and prosecution of drug cases.

Properly implemented, they should serve as an aid, and not a barrier, to efficient and effective drug law enforcement. The Narcotic and Dangerous Drug Section of the Criminal Division is prepared to assist prosecutors in the interpretation and application of the Guidelines.

Any questions or comments from prosecutors about the DEA Domestic Operations Guidelines should be directed to Section Attorney James Savage, FTS 724-6901.

(Criminal Division)

CRIMINAL DIVISION BRIEF/MEMO BANK

All United States Attorneys, Criminal Division personnel, and other Department personnel who deal with criminal matters should be made aware of the existence of the Criminal Division Brief/Memo Bank. This is a document storage and retrieval system designed to offer to these personnel convenient access to a valuable body of previously prepared legal memoranda and briefs. Use of this resource can help in avoiding needless duplication of work efforts, and permit legal research to be performed more expeditiously and thoroughly.

While the Criminal Division has long maintained a system containing legal memoranda (see USAM 9-1.502), the system has recently been redesigned and improved, so as to be more useful. A USAM bluesheet providing more information concerning the Criminal Division Brief/Memo Bank will be forthcoming shortly. In the meantime, anyone wishing to avail themselves of this resource should contact the Legal Reference Unit of the Office of Legal Support Services, FTS 724-7184.

It is requested that a copy of any legal memorandum which is prepared that may be of future use to others be forwarded to the Office of Legal Support Services, Room 308 Federal Triangle Building, 315 9th Street, Northwest, Washington, D.C. 20530.

(Criminal Division)

CIVIL DIVISION
Assistant Attorney General Alice Daniel

Shermco v. Secretary of Air Force, No. 78-2499 (5th Cir. March 19, 1980) DJ 145-14-1492

FOIA: FIFTH CIRCUIT RULES THAT FREEDOM OF INFORMATION ACT DOES NOT REQUIRE DISCLOSURES OF CERTAIN AIR FORCE RECORDS GENERATED IN CONNECTION WITH AWARD OF GOVERNMENT CONTRACT.

Shermco's bid on a government contract was rejected, and it was so notified by the Air Force. In response, Shermco filed a protest with GAO and, in connection with the protest, requested the production of various documents under the Freedom of Information Act, 5 U.S.C. 552. The Air Force released 24 of the requested documents but withheld from disclosure 3 legal memoranda which had been attached to the Air Force's response to the protest and three documents containing basic pricing information of the bidder who had submitted the lowest acceptable bid. (No contract had yet been awarded). The district court ordered that all six documents be released.

On appeal, the Fifth Circuit reversed. It upheld the Air Force's contentions that the legal memoranda were exempt from disclosure under exemption 5, concluding that the Air Force memoranda were pre-decisional because the decision on the contract was not final at the time the memoranda were written and because the memoranda were not expressly incorporated by reference into any formal written decision of the Air Force. The Court also found that the Air Force, by submitting its comments to GAO during the protest procedure, did not waive its right to invoke exemption 5.

As to the pricing information, exemption 4 was found applicable because, at the time of Shermco's protest, no final award of the contract had been made. To require release before a final decision would be prejudicial to the low-bidder, undermining its competitive advantage, and to the Air Force, undermining its ability to obtain accurate bids which reflect actual costs and capabilities.

Attorneys: Alice Mattice (formerly of Civil Division)
Howard Scher (Civil Division)
FTS 633-5055

Thornton v. Coffey, No. 78-1702 (10th Cir., March 28, 1980)
DJ 35-60-23

TITLE VII: TENTH CIRCUIT REVERSES DISTRICT COURT'S ORDER FOR MILITARY PROMOTION AND MILITARY BACK PAY AWARD IN TITLE VII ACTION.

The National Guard hires a number of its military personnel, who are part-time soldiers, in a civilian capacity as well, in order to maintain the Guard in a "ready" state. Military status in the Guard is a condition of eligibility for these civilian positions.

In this suit, a black male who was a former Captain in the Oklahoma National Guard charged that the Guard had denied his application for civilian employment for racially motivated reasons. After he filed an EEO complaint in the matter, the plaintiff received adverse officer ratings, which led to his discharge from the Guard; these ratings were given, he alleged, in retaliation for his filing the EEO complaint.

The district court found that the denial of civilian employment by the Guard was racially motivated, and ordered back pay for the civilian position; in addition, the court ordered that the plaintiff be reinstated as a Major in the Guard, given military back pay, and given right of first refusal for a comparable civilian position. We appealed the award of military relief on the grounds that the plaintiff had not exhausted his administrative remedies within the Guard regarding the adverse ratings, and on the ground that the court lacked jurisdiction to order military promotions. We also argued that, as a consequence, the plaintiff was not eligible for the civilian employment ordered by the court. The 10th Circuit agreed, holding that such plaintiffs are required to exhaust military remedies, including remedies before the Board for the Correction of Military Records. Even then, the Court held, there would not be jurisdiction for a court to order a military promotion -- it could only order an opportunity for promotional consideration based upon an accurate record. The Court agreed also that since the plaintiff did not possess the requisite military status, the district court's order granting the plaintiff a right of first refusal to civilian employment was incorrect. The Court rejected our argument that the finding of racial discrimination regarding the Guard's denial of civilian employment was clearly erroneous.

Attorney: Alfred Mollin (Civil Division)
FTS 633-4792

Pendleton v. Rumsfeld, No. 78-2148 (D.C. Cir. April 1, 1980) DJ 170-16-89

TITLE VII: D.C. CIRCUIT HOLDS THAT EEO COUNSELORS WHO HAD ACTIVELY PARTICIPATED IN A DISRUPTIVE DEMONSTRATION TO PROTECT EMPLOYMENT PRACTICES WERE NOT RETALIATORILY REMOVED FROM THEIR POSITIONS IN VIOLATION OF TITLE VII.

Plaintiffs, two EEO Counselors at Walter Reed Army Medical Center, filed a complaint under § 704(a) of Title VII of the Civil Rights Act of 1964, alleging that the commanding officer of the Center had relieved them of their EEO duties in retaliation for their opposition to the Center's allegedly unlawful practices. The district court rejected their contentions, finding that plaintiffs were in fact removed because of their active participation in a disruptive demonstration, which was a breach of their responsibilities as EEO counselors. The district court also held that although plaintiffs sought to maintain the suit as a class action, the factual circumstances of their removals was so unique that class certification was inappropriate.

The D.C. Circuit has just affirmed. Although plaintiffs argued that they were merely bystanders at an orderly press conference, it held that the district court's finding that plaintiffs had actively participated in the demonstration was not clearly erroneous. Since the demonstration was not a protected form of protest for EEO Counselors, because it hopelessly compromised their ability to do their jobs, the court concluded that their removal was not a violation of § 704(a). The court of appeals also agreed with our position that the case should not have been maintained as a class action, holding that plaintiff's claims were so unique that they failed to satisfy the commonality and typicality requirements of F.R.Civ.Pro. 23.

Attorney: Marleigh Lang (Civil Division)
FTS 633-1996

DeWeever v. United States of America, No. 78-1445 (10th. Cir., March 28, 1980) DJ 35-49-16

TITLE VII: TENTH CIRCUIT JOINS OTHER CIRCUITS IN RULING THAT INTEREST ON BACK PAY AWARDS IN FEDERAL TITLE VII CASES IS PROHIBITED.

The sole issue presented in this appeal was plaintiff's right to interest on a back pay awarded in a federal Title VII action. The Tenth Circuit has just ruled that Title VII, as amended to include federal employees, does not provide the

necessary express statutory authorization to overcome the bar of sovereign immunity. The Tenth Circuit's decision is in accord with the three other circuits which have ruled on this question, the Third, First and D.C. Circuits.

Attorney: Freddi Lipstein (Civil Division)
FTS 633-3380

April 25, 1980

CIVIL RIGHTS DIVISION
Assistant Attorney General Drew S. Days, III

United States v. Albrecht, et al, CA No. (N.D. Ill.)
DJ 170-60-6

Title VII

A complaint was filed on March 31, 1980, alleging that the Chicago Fire Department's procedures for selecting candidates for promotions discriminate against black and Hispanic candidates in violation of Title VII. The same day, Judge McGarr entered a consent decree between the United States and the defendants in this case. This suit follows United States v. City of Chicago, et al., which concerned previous examinations for promotions. Last October, Judge McGarr ruled against the United States in that case, stating, inter alia, that Title VII did not apply to the particular engineer and lieutenant exams before the Court. Those exams had been administered before the 1972 effective date of Title VII. We appealed that decision. The consent decree provides, inter alia, that future promotions based upon the results of these exams must be made at a ratio of one black or Hispanic promoted for every four whites promoted. As part of the settlement of the new case, we have moved to dismiss our appeal of the previous Fire Department case.

Attorneys: Robert Moore (Civil Rights Division)
FTS 633-3834
Cynthia Drabek (Civil Rights Division)
FTS 633-3875

United States v. City of Birmingham, CA No. 8070991 (E.D.Mich.)
DJ 175-37-88

Fair Housing Act of 1968

On March 7, 1980, the Department filed suit against the City of Birmingham, Michigan, alleging that the City Commission had blocked the development of low and moderate income senior and family housing in violation of the Fair Housing Act of 1968. In our complaint, we allege that the City Commission allowed a public referendum on the issue of low income housing and then followed the referendum in impeding an eventually blocking the construction of housing which would have had 16% minority residency goal. We have alleged that this action was

intended to maintain Birmingham as an overwhelmingly white suburb and has had that effect.

Attorneys: Michael H. Sussman (Civil Rights Division)
Denise Field (Civil Rights Division)

Garza v. Gates, CA No. SA-79-CA-413 (W.D. Tex.) (Atascosa Co.); Casares v. Thompson, CA No. 5-79-127 (N.D. Tex.) (Cochran Co.); Ybarra v. Work, CA No. 5-79-126(N.D. Tex.) (Crosby County); Garcia v. Decker, CA No. SA-79-CA-414 (W.D. Tex.)(Medina Co.) DJ Nos. 166-76-42, 166-73-19, 166-73-18, 166-76-43

Section 5 and "One Person, One Vote"

On March 7, 1980, we mailed for filing motions for leave to participate as amicus curiae in four private lawsuits which challenge the legality of the present apportionment plans for electing the County Commissioners Court, the governing body in each of the above named Texas counties, on Section 5 and "one person, one vote" Constitutional grounds.

Attorney: Robert Kawn (Civil Rights Division)
FTS 724-7341

United States v. Z & E Inc., et al, CA No. 80-148 (D.N. Mex.) DJ 180-49-44

Denial of Public Accommodations

On March 7, 1980, the Office of Indian Rights, in conjunction with the United States Attorney's office for the District of New Mexico, filed and obtained court approval of a consent decree. The case is the first in the country to allege a denial of public accommodations to American Indians on account of race. The consent decree provides for injunctive relief against further discriminatory practices and requires the defendants to post notices in its establishments stating that they do not discriminate on account of race.

Attorney: Lawrence Baca (Civil Rights Division)
FTS 633-4421

April 25, 1980

Parents In Action Against Special Education (PASE) v. Hannon, No. 74-C-3586 (N.D. Ill.) DJ 168-23-11

Violation of Title VI, Section 504 and the Education of the Handicapped Act

The United States was granted leave to participate as amicus curiae. This is a case in which plaintiffs alleged that the use of racially and culturally biased I.Q. tests results in the diagnosis and placement of disproportionate numbers of black children in classes for the Educable Mentally Handicapped (EMH) in the Chicago Schools. We filed a motion to participate in the case because of its importance as a precedent affecting the educational rights of minority students and because it will be the first case concerning I.Q. tests to be decided after Larry P. v. Riles. At the oral argument on March 11, 1980, in response to questions from Judge Grade about whether he could rule in favor of the plaintiffs without specifically finding that I.Q. tests are racially and culturally biased, we argued that the Court should find that the defendants had not complied with the validation Requirements of Section 504 and the EHA. In addition, we argued that the defendants had not presented a compelling educational justification for the segregation of black students into EMH classes and are in violation of Title VI. During the argument, the Judge stated emphatically that the misplacement of non-retarded students to EMH classes is "a tragedy." The Court intends to issue an opinion in the case by the end of April.

Attorneys: Lucy Thomson (Civil Rights Division)
FTS 633-3577
Michael Sussman (Civil Rights Division)
FTS 633-4755

OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Alan A. Parker
SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

April 1, 1980 - April 15, 1980

Stanford Daily. House Judiciary Committee mark-up was postponed to April 16th. The Senate Judiciary Committee is aiming for a mid to late April mark-up.

Juvenile Justice. The House Education and Labor Subcommittee on Human Resources unanimously reported out the authorization bill for the Juvenile Justice Delinquency Prevention Act.

Some amendments were passed including encouraging state and local authorities to remove juveniles from adult correction facilities, redefining the term "secure", and directing the removal of status offenders from secure facilities in most cases.

DEA Reauthorization. The House Commerce Committee mark-up was postponed until after the Easter recess.

I&NS Authorization. Acting Commissioner David Crosland testified before the Senate Judiciary Committee on I&NS Authorization for 1981 on April 2. Acting Chairman DeConcini's main interest was in the number of Iranians presently being admitted to the United States. He did not question I&NS budget and personnel cuts in as great detail as did Representative Holtzman, when he testified before the House Subcommittee on Immigration, Refugees and International Law. However, like Holtzman, DeConcini expressed concern as to whether I&NS is receiving sufficient support from Main Justice.

Puerto Rican Courts. On April 1, 1980, the House passed by voice vote H.R. 5563, to provide for the use of Spanish in the federal court in Puerto Rico. This proposal, which has long been advocated by our Civil Rights Division, passed the Senate last year but died in the House. We do not anticipate any real problem with Senate passage again this year.

Regulatory Reform. On April 3, the Senate Governmental Affairs Committee will meet to continue, and perhaps complete, markup of S. 262, the Administration's regulatory reform proposal. A number of critical issues remain, including the proposed definition of "major rule." If favorably reported, S. 262 would go to the Judiciary Committee on a forty-five day sequential referral.

Tort Claims Act - National Guard. On April 3, John Farley, Assistant Torts Director, Civil Division, testified against S. 1858, to amend the Federal Tort Claims Act to cover torts of National Guardsmen. The Department will oppose the bill on the ground that Guardsmen are state, not federal, employees and thus beyond the "control" of the Federal Government.

Private Relief Bills. Representative Danielson's subcommittee in the House held hearings on H.R. 3359 and H.R. 3459. The former was passed by the

Senate and appropriates $700,000 to Dr. Halla Brown who was injured by an automobile driven by a Panamanian diplomat prior to the enactment of P.L. 95-393 which imposed a mandatory insurance requirement on diplomats. Representative Kindness requested more information on the amount of damages before the subcommittee acts.

H.R. 3459 would waive the statute of limitations for Eazor Express, Inc., whose suit against the Army Corps of Engineers was dismissed in January. More information was requested from the Army so consideration of this bill was also postponed. The chances of passage do not appear good.

Airport and Airway Improvement Act. On March 27, Donald Flexner, Deputy Assistant Attorney General for the Antitrust Division, testified before the Subcommittee on Aviation of the House Public Works Committee on H.R. 6721, the Airport and Airway Improvement Act. Flexner argued that the current method for allocating access to airports among air carriers is anticompetitive and that it should be replaced by a market mechanism that required carriers to bid and pay for the access slots. Carriers would thus have equal and non-discriminatory opportunity to acquire such slots, with the result of more efficient allocation.

Oil and Gas Lease Fraud. On March 27, Edward J. Barnes, Chief of the government regulatory branch of the fraud section, Criminal Division, testified before the Subcommittees on Mines and Mining and on Oversight and Investigations of the House Interior Committee on pending investigations of fraud in the non-competitive leasing of federal onshore oil and gas leasing. Barnes states that as high as 80% of the lease filings in Wyoming in recent years may be fraudulent. Barnes encountered persistent questioning about plea bargaining in the investigation, particularly with a subsidiary of ITT. He was also questioned at length about the Department's role in a recently announced suspension of leasing, by the Secretary of Interior, and its relationship to the investigation.

Railroad Deregulation. On April 1, the Senate passed, 91-4, S. 1946, the Railroad Transportation Policy Act of 1979. The bill is substantially weaker than that desired by the Administration but was not strenuously resisted. It is anticipated that substantial improvement in the bill can be achieved on the House side.

NOMINATIONS:

On April 3, 1980 the Senate confirmed the nomination of Truman M. Hobbs to be U.S. District Judge for the Middle District of Alabama.

On April 3, 1980, the Senate Judiciary Committee concluded hearings on the nominations of Odell Horton, to be U.S. District Judge for the Western District of Tennessee; John T. Nixon, to be U.S. District Judge for the Middle District of Tennessee; and Norma H. Johnson, to be U.S. District Judge for the District of Columbia.

On April 2, 1980, the Senate received the following nominations:

Samuel J. Ervin III, of North Carolina, to be U.S. Circuit Judge for the Fourth Circuit;

William C. Canby, Jr., of Arizona, to be U.S. Circuit Judge for the Ninth Circuit;

Charles L. Hardy, to be U.S. District Judge for the District of Arizona;

Milton I. Shadur, to be U.S. District Judge for the Northern District of Illinois;

Frank J. Polozola, to be U.S. District Judge for the Middle District of Louisiana; and

Clyde S. Cahill, Jr., to be U.S. District Judge for the Eastern District of Missouri.

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Federal Rules of Evidence

Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

See Rule 11(e)(6) Federal Rules of Criminal Procedure, this issue of the Bulletin for syllabus.

United States v. James Allen Posey, 611 F.2d 1389 (5th Cir. 1980)

Federal Rules of Criminal Procedure

Rule 35. Correction or Reduction of Sentence.

Defendant appeals from denial of a Rule 35 motion made more than three years after the imposition of his sentence, contending that his sentence was based on erroneous information as to his military record. The Government responded that, even assuming error, the Rule 35 motion was not timely made because a sentence within the maximum term that is based on erroneous information is not an illegal sentence which may be corrected at any time under Rule 35, but rather one imposed in an illegal fashion, which is subject to the 120 day limitation under the Rule.

Noting precedents which held that sentences based on erroneous information were not illegal, and that to be termed illegal a sentence must exceed the statutory limit or be otherwise contrary to the applicable statute, the Court concluded that since the sentence here was concededly within the statutory limit, this was not an illegal sentence, and defendant's Rule 35 motion was therefore properly denied as time barred.

(Affirmed.)

United States v. Anthony DeLutro, No. 79-1274 (2d Cir. March 5, 1980)

Federal Rules of Criminal Procedure

Rule 11(e)(6). Pleas. Plea Agreement Procedure. Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

Federal Rules of Evidence

Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

Defendant, after being advised of Miranda rights, indicated to DEA agent who had arrested him that he would like to "cut a deal" and "make some kind of negotiated settlement" with the district court. The DEA agent responded that the only thing that could be promised was that the agent would bring defendant's cooperation to the attention of the U.S. Attorney's office and the court. Defendant's subsequent statement was later admitted into evidence at trial, and defendant appealed, contending that the statement was made during plea negotiations, and was therefore inadmissible under Rule 11(e)(6) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence.

The Court noted that in United States v. Robertson, 582 F.2d 1356 (5th Cir. 1978), it was held that a defendant's statement is inadmissible on the ground that it was given during plea negotiations only if the defendant "exhibited an actual subjective expectation to negotiate a plea at the time of the discussion" and the "expectation was reasonable given the totality of the circumstances". The Court concluded that the second prong of this test was unmet in this case, because the DEA agent's statement that he would bring defendant's cooperation to the attention of the government and the court provided no reasonable expectation that a bargain was being negotiated, but was rather the antithesis of a bargained plea.

(Affirmed.)

United States v. James Allen Posey, 611 F.2d 1389 (5th Cir. 1980)

LISTING OF ALL BLUESHEETS IN EFFECT

DATE	AFFECTS USAM	SUBJECT
	TITLE 1	
5-23-78	1 thru 9	Reissuance and Continuation in Effect of BS to U.S.A. Manual
Undtd	1-1.200	Authority of Manual; A.G. Order 665-76
6-21-77	1-3.100	Assigning Functions to the Associate Attorney General
6-21-77	1-3.102	Assignment of Responsibility to DAG re INTERPOL
6-21-77	1-3.105	Reorganize and Redesignate Office of Policy and Planning as Office for Improvements in the Administration of Justice
4-22-77	1-3.108	Selective Service Pardons
6-21-77	1-3.113	Redesignate Freedom of Information Appeals Unit as Office of Privacy and Information Appeals
6-21-77	1-3.301	Director, Bureau of Prisons; Authority to Promulgate Rules
6-21-77	1-3.402	U.S. Parole Commission to replace U.S. Board of Parole
Undtd	1-5.000	Privacy Act Annual Fed. Reg. Notice; Errata
12-5-78	1-5.400	Searches of the News Media
8-10-79	1-5.500	Public Comments by DOJ Emp. Reg., Invest., Indict., and Arrests
4-28-77	1-6.200	Representation of DOJ Attorneys by the Department: A.G. Order 633-77
8-30-77	1-9.000	Case Processing by Teletype with Social Security Administration
10-31-79	1-9.000	Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings

DATE	AFFECTS USAM	SUBJECT
11-16-79	1-9.000	Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents
7-14-78	1-14.210	Delegation of Authority to Conduct Grand Jury Proceedings
TITLE 2		
1-03-77	2-3.210	Appeals in Tax Case
TITLE 3		
Undtd	3-4.000	Sealing and Expungement of Case Files Under 21 U.S.C. 844
TITLE 4		
11-27-78	4-1.200	Responsibilities of the AAG for Civil Division
9-15-78	4-1.210-4-1.227	Civil Division Reorganization
4-1-79	4-1.300-4-1.313	Redelegations of authority in Civil Division Cases
5-5-78	4-1.313	Addition of "Direct Referral Cases" to USAM 4-1.313
4-1-79	4-2.110-4-2.140	Redelegation of Authority in Civil Division Cases
2-22-78	4-2.320	Memo Containing the USA's Recommendations for the Compromising or Closing of Claims Beyond his Authority
11-13-78	4-2.433	Payment of Compromises in Federal Tort Claims Act Suits
8-13-79	4-3.000	Withholding Taxes on Backpay Judgments
5-05-78	4-3.210	Payment of Judgments by GAO
6-01-78	4-3.210	New telephone number for GAO office handling payment of judgments
5-14-79	4-4.230	Attorneys' Fees in EEO Cases
11-27-78	4-4.240	Attorney fees in FOI and PA suits
4-1-79	4-4.280	New USAM 4-4.280, dealing with attorney's fees in Right To Financial Privacy Act suits

DATE	AFFECTS USAM	SUBJECT
4-1-79	4-4.530	Addition to USAM 4-4.530 (costs recoverable from United States
4-1-79	4-4.810	Interest recoverable by the Gov't.
4-1-79	4-5.229	New USAM 4-5.229, dealing with limitations in Right To Financial Privacy Act suits.
2-15-80	4-5.530; 540; 550	FOIA and Privacy Act Matters
4-1-79	4-5.921	Sovereign immunity
4-1-79	4-5.924	Sovereign immunity
9-24-79	4-9.200	McNamara-O'Hara Service Contract Act cases
9-24-79	4-9.700	Walsh-Healy Act cases
4-1-79	4-11.210	Revision of USAM 4-11.210 (Copyright Infringement Actions).
4-1-79	4-11.850	New USAM 4-11.850, discussing Right To Financial Privacy Act litigation
6-4-79	4-12.250; 4-12.251	Priority of Liens (2410 cases)
5-22-78	4-12.270	Addition to USAM 4-12.270
4-16-79	4-13.230	New USAM 4-13.230, discussing revised HEW regulations governing Social Security Act disability benefits
11-27-78	4-13.335	News discussing "Energy Cases"
7-30-79	4-13.350	Review of Government Personnel Cases under the Civil Service Reform Act of 1978
4-1-79	4-13.361	Handling of suits against Gov't Employees
6-25-79	4-15.000	Subjects Treated in Civil Division Practice Manual
	TITLE 5	
9-14-78	5-1.110	Litigation Responsibility of the Land & Natural Resources Division

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9-7-78	5-1.310	Authority of U.S. Attorneys to Initiate Actions Without Prior Authorization to Initiate Action
9-14-78	5-1.321	Requirement for Authorization to Initiate Action
1-3-79	5-1.325; 5-1.326	Case Weighting System, Case Priority System, Procedures
9-7-78	5-1.620	Settlement Authority of Officers within the Land and Natural Resources Division
9-7-78	5-1.630	Settlement Authority of U.S. Attorneys
9-14-78	5-2.130	Statutes administered by Pollution Control Section
9-06-77	5-2.310(a) and (b); 5-2.312	Representation of the Environmental Protection Agency
9-14-78	5-2.312	Cooperation and Coordination with Environmental Protection Agency
9-14-78	5-2.321	Requirement for Authorization to Initiate Action
9-06-77	5-3.321; 5-3.322	Category 1 Matters and Category 2 Matters-Land Acquisition Cases
9-14-78	5-4.321	Requirement for Authorization to Initiate Action
9-14-78	5-5.320	Requirement for Authorization to Initiate Action
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9-14-78	5-7.321	Requirement for Authorization to Inititate Action

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6-21-77	8-2.000	Part 55-Implemenation of Provisions of Voting Rights Act re Language Minority Groups (interpretive guidelines)
6-21-77	8-2.000	Part 42-Coordination of Enforcement of Non-discrimination in Federally Assisted Programs
10-18-77	8-2.220	Suits Against the Secretary of Commerce Challenging the 10% Minority Business Set-Aside of the Public Works Employment Act of 1977 P.L 95-28 (May 13, 1977)
	TITLE 9	
7-11-79	9-1.000	Criminal Divison Reorganization
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11-13-79	9-1.160	Requests for Grand Jury Authorization Letters for Division Attorneys
Undtd	9-1.215	Foreign Corrupt Practices Act of 1977-15 U.S.C. 78m(b)(2)-(3); 15 U.S.C. 78dd-1; and 15 U.S.C. 78dd-2
4-16-80	9-1.502	Criminal Division Brief/Memo Bank
6-22-79	9-2.000	Cancellation of Outstanding Memorandum
5-11-79	9-2.025	Trade Secrets Act-Prosecution Under 18 U.S.C. 1905
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8-16-79	9-7.230	Pen-Register Surveillance
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12-13-78	9-11.220	Use of Grand Jury to Locate Fugitives
5-31-77	9-11.230	Grand Jury Subpoena for Telephone Toll Records
8-13-79	9-11.230	Fair Credit Reporting Act and Grand Jury Subpoenas
5-22-79	9-16.210	Explanation of "Special Parole" in Entry of Pleas Pursuant to Rule 11 F.R. Crim. P.
9-15-77	9-27.000	Federal Telephone Search Warrant System
11-13-79	9-34.220	Prep. Reports on Convicted Prisoners for Parole Commission
10-22-79	9-42.000	Coordination of Fraud Against the Government Cases (non-disclosable)
2-27-80	9-47.120	Foreign Corrupt Practices Act Review Procedure
6-29-79	9-60.291	Forfeiture of Devices Illegally Used to Intercept Wire or Oral Communications
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8-08-79	9-69.260	Perjury: False Affidavits Submitted in Federal Court Proceedings Do Not Constitute Perjury Under 18 USC 1623
1-3-80	9-69.420	Issuance of Federal Complaint in Aid of States' Prerequisites to; Policy
3-12-79	9-79.260	Access to information filed pursuant to the Currency & Foreign Transactions Reporting Act
2-29-80	9-121.120, .153 and .154	Authority to Compromise & Close Appearance Bond Forfeiture Judgements
5-11-78	9-120.160	Fines in Youth Corrections Act Cases
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UNITED STATES ATTORNEYS' MANUAL--TRANSMITTALS

The following United States Attorneys' Manual Transmittals have been issued to date in accordance with USAM 1-1.500. This monthly listing may be removed from the Bulletin and used as a check list to assure that your Manual is up to date.

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	8	1/18/78	2/01/78	Ch. 14
	9	5/18/79	5/08/79	Ch. 5
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	11	10/09/79	10/09/79	Index to Manual
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