

Lisa

UNITED STATES GOVERNMENT

memorandum

DATE: October 20, 1993 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: *Paul Wilson for* Bill Burlington, Regional Counsel

ATTN OF: Mid-Atlantic Region

SUBJECT: September 1993 Monthly Report

TO: Wallace H. Cheney, General Counsel

ATTN: Nancy Redding, Executive Assistant

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SUBSTANTIVE PLEADINGS (COMPLAINT, MOTION FOR SUMMARY JUDGMENT, ETC.):

Long v. Gable, 2:92CV1113, Norfolk Division, FCI Petersburg

Supplemental litigation report transmitted to AUSA outlining current medical status and treatment plan of plaintiff, along with a recommendation for a Motion for Summary Judgment. This Bivens case results from inmate Long's complaint that he is not receiving adequate medical care for his back problem. In his J&C the court issued an order directly that Long's back problem be diagnosed and treated. Additionally, the sentencing court (E.D. Va.) is also interested in the medical condition of the inmate. There is a great deal of interest in this case by the courts. Mr. Long has persistently indicated that he needs back surgery. He has submitted two reports from outside doctors - one recommending surgery and one recommending more conservative treatment. Long was sent to USMCFP and was evaluated by both a board certified neurosurgical specialist (who specializes in surgery with low back pathology) and a board certified neurology specialist who diagnosed him as having osteoarthritis and degenerative disc disease, prominent at the L5 - S1 level. He has a narrowing of the L5 - S1 interspace and a slight degree of central disc bulging at this level. Recommended treatment is physical therapy, non-steroidal anti-inflammatory medication, regular ambulation, and low back muscle strengthening. Records indicate that Long is not compliant with the recommended treatment and insists that he needs surgery. A hearing in the case has tentatively been set for November.

SETTLEMENTS: None.

ADVERSE DECISIONS OR SIGNIFICANT DECISIONS:

Conchita Washington v. Reno et al., (E.D. Kentucky - FCI Lexington)

After an all day hearing, Judge Wilhoit has indicated that he

will preliminarily enjoin the Bureau of Prisons from implementing the ITS system unless collect calls are also available in each housing unit. The government is now considering whether this order is appealable and whether a stay of this order can be obtained.

UPDATE ON CASES, TRIALS OR HEARINGS, ETC. NOTED IN PRIOR REPORTS:

Robert Dickey v. Warden Story et al., CA No. 92-237, E.D. Ky.

Inmate Bivens and injunctive relief action where inmate (a) seeks damages for having white supremacist publications rejected; and (2) seeks injunctive relief to be allowed to review such literature within confines of chapel, as related to white supremacist religion. Inmate was released from custody on July 9, 1993. Proceedings were at a standstill while service of process was effectuated on Warden Story and Defendant Stone and a response filed on their behalf. Service has now been accomplished, and the AUSA handling the case is awaiting scheduling by the court.

Osborn v. United States, C.A. No. 3:92CV702, Richmond Division, FCI Petersburg

An evidentiary hearing is set for October 21, 1993, in this habeas action. Former federal inmate on federal parole in state custody, alleges that federal authorities waived jurisdiction over him when they allowed the state to prosecute and incarcerate him. He seeks total release from his federal sentence obligation. Supplemental memorandum filed in this case on July 28, 1993, asserting no waiver of jurisdiction citing applicable case law and Fourth Circuit law on the operation of § 3568. Court has also been advised in memorandum that inmate's federal sentence has been computed as starting on date of federal sentencing and he has received jail time credit since the date of his initial arrest. In other words, the inmate has received all possible credit under § 3568, notwithstanding that he was in state custody for a period of time. The record also shows that the Marshals had a detainer on file with the state and the inmate has never been "released" from custody. The court nevertheless has set this action for a hearing.

Miguel Angel Batista Collazo, et al. v. United States, CA No. 92-0017-C(S), N.D. W. Va.

This FTCA complaint is seeking \$2.5 million to recover money damages for alleged acts and omissions of FCI Morgantown employees which allegedly caused the suicide death of inmate Hector Alfredo Batista-Hernandez on February 23, 1988. A recent decision in the Fourth Circuit enables us to argue that an action for wrongful death under the FTCA would be barred in West Virginia, and therefore, a motion to dismiss should

succeed. Reference: Hill v. Nicodemus, 979 F. 2d 987 (4th Cir. 1992). Therefore, the Government's position is that no settlement negotiations will be entertained at this time.

Rodney K. Bevans v. United States, CA No. 93-0295, E.D. Pa.

A straight FTCA case with a claim of \$50,000 for alleged failure to provide medical services during pre-designation status at Petersburg, Atlanta and Lewisburg. Arbitration panel met on September 22, 1993, and awarded \$10,000 to the Plaintiff. Essentially, the Panel found that the Plaintiff's statements were believable, that he complained of various severe symptoms and that his complaints were unanswered. He claims he was told, "when you get to your destination institution, you will have a physical exam." In fact, Plaintiff did receive a physical exam, once he was designated to FCI Morgantown in April 1990. We have recommended to the Office of General Counsel that we do not appeal this case. We believe the violation of policy of no physical being given for four months of incarceration is likely to come out at trial, and risk a higher award.

Evans v. Thompson, 89-29-C, S.D. Ind., USP Terre Haute

Trial was held September 20, 1993, in this Bivens case against a single defendant alleging 8th Amendment violation during forced cell move to allow a search of the cell. AUSA Gerald Coraz anticipates a favorable outcome, and we should hear something within the next couple of weeks.

REPRESENTATION NOT RECOMMENDED FOR STAFF: None

ITEMS OF INTEREST, PERSONAL LEAVE, BUSINESS TRIPS, MOVES, ETC.

Teresa Leneave will be on scheduled annual leave October 12-15, 1993.

Sherian Fabo, Paralegal, USP Terre Haute, will attend recruitment training on October 15, 1993.

SIGNIFICANT FTCA CLAIMS: None

SIGNIFICANT ADMINISTRATIVE REMEDIES:

Inmate at Manchester contested staff removal of \$200 from his trust fund account. Previously, inmate requested BOP to issue two (2) \$100 checks to persons in the community. After several months going by without the checks being cashed, the inmate had the checks cancelled and the money was returned to his account. Subsequently, the checks were negotiated by the Chase Manhattan Bank, who received payment from the U.S. treasury despite the checks having been cancelled. The U.S. Treasury took the money from BOP, who in turn took it out of the inmate's account. The BOP's action of withdrawing the

money from the inmate's account without express authorization is prohibited by BOP policy regarding inmate trust funds. While the U.S. Treasury mistakenly honored the checks from the bank, it was improper to pass the loss on to the inmate. The money was returned to him.

SITUATION OF INTEREST, CONTACT WITH FEDERAL BENCH, HAZARDOUS WASTE SITES, ETC.:

The City of Ashland's billing error to FCI Ashland of the sewer backbill of \$100,000 has been reduced to an acceptable level for payment.

On Wednesday, October 13, 1993, the Supreme Court heard arguments in Landgraf v. USI Film, 122 L. Ed. 2d 1049 (1993). This case will review the retroactivity of provisions in the Civil Rights Act of 1991 which afforded jury trial and punitive damages in Title VII styled cases. The court in our previously reported case of Moore v. United States, Civil No. 5:92-0463, S.D. W. Va., had placed any decisions on our motion to dismiss on hold pending the Supreme Court's decision in Landgraf. Hopefully, staff members were able to attend the argument in this case.