

memorandum

DATE: February 3, 1997

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel
ATTN OF: Mid-Atlantic Region

SUBJECT: QUARTERLY REPORT - October 1, 1996 thru December 31, 1996

TO: Nancy Redding, Executive Assistant
Office of General Counsel**TORTS**

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
157	112	40	3	0	2	19	2303	201	110	5*	13	124

LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
224	109	27	73	15	66	265	35	2	0	0

ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
477	94	18	29	1	14	9	29	432	151	0

FOI/PRIVACY

NUM	ANS	PEN	OD
126	140	66	32

*We are in the process of obtaining settlement approval from the Central Office for these claims.

TRIALS AND HEARINGS

FPC Alderson - Leacock v. Reno - Plaintiff is a black medical doctor who was dismissed for poor work performance while still a probationary employee at FPC Alderson. The court granted the United States' Motion for Summary Judgment on the theories of disparate impact and retaliation and denied the Motion on the discriminatory discharge and disparate disciplinary treatment. A settlement could not be reached and the case was argued before a seven-person jury and lasted for six days. An order was entered November 7, 1996, from the U.S. District Court for the Southern District of West Virginia at Bluefield, in favor of plaintiff and against the U.S. in the amount of \$30,000. Subsequent to the judgment, motions for attorneys' fees and costs totaling approximately \$97,000 were filed. Plaintiff

also seeks equitable relief by way of cancellation of the repayment of his physicians comparability allowance and moving expenses, which together total more than \$9,000. After filing our motion for a new trial in this case, a hearing was held in early December, where the Judge strongly recommended that the two sides try to settle, rather than force the court to rule on the government's motion for a new trial, suggesting that he would probably deny the motion and let Defendants take an appeal. The parties submitted that for \$60,000 the case could very likely be settled. We have now made a formal \$60,000 settlement offer to plaintiff's attorney.

FCI Memphis - Ashley v. BOP - On December 17, 1996, even though this was supposed to have been a scheduling conference, because the plaintiff had not responded to the government's Motion, the Judge gave him the opportunity to do so in open court. Rather than respond to the Motion, plaintiff merely reargued the facts of his complaint. The AUSA, Brian Quarles, reiterated that plaintiff has failed to establish the burden and has not demonstrated a prima facie case for negligence or constitutional deprivation in either his complaint or his response to the government's Motion. This case arises out of an assault that occurred against Ashley during the riot in October of 1995 and a disagreement over his classification. The court did not make a ruling.

SETTLEMENTS: None

memorandum

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

DATE: October 15, 1996

REPLY TO: Bill Burlington, Regional Counsel
 ATTN OF: Mid-Atlantic Region

SUBJECT: QUARTERLY REPORT - January 1, 1996 thru March 31, 1996

TO: Nancy Redding, Executive Assistant
 Office of General Counsel

TORTS

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
225	167	47	8	1	2	5	229	265	82	2*	12	99

LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
52	30	7	13	2	53	291	49	0	1	\$1,500

ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
454	150	22	3	1	7	3	59	284	209	0

FOI/PRIVACY

NUM	ANS	PEN	OD
154	140	135	105

TRIALS AND HEARINGS: None

SETTLEMENTS:

Francis v. U.S., 3:95CV267, E.D. Va., FCI Petersburg

This case is based on a FTCA claim for \$200,000 that BOP negligently placed the inmate's bunk bed too close to the door of the T.V. room which allegedly resulted in the plaintiff falling and sustaining injuries. Plaintiff also claims negligent follow-up care. Plaintiff agreed to a settlement of \$1,500 along with a stipulation that the BOP would provide the inmate with a MRI and any appropriate follow-up care while he remains in BOP custody.

*We are in the process of obtaining settlement approval from the Central Office for these two claims.

memorandum

DATE: July 12, 1996

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel
 ATTN OF: Mid-Atlantic Region

SUBJECT: QUARTERLY REPORT - April 1, 1996 thru June 30, 1996

TO: Nancy Redding, Executive Assistant
 Office of General Counsel

TORTS

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
190	142	46	1	0	1	13	217	257	129	8*	10	113

LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
54	26	7	19	2	56	311	22	3	5	\$500,680

ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
479	138	24	32	2	12	5	60	387	243	22

FOI/PRIVACY

NUM	ANS	PEN	OD
190	228	94	63

*We are in the process of obtaining settlement approval from the Central Office for three claims and one is an employee disturbance claim awaiting Central Office decision.

TRIALS AND HEARINGS:

Mary Lobbins v. Phillip Wise, 1-96-0065, S.D. W.Va., FPC Alderson

On April 10, 1996, Magistrate Mary Feinberg, heard oral argument in these VCCLEA-early release cases. I argued that 18 U.S.C. Section 3625 is a substantial limitation on any federal court's subject matter jurisdiction to review agency action under Section 3621. On June 25, 1996, we filed exceptions to the 70-page adverse Report and Recommendation of

Magistrate Mary Feinberg. Judge Feinberg had ruled the Bureau's Program Statement Definition of Term Crime of Violence was ultra vires on a couple of grounds. First, she ruled it was a "legislative rule" which must undergo APA notice and comment. Second, she ruled we exceeded our authority by considering conduct underlying the conviction, as she feels section 3621 only allows us to look at the conviction in determining if the inmate is a "nonviolent" offender. We expect a hearing before Judge Faber in the near future.

On May 15, 1996, two Alderson cases regarding FCI Dublin's non-residential drug treatment program were heard. The cases involved the argument that the Bureau of Prisons should be estopped from asserting that the FCI Dublin program was not a residential program due to the inmates signing an agreement to participate in a residential treatment program.

There have been 16 VCCLEA cases filed out of Alderson. Although we originally report the Lobbins case, the Magistrate changed plaintiffs on us and actually heard the case of Wiggans v. Wise. All other cases, including the challenge to FCI Dublin's non-residential drug treatment program, are being held in abeyance until a decision is reached in Wiggans.

Carswell-Alderson - Anne Hammand v. Hawk

On May 22, 1996 we attended a Temporary Restraining Order hearing in Elkins, West Virginia. This was a case in which former Carswell inmate Anne Hammond claimed she was being discriminated against, due to her mental condition. The court had specifically asked us whether the Americans With Disabilities Act (ADA) applied to the Bureau of Prisons. On June 10, 1996 we received a favorable ruling giving us permission to transfer inmate Anne Hammond from the Greenbriar Birthing Center to FPC Alderson. The court rejected both the ADA and Rehabilitation Act claims of inmate Hammond.

SETTLEMENTS:

FCI Morgantown - Horbachevsky v. United States

Plaintiff accepted our settlement offer of \$500,000. This case involved a diabetic whose untreated eye condition resulted in blindness.

Sterling v. Keohane, Case Nos. TH 93-101-C-T/H, TH 94-01-C-T/H, TH 94-047-C-T/H, S.D. Ind. (U.S.P. Terre Haute)

On April 12, inmate Sterling agreed to accept \$150 as a settlement in full of his FTCA/Bivens RFRA action. This is the case that we argued for private counsel for Warden Keohane

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and another Bivens defendant, so defenses could have been raised the Department of Justice did not want to raise. One aspect of the FTCA claim was an allegation that we failed to follow a physician's order that inmate Sterling receive daily hot showers to reduce his stiffness and limited range of motion in his shoulder. We failed to follow this order while inmate Sterling was in administrative detention for an extended period. AUSA Tom Kieper was able to get Sterling to settle the Bivens/RFRA claim along with the tort claim for \$150 -- a very good deal! I notified Richard Montague, Attorney, Torts Branch, of this settlement.

Roger Hampel v. United States of America, 96-40045-FL, E.D. Mich., FCI Milan

This FTCA property case was settled for \$500.00. We felt this case would never be dismissed on summary judgment and did not want to go to trial based on the facts in this case. Several factors influenced this decision, i.e., inmates packing other inmate's property; death of lieutenant to whom this inappropriate activity was reported; and conflicting staff statements.

FCI Beckley - Strudwick v. Beckley Federal Correctional Institution, 5:96-0414, S.D. W. Va.

FTCA case wherein inmate alleges his personal property was lost by Beckley staff upon his placement in administrative detention. This case was settled for \$29.35, the amount originally offered at the administrative stage.

EEO Suit - FCI Butner: We appear to have settled one of our major EEO complaints out of Butner, involving the former director of the Sex Offender Treatment Program, Dr. Chris Norris. One of the complainants has agreed to accept our offer of a monetary sum, a job transfer, and the Bureau paying the moving expenses. Amy Risley, Labor Law Branch, has been extremely helpful in supplying us with case law and other information we used in bringing about this settlement. We have signed a confidentiality clause and because of that we are not putting the name of the complaint or the settlement amount in our report.

memorandum

DATE: October 24, 1996

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel
ATTNOF: Mid-Atlantic Region

SUBJECT: QUARTERLY REPORT - July 1, 1996 thru September 29, 1996

TO: Nancy Redding, Executive Assistant
Office of General Counsel**TORTS**

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
174	106	32	4	0	5	11	2713	210	140	4*	19	126

LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
44	19	5	14	6	46	297	25	0	1	\$150,000

ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
436	138	13	32	2	10	3	68	429	62	4

FOI/PRIVACY

NUM	ANS	PEN	OD
133	139	82	49

*We are in the process of obtaining settlement approval from the Central Office for four claims.

TRIALS AND HEARINGS: None**SETTLEMENTS:****FMC Lexington - Michels, Rosado & West-Wenger v. United States, E.D. Ky.**

These are the civil suits following the sexual abuse conviction of former FMC Lexington Correctional Officer Eddie Smith. The week of July 8-12, 1996, Wanda Hunt attended depositions of plaintiff Katherine West-Wenger and several doctors who have treated her. As a result of the depositions of the treating psychiatrists, plaintiff West-Wenger accepted settlement in the amount of \$150,000. The week of September 9, 1996, Wanda Hunt attended the deposition of plaintiff Rosado in New York City. As a result of this deposition, plaintiff

Rosado has agreed to a settlement in the amount of \$150,000, although we have not yet received the official settlement documents.

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