

memorandum

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

DATE: April 13, 1998

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

SUBJECT: QUARTERLY REPORT - January 1, 1998 thru March 31, 1998

TO: Nancy Redding, Acting Executive Assistant
Office of General Counsel

TORTS

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
182	141	39	0	2	0	7	\$1396	186	152	0	7	115

LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
27	15	3	6	3	41	314	54	5	3	\$199,711.02

ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
549	172	13	50	1	24	8	38	462	123	0

FOI/PRIVACY

NUM	ANS	PEN	OD
120	109	23	0

TRIALS AND HEARINGS:

USP Terre Haute - Yanez v. US - This FTCA trial was held in January. The inmate claimed that staff at USP Terre Haute lost his hobby craft material when he was transferred. Judgment was entered in the favor of the U.S.

FCI Memphis - Johnson v. U.S. - This is a FTCA claim for lost property arising out of the October 20, 1995, disturbance. In this case we were also permitted to argue discretionary function exception. The court denied our motion and the case proceeded to trial on January 21, 1998, and was continued/completed on January 30, 1998. At the close of plaintiff's proof, the Government moved for judgment as a matter of law arguing again that the discretionary function

exception barred recovery, or in the alternative, that plaintiff had not made out a prima facie case of negligence. Having drawn a blurred line between discretionary decisions and their ministerial implementation, the court concluded that the BOP's development of a procedure to remove inmate personal property was protected by the discretionary function exception, but that the ministerial implementation was subject to negligence analysis. Throughout, plaintiff contended that we should not have removed the property or that we should have returned the inmates to the same cells they occupied prior to the disturbance. At the Judge's insistence that plaintiff could have the merits considered only if he challenged the ministerial implementation, plaintiff included that in his challenge. The Judge then ruled in favor of the Government and dismissed the complaint, but it is unclear as to whether that ultimate decision was based upon the discretionary function exception or lack of negligence.

FCI Beckley - Depew v. Hawk and Olson - This inmate filed suit in Massachusetts because his right to have unprivileged communications with his attorney had been restricted for one year. He requested an injunction and money damages. A hearing was held in Boston February 3, 1998. A second hearing was held on March 16, 1998, after which the Judge dismissed the individual liability claims for lack of personal jurisdiction and transferred the official capacity claims to the Southern District of West Virginia.

FCI Manchester - Dunlap v. Luttrell, et al. - On February 23-25, this Bivens excessive force case was tried to a jury. After two full days of testimony the jury deliberated less than one hour, concluding that the four defendants did not use excessive force in subduing an unruly inmate. This case also involved an FTCA claim for failure to train and supervise the officers, and failure to provide proper medical care to the inmate after the use of force incident. The Judge was visibly angry at the government for canceling an outside medical exam, and ordered that such an exam take place before she decides the FTCA claim. The government was allowed to select an outside physician to perform one exam, and the plaintiff was allowed to select one physician. Both exams have now been completed and neither indicates any injuries that could be attributed to the use of force incident.

SETTLEMENTS:

Gutierrez v. U.S. - We were informed on January 14, 1998, by the AUSA in this case that the plaintiff had accepted our Offer of Judgment for \$140,000 plus costs (actual costs \$7,711.02). This is the case where the inmate, while in USMS custody in a local jail in Michigan, fell out of the top bunk

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and permanently damaged his left elbow. Subsequently, he was returned to BOP custody where there was a delay in surgery and some mix-ups during post-surgery rehab.

FPC Alderson - Poindexter v. US - This old FTCA case arose from an accident involving an Alderson vehicle and an inmate driver. The vehicle struck another car, injuring its driver and damaging the vehicle. The only issue was the extent of physical damages to the driver of the other car. The case has been settled for \$40,000.

FCI Memphis - Martin, et al. v Hawk, et al. - The three plaintiffs in this case have accepted the \$4,000 each settlement offer under FTCA. This is the Bivens/FTCA case where the Director was still a defendant regarding the implementation of the BOP's change in our bed board policy.

memorandum

DATE: July 15, 1998

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: QUARTERLY REPORT - April 1, 1998 thru June 30, 1998

TO: Amy Whalen Risley, Executive Assistant
 Office of General Counsel

TORTS

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
139	108	25	3	0	3	18	2205	154	120	1	15	101

LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
40	16	4	16	4	42	261	102	4	3	\$22,900

ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
528	177	14	37	2	12	5	26	532	101	1

FOI/PRIVACY

NUM	ANS	PEN	OD
137	127	35	2*

*Files are being retrieved from archives

TRIALS AND HEARINGS:

FMC Lexington - Velda Reed v. Reno - This age discrimination case was argued before the 6th Circuit on Tuesday, April 21st. The panel consisted of Judges, Ryan, Lay and Daughtery. On June 8th, the Sixth Circuit ruled that the Bureau's mandatory age requirement for primary law enforcement positions did not violate the Age Discrimination in Employment Act, 29 U.S.C. 633a, or the Veterans Preference Act. This opinion is the first published opinion which approves of the Bureau's policy since the initiation of FERS in 1986. This is a major victory for the BOP. We do not expect it to be appealed.

In Re Lincoln - FMC Lexington - On April 29, 1998, an emergency hearing was held to hear inmate Lincoln's claim that he was illegally being held beyond his release date. In fact, inmate Lincoln was not released the week of April 20th, as he refused to sign the installment schedule for payment of his fine, as required by 18 U.S.C. 3624(e). This hearing was complicated by the U.S. Attorney's Office and Probation, concluding that our form (from the IFRP Program Statement) constitutes an impermissible delegation of a court function to the Probation Officer. While I believe their position is incorrect, I have written Jeff Shorba with some language that we could use to modify the form, thus eliminating any confusion about the fact that the installment agreement relates only to collection of a fine, where a court has previously determined both the amount of, and timing for payment of the fine. After the hearing, inmate Lincoln signed a revised form and was released.

FMC Lexington - Kevin Jones v. J.T. Holland, et al. - A TRO hearing was held on April 10, 1998, in this Bivens case pertaining to plaintiff's allegations he was denied pain medication and treatment for his kidney stones and back pain.

Even though Judge Wilhoit subsequently dismissed the action with prejudice, the order did state that he (Judge Wilhoit) had determined at the April 10, 1998, preliminary injunction hearing that the defendants were deliberately indifferent to plaintiff's serious medical needs because the cause of the blood in plaintiff's urine had not been discovered and properly addressed. However, the Court dismissed the action in its entirety, since plaintiff received the relief he requested, to be seen by an outside urologist and obtain some type of relief. Judge Wilhoit also ordered \$1,200 in attorneys fees.

We have forwarded a recommendation that this case be appealed. Aside from contesting this factual finding, we are recommending that we appeal the court's failure to require exhaustion of administrative remedies in this Bivens case. The Sixth Circuit now has two published decision requiring inmates to exhaust in 1983 cases, Brown v. Toombs, 1998 WL 136185 (6th Cir. 1998) and White v. McGinnis, 131 F.3d 583 (6th Cir. 1997). Unfortunately, neither decision addresses the claim that monetary relief was not available in the state system.

FCI Morgantown (4th Circuit) - Pelissero and Hayes v. Thompson
On April 10th, this 2-point enhancement/Felon in Possession, early release case was argued to the 4th Circuit. The panel was prepared to rule that the new rule mooted these cases. We pointed out that the new rule did not apply, as both appellants entered a drug treatment program prior to October 1997. When this was pointed out, Judge Billy Wilkens responded "you realize that admission hurts your case." By

this comment, I believe Judge Wilkens may have been suggesting that the panel was prepared to strike down the Program Statement, Definition of the Term, Crimes of Violence, and had hoped to avoid that result by upholding the new rule, a la Bush v. Pitzer.

SETTLEMENTS:

FMC Lexington - Dumphord v. Reno - We received an adverse Preliminary Injunction in this case, which involves an extremely severe case of facial keloids. After much work by Joe Tang and the staff at Lexington, the Preliminary Injunction order has now been vacated as part of a settlement agreement. Aside from agreeing to allow inmate Dumphord to be seen by his private plastic surgeon, the Bureau agreed to pay approximately \$13,900 in attorney fees. When apprised of the settlement, Judge Karl Forester seemed pleased that the matter was resolved and that Dr. Dowden would be allowed to continue treating inmate Dumphord.

FCI Petersburg - Jenkins v. U.S. - This is the FTCA case brought by the estate of a deceased former FCI Petersburg inmate who was scalded and stabbed by a former correctional officer at that facility (who was then convicted of assault). The case was settled for \$7,500 and the settlement release has been written very broadly to put an end to any further litigation over this incident.

FCI Milan - Miller v. U.S. - Plaintiffs Shantel Miller and Ryanesha Swims, a minor child, filed this complaint after denial of their administrative claim (sum certain \$250,000). It was determined to be in the best interests of the government to settle the case for \$1,500. The plaintiffs were at FDC Milan for a social visit when the seven year old plaintiff's finger received a 3-cm laceration to her thumb, with a large amount of bleeding, when it was caught in the lobby door. The case was settled for several reasons: child and parent might be considered invitees under Michigan law; the doors involved were glass and very heavy which causes them to swing shut quickly; the chairs are positioned in the visiting room in such a way that the mother's view of the child playing with the door was obscured; under Michigan law negligence cannot be imputed to the parent; and under Michigan law a child under the age of seven cannot be found contributorily negligent.

memorandum

DATE: October 9, 1998 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: QUARTERLY REPORT - July 1, 1998 thru September 30, 1998

TO: Amy Whalen Risley, Executive Assistant
 Office of General Counsel

TORTS

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
141	105	31	4	0	1	20	\$2475	155	93	3	12	104

LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
70	24	6	11	29	27	284	50	1	0	\$0

ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
630	205	9	60	5	17	13	32	572	109	1

FOI/PRIVACY

NUM	ANS	PEN	OD
158	156	37	2

TRIALS AND HEARINGS:

FCI Milan - Beckley v. Scibana - The inmate filed an injunction and TRO requesting immediate medical care for a prothesis of his left shoulder and the resulting pain. The hearing took place on August 24, 1998, in front of a new Federal judge. The Judge heard testimony from Dr. Parker, Chief Medical Officer, and testimony from Beckley. The Court requested that Beckley continue to work with medical staff and that upon his placement into a CCC he could seek medical surgery at his own cost. The Court did not grant Beckley's request for an Order for Tylenol #3 and immediate surgical intervention. The Judge deferred to Dr. Parker's judgment.

SETTLEMENTS: None