

**U.S. Department of Justice  
Federal Bureau of Prisons  
North Central Region**

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*Kansas City, KS 66101-2492*

July 5, 1996

MEMORANDUM FOR WALLACE H. CHENEY, ASSISTANT DIRECTOR  
GENERAL COUNSEL & REVIEW

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: QUARTERLY/MONTHLY REPORT (June 1996) *2/1/96 - 6/30/96*

**LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS**

**LITIGATION:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
37	31	40	37	35	25							
Total for Calendar Year									205	190		
Pending				875								

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
118	119	115	106	74	45							
Total for Calendar Year									577			
Pending				396								

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
242	220	167	237	180	155						
Total for Calendar Year											1201

**ADVERSE DECISIONS**

Russell Rice v. P.W. Keohane, Civil No. 96-3133-CV-S-RGC, (W.D.Mo.), USMCFP

The inmate in this case is seeking a compassionate release or in the alternative a kidney transplant. USMCFP and NCRO medical staff have recommended him for a compassionate release because the inmate has exhausted all of his access points for dialysis. The magistrate concluded that while recommending compassionate release is within the Bureau's discretion, if such a release is denied, he would require the BOP to show cause why the failure to provide a kidney transplant is not deliberate indifference.

The matter is complicated by the fact that the state of New Jersey has a detainer lodged against the inmate. As of this writing steps were being taken by that sovereign to grant the inmate executive clemency so that the inmate could be released to the community.

David Sterling v. USA, Civil No. 95-1459, (Seventh Circuit), USP Lewisburg and USP Marion.

On June 3, 1996 the Seventh Circuit addressed a novel issue: whether someone who files and loses a Bivens suit against a federal employee is entitled to pursue a FTCA action against the United States. In this case, David Sterling originally sued C.O. Miller in the Middle District of Pennsylvania for a lost duffel bag containing legal materials. While the suit was pending, Sterling escaped. Judge Caldwell dismissed the suit as an application of the fugitive disentitlement doctrine. After his recapture, Sterling filed another suit for the loss, this time against the United States under FTCA, in the Southern District of Illinois. Judge Stiehl viewed the Bivens and the FTCA suits as identical claims, and held Sterling's loss on the former meant he must lose on the latter as well.

Circuit Judge Easterbrook found that a decision in the employee's favor is not automatically preclusive in the United States' favor. When sequential suits name different parties, only issues actually and necessarily decided in the first case carry over to the second under the doctrine of issue preclusion. Here the court found that the issue of negligence for the lost property had never been decided. Judge noted the United States may very well prevail on the FTCA claim, but Sterling was entitled to proceed with the case.

#### **SETTLEMENTS OR JUDGMENTS**

None.

#### **DECISIONS OF INTEREST**

DeWayne Murphy v. Janet Reno, et al., Civil No. 4-95-678, (D. Minn.), FMC Rochester

The inmate in this case sued numerous officials after he was denied a heart

transplant. The inmate died after the complaint was filed and his attorney filed a motion to dismiss without prejudice pursuant to Fed.R.Civ.P. 41(a)(1). The court granted the motion but conditioned any refiling of the complaint on payment of the costs and legal fees the defendants incurred defending against the original complaint.

### PENDING CASES OF INTEREST

Pedersen v. Reno, Civil No. 5-95-304, (D.Minn.), Unicor/FPC Duluth

The plaintiff in this case is a current BOP employee who alleges she was paid less than other factory managers just because she is a woman. The NCRO sent admission requests, interrogatories and production requests to UNICOR for response. Plaintiff's attorney has stated her client is willing to take \$25,000 in settlement.

### RELIGIOUS FREEDOM RESTORATION ACT CASES

No new cases to report.

### CRIMINAL MATTERS

FCI Oxford Sentencing, Western District of Wisconsin

On June 7, 1996 three inmates were sentenced for their roles in the October 1995 disturbance at FCI Oxford. They were convicted of Mutiny and Destruction of Government Property. Inmate Overstreet, Reg. No. 06844-029, was sentenced to 24 months, inmate Warren, Reg. No. 05528-041, was sentenced to 16 months, and inmate Garner, Reg. No. 04245-089 was sentenced to 16 months. In addition, inmate Bunch, Reg. No. 06881-061, plead guilty to Possession of a Weapon During a Disturbance and received a 24 month sentence.

FPC Yankton Resentencing Hearing, District of South Dakota

Inmates Love and Dougan are being resentence on July 8, 1996 for convicting the crime of Escape. The Eighth Circuit vacated the previously imposed sentences because the district court erred in holding that the government had the burden to showing the FPC was a secure facility. The court mistakenly found that the FPC was similar to a half-way house and awarded a downward departure. Witnesses from the NCRO and FPC Yankton are testifying on behalf of the government.

### ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

Prison Litigation Reform Act, FCI Englewood and Florence Complex

The NCRO assisted FCI Englewood, the Florence Complex and the U.S. Attorney's Office for the District of Colorado with formulating the procedures inmates must use when filing in forma pauperis lawsuits under the PLRA.

Special Mail Restrictions, ADX Florence

After receiving information that inmates Archambeault, Reg. No. 46789-079, and Pfeffer, 00543-088 were using the special mail privilege to facilitate a scheme to obtain fraudulent tax refunds from federal and state entities, ADX Warden Hershberger requested authority to open the inmates incoming and outgoing legal mail. NBC's "Dateline" ran a story on Mr. Archambeault last year and re-broadcast the story this June. The NCRO researched the matter and advised Warden Hershberger that the inmates' outgoing mail could be inspected for contraband, but not read.

STAFF TRAVEL AND LEAVE

John	None Scheduled	
Daryl	Annual Leave	July 2-12
Dan	Annual Leave	July 19
Gwen	NABCJ Conference St. Louis	July 15-18
	Annual Leave	July 19
James	Paralegal Training Denver STC	July 15-26
	Annual Leave	July 29-31
Janice	Paralegal Training Denver STC	July 15-26
Gary	Annual Leave	June 28-July 12
Janet	None Scheduled	

FTCA database WAN to Mary Rose Hagan on June 26, 1996.