

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

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January 11, 2001

**MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL
GENERAL COUNSEL AND REVIEW DIVISION**

FROM: DARYL KOSIAK, Regional Counsel

SUBJECT: Monthly Report (December 2000)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	46	25	12	7	2	33	436	38	3	0	\$9,273

Total cases for Calendar Year - 295

- NUM - Number of total lawsuits filed in the month**
- HC - Number of habeas corpus actions filed in the reporting period**
- FTC - Number of FTCA actions filed**
- BIV - Number of Bivens actions filed**
- OTH - Number of other actions filed, e.g., mental health, mandamus**
- ANS - Number of litigation reports completed**
- PEN - Number of cases pending**
- CLD - Number of cases closed**
- H/T - Number of hearings or trials (include in narrative)**
- SET - Number of settlements (include in narrative)**
- AWD - Number of Awards (include in narrative)**

Appeals	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	5	2	0	2	0		45	7			

Mental Health cases	Petitions filed	Hearings
18 USC § 4245	5	1
18 USC § 4246	3	0

ADMINISTRATIVE CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending				254	207	238	233	219	207	220	225	233
#Received	55	65	55	47	48	59	52	82	54	81	74	70
#Answered				45	55	71	66	37	38	45	65	46
#Over 6 month				4	7	7	10	13	12	23	10	9*
#Pending				207	238	233	219	207	220	225	233	280

Total for Calendar Year - 742

*Three of the institutions, which are responsible for 7 of the late responses, have recently undergone attorney transition.

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Received	175	164	192	171	249	234	195	226	182	215	203	228
#Answered	168	178	178	186	164	264	207	214	215	214	210	183
# Rejected	65	83	97	87	119	112	82	59	78	110	97	123

Total for Calendar Year - 2206

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

FOIA/PA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	47	33	48	68	71	70	73	57	64	109	128	138
#Received	68	94	92	69	77	75	61	80	47	101	98	69
#Processed	39	74	106	41	97	63	62	85	47	54	77	70
#Backlog	16	4	1	1	3	3	0	3	0	9	11	10*

Total for Calendar Year - 931

* 4 Requests awaiting the retrieval of records from the archives.

ADVERSE DECISIONS

SETTLEMENTS OR JUDGMENTS

Schmidt v. Kruger, FMC Rochester

This was a worker's compensation case. While Schmidt was an inmate at FMC, he received surgery for a hernia. Apparently, Schmidt was injured, while working for Kruger Construction, prior to his incarceration. Under the Medical Care Recovery Act, FMC intervened in the Worker's Compensation action, and was able to recoup \$9,273.99 for the costs incurred for Schmidt's treatment.

DECISIONS OF INTEREST

Sesi v. BOP, et al., 6th Circuit Court of Appeals, FCI Milan

The Sixth Circuit Court of Appeals issued an Order on December 29, 2000, addressing Sesi's appeal of the District Court's Dismissal of his 2241 petition appealing his expulsion from the RDAP Program. The Sixth Circuit upheld the District Court's dismissal on the grounds of failure to exhaust administrative remedies, as well as the dismissal on the grounds that Sesi's claim failed to articulate a protected liberty interest. The Sixth Circuit held that there is no liberty interest in a reduced sentence, and 3621(e)(2)(B) does not afford such an interest.

PENDING CASES OF INTEREST

Cesspooch v. BOP, et al., Case No. 00-ES-1973, USP Florence

This is a Bivens action arising from the USP, naming several staff. Plaintiff alleges he was assaulted by the defendants while housed in the Special Housing Unit and was denied medical care.

Eusi v. Pugh, Case No. 00-S-1736, ADX/USP Florence

This is a habeas petition challenging disciplinary action taken against the petitioner as a result of his assault of staff at USP Florence. Petitioner claims he was denied due process by staff's failure to provide him with evidence used against him and failure to investigate his claims that staff fabricated evidence against him.

Kowaalski v. Pugh, Case No. 00-M-2136, ADX Florence

This is a Bivens action in which plaintiff alleges he is unable to meet with his attorney in a confidential setting and that the defendant is censoring his legal mail. Plaintiff complains that the actions of defendant violate his constitutionally protected rights under the 4th, 5th, 6th, and 8th Amendments. Plaintiff seeks declaratory, injunctive, and monetary relief. Specifically, plaintiff, a Control Unit inmate at the ADX, seeks an Order requiring the ADX to provide him with a contact, unrestrained, unmonitored legal visit. Plaintiff and another Control Unit inmate are being prosecuted by the United States Attorney's Office in the Middle District of Pennsylvania for the killing of another inmate at USP Lewisburg. That matter is in the pre-indictment stage and the AUSA handling the matter is seeking input from plaintiff for the death penalty review. Plaintiff and his legal counsel argue that it is too difficult to converse through the "speak-easy" in the booth without shouting, and that the conversation could be overheard easily. The judge ordered the parties to mediate the matter, making it clear that a balance must be struck between plaintiff's need to effectively communicate with his attorney and legitimate security concerns of the ADX. Plaintiff's counsel offered to sign a waiver, removing any liability the BOP would have should plaintiff attack him or take him hostage. Modifications to one of the legal visitation booths are being made to address the issues raised by both counsel and the judge, concerning the ability to communicate and be overheard outside the booth.

Turner v. Schultz, et al., Case No. 99-WM-2232, USP Florence

On December 13, 2000, plaintiff filed a Second Amended Complaint. Among other things, plaintiff now alleges that staff had knowledge of allegations of inmate abuse which were ignored and/or responded to with retaliation. Plaintiff is relying on information provided to him by former union officials at USP Florence. It is alleged that these officials routinely complained to management at LMR meetings about the abuse to inmates being done by a group of staff called the "cowboys." It is alleged that management refused to take action and investigate the allegations, and instead rewarded those involved in the illegal activity. It is alleged that management began a pattern of illegal activity to force the officials out of their positions with the union. This matter has received significant media attention. Staff are either not represented, represented by constitutional torts, or represented by DOJ-paid counsel.

In re Richard & Pamela Galloway, Case No. 00-31194 & Larkin v. Galloway, Adversary Action 00-3192, FCI Greenville

The Custodian of Records was served with a subpoena for records in an Adversary Action in a bankruptcy case. [HISTORY: Inmate had filed a Bivens action against a staff member. While this case was pending, the staff member filed for bankruptcy. The Bivens action was subsequently dismissed for failure to exhaust. The Bivens action is currently pending appeal in the 7th Circuit. The inmate brought an adversary action in the bankruptcy proceeding, seeking to have the court find that any potential future judgement in the Bivens action is not dischargeable in bankruptcy. The bankruptcy judge would not stay the proceedings until the 7th Circuit ruled on the appeal in the Bivens case. A hearing was set to determine if any potential future judgement for the inmate in the Bivens case would be dischargeable.] The records sought included the

OIA report and portions of a FBI report in the possession of the BOP.

Blandin v. Acosta, et al., Case No. 98-3282-MLB, USP Leavenworth

In this case, petitioner claims staff assaulted him. An attorney at USP Lompoc recently notified USP Leavenworth attorneys that the inmate is willing not to pursue his claims if he were to receive protective custody and a transfer. Currently, the attorneys are working to obtain a voluntary dismissal from Blandin.

Swanson v. US, Case No. 00-3189, FMC Rochester

Prior to his good conduct release, Swanson filed a personal injury tort claim regarding treatment he received at FMC Rochester for his condition. Swanson's tort claim was denied, and he filed an action in Alabama which was then transferred to Minnesota. Swanson filed as a combination FTCA and Bivens case, and has added additional medical issues, including anal warts and his heart condition.

Canty v. US, Case No. 00-1333, FMC Rochester

Prior to Canty's release, he filed a personal injury tort claim regarding treatment he received after being burned by hot water he heated in a housing unit microwave. Canty's tort claim was denied. Canty filed a combination FTCA and Bivens case, but names only unknown staff members.

Stocker v. BOP, Case No. 00-2016, FCI Sandstone

Stocker has filed a Civil Rights action against staff at FCI Sandstone claiming "cruel and unusual punishment." He contends the overcrowding conditions at the institution caused him to attempt suicide.

Young v. FCI Waseca, Case No. 00-2582, FCI Waseca

Young has filed a Bivens action against the staff at FCI Waseca claiming they did not provide him with all information during a team meeting.

RELIGIOUS FREEDOM RESTORATION ACT

Patel v. Wooten, 10th Cir., FCI Florence

This is a RFRA matter challenging lack of special religious diet for Muslims at FCI. The matter was initially dismissed by Judge Matsch, heard by 10th Circuit, who found that RFRA didn't apply, but who returned the matter for a determination as to whether qualified immunity should apply. The District Court granted Summary Judgement, and the plaintiff appealed. On appeal, plaintiff argues that common fare is insufficient to meet the needs of Muslim inmates, as it is mainly a "kosher" substitute, thus resulting in an equal protection violation. The matter has been briefed and the Circuit intends to rule without argument.

Tolley et al. v. Pugh, et al., Case No. 97-N-0793, FCI Florence

This is a RFRA case challenging denial of separate outdoor worship area for Odinists at

FCI Florence. The original plaintiff transferred in 1999. However, other plaintiffs were allowed to join. The R&R recommended dismissal of all plaintiffs, except Tolley for failure to exhaust. It also recommended denial of claims with respect to Tolley on mootness, and denial of official capacity claims, finding the APA constituted a waiver of sovereign immunity.

UPCOMING HEARINGS AND TRIALS

Johnson v. USA, 7th Circuit, MCC Chicago

Oral argument is set for Tuesday, January 23, 2001, at 10:00 a.m. The administrator of the estate of an inmate, who committed suicide in June 1993, alleges the inmate's death was the result of staff negligence. The district court awarded the plaintiff \$1.8 million in damages, plus costs. The United States appealed.

Boyce v. Reno, et al, Case No. ADX Florence

Oral argument on the petitioner's (Boyce) appeal set for Monday, January 22, 2001, at 9:00 a.m. Judge Daniel had dismissed Boyce's habeas petition on the basis of lack of jurisdiction. Boyce wanted the court to order the BOP to transfer him from the ADX to FCI Sheridan.

Bryant v. Cassaro, et al., Case No. 97-S-0891, USP Florence

Matter currently set for three day trial beginning March 5, 2001. R&R dated, December 28, 2000, recommends denial of Cassaro's motion for summary judgment, finding an issue of fact exists as to his presence at the relevant time.

Garrett v. Stratman, 10th Cir. # 00-1028, ADX Florence

Oral argument on appeal of denial of qualified immunity by former clinical director. Inmate injured his shoulder, and doctor provided care, to include evaluation by specialist. Specialist recommended surgery, and 204 was immediately prepared. Medical designator approved transfer to MCFP, but placed a delay, pending authorization to move. Authorization was not received for 11 months. After arrival at MCFP, it was determined that because of the delay, surgery was no longer an option. District Judge denied qualified immunity, holding that clinical director "could have done more" to ensure a timely transfer. Oral arguments set before the 10th Circuit on January 24, 2001 in Kansas City.

Laury v. Carl Greenfield, et al., Case No. 98-3024-JWL, USP Leavenworth

This case is currently scheduled for trial in the District of Kansas on January 17, 2001. This case involves allegations of three specific acts of excessive use of force. All defendants are represented by private counsel at DOJ expense.

Yu Kikumura v. United States, No. 97-CV-52-JPG, USP Marion

The above case is set for trial on Friday, January 12, 2001, at the USP Marion courtroom.

CRIMINAL MATTERS

USA v. Walter Walsh, Case No. 00-CR-0133, FCI Florence

Walsh, a former cook supervisor, is charged with bribery and conspiracy. Specifically, he was implicated in a scheme to introduce drugs into the FCI for profit. Trial continued from 5/30/00, as defendant filed 14 separate motions. Motions hearing held 7/21, and matter continued until 10/23/00 for suppression hearing. On 11/1/00, Judge Miller granted motion to suppress statements. James hearing set for 1/18/01.

USA v. Rodney B. White, Case No. 00-CR-0358

Inmate indicted for possession and trafficking in contraband in violation of 18 U.S.C. § 1791. Various discovery motions filed. Trial date vacated, to be reset. Motions hearing was set for 12/14/00 at 3:00 p.m. Notice of change of plea, and hearing set for 1/5/01.

United States v. David Michael Sahakian, Richard Scott McIntosh and Carl Edgar Knorr, Case No. 99-40044-JPG, USP Marion.

Inmate Sahakian is charged with possession of a prohibited object in violation of 18 U.S.C. § 1791(a)(2). All inmates are charged with murder in the first degree and conspiracy to commit murder in the first degree in violation of 18 U.S.C. § 18:1111, 7(3) & 2. An arraignment was held on November 15.

U.S. v. Schofler & Johnson, USP Leavenworth

On December 11, 2000, inmates Scott Schofler and Damion Johnson were both sentenced in the District of Kansas for the murder of inmate Joseph Glenn Smothers. The court accepted their plea to second degree murder in violation of 18 U.S.C. § 111. Each inmate received a 121 month sentence, 5 years supervised release and a \$100.00 special assessment. Both inmates also waived their right to appeal.

PERSONNEL ISSUES

STAFF TRAVEL AND LEAVE

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January 22

10th Circuit Court of Appeals
Yousef v. Reno
Boyce v. Reno, et al

January 23

7th Circuit Court of Appeals
Estate of Johnson v. USA