

memorandum

DATE: November 10, 1992

REPLY TO
ATTN OF:for Larry Kosak
John R. Shaw, Regional Counsel
North Central Region

SUBJECT: MONTHLY REPORT

OCT '92

16 1992

TO: Wallace H. Cheney, Assistant Director
General Counsel and ReviewPENDING TRIALS/HEARINGS

United States v. Henry Andrews, 89-CR-908, N.D. Illinois, MCC Chicago. A Bureau staff member is currently scheduled to testify at a hearing on Monday, November 16, 1992 before Judge Holderman.

There were no other reports of pending trials or hearings received from institutions within this region.

DECISIONS/SETTLEMENTS/CASES OF INTEREST

Kikumura v. Turner, 92-132-WLS, S.D. Illinois, USP Marion. In this foreign publications case, the institution has re-drafted its institution supplement to address the receipt of foreign publications. The supplement will discuss the qualifications to receive such materials and the acceptable sources for the publications. Currently, the institution is waiting for a response from the General Counsel's Office after discussions with this office.

Farmer v. U.S.A., 92-C-437-S, W.D. Wisconsin.

In this FTCA claim, Inmate Farmer complains of inadequate treatment of his transsexualism at FCI Oxford, USP Terre Haute, and USMCFP-Springfield. In preparation for a December 4, 1992 trial setting in Madison, Wisconsin, potential witnesses were contacted and an expert witness was sought on the issue of proper treatment of transsexuals in the institution environment.

On November 5, 1992, U.S. District Judge John C. Shabaz denied both defendant's motion of summary judgment and plaintiff's request for appointed counsel. The Assistant U. S. Attorney filed a Motion for Reconsideration. On November 10, 1992, Judge Shabaz reconsidered and granted defendant's motion and dismissed plaintiff's claims which arose at FCI Oxford. Plaintiff's claims arising at USP Terre Haute and USMCFP Springfield were transferred to the Western District of Missouri.

Farmer v. Mothersead, et al, 92-3074-CV-S-4, FCI Oxford, USP Terre Haute, USMCFP-Springfield.

In this case, inmate Farmer filed a civil rights (Bivens) complaint alleging deliberate indifference at USMCFP-Springfield to a serious medical condition; namely his transsexualism. The claims are very similar to the FTCA complaint discussed above. At the present time, defendants have not been served pending an order of the court concerning Farmer's request to proceed in forma pauperis.

Farmer v. Haas, et al, 89-C-524-S, W.D. Wisconsin.

In this case, inmate Farmer also filed a civil rights (Bivens) complaint alleging, again, deliberate indifference to his serious medical condition of transsexualism. The case proceeded to trial before a jury at which a verdict was entered in favor of the defendants, finding that Farmer's constitutional rights were not violated. The 7th Circuit court of Appeals has permitted Farmer to proceed in forma pauperis on appeal and has appointed counsel. Farmer's brief has not yet been filed.

STAFF TRAVEL AND LEAVE

Daryl	NOVEMBER 10-12-13-25-27-30	Annual Leave
Gary	NOVEMBER 12-13-27	Annual Leave
Helen	NOVEMBER 23-24-25-27	Annual Leave
Jackie	NOVEMBER 27	Annual Leave
John	NOVEMBER 12-13	Chicago
Paul	NOVEMBER 27	Annual Leave

UNITED STATES GOVERNMENT

memorandum

RECEIVED
BUREAU OF PRISONS
OFFICE OF GENERAL COUNSEL
DATE: December 1, 1992
REPLY TO
ATTN OF: John R. Shaw, Regional Counsel
North Central Region
SUBJECT: MONTHLY REPORT (Nov)

TO: Wallace H. Cheney, Assistant Director
General Counsel and Review

PENDING TRIALS/HEARINGS

FCI Oxford

Dauksza and Rutledge v. Warden, 92-C-475-S, W.D. Wisconsin, Trial scheduled for December 31, 1992. The inmate plaintiffs brought this Bivens suit alleging that the defendant violated their First Amendment right to freely practice their religion. Plaintiff's allege they were placed in Administrative Detention for practicing their religion, which requires them to keep their heads shaven. Plaintiff's profess to be members of Syda, the Theosophical Society of America.

MCC Chicago

United States v. Henry Andrews, 89-CR-908, N.D. Illinois, Hearings have been on going since October 1992. This case relates to the recent criminal prosecution of approximately 25 El Rukn gang members from the Chicago area. The inmates' counsel have alleged staff improperly expunged positive drug tests and provided other favors for the inmates testifying against the El Rukns in their criminal trials. The criminal defendants assert the prosecuting AUSA acted in bad faith by not informing the court of the favors extended to the government witnesses and by not allowing them an opportunity to impeach those witnesses. It also appears that staff at MCC Chicago unintentionally failed to fully comply with court orders and subpoenas for the production of Giglio material which had been requested by the defendants. Bureau staff have been required to testify at various times during these hearings and it is possible that additional staff may be required to appear in the near future. These hearings, if successful, may allow certain gang members to obtain a new trial.

There were no other reports of pending trials or hearings received from the remaining institutions within this region.

DECISIONS/SETTLEMENTS/CASES OF INTEREST

The U.S. District Court, D. Minn., denied several BOP defendants motion for summary judgment in Henderson v. Baird, et al (FMN 5-91-137). This case involves a 1987 IDC action. The U.S. Attorney is seeking leave to appeal. This case has been previously reported.

Prows v. BOP, et al, 10th Cir. No.s 92-1245 and 92-1301 (D.Colorado No. 91-C-710). The 10th Cir. affirmed the district court in denying inmate Prows a transfer back to FCI Englewood and held that 18 USC 3624 does not provide an inmate a right to a six month CCC placement. This opinion will be published. This case has been reported to the OGC.

STAFF TRAVEL AND LEAVE

Daryl	DECEMBER 15-16	Oral argument in <u>Bellecourt v. USA</u> before the Eighth Circuit
	DECEMBER 23, 24 & 28	Annual Leave
Gary	DECEMBER 18 & 31	Annual Leave
Helen	DECEMBER 28	Annual Leave
Jackie	DECEMBER 15 - 24	Sick Leave
	DECEMBER 28 - 31	Annual Leave
John		
Paul	DECEMBER 24 & 28	Annual Leave
Sonya	DECEMBER 1 - 18	FLETC
Erv	DECEMBER 10 & 11	Admin. Leave
	DECEMBER 24 & 28	Annual Leave

memorandum

Joyce

DATE: January 5, 1993

REPLY TO: *John R. Shaw*
ATTN OF: John R. Shaw, Regional Counsel
North Central Region

SUBJECT: MONTHLY/QUARTERLY REPORT NARRATIVE

12/92

TO: Wallace H. Cheney, Assistant Director
General Counsel and Review

PENDING TRIALS/HEARINGS

There were no reports of pending trials or hearings received from the institutions within this region.

DECISIONS/SETTLEMENTS/CASES OF INTEREST

Campbell, et al. v. Henman, 89-3576-WLB, S.D. Illinois, USP Marion. In this habeas corpus case contesting disciplinary actions against several inmates, the petitioners' request for an "in camera" review of materials compiled during the investigation of the death of inmate Thomas Lamb was granted.

The court's review of the investigatory file produced two types of information which qualifies as exculpatory evidence: facts indicating Lamb committed suicide and facts placing some of the petitioners outside the unit during the time they were charged with the killing. Thus, the court directed the respondent be given 120 days to conduct new disciplinary proceeding after providing the petitioners the exculpatory material, in complete or redacted form; restore the good time credits taken from the petitioners as a result of the disciplinary proceedings and expunge the disciplinary proceedings from the prison file.

Gonzalez v. Henman, et al, 92-3476-RDR, District of Kansas, USP Leavenworth.

In this case, Inmate Gonzalez filed a civil rights complaint against staff at USP Leavenworth. Gonzalez alleges that he is being denied the special diet required for his physical condition and requests injunctive relief.

After reviewing inmate Gonzalez's case, Federal District Judge Richard Rogers concluded that no real medical emergency was present and dismissed the suit suggesting that Gonzalez pursue relief through the administrative grievance program.

Gee v. Cripe et al., 86-4239, S.D. ILL. USP Marion, USP Lewisburg.

In this case, Inmate Gee filed an amended complaint with the courts pertaining to events that occurred at USP Lewisburg, and at USP Marion in 1984. Gee contends that in May 1984 he was charged and found guilty by the USP Lewisburg IDC without being afforded a 24 hour notice of the charge. Subsequently, he was transferred to USP Marion. In addition to claims of due process violations, Gee also alleges that he was deprived of food, water and toilet facilities while in transit to USP Marion. When he arrived at USP Marion, Gee alleges that staff physically beat him, forced him to undergo several x-rays and submit to a rectal examination. On September 12, 1984, Gee was brought before USP Marion's IDC for a re-hearing which upheld initial sanctions imposed by the USP Lewisburg IDC. Gee contends that this court conspired to deprive him of his rights to a fair hearing.

Jones FTCA Claim, Wrongful Death, MCFP Springfield.

In this wrongful death claim, the mother of inmate Eddie Bishop Jones has filed a FTCA for \$5,000,000.00.

The claimant contends that MCFP Springfield staff used excessive and reckless force to restrain her son. This action resulted in the death of Eddie Jones on December 11, 1990.

This potential action contains some elements of concern for the Federal Bureau of Prisons in that the inmate died as result of staff action in applying restraints. Also, the video tape of the SORT Team action in this case is the subject of an FOI/PA request by a news agency and several other requestors.

Dauksza and Rutledge v. Warden, 92-C-475-S, W.D. Wisconsin, December 31, 1992. The inmate plaintiffs brought this Bivens suit alleging that the defendants violated their First Amendment right to freely practice their religion by not allowing them to shave their heads and offer their hair as a sacrifice to their god.

At a hearing the court found that shaving one's head was not a devotional requirement of the religion and that placement in administrative detention did not violate their right to practice their religion.

United States v. Henry Andrews, 89-CR-908, N.D. Illinois, Hearings have been on going since October 1992. This case relates to the recent criminal prosecution of 50+ El Rukn gang members from the Chicago area. The inmates' counsel allege staff improperly expunged positive drug tests and provided other favors for the inmates testifying against the El Rukns in their criminal trials. The criminal defendants assert the prosecuting AUSA acted in bad faith by not informing the court of the favors extended to the government witnesses and not allowing them an opportunity to impeach those witnesses. Bureau staff have been required to testify at various times during these hearings. These hearings are

finally nearing their conclusion, if successful, the criminal defendants may be allowed new trials. A decision by the court is expected in the very near future.

STAFF TRAVEL AND LEAVE

Jackie	JANUARY 12 - 22	Sick Leave
John	JANUARY 11 - 15	Annual Leave

LITIGATION

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR	55	24	3	27	1	—	514	47	2*		
SCR											
WXR											
CO											
TOT											

NARRATIVE ANALYSIS

DEFINITIONS

LOC - LOCATION
 NUM - NUMBER OF TOTAL LAWSUITS FILED IN QUARTER
 HC - NUMBER OF HABEAS CORPUS ACTIONS FILED
 FTC - NUMBER OF FTCA ACTIONS FILED
 BIV - NUMBER OF BIVENS ACTIONS FILED
 OTH - OTHER ACTIONS FILED
 ANS - NUMBER OF LITIGATION REPORTS COMPLETED
 PEN - PENDING
 CLD - NUMBER OF ACTIONS CLOSED
 H/T - NUMBER OF HEARINGS OR TRIALS (INCLUDE INFO IN NARRATIVE)
 SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)
 AWD - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)
 GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE IN NARRATIVE)

* See Report

TORT CLAIMS

LOC	NUM	PROP	PI	APPR	AMT	DEN	PEND	OD	A/O	A/P
MXR										
NER										
SER										
NCR	110	03	35	5	107.85	115	232	53	—	—
SCR										
WXR										
TOT										

NARRATIVE ANALYSIS

DEFINITIONS

LOC - LOCATION
 NUM - NUMBER FILED IN QUARTER
 PROP - PROPERTY CLAIM
 PI - PERSONAL INJURY CLAIM
 APPR - APPROVED
 AMT - TOTAL AMOUNT APPROVED
 DEN - DENIED
 PEND - PENDING
 OD - NUMBER OVERDUE
 A/O - AVERAGE NUMBER OF DAYS OVERDUE
 A/P - AVERAGE LENGTH OF TIME TO PROCESS

6 medical claims

memorandum

DATE: January 5, 1993

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ATTN OFJohn R. Shaw, Regional Counsel
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TO: Wallace H. Cheney, Assistant Director
General Counsel and ReviewPENDING TRIALS/HEARINGS

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The Ct. also ordered the BQP to
~~In reviewing the court's review of the investigatory file, produced two types of information which qualifies as exculpatory evidence: facts indicating Lamb committed suicide and facts placing some of the petitioners outside the unit during the time they were charged with the killing. Thus, the court directed the respondent be given 120 days to conduct a new disciplinary proceeding after providing the petitioners the exculpatory material, in complete or redacted form, restore the good time credits taken from the petitioners as a result of the disciplinary proceedings and expunge the disciplinary proceedings from the prison file.~~ *in favor of the Ps: allegedly committed the murder.*

Based on these findings, which wld. take this excul material into consid.
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there was
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Gee v. Cripe et al., 86-4239, S.D. ILL. USP Marion, USP Lewisburg.

that BOP viol. his rt. to DP²

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^{mother} The claimant contends that MCFP Springfield staff used excessive and reckless force to restrain her son. This action resulted in the death of Eddie Jones on December 11, 1990.

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BOP
being
restr.
by
staff.

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United States v. Henry Andrews, 89-CR-908, N.D. Illinois. ^{This case has} ~~Hearings~~ ^{been} ~~have been on-going since October 1992.~~ This case relates to the recent criminal prosecution of ⁽⁵⁰⁺⁾ El Rukn gang members from the Chicago area. The inmates' counsel allege staff improperly expunged positive drug tests and provided other favors ~~for~~ ^{for} the inmates testifying against the El Rukns. ~~in their criminal trials.~~ ^{on-going since 10/92.} The ~~criminal~~ ^{criminal} defendants assert the prosecuting AUSA acted in bad faith by not informing the court of the favors extended to the government witnesses and ~~not~~ allowing them an opportunity to impeach those witnesses. Bureau staff have been required to testify at various times during these hearings. These hearings are

gang members

approx. 50

~~finally~~ nearing their conclusion. ^If successful, the criminal defendants may be allowed new trials. ~~A decision by the court is~~ expected in the ~~very~~ near future. *dec.*

STAFF TRAVEL AND LEAVE

Jackie
John

JANUARY 12 - 22
JANUARY 11 - 15

Sick Leave
Annual Leave