

U.S. DEPARTMENT OF JUSTICE
 Federal Bureau of Prisons
 North Central Region
 Office of Regional Counsel

Kansas City, KS 66101

February 6, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (January, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
	14	4	3	5	2	10	394*	12	3	2	0

- NUM - Number of total lawsuits filed in the month (1)
- 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)

Total new cases for calendar year 14
All statistics taken from North Central Region LMS

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61											

Total for Calendar Year 61
Pending 483

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184											

Total for Calendar Year

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND 1/31		38
ACTUAL RECEIVED		75
ACTUAL PROCESSED		47
ACTUAL BACKLOG		6

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

Martin v. Gerlinski, Eighth Circuit, Case No. 97-2232SD, 1998 WL 7258 (January 13, 1998), FPC Yankton

The Court of Appeals had consolidated the appeals of five denials of habeas corpus relief (three from South Dakota, two from Minnesota) for one year off under the provisions of 18 USC 3621(e). All five offenders had received a two point enhancement of their sentences and were subsequently denied the one year off. In an order dated December 19, 1997, the Court of Appeals reversed the dismissals and remanded the matters to the district courts.

SETTLEMENTS OR JUDGMENTS

Tyler v. United States, et al, SD Ill., Case No. 96-46-JPG, FCI Greenville

Hybrid FTCA/Bivens action alleging excessive use of force following October, 1995 disturbance. Settled for \$300. Plaintiff had appointed counsel.

Bickford, Inc. v. Federal Correctional Institution, Juneau County, Wisconsin Circuit Court Case NO. 97-C-623

Former federal contractor alleges FCI failed to return \$1,800.00 in lighting ballasts. Settled for \$660.

DECISIONS OF INTEREST

Bush v. Pitzer, Seventh Circuit, Case No. 97-3024, FCI Oxford

The Seventh Circuit affirmed the decision of the district court which denied an inmate early release under 18 U.S.C. § 3621. The Court of Appeals affirmed the district court's denial of habeas relief on the basis of an ad hoc review of the underlying crime of selling numerous weapons to gang-members was a crime of violence. The BOP had not used section nine of the Program Statement to deny eligibility for the year time off, but in dicta, the court held that use of enhancement was inconsistent with the plain language of the statute.

United States v. Morris, D. Colorado, FCI Florence

In December, 1996, Morris killed another inmate at the UNICOR shop at the FCI. Morris pleaded guilty to voluntary manslaughter and will be sentenced in April.

Love v. Tippy, Eighth Circuit, 1998 WL 3410, FCI Waseca

At the district court level, the court upheld the BOP's decision that a violation of 18 U.S.C. 924(c) was not a nonviolent offense for purposes of early release under 18 U.S.C. 3621(e)(2)(B). The Eighth Circuit affirmed this decision and held that the inherently violent nature of firearms and the danger firearms pose to all members of society made the BOP's determination a permissible construction of § 3621(e)(2)(B).

PENDING CASES OF INTEREST

Rahman v. Keohane and Kane, W.D. MO. Case No. 97-3270-CV-S-RGC, MCFP Springfield

Inmate alleges various conditions of confinement violate his constitutional rights and RFRA. Plaintiff is represented by former U.S. Attorney General Ramsey Clark. The DOJ has approved outside counsel for the defendants. Outside counsel, David Baker, filed a responsive pleading on or about September 24, 1997 on behalf of Warden Keohane. Outside Counsel noted that former Regional Director Patrick Kane had not been served and suggested, pursuant to F.R.Civ.P. 25 (a)(1) that Mr. Kane was deceased.

Patel v. Wooten, et al, Tenth Circuit, Case No. 97-1083, D. Colorado Case No. 96-M-286, FCC Florence. (1997 WL 764570)

The Court of Appeals reversed and remanded the dismissal of this Bivens action against BOP staff. Patel is a Hindu who complained that the Common Fare Program at FCI Florence violated his religious rights under the First Amendment and RFRA. In addition, the failure to provide pork substitutes to Jews and Moslems and not meat substitutes for Hindus violated equal protection. The Court of Appeals found that RFRA was declared unconstitutional and did not address the RFRA claims. The court concluded that Patel's right to a religious diet was clearly established in 1994 and the defendants were not entitled to qualified immunity. Outside counsel at DOJ expense has been appointed for the individual defendants.

Massey v. Helman, C.D. Ill., Case No. 97-1401, FCI Pekin

Represented inmate-plaintiff seeks class certification concerning medical care at FCI Pekin.

Plaintiff alleges he was denied surgery for hernia after physician suggested it. Central theme is that FCI physician recommended treatment which was delayed or denied by administration. Plaintiff has obtained a court order to access inmate medical records of non-parties. This case may have an impact current BOP medical treatment classification of medically mandatory, medically necessary and medically acceptable but not necessary. While the court has permitted some initial discovery, a dispositive motion on qualified immunity grounds is being prepared..

RELIGIOUS FREEDOM RESTORATION ACT CASES

Patel v. Wooten, et al, see above.

ENSIGN AMENDMENT LITIGATION

No new cases filed.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

None

HEARINGS AND TRIALS

U.S. v. Wille Boyd, SD Ill., FCI Greenville

Arraignment in FCI criminal case

U.S. v. Richard Williams, SD Ill., USP Marion

Arraignment in USP criminal case

Eickleberry v. Ward, CD Ill., FCI Pekin

Final pre-trial conference. Settlement is being negotiated.

UPCOMING HEARINGS OR TRIALS

United States v. Mills, D. Col., Case No. , Florence Complex

This case involves civil rights violations by a former staff member and was set for trial on January 12, 1998. While staff were trying to use force to restrain an inmate. Mr. Mills allegedly struck the inmate. After the inmate was fully restrained, Mr. Mills allegedly continued to strike the inmate. It is alleged that the defendant then grabbed the video camera that was documenting the use of force and erased the tape. Trial postponed until April, 1998.

Lozano v. Reno, D. Col., Case No. 95-WM-2661, FCI Englewood

The plaintiff in this case is a former probationary employee who was removed from his position for not disclosing pertinent information on his preemployment forms. The case was scheduled

for a bench trial on February 9, 1998. but was postponed because of a delay that occurred in the trial heard the week before. The trial has been postponed for at least three months. The plaintiff cannot seek any damages except for back-pay since he was terminated prior to the enactment of the 1991 Civil Rights Act.

Jones v. Simek, et al, ND Ill Case No. 94-C-1097, MCC Chicago

Allegations of excessive use of force against BOP staff. Trial scheduled to begin March 2, 1998. Outside counsel at DOJ expense for defendants.

U.S. v. Fountain & Young, CD Ill., FCI Pekin

Inmates charged with trafficking in contraband. Trial scheduled for March 9, 1998.

U.S. v. Niles, CD Ill., FCI Pekin

Inmate charged with aggravated assault on staff. Trial scheduled for March 16, 1998.

U.S. v. Beltran & Ryan, CD Ill., FCI Pekin

Inmates charged with trafficking in Contraband. Trial sheduled for March 16, 1998.

PERSONNEL ISSUES

Supervisory Paralegal Specialist Gary Roberts announced his retirement from the BOP effective March 28, 1998. Gary has been an integral part of the North Central Regional Counsel's Office since 1985 and will be greatly missed. Gary reports he will be spending his time on the farm he and his wife Connie share in Leavenworth, Kansas if anyone wants to drop by and help bail the hay.

STAFF TRAVEL AND LEAVE

John	None Scheduled	
Daryl	None Scheduled	
Dan	None Scheduled	
Vincent	Administrative Leave	February 23 -27
Gwen	FMC Rochester	February 23 - 27
Janet	None Scheduled	
Gary	None Scheduled	
Bill	None Scheduled	

LeeAnn

None Scheduled

Claims database WAN to Delores Johnson on February 3, 1998.

U.S. DEPARTMENT OF JUSTICE
 Federal Bureau of Prisons
 North Central Region
 Office of Regional Counsel

Kansas City, KS 66101

March 12, 1998

*No Narrative
for report*

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (February, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t
	44	24	3	15	2	14	420	33	3

- NUM - Number of total lawsuits filed in the month (1)
- HC - Number of habeas corpus actions filed in the reporting period
- FTC - Number of FTCA actions filed
- B - 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)

Total new cases for calendar year: 63

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
61	50							

Total for Calendar Year: 111
 Pending: 491

ADMINISTRATIVE REMEDIES:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
184	170							

Total for Calendar Year: 354

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS:

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	41	2
ACTUAL RECEIVED	64	3
ACTUAL PROCESSED	36	2
ACTUAL BACKLOG	10	0

ADVERSE DECISIONS

McKenzie v. Romine, Case No. 97-1416, D.Minn., FCI Sandstone

The petitioner alleged that the BOP improperly refused to release him due to the concurring of his mandatory release violator term with the Parole Commission. The Magistrate Judge ordered the petitioner be immediately released and the BOP complied with the order.

X

Dahler v. Goodman, 1998 WL 67359 (10th Cir. (Kan.)), USP Leavenworth

The District of Kansas had decided that an inmate's request for annotated sets of state from Michigan and Wisconsin was overly broad and that the inmate failed to state a claim for relief because he had not demonstrated that he sought assistance from the University of Kansas Law School Defender Project. After reviewing the record, the Tenth Circuit reversed and found that the inmate had submitted a BP-11 request in which he claimed the KU Law School program would not respond to him. More remarkably, the Circuit held that the inmate's request was specific under its prior decision in Petrick v. Maynard, 11 F.3d 991 (10th Cir. 1997). Because the Circuit found the district court acted on clearly erroneous factual findings and applied the wrong legal standards to the inmate's claims regarding access to legal materials, the court reversed and remanded to the District of Kansas.

X

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

C n v. Miller, 1198 WL 78992 (7th Cir. 1998), USP Marion

At trial, the plaintiff prevailed against both the United States and four Bivens defendants proving assault and battery and violations of the Eight Amendment. The District Court affirmed the Bivens judgments pursuant to 28 § 2676 of the FTCA which provides that a judgment in an FTCA action is a complete bar to any judgment against government employees for injuries from the same acts. The inmate appealed the dismissal and the Seventh Circuit affirmed the holding of the District Court. X

PENDING CASES OF INTEREST

Clancy v. United States, Case No. 98-CV-0910, N.D.Ill., MCC Chicago

A visitor fell and injured herself in front of the MCC in 1996 and is now seeking compensation of \$500,000. X

Jones v. Simek, Case No. 94-C-1097, N.D.Ill., MCC Chicago

Allegations that staff used excessive force against an inmate. Due to an investigation into Civil Rights, outside counsel has been appointed for the defendant. Trial is set for March 1998, with over 20 BOP witnesses expected to testify. X

RELIGIOUS FREEDOM RESTORATION ACT CASES

Houston v. Brooks, Case No. 97-2081, D. Minn., FCI Sandstone

The inmate, who is a member of the Nation of Islam, was removed from general population and transferred to USP Lompoc after he made racially inflammatory remarks. Once at USP Lompoc he did the same thing and was placed in administrative detention. He sued staff at both institutions under Bivens and RFRA. All defendants have requested private counsel and are awaiting approval from DOJ. X

Denoyer v. Walker, Case No. 96-2177, D. Colo., USP Florence

The plaintiff made general allegations under RFRA that the chaplains at USP Florence were attempting to interfere with his practice of the Native American faith. In defending against the allegations, the chaplains pointed out that they located Native American volunteers, provided Native American inmates with instruments necessary for the practice of their religion, use of the sweat lodge, and arranged ceremonies for the Native American inmates. In a R&R, the Magistrate Judge granted the defendants qualified immunity and distinguished the analysis found in Garrett regarding the exhaustion of administrative remedies. X

ENSIGN AMENDMENT LITIGATION

None.

EMPLOYMENT LAW LITIGATION

Th. s v. Reno, Case No. 97-1155, Tenth Circuit, MSTC

The plaintiff in this case is a former BOP employee who was removed from his position a was discovered that he was teaching at a local university during his regularly schedule hours with the BOP. The plaintiff sued numerous BOP employees under Bivens and the Pri Act, but had his complaint dismissed by the District Court. On appeal, the Tenth Circu the holding of the District Court and held that the plaintiff had failed to demonstrate intentional or willful violations of the Privacy Act. The Circuit also held that the p were barred by the Civil Service Reform Act. The plaintiff currently is litigating ano filed under Title VII, alleging age motivated his removal.

CRIMINAL MATTERS

United States v. Young, Case No. 97-10068, S.D.Ill., FCI Pekin

On February 20, 1998, the inmate pled guilty to Traffic in Contraband Articles.

United States v. Bridges, D. Kan., USP Leavenworth

On February 13, 1998, former Correctional Officer, Mildry Bridges, was sentenced to 18 for Providing Contraband in Prison.

United States v. Green, D. Kan., USP Leavenworth

Former Correctional Officer Green was indicted in connection with giving a package of m to an inmate. Four other individuals were also indicted in this matter.

United States v. Bernard, D. Colo., Florence Complex

I : indicted on February 12, 1998, for Possession of a Weapon.

United States v. Bryant, D. Colo., Florence Complex

Inmate sentenced to two one-year consecutive sentences for rioting. This is the last i sentenced for rioting in October 1996.

United States v. Mills, D. Colo., Florence Complex

This case involves allegations of civil rights violations by a former staff member. Tr April 27, 1998.

United States v. Morris, D. Colo., Florence Complex

Inmate pled guilty to killing another inmate in the FCI Unicor. The inmate is expected an additional 8-9 years.

United States v. Flanagan, D. Colo., Florence Complex

This inmate murdered another inmate in December of 1994 and will be tried in March of 1

United States v. Williams, S.D.Ill., USP Marion

Trial in this case is set for March 30, 1998, and it involves an inmate-on-inmate assault with a dangerous weapon.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

PERSONNEL ISSUES:

Gary Roberts, one of the original BOP Paralegals, will be retiring at the end of this month. His office will have a difficult time functioning without him. Gary will be greatly missed and we wish him the best of luck in retirement.

Walter Pirnot resigned from his position as a legal intern to pursue a legal career in the private sector.

STAFF TRAVEL AND LEAVE

John	MCC Chicago CLE	March 18 March 19-20
Daryl	FT. WORTH FLETC	March 16-17 March 30-April 9
Dan	MCC Chicago CLE	March 18 March 18-19
Ge...	None scheduled	
Vi...	None scheduled	
Gwen	None scheduled	
Janet	None scheduled	
LeeAnn	FOIA\PA Training	March 24 - 26
Bill	None scheduled	

U.S. DEPARTMENT OF JUSTICE
 Federal Bureau of Prisons
 North Central Region
 Office of Regional Counsel

Kansas City, KS 66101

April 6, 1998

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

FROM: JOHN R. SHAW, Regional Counsel
 SUBJECT: *Quarterly*
 MONTHLY REPORT (March, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
	33	24	0	3	6	23	*422	35	0	0	0

NUM - Number of total lawsuits filed in the month (1)
 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)

Total new cases for calendar year
 All statistics taken from North Central Region LMS

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66									

Total for Calendar Year 177
 Pending 503

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210									

Total for Calendar Year 561

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	0	24
ACTUAL RECEIVED	0	51
ACTUAL PROCESSED	2	50
ACTUAL BACKLOG	0	15

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

Tolley v. Pugh and Petersen, D. Colo., No. 97-Z-0651, FCI Florence

This case involves by Odinist-inmates claiming inadequate opportunities for outdoor worship. Magistrate Borchers found that it may be the practice of the BOP to treat the outdoor worship area where the sweatlodge is located to be an area for the exclusive use of Native American inmates. Magistrate Borchers also found there to be a dispute as to the size of the area and the impact the establishment of a separate area for Odinist to conduct religious ceremonies would have on prison management. As a result, he held the matter should proceed to trial. Since the plaintiff seeks only injunctive relief, qualified immunity is not an issue.

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

LaPlante v. USA, D.Col., No. 96-WM-2779, FCI Florence

Inmate claimed negligence on behalf of the United States after he ran into a light-pole while engaging in a game of flag-football. Argument by inmate was that the poles should have been wrapped in protective padding. Favorable Report and Recommendation for BOP based on Discretionary Function Exception to the FTCA.

Stewart v. USA, S.D. Ill., No. 97-353 JPG, FCI Greenville

An inmate alleged that he was sexually abused by a staff member and sought damages under both the FTCA and Bivens. The United States responded by filing a motion to dismiss arguing that the conduct of the employee, if assumed true, was outside the scope of the employee's duties with the Bureau of Prisons. The court held that under Illinois law, employee acts of sexual assault are deemed to be personally motivated and outside the scope of employment. Accordingly, liability for a sexual assault did not extend to the United States under the FTCA as a matter of law. Honor's Law Clerk Vince Shaw prepared the successful motion that was filed

Leggett v. Lacy, D. Kan., No. 94-3438, USP Leavenworth

After an inmate was assaulted he brought suit against a staff member alleging deliberate indifference. The inmate alleged that the staff member had specific information that he was going to be assaulted, but failed to act on this information. The court concluded there was insufficient evidence of deliberate indifference to present the question to the jury since there was no showing that specific information was relayed to the staff member that the assault was imminent. As a result the staff member's actions were reasonable and the plaintiff's complaint was dismissed on summary judgment.

Lambros v. Hawk, D. Kan., No. 3035-RDR, USP Leavenworth

Motion for Summary Judgment granted against plaintiff's Biven's claim that he was denied Brazilian law books translated into English for use in challenging his arrest and conviction.

PENDING CASES OF INTEREST

Clemmons v. Pitzer, W.D.Wisc., No. 98-C-0049-C, FCI Oxford

Petitioner argues the State of Ohio waived primary jurisdiction when it allowed the plaintiff to remain in federal custody pursuant to a writ.

Langerndorf Supply v. Safeco Insurance, S.D.Ill., No. 3:98-CV-102, USP Marion

An excavating company named Korte-Luitjohn, had a contract with USP Marion to work on sewage treatment plant. Safeco Insurance was surety of Korte-Luitjohn. A subcontractor of Korte-Luitjohn allegedly failed to pay Langerndorf for materials and now Langerndorf is suing Safeco as the surety of Korte-Luitjohn. A former project manager in the facilities department has been served as a defendant.

Massey v. Helman, C.D. Ill., Case No. 97-1401, FCI Pekin

Represented inmate-plaintiff seeks class certification concerning medical care at FCI Pekin. Plaintiff alleges he was denied surgery for hernia after physician suggested it. Central theme is that FCI physician recommended treatment which was delayed or denied by administration. Plaintiff has obtained a court order to access inmate medical records of non-parties. This case may have an impact current BOP medical treatment classification of medically mandatory, medically necessary and medically acceptable but not necessary. While the court has permitted some initial discovery, a dispositive motion on qualified immunity grounds is being prepared.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Patel v. USA, D.Colo., No. 96-M-0286, FCI Florence

Inmate alleges he is entitled to Hindu diet that cannot be accommodated with common fare. Court has appointed private counsel for the inmate and denied staff qualified immunity. Staff have sought private counsel to fight validity of RFRA.

Houston v. USA, D. Minn., No. FCI Sandstone

Inmate was placed in administrative detention and transferred after he made offensive and inflammatory remarks on the compound about Caucasians. The inmate claims the speech was religious in nature and protected by the First Amendment and RFRA. Each defendant was provided outside counsel. U.S. Attorney's Office worked with NCRO to find outside counsel for defendants.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

Temporary Closing of ADX Florence and USP Marion Sweat Lodges.

Operation of the ADX Florence and USP Marion sweat lodges was temporarily suspended after staff discovered that gang-activities were being conducted in the sweat lodges. Staff also received information that weapons were being constructed in the sweat lodges by certain inmates. In response to this information, ADX Florence and USP Marion Wardens requested the sweat lodges be closed until these security concerns could be addressed.

HEARINGS AND TRIALS

Jones v. Simek, N.D. Ill., No. 94-C-1097, MCC Chicago

Inmate alleged he was subjected to the excessive use of force during a lockdown. Outside counsel has represented staff against allegations during trial held on March 12 through 19, 1998. No ruling was made at trial.

UPCOMING HEARINGS OR TRIALS

CRIMINAL MATTERS

U.S. v. Fountain, C.D.Ill., No. 97-10070, FCI Pekin

Traffic in Contraband charge. The defendant is awaiting sentencing for another crime in the N.D. of Iowa.

U.S. v. Niles, C.D.Ill., No. 97-10069, FCI Pekin

Aggravated Assault on a Correctional Officer. The defendant pled guilty on March 19, 1998, and will be sentenced in May.

U.S. Young, C.D.Ill., No. 97-10068, FCI Pekin

U.S. v. Beltran, C.D. Ill., No. 97-10071, FCI Pekin

U.S. v. Ryan, C.D. Ill., No. 97-10072, FCI Pekin

All Traffic in Contraband cases. While both Young and Beltran have pled guilty, Ryan has not, but is expected to enter a guilty plea this month.

U.S. v. Williams, S.D.Ill., No. 98-40001-JPG, USP Marion

Inmate is charged with Assaulting Another Inmate with A Dangerous Weapon. A pre-trial hearing was held on March 19, 1998, and trial is set for April 6, 1998.

U.S. v. Richard Bernard, D. Colo., No. 98-CR-0066-WM, FCI Florence

Inmate found with a shank in pocket when shaken down on way out to recreation. Inmate charged in one count information with possession of contraband. Initial appearance, arraignment, and advisement were held March 12, 1998 in ADX Courtroom. Inmate pleaded not guilty. Trial set for May 11, 1998. Inmate expected to change plea to guilty on April 15, 1998.

U.S. v. Kevin Everhart, D. Colo., No. 98-CR- , USP Florence

Inmate, with another inmate, assaulted a third inmate with weapons. Pleaded guilty to possession of contraband, to wit, a "shank," and received sentence of six months, consecutive to current term. Initial appearance, plea of guilty and immediate sentencing by Magistrate Borchers at ADX Courtroom on March 12, 1998.

U.S. v. Mike Flanagan, D. Colo., No. 96-CR-0357-M, USP Florence

After jury trial, the defendant was acquitted of the murder of inmate Michael Brown at USP Florence in December 1994. Two inmates pleaded guilty and testified against Flanagan. However, the jury acquitted on the murder and conspiracy charges.

U.S. v. Christopher Gibson, D. Colo., No. 98-CR-0099, ADX Florence

Inmate, with two other inmates, assaulted inmate Nevergall on recreation yard at ADX. Charged in a two count information of violating 18 USC 113(a)(4), by striking with fists (count one) and kicking (count two). Arraignment, advisement, and initial appearance on March 12, 1998.

U.S. v. Rafael Gonzales-Munoz, D.Colo., No. 98-CR-0100, ADX Florence

Inmate, with two other inmates, assaulted inmate Nevergall on recreation yard at ADX. Charged in one count information of assault in violation of 18 USC 11(a)(4). Initial advisement in ADX Courtroom on March 12, 1998.

U.S. v. Manuel Jackson, D. Colo., No. 98-CR-0097, ADX Florence

Inmate , with two other inmates assaulted inmate Nevergall on recreation yard. Also assaulted AW after removed from recreation yard. Charged in two count information with assault on inmate (18 USC 113(a)(4)) and assault on staff (18 USC 111(a)(1)). Initial appearance, arraignment and advisement on March 12, 1998.

U.S. v. Larry Morris, D. Colo., No. 97-CR- , FCI Florence

Inmate murder in UNICOR in December of 1997. Inmate set for sentencing on voluntary manslaughter guilty plea April 6, 1998.

U.S. v. Christopher Simmonds, D. Colo., No. 98-CR-0098, ADX Florence

Inmate assaulted two staff members at ADX. Charged in two count information with violation of 18 USC 111(a)(1). Initial appearance, arraignment and advisement held March 12, 1998.

U.S. v. Irwin Stern, D. Colo., No. 98-CR- , USP Florence

Inmate, with another inmate, assaulted a third inmate with weapons. Pleaded guilty to possession of contraband, and received sentence of six months to be served consecutive to current term. Initial appearance, plea of guilty, and immediate sentencing by Magistrate Borchers at ADX on March 12, 1998.

PERSONNEL ISSUES

*Janet Winebrenner recently was named NCRO Employee of the Quarter. We appreciate all of Janet's hard work and congratulate her on her award.

*With the retirement of Gary Roberts, NCRO Legal has restructured its operations. Bill Whitcomb and Gwen Robinson are now under the supervision of Dan Eckhart. Gwen had almost exclusive oversight of FTCA claims and will now become more involved in other matters such as litigation and FOIA. LeeAnn Tufté has taken over responsibility for the administration of FOIA until selections are made for the NCRO Legal FOIA positions.

*NCRO has made an offer of employment to a first-year University of Missouri, Kansas City, law student. At this time the student has not accepted the offer.

STAFF TRAVEL AND LEAVE

John	None Scheduled
Daryl	A/L-10
Dan	A/L-9
Gwen	A/L-17, 28, 29
Vince	None Scheduled
LeeAnn	A/L-13
Bill	A/L-10
Janet	A/L-10

No narrative

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons
North Central Region
Office of Regional Counsel

Kansas City, KS 66101

April 6, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (March, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	clد	h/t	set	awd
	33	24	0	3	6	23	*422	35	0	0	0

- NUM - Number of total lawsuits filed in the month (1)
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- 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)

Total new cases for calendar year
All statistics taken from North Central Region LMS

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66									

Total for Calendar Year 177
Pending 503

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210									

Total for Calendar Year 561

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	0	24
ACTUAL RECEIVE D	0	51
ACTUAL PROCESSED	2	50
ACTUAL BACKLOG	0	15

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

Tolley v. Pugh and Petersen, D. Colo., No. 97-Z-0651, FCI Florence

This case involves by Odinst-inmates claiming inadequate opportunities for outdoor worship. Magistrate Borchers found that is may be the practice of the BOP to treat the outdoor worship area where the sweatlodge is located to be an area for the exclusive use of Native American inmates. Magistrate Borchers also found there to be a dispute as to the size of the area and the impact the establishment of a separate area for Odinst to conduct religious ceremonies would have on prison management. As a result, he held the matter should proceed to trial. Since the plaintiff's seeks only injunctive relief, qualified immunity is not an issue.

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

LaPlante v. USA, D.Col., No. 96-WM-2779, FCI Florence

Inmate claimed negligence on behalf of the United States after he ran into a light-pole while engaging in a game of flag-football. Argument by inmate was that the poles should have been wrapped in protective padding. Favorable Report and Recommendation for BOP based on Discretionary Function Exception to the FTCA.

Stewart v. USA, S.D. Ill., No. 97-353 JPG, FCI Greenville

An inmate alleged that he was sexually abused by a staff member and sought damages under both the FTCA and Bivens. The United States responded by filing a motion to dismiss arguing that the conduct of the employee, if assumed true, was outside the scope of the employee's duties with the Bureau of Prisons. The court held that under Illinois law, employee acts of sexual assault are deemed to be personally motivated and outside the scope of employment. Accordingly, liability for a sexual assault did not extend to the United States under the FTCA as a matter of law. Honor's Law Clerk Vince Shaw prepared the successful motion that was filed

Leggett v. Lacy, D. Kan., No. 94-3438, USP Leavenworth

After an inmate was assaulted he brought suit against a staff member alleging deliberate indifference. The inmate alleged that the staff member had specific information that he was going to be assaulted, but failed to act on this information. The court concluded there was insufficient evidence of deliberate indifference to present the question to the jury since there was no showing that specific information was relayed to the staff member that the assault was imminent. As a result the staff member's actions were reasonable and the plaintiff's complaint was dismissed on summary judgment.

Lambros v. Hawk, D. Kan., No. 3035-RDR, USP Leavenworth

Motion for Summary Judgment granted against plaintiff's Biven's claim that he was denied Brazilian law books translated into English for use in challenging his arrest and conviction.

PENDING CASES OF INTEREST

Clemmons v. Pitzer, W.D.Wisc., No. 98-C-0049-C, FCI Oxford

Petitioner argues the State of Ohio waived primary jurisdiction when it allowed the plaintiff to remain in federal custody pursuant to a writ.

Langerndorf Supply v. Safeco Insurance, S.D.Ill., No. 3:98-CV-102, USP Marion

An excavating company named Korte-Luitjohn, had a contract with USP Marion to work on sewage treatment plant. Safeco Insurance was surety of Korte-Luitjohn. A subcontractor of Korte-Luitjohn allegedly failed to pay Langerndorf for materials and now Langerndorf is suing Safeco as the surety of Korte-Luitjohn. A former project manager in the facilities department has been served as a defendant.

Massey v. Helman, C.D. Ill., Case No. 97-1401, FCI Pekin

Represented inmate-plaintiff seeks class certification concerning medical care at FCI Pekin. Plaintiff alleges he was denied surgery for hernia after physician suggested it. Central theme is that FCI physician recommended treatment which was delayed or denied by administration. Plaintiff has obtained a court order to access inmate medical records of non-parties. This case may have an impact current BOP medical treatment classification of medically mandatory, medically necessary and medically acceptable but not necessary. While the court has permitted some initial discovery, a dispositive motion on qualified immunity grounds is being prepared.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Patel v. USA, D.Colo., No. 96-M-0286, FCI Florence

Inmate alleges he is entitled to Hindu diet that cannot be accommodated with common fare. Court has appointed private counsel for the inmate and denied staff qualified immunity. Staff have sought private counsel to fight validity of RFRA.

Houston v. USA, D. Minn., No. FCI Sandstone

Inmate was placed in administrative detention and transferred after he made offensive and inflammatory remarks on the compound about Caucasians. The inmate claims the speech was religious in nature and protected by the First Amendment and RFRA. Each defendant was provided outside counsel. U.S. Attorney's Office worked with NCRO to find outside counsel for defendants.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

Temporary Closing of ADX Florence and USP Marion Sweat Lodges.

Operation of the ADX Florence and USP Marion sweat lodges was temporarily suspended after staff discovered that gang-activities were being conducted in the sweat lodges. Staff also received information that weapons were being constructed in the sweat lodges by certain inmates. In response to this information, ADX Florence and USP Marion Wardens requested the sweat lodges be closed until these security concerns could be addressed.

HEARINGS AND TRIALS

Jones v. Simek, N.D. Ill., No. 94-C-1097, MCC Chicago

Inmate alleged he was subjected to the excessive use of force during a lockdown. Outside counsel has represented staff against allegations during trial held on March 12 through 19, 1998. No ruling was made at trial.

UPCOMING HEARINGS OR TRIALS

CRIMINAL MATTERS

U.S. v. Fountain, C.D.Ill., No. 97-10070, FCI Pekin

Traffic in Contraband charge. The defendant is awaiting sentencing for another crime in the N.D. of Iowa.

U.S. v. Niles, C.D.Ill., No. 97-10069, FCI Pekin

Aggravated Assault on a Correctional Officer. The defendant pled guilty on March 19, 1998, and will be sentenced in May.

U.S. Young, C.D.Ill., No. 97-10068, FCI Pekin
U.S. v. Beltran, C.D. Ill., No. 97-10071, FCI Pekin
U.S. v. Ryan, C.D. Ill., No. 97-10072, FCI Pekin

All Traffic in Contraband cases. While both Young and Beltran have pled guilty, Ryan has not, but is expected to enter a guilty plea this month.

U.S. v. Williams, S.D.Ill., No. 98-40001-JPG, USP Marion

Inmate is charged with Assaulting Another Inmate with A Dangerous Weapon. A pre-trial hearing was held on March 19, 1998, and trial is set for April 6, 1998.

U.S. v. Richard Bernard, D. Colo., No. 98-CR-0066-WM, FCI Florence

Inmate found with a shank in pocket when shaken down on way out to recreation. Inmate charged in one count information with possession of contraband. Initial appearance, arraignment, and advisement were held March 12, 1998 in ADX Courtroom. Inmate pleaded not guilty. Trial set for May 11, 1998. Inmate expected to change plea to guilty on April 15, 1998.

U.S. v. Kevin Everhart, D. Colo., No. 98-CR- , USP Florence

Inmate, with another inmate. assaulted a third inmate with weapons. Pled guilty to possession of contraband. to wit. a "shank," and received sentence of six months, consecutive to current term. Initial appearance, plea of guilty and immediate sentencing by Magistrate Borchers at ADX Courtroom on March 12, 1998.

U.S. v. Mike Flanagan, D. Colo., No. 96-CR-0357-M, USP Florence

After jury trial, the defendant was acquitted of the murder of inmate Michael Brown at USP Florence in December 1994. Two inmates pleaded guilty and testified against Flanagan. However, the jury acquitted on the murder and conspiracy charges.

U.S. v. Christopher Gibson, D. Colo., No. 98-CR-0099, ADX Florence

Inmate, with two other inmates. assaulted inmate Nevergall on recreation yard at ADX. Charged in a two count information of violating 18 USC 113(a)(4), by striking with fists (count one) and kicking (count two). Arraignment, advisement, and initial appearance on March 12, 1998.

U.S. v. Rafael Gonzales-Munoz, D.Colo., No. 98-CR-0100, ADX Florence

Inmate, with two other inmates. assaulted inmate Nevergall on recreation yard at ADX. Charged in one count information of assault in violation of 18 USC 11(a)(4). Initial advisement in ADX Courtroom on March 12, 1998.

U.S. v. Manuel Jackson, D. Colo., No. 98-CR-0097, ADX Florence

Inmate , with two other inmates assaulted inmate Nevergall on recreation yard. Also assaulted AW after removed from recreation yard. Charged in two count information with assault on inmate (18 USC 113(a)(4)) and assault on staff (18 USC 111(a)(1)). Initial appearance, arraignment and advisement on March 12, 1998.

U.S. v. Larry Morris, D. Colo., No. 97-CR- , FCI Florence

Inmate murder in UNICOR in December of 1997. Inmate set for sentencing on voluntary

manslaughter guilty plea April 6, 1998.

U.S. v. Christopher Simmonds, D. Colo., No. 98-CR-0098, ADX Florence

Inmate assaulted two staff members at ADX. Charged in two count information with violation of 18 USC 111(a)(1). Initial appearance, arraignment and advisement held March 12, 1998.

U.S. v. Irwin Stern, D. Colo., No. 98-CR- , USP Florence

Inmate, with another inmate, assaulted a third inmate with weapons. Pleaded guilty to possession of contraband, and received sentence of six months to be served consecutive to current term. Initial appearance, plea of guilty, and immediate sentencing by Magistrate Borchers at ADX on March 12, 1998.

PERSONNEL ISSUES

*Janet Winebrenner recently was named NCRO Employee of the Quarter. We appreciate all of Janet's hard work and congratulate her on her award.

*With the retirement of Gary Roberts, NCRO Legal has restructured its operations. Bill Whitcomb and Gwen Robinson are now under the supervision of Dan Eckhart. Gwen had almost exclusive oversight of FTCA claims and will now become more involved in other matters such as litigation and FOIA. LeeAnn Tuftte has taken over responsibility for the administration of FOIA until selections are made for the NCRO Legal FOIA positions.

*NCRO has made an offer of employment to a first-year University of Missouri, Kansas City, law student. At this time the student has not accepted the offer.

STAFF TRAVEL AND LEAVE

John	None Scheduled
Daryl	A/L-10
Dan	A/L-9
Gwen	A/L-17, 28, 29
Vince	None Scheduled
LeeAnn	A/L-13
Bill	A/L-10

Janet

A/L-10

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons
North Central Region
Office of Regional Counsel

Kansas City, KS 66101

May 7, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (April, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	clد	h/t	set	awd
	31	23	2	5	7	28	288*	30	10	1	0

NUM - Number of total lawsuits filed in the month (1)
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)

We closed a significant number of cases in the LMS this month and are in the process of conducting an audit of all cases considered "open" by NCR institutions.

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66	81								

**Total for Calendar Year 258
Pending 392***

***NCRO Tort Files were audited in April 1998.**

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198								

Total for Calendar Year 759

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	6	52
ACTUAL RECEIVE D	13	88
ACTUAL PROCESSED	7	67
ACTUAL BACKLOG	1	5

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

None.

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

Saleem v. Helman et al., C.D.Ill., Case No. 96-1500, FCI Pekin

Inmate alleged removal from work assignment was in retaliation for exercising his first amendment rights. Court found removal was for safety and security reasons. Case dismissed on summary judgment.

PENDING CASES OF INTEREST

Massey v. Helman, C.D.Ill., Case No. 97-1401, FCI Pekin.

Dr. Otten, the former Clinical Director for FCI Pekin has attempted to become a plaintiff in a suit filed by several inmates alleging inadequate medical care. Otten claims he was fired in

retaliation for helping the inmates with the suit. A motion to dismiss has been filed arguing that Otten is barred from suing under Bivens as the Civil Service Reform Act provides his sole avenue for relief.

Antonelli v. Hurley, 7th Cir., No. 96-C-9, FCI Oxford

Due process rights allegedly violated during DHO hearing. District court dismissed for failure to exhaust administrative remedies and also found some evidence to support DHO's finding of guilt.

Houston v. Keohane, W.D.Mo., No. 97-3240, USMCFP Springfield

In March, the district court found that the BOP should determine if a liver transplant is necessary to save the plaintiff's life and/or assess whether medical furlough or compassionate release is appropriate. The plaintiff submitted a request for a compassionate release and arrangements have been made to have his medical condition evaluated at the University of Washington, in St. Louis, Missouri.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Patel v. USA, D.Colo., No. 96-M-0286, FCI Florence

Inmate alleges he is entitled to Hindu diet that cannot be accommodated with common fare. Court has appointed private counsel for the inmate and denied staff qualified immunity. Staff have sought private counsel to fight validity of RFRA. Plaintiff is now willing to settle case if the BOP expunges an incident report he received for Assault.

Tolley v. Pugh, D. Colo., No. 97-N-0793, FCI Florence

Inmate alleges he needs an separate outdoor area to practice Odinism. A motion has been filed for class certification, appointment of counsel and the addition of several inmate-plaintiff's.

Houston v. USA, D. Minn., No., FCI Sandstone

Inmate was placed in administrative detention and transferred after he made offensive and inflammatory remarks on the compound about Caucasians. The inmate claims the speech was religious in nature and protected by the First Amendment and RFRA. The original attorney recommended by the U.S. Attorney's Office to represent the defendants could not take the case because of a conflict of interest. Another attorney in his firm has taken over the representation.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

Patrick Freil, FTCA # 97-680, USMCFP Springfield

Inmate Freil was a quadriplegic who died of septicemia on November 10, 1995 at USMCFP Springfield. As a result of his death, his daughter is seeking damages of two-million dollars for emotional distress, medical negligence and medical malpractice. The claimant alleges that BOP

staff breached their duty to recognize clinical manifestations of the infection that led to the inmate's death.

HEARINGS AND TRIALS

U.S. v. Williams, No. 98-40001-JPG, S.D. Ill., USP Marion

Inmate charged with assaulting another inmates with a dangerous weapon, with intent to do bodily harm. At trial, a jury found the defendant not guilty.

Jones v. Simek, N.D.Ill., 94-C-1097

Inmate alleges staff used excessive force to subdue him. After a jury trial held March 12-19, 1998, a verdict was returned in favor of all BOP defendants. Mary Benning did a great job second-chairing this case.

UPCOMING HEARINGS OR TRIALS

None.

CRIMINAL MATTERS

U.S. v. Petty, C.D.Ill., No. 98-10027, FCI Pekin

Inmate charged with Possession of Marijuana. Arraignment set for May 1, 1998.

U.S. v. Payne, C.D.Ill., No. 98-10028, FCI Pekin

Inmate charged with Assaulting/Resisting Officers or Employees. Inmate assaulted staff as he attempted to hide drug paraphernalia. Arraignment set for May 14, 1998.

U.S. v. Larkin, C.D.Ill., No. 98-10026, FCI Pekin

Inmate charged with Possession of Marijuana and will be arraigned on May 14, 1998.

U.S. v. Gonzales -Munoz, D.Colo., 98-CR-0100, FCI Florence

Inmate pled guilty to Assault and received two consecutive 6 month sentences.

U.S. v. Morris, D.Colo., 97-CR-, FCI Florence

Inmate sentenced to 102 months for Involuntary Manslaughter on April 6, 1998.

U.S. v. Bernard, D.Colo., 98-CR-0066-WM, FCI Florence

Inmate pled guilty to Possession of Contraband and received a 6 month sentence.

PERSONNEL ISSUES

- * Vince Shaw recently found out he passed the Ohio Bar Exam. Great news Vince!
- * FCI Greenville Paralegal Specialist Stan Butterfield was named Employee of the Month. Congratulations Stan.

* Lee Anne Tufte, Paralegal Trainee, was appointed to the FOIA Coordinator position in the North Central Regional Counsel's Office. Welcome to K.C. Lee Anne.

* Bill Whitcomb, a former employee of the DOJ Community Relations Service who was assigned to NCRO Legal as a Correctional Programs Specialist, will be returning to his old agency on 5/11/98.

* Janet Winebrenner was selected for the FOIA Technician position in the North Central Regional Counsel's Office. Janet was also recently selected as the NCRO Employee of the Quarter!

STAFF TRAVEL AND LEAVE

John	None Scheduled
Daryl	DHO Training 11-15
Dan	A/L-21
Gwen	None Scheduled
Vince	Administrative Leave 11-12
LeeAnne	Military Leave 4-15
Bill	Last Day with BOP 5/8/98
Janet	None Scheduled

U.S. DEPARTMENT OF JUSTICE
 Federal Bureau of Prisons
 North Central Region
 Office of Regional Counsel

Kansas City, KS 66101

June 9, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (May, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	clد	h/t	set	awd
	31	15	3	3	10	23	374*	23	2	0	0

NUM - Number of total lawsuits filed in the month (1)
 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)

*Number of open cases on LMS.

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66	81	56							

Total for Calendar Year 259
Pending 410

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198	249							

Total for Calendar Year 1011.

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	30	4
ACTUAL RECEIVED	28	3
ACTUAL PROCESSED	48	3
ACTUAL BACKLOG	13	3

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

None.

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

Carter v. Booker, 1988 WL 220454, D.Kan., USP Leavenworth

✕ Court found that the unlawful manufacture of a firearm in violation of 26 U.S.C. 5822 was a crime of violence for the purposes of 18 U.S.C. 3621(e)(2)(B).

Grakia v. Moat, Civil No. 98-1006, C.D.Ill., FCI Pekin

✕ Inmate's Bivens suit dismissed for failure to exhaust administrative remedies. Court found exhaustion requirement in 42 U.S.C. 1997e (a) to be applicable to Bivens as well as 42 U.S.C. 1983 actions.

Ping v. Raleigh, Civil No.97-1301, D. Minn., FCI Sandstone

✕ Inmate had alleged his first amendment rights were violated when he was precluded from receiving play-by-mail games from outside sources. Defendants responded that prohibition was necessary because play-by-mail games allowed for the possibility of coded messages to be sent to other inmates through third-parties. Additionally, games that did not present any identifiable danger to institution security were readily available from the institution recreation department. Magistrate's Report and Recommendation sided with the BOP on security grounds and granted qualified immunity to each of the defendants. The District Court also found the BOP's security

arguments to be compelling and adopted the Report and Recommendation.

PENDING CASES OF INTEREST

Washington v. Hedrick, Civil No. 97-941-JPG, S.D.Ill., USP Marion

Inmate was denied nine months credit for time spent in state jail awaiting sentence because state JNC indicated inmate was to receive a sentence of "time served." Because the maximum penalty the inmate could have received for the state charge was thirty days, he is asking the court to give him eight months jail credit.

Bustillo v. Hawk, et al., Civil No. 95-WM-2242, D. Colo., ADX Florence

In response to the mandate from the 10th Circuit reported last month In re Bustillo, 10th Cir. No. 98-1079, District Judge Walker Miller issued an order dated 5/7/98 ruling on various pending issues, finding that (1) Director Hawk has sufficient contacts with the forum state to sustain personal jurisdiction, rejecting the R&R with leave to refile (which we are in the process of doing), (2) dismissing all claims in the official capacities, (3) dismissing Dr. Stratman, (4) condensing the remaining claims from 36 to 5 - retaliation for exercising 1st Amendment rights in the inmate grievance system, cruel and unusual punishment under the 8th Amendment, taking property without due process, denial of 5th Amendment due process rights in the grievance process; and denial of equal protection by denial of access to the law library. Court directed a response be provided to the various motions for preliminary relief.

Houston v. Keohane, W.D.Mo., No. 97-3240, USMCFP Springfield

In March, the district court found that the BOP should determine if a liver transplant is necessary to save the plaintiff's life and/or assess whether medical furlough or compassionate release is appropriate. Per policy, the inmate was referred to the Washington University (St. Louis) Medical Center. While the evaluation is not complete, it appears that the inmate may be a suitable candidate for inclusion in the medical center's liver transplant program.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Patel v. USA, et al., Civil No. 96-M-0286, D. Col., FCI Florence

Pending order from district court on how to proceed in this matter returned to district court on issues of whether common fare meets the religious requirements for Hindu inmates. Private counsel appointed to represent the four individual defendants who remain. Plaintiff has made a settlement offer. He is willing to drop matter if we expunge an incident report he received for assault at FTW. NCRO is still evaluating the offer.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

None.

HEARINGS AND TRIALS

U.S. v. Smith, D. Minn. Case No. 98-927, FMC Rochester

18 USC 4245 hearing. Inmate committed per court order.

U.S. v. Sandoval, N.D. Ill, criminal matter, FMC Rochester

Offender was referred to FMC prior to sentencing. In light of defendant's medical condition, sentencing was accomplished via video conferencing from the Mayo Clinic. FMC staff attorney coordinated the video conference.

UPCOMING HEARINGS OR TRIALS

U.S. v. Steven Mills, Crim. No., D.Col., USP Florence

This civil rights trial involving former counselor at USP Florence postponed from April 27 to June 29.

Duarte v Cooksey, Civil No. 95-069-GPM, S.D. Ill., USP Marion

Trial was set for June 2, 1998 before U.S. District Court Judge Gilbert and is now postponed indefinitely. The defendant has alleged that staff retaliated against him by issuing false incident reports and refusing to mail his legal documents.

Bernal v. Black & Lewis, Case No. 96-1209, CD Ill., FCI Pekin

Plaintiff alleges two staff initiated disciplinary action him in retaliation for complaining about conditions at commissary. Trial scheduled to begin Monday, June 22, 1998 in Peoria.

CRIMINAL MATTERS

U.S. v. Petty, No. 98-10027, C.D.Ill., FCI Pekin

Inmate charged with Possession of Marijuana. Motions hearing scheduled for July 1, 1998 at 11:30 am.

U.S. v. Payne, No. 98-10028, C.D. Ill., FCI Pekin

Inmate charged with Assaulting/Resisting Officers or Employees. Motions hearing scheduled for June 26, 1998 at 9:30 am.

U.S. v. Larkin, No. 98-10026, C.D. Ill., FCI Pekin

Inmate charged with Possession of Marijuana. Motions hearing scheduled for June 26, 1998 at 1:30 pm..

U.S. v. Christopher Simmonds, No. 98-CR-0098, D. Col., ADX Florence

Inmate assaulted two staff members at ADX. Charged in two count information with violation of 18 USC 111(a)(1). Appointed Counsel and AUSA changed. Inmate refused offer of two misdemeanors, thus, AUSA George Gill indicted inmate on felony assault of a correctional officer.

FMC Rochester

On May 6, 1998, an indictment was returned on Eric Reichenbach. He was indicated for Assault on a Federal Officer stemming from his assault on Dr. Tucker Johnson, Chief of Psychiatry, on October 29, 1997.

PERSONNEL ISSUES

Lisa McKnight started working at the NCRO as a legal intern this month. Lisa is entering her second-year at UMKC law school and has a four-year paralegal degree. She will be working full-time with the BOP this summer.

STAFF TRAVEL AND LEAVE

John	None scheduled	
Daryl	June 3-4	FPC Yankton
	June 19	A/L
	June 22	FCI Pekin
	June 24	USP Marion
Dan	None scheduled	
Gwen	June 12 & 15	A/L
Vince	None scheduled	
LeeAnn	None scheduled	
Janet	June 6-15	A/L
Lisa	None scheduled	

U.S. DEPARTMENT OF JUSTICE
 Federal Bureau of Prisons
 North Central Region
 Office of Regional Counsel

Kansas City, KS 66101

July 8, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: *Quarterly*
 MONTHLY REPORT (June, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
NCR	32	19	2	9	9	22	389	16	20	0	0

- NUM - Number of total lawsuits filed in the month (1)
- 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)

*Number of open cases on LMS.

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66	81	56	74						

Total for Calendar Year 388
Pending 302

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198	249	202						

Total for Calendar Year 1213

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	31	8
ACTUAL RECEIVED	62	11
ACTUAL PROCESSED	66	10
ACTUAL BACKLOG	4	4

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

Bustillo v. Hawk, et al., Civil No. 97-WM-445, D. Col., FCI Florence

Magistrate Borchers issued a Memorandum Opinion and Order and noted that the case was almost 2 years old and only defendant Hawk had been served. The Magistrate further alleged that the BOP and Defendants "have undertaken every available step . . . to stall progress in [the] matter." Argument was made by AUSA that any release of information about an unserved defendant would violate the Privacy Act and that if plaintiff needed to know location of these unserved individuals that he could file an FOIA request. Court disagreed in no uncertain terms indicating that defendant Hawk would provide to the USMS addresses for service on individuals who are defendants but no longer work at ADX. Court indicated that an FOIA Request for the information would be fruitless as BOP would not provide such information to an inmate requestor [cited Sellers v. United States, 902 F.2d 598 (7th Cir. 1990.)] The Court advised that addresses should be work address unless defendant(s) are no longer working for the BOP. If the latter is the case, then the USMS is to be informed of the defendant's last known home address. All addresses are to be safeguarded by the USMS. No addresses are to be provided to the plaintiff concerning location of any defendant. Work addresses provided to the USMS via the AUSA.

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

Dyksta v. BOP, Civil No. 97-3410, 140 F.3d 791, 8th Cir., USMCFP Springfield

An inmate with a "youthful appearance" was assaulted by other inmates and sued for damages under the Constitution and the FTCA. The inmate also alleged that the BOP failed to adequately treat his post-traumatic stress disorder. The trial court's finding that the decision not to place the inmate in protective custody was a discretionary function under the FTCA was upheld by the Circuit Court. The Circuit Court also affirmed the trial court's conclusion that prison staff were not negligent in treating the inmate's post-traumatic stress disorder.

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Inmate sentenced to death argued that the BOP had several alternatives available which could effectively curtail his future dangerousness, specifically placement at ADX Florence. Former ADX Florence Associate Warden Vanyur testified that the inmate did not fit the profile for a prisoner assigned to the ADX and he could instead be assigned to one of nine federal penitentiaries where he would be in open population with several privileges. Though the inmate characterized Warden Vanyur's testimony as distorted, the trial court decided not to vacate the inmate's sentence of death.

PENDING CASES OF INTEREST

Martin Gordon v. T. Banks, et al., Civil No. 97-513-WDS, S.D. Ill., USP Marion

Plaintiff had sued 38 staff members for various alleged constitutional violations including excessive use of force, failure to protect, destruction of property, filing false charges, deliberate indifference to medical care, and obstruction of access to court. The case is somewhat problematic since the Office of Internal Affairs sustained charges of excessive force against one of the defendants.

James Lewis v. Donald Romine, et al, Civil No. 98-1427 PAM/JGL, D.Minn., FMC Rochester, FCI Greenville, and FCI Sandstone

Inmate Lewis filed a Bivens action in the District of Minnesota wherein he alleges BOP Defendants at several institutions violated his 8th Amendment rights with regard to medical care. Plaintiff seeks \$1,000,000.00 in compensatory damages, punitive damages in an amount set by the Court, and attorney's fees. Given the nature of the claims, FMC Rochester will be primarily responsible for providing litigation assistance in this matter.

Sims v. Federal Bureau of Prisons, et al, Civil No. 98-1468, D.Minn, FCI Waseca

This case involves a petition for a writ of habeas corpus alleging that the Bureau of Prisons had erroneously calculated his sentence by not aggregating his two sentences (PLRA and SR-A), thus

resulting in no Good Conduct Time (GCT) earned. Additional issues involve foreign jail credit and date of offense. Petitioner fails to earn GCT for two reasons: 1) both sentences are less than one year and 2) the Bureau of Prisons is not able to aggregate the two sentences due to the incompatibility of the GCT applications of the SRA and the PLRA. The issue of aggregation for PLRA and SRA sentences is ripe for a decision, however, this case will probably not reach that level because petitioner failed to exhaust administrative remedies.

Perdomo-Pech v. Rehorst, Civil No. 97-2588, D. Minn., FCI Sandstone

Bivens action wherein an inmate alleges that a staff dentist fired him illegally and discriminated against him. The Warden is also alleged to be responsible for ratifying the dentist's decision. A favorable R&R was issued in this matter and we are awaiting adoption by the District Court Judge.

Joseph L. Davis v. Seiter, et al., Civil No. 96-3316-KHV, D. Kan., USP Leavenworth

On June 30, 1998, Judge Kathryn Vratil, granted in part and denied in part Defendant's Motion to Dismiss or Alternatively For Summary Judgment which was filed on July 24, 1997. This is one of the remaining LVN cases where the plaintiff alleges he was assaulted by staff after he was transferred from Greenville to LVN in October 1995. The motion is granted as (1) plaintiff's claim against defendants in their official capacities; (2) plaintiff's claim against defendants for verbal abuse; (3) plaintiff's claim for excessive use of force against defendants True, Greenfield, Johns and Perdue; (4) plaintiff's claim for deliberate indifference against defendant Moore for denying him his eyeglasses; and (5) plaintiff's claim against John Doe, Food Administrator. The motion is denied as to (1) plaintiff's Fifth Amendment claim; (2) plaintiff's claim against Moore for excessive force; (3) plaintiff's claim for supervisory liability against True and Greenfield; (4) plaintiff's claim for excessive force against John Doe officers; (5) plaintiff's claims for failure to intervene; (6) plaintiff's conditions of confinement claim; and (7) defendant's motion to dismiss based on qualified immunity or for lack of service.

Blanche Dyer v. U.S.A., Case No.4-92-CV-70077, S.D. Iowa, 96-1506, Eighth Circuit 97-CV-4194, N.D.Ill., MCC Chicago

An inmate who was at MCC Chicago for two weeks in 1989 filed a tort claim with the U.S.M. regarding her medical treatment as a pre-trial inmate. Iowa court granted summary judgement for the government, but Court of Appeals reversed, remanding to N.D. Illinois. Case will now focus on the treatment plaintiff received from Bureau of Prisons. Depositions are set to begin in July.

3621(e) Litigation

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RELIGIOUS FREEDOM RESTORATION ACT CASES

Houston v. Brooks, Civil No. 97-2081, D. Minn., FCI Sandstone

Private counsel is in the process of interviewing various staff members regarding their actions in this case. The defendant claims his rights under RFRA were violated when he was placed in administrative detention for making inflammatory remarks about Caucasians.

McCain v. Knowles, Case No. 97-B-127, D.Col., USP Florence

USP environmental tobacco smoke (ETS) case. Response date set for original two defendants for June 8, 1998. Plaintiff filed amended complaint adding seven other defendants.

Crowder v. Whalen, et al., Civil No. 95-M-1579, D. Colo., USP Florence

On 6/11 received plaintiff's motion for ADR. He seeks to have the court order mediation on various allegations, including physical therapy available to wheelchair bound inmates, wheelchair ramps at USP Florence, number of handicap-accessible cells at USP Florence, and the availability of a special van to transport wheelchair bound inmates.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

None.

HEARINGS AND TRIALS

U.S. v. Paul, 98-990 MJD/AJB, D. Minn., FMC Rochester

On June 11, 1998, a hearing was held to determine whether inmate Peter Paul should be committed for mental health treatment pursuant to 18 U.S.C. § 4245. On June 22, 1998, Magistrate Judge Boylan issued an R&R recommending that the petition be granted. An Order has not yet been received.

U.S. v. George Chairse, 98-1342 RHK/JMM, FMC Rochester

On June 25, 1998, a hearing was held to determine whether inmate Peter Paul should be committed for mental health treatment pursuant to 18 U.S.C. § 4246. Neither an R&R nor an Order have been received as of this date.

4245 and 4246 Hearings

USMCFP Springfield had four 18 U.S.C. § 4245 hearings and four 18 U.S.C. § 4246 hearings this month.

UPCOMING HEARINGS OR TRIALS

None.

CRIMINAL MATTERS

U.S. v. Riddle and Black, Crim. No. 98-CR-196-S, D. Colo., USP Florence

Two inmates indicted for assault on inmate, murder of inmate, possession of a weapon, attempted assault on staff for 1/16/96 homicide at USP Florence. The Department of Justice has authorized the death penalty in this case. AUSA has filed protective order since many sensitive documents will need to be disclosed to opposing counsel during discovery. NCRO Legal, Florence Legal, Litigation Branch (Criminal) and the Office of Internal Affairs are in process of providing *Giglio* materials on the 29 staff witnesses. [REDACTED] bl

U.S. v. Steven Mills, Crim. No., D.Col., USP Florence

This civil rights trial involving former counselor at USP Florence was held at the end of this month and the jury returned a guilty verdict against Mr. Mills. Mr. Mills was found to have violated 2 U.S.C. § 242, Deprivation of Rights Under Color of Law for assaulting an inmate while the inmate was handcuffed.

U.S. v. Beltran, Crim. No. , C.D. Ill., FCI Pekin

After the inmate notified the judge that it was the BOP's fault that he was allowed to possess heroin in the institution, the judge imposed a 31 month sentence for the offense.

U.S. v. Miller, Crim. No. 98-10046, C.D.Ill., FCI Pekin

Possession with intent to distribute heroin. Inmate Miller was indicted on June 19, 1998, and pled not guilty to these charges at his initial arraignment on June 25, 1998. The final pre-trial hearing is scheduled for July 24, 1998 at 4:30 pm and the trial, if necessary, is scheduled for August 3, 1998.

U.S. v. Smith, Crim. No. 98-10045, C.D.Ill., FCI Pekin

Possession of marijuana. Inmate Smith was indicted on June 19, 1998, and pled not guilty to these charges at his initial arraignment on June 25, 1998. The final pretrial hearing is scheduled for July 24, 1998 at 2:30 pm and the trial, if necessary, is scheduled for August 3, 1998.

U.S. v. Young, Crim. No. 97-10068, C.D.Ill., FCI Pekin

Inmate pled guilty to charges stemming from February 1998 indictment and was sentence to an additional 10 months, consecutive to his current term. The Sentencing Guidelines indicated a range of 6 to 12 months for his charges.

U.S. v. Payne, Crim. No.98-10028, C.D. Ill., FCI Pekin

Assault on a Federal Officer. The final pretrial hearing was held on June 26, 1998 at which time the defendant requested that the AUSA drop the second assault charge contained in the indictment. The AUSA agreed to do so, but only if the defendant waived his appeal rights on the first charge. The defendant requested a continuance to consider the matter. The matter is set for hearing on July 10, 1998.

U.S. v. Larkin, Crim. No. 98-10026, C.D.Ill., FCI Pekin

Possession of Marijuana. The final pretrial hearing was held on June 26, 1998 at which time the defendant changed his plea to guilty.

U.S. v. Battle, Crim. No. , D. Kan., USP Leavenworth

Inmate, Glendell Battle, Reg. No. 29303-048, was indicted in the District of Kansas for a violation of 18 U.S.C. 1791(a)(2) (knowingly and intentionally making, possessing, and obtaining a prohibited object, namely a homemade knife intended to be used as a weapon) in connection with an offense which occurred on or about January 22, 1997 at USP Leavenworth.

U.S. v. Velasquez, Crim. No. , D. Kan., USP Leavenworth

Inmate, Benjamin Velasquez, Reg. No. 80962-012, was indicted on three counts in the District of Kansas for a violations of the following statutes: possessing a prohibited object, (2.6 grams of a substance containing heroin), 18 U.S.C. § 1791(a)(2), 1791(b)(1) and 2; attempted to introduce a prohibited object into the USP, (2.6 grams of a substance containing heroin that was delivered to him while he was an inmate at USP Leavenworth), 18 U.S.C. § 1791(a)(1), 1791(b)(1) and § 2; and did knowingly and intentionally possess with the intent to distribute 2.6 grams of a substance containing heroin in violation of 21 U.S.C. §§ 841 (a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2. This indictment is in connection with an offense that occurred on or about November 5, 1995.

PERSONNEL ISSUES

Beth Cole started working at the NCRO as a paralegal trainee this month. Beth comes from the FPC Pensacola. She had worked at the U.S. Attorney's Office prior to joining the BOP.

Francis Dent, a recent graduate of the BOP Paralegal program at MSTC Aurora, will be undertaking an increased role in defending against litigation filed by FCI Englewood inmates. NCRO Paralegal Specialist Gwn Robinson will be assisting Ms. Dent with the FCI Englewood cases.

STAFF TRAVEL AND LEAVE

John	A/L July 27-31	July 3 &6 National Legal Training
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U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons
North Central Region
Office of Regional Counsel

Kansas City, KS 66101

July 8, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (June, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
NCR	32	19	2	9	9	22	389	16	20	0	0

NUM - Number of total lawsuits filed in the month (1)
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)

***Number of open cases on LMS.**

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66	81	56	74						

**Total for Calendar Year 388
Pending 302**

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198	249	202						

Total for Calendar Year 1213

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	31	8
ACTUAL RECEIVED	62	11
ACTUAL PROCESSED	66	10
ACTUAL BACKLOG	4	4

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

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Magistrate Borchers issued a Memorandum Opinion and Order and noted that the case was almost 2 years old and only defendant Hawk had been served. The Magistrate further alleged that the BOP and Defendants "have undertaken every available step . . . to stall progress in [the] matter." Argument was made by AUSA that any release of information about an unserved defendant would violate the Privacy Act and that if plaintiff needed to know location of these unserved individuals that he could file an FOIA request. Court disagreed in no uncertain terms indicating that defendant Hawk would provide to the USMS addresses for service on individuals who are defendants but no longer work at ADX. Court indicated that an FOIA Request for the information would be fruitless as BOP would not provide such information to an inmate requestor [cited Sellers v. United States, 902 F.2d 598 (7th Cir. 1990.)] The Court advised that addresses should be work address unless defendant(s) are no longer working for the BOP. If the latter is the case, then the USMS is to be informed of the defendant's last known home address. All addresses are to be safeguarded by the USMS. No addresses are to be provided to the plaintiff concerning location of any defendant. Work addresses provided to the USMS via the AUSA.

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None.

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Possession with intent to distribute heroin. Inmate Miller was indicted on June 19, 1998, and pled not guilty to these charges at his initial arraignment on June 25, 1998. The final pre-trial hearing is scheduled for July 24, 1998 at 4:30 pm and the trial, if necessary, is scheduled for August 3, 1998.

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Possession of marijuana. Inmate Smith was indicted on June 19, 1998, and pled not guilty to these charges at his initial arraignment on June 25, 1998. The final pretrial hearing is scheduled for July 24, 1998 at 2:30 pm and the trial, if necessary, is scheduled for August 3, 1998.

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Assault on a Federal Officer. The final pretrial hearing was held on June 26, 1998 at which time the defendant requested that the AUSA drop the second assault charge contained in the indictment. The AUSA agreed to do so, but only if the defendant waived his appeal rights on the first charge. The defendant requested a continuance to consider the matter. The matter is set for hearing on July 10, 1998.

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North Central Region
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Kansas City, KS 66101

August 7, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (July, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
NCR	47	31	4	9	3	28	429	29	22	1	0

NUM - Number of total lawsuits filed in the month (1)
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)

*Number of open cases on LMS.

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66	81	56	74	98					

**Total for Calendar Year 486
Pending 273**

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198	249	202	241					

Total for Calendar Year 1454

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	31	8
ACTUAL RECEIVED	62	11
ACTUAL PROCESSED	66	10
ACTUAL BACKLOG	4	4

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

None.

SETTLEMENTS OR JUDGMENTS

Sartin v. United States, Case No. 97-2780, (W.D.Tenn.) USP Marion

This case was recently settled for \$12,000. The case involved a visitor who sustained injuries when a chair collapsed in the FPC Marion visiting room. The AUSA did not obtain the concurrence of the BOP prior to settling this case.

Lumpkin v. Knowles, Case No. 97-X-0033 (D. Col.), USP Florence

District Court directed BOP to make a copy of telephone conversation on cassette tape and provide declaration as to its authenticity. Lumpkin is to provide address where tape will be sent and will pay costs of copying/mailing. BOP also directed to preserve master reel if Lumpkin pays cost of replacement (approx. \$120). If Lumpkin has not paid to replace master reel by August 6, order to preserve master reel will be vacated.

McCarthy v. U.S., et al., Case No. 95-Z-320 (D.Col.), ADX Florence

On July 14, 1998, a settlement was reached when the plaintiff agreed to dismiss his complaint without prejudice due to the fact that he is currently receiving assistance from KU Defender Project. In exchange, BOP will provide a declaration to plaintiff's counsel as to unavailability of Florida materials in BOP facilities.

DECISIONS OF INTEREST

Parsons v. Pitzer, 1998 WL 416888 (7th Cir. (Wis.)), FCI Oxford

Seventh Circuit found that Felon in Possession of a Firearm was a crime of violence for purposes of 18 U.S.C. 3621(e)(2)(B).

Copley v. Keohane, 1998 WL 410067 (8th Cir. (Mo.)), USMCFP Springfield

Court held that since inmate was no longer in the custody of the BOP and instead under the supervision of U.S. Probation, the petitioner's habeas action was moot.

PENDING CASES OF INTEREST

Johnson v. United States, Case No. 96-C-5708, N.D. Ill., MCC Chicago

After inmate committed suicide, his estate sued claiming BOP's negligence led to death. During recent settlement conference, administrator of estate asked for \$800,000. AUSA responded with an offer of \$10,000 in nuisance value.

Massey and Otten v. David Helman, et al., Case No. 97-1401, C.D. IL, FCI Pekin

Pursuant to Rule 23, Fed. R. Civ. P., Plaintiffs brought a Motion for Class Certification. Plaintiff Massey alleged that because it is institutional policy to deny necessary medical care to inmates, he was denied the prescribed medical treatment for an existing hernia, a violation of his Eighth Amendment right to be free from cruel and unusual punishment. In addition to his individual claim, Plaintiff Massey sought class certification on behalf of other inmates who were denied medical treatment. Plaintiff Otten was a former staff physician at FCI Pekin prior to his termination during March 1998. Plaintiff Otten alleged that he was terminated for insisting that his patients receive necessary medical care as required by the Eighth Amendment and because he spoke freely with the inmates about the necessary medical care being denied to them. In addition to Plaintiff Otten's individual claim, he brought action on behalf of his former FCI Pekin inmate patients. In an Order dated July 7, 1998, the Court denied the Motion because Plaintiffs failed to meet the first of four pre-requisites to certify the class; numerosity.

Gonzalez v. Cambiazo, Derr and Kuzinki, Case No. 97-S-2639, D.Col., FCI Florence

Inmate alleges he was assaulted by these three defendants on 12/1/97. The inmate specifically alleges that staff removed his wheelchair and walker from his cell, resulting in inability to ambulate around the cell. The inmate alleges that the officers then kicked plaintiff, injuring his legs and shoulder. He is seeking \$1 million in damages and a transfer to a "hospital."

Boyce v. Hershberger, Case No. 983238-GTRV, D.Kan., NCRO

Convicted spy Christopher Boyce has filed suit in the District of Kansas alleging that his constitutional rights were violated when he was transferred from a state facility in Minnesota to ADX Florence. Boyce is represented by counsel in this matter and claims that he was transferred solely because of articles he wrote that were critical of the BOP and members of the Aryan Brotherhood. A current BOP staff member testified on behalf of Boyce during his last parole hearing and assessed that Boyce was best suited for confinement in an FCI, not a maximum security prison. NCRO legal staff will be providing the U.S. Attorney's Office with assistance.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Houston v. Brooks, Civil No. 97-2081, D. Minn., FCI Sandstone

Private counsel is in the process of interviewing various staff members regarding their actions in this case. The defendant claims his rights under RFRA were violated when he was placed in administrative detention for making inflammatory remarks about Caucasians. The U.S. Attorney's Office filed a motion to dismiss on behalf of the defendants in their official capacities.

HEARINGS AND TRIALS

None.

UPCOMING HEARINGS OR TRIALS

Bernal v. Black & Lewis, Case No. 96-1209, CD Ill., FCI Pekin

Plaintiff alleges two staff initiated disciplinary action him in retaliation for complaining about conditions at the commissary. Trial scheduled to begin Monday, August 31, 1998 in Peoria.

Locascio v. Keohane, WD MO, MCFP Springfield

Plaintiff, an organized crime figure, filed for a temporary restraining order requesting release from Administrative Detention. The inmate was placed in SHU after information was received that a contract had been placed on his life. Judge Clark has scheduled a hearing regarding this matter for August 19, 1998.

CRIMINAL MATTERS

USA v. JOHNSON, Case No. 96-CR-379, N.D.Ill., MCC Chicago

On July 27, 1998 Johnson was formally sentenced to two concurrent death sentences. The judge requested that Johnson be allowed to stay at the MCC for 14 days so he could have the opportunity to visit with family members.

USA v. Leo ALVAREZ D.Col., USP Florence

Inmate pleaded guilty to introduction of contraband (heroin) and was sentenced to 27 months consecutive to his current term of imprisonment.

USA v. Jack COOK, D.Col., FCI Florence

Inmate charged with one count of assault on staff (Correctional Counselor) and pleaded guilty. The inmate was immediately sentenced to one year, consecutive, during proceedings before Magistrate Borchers in ADX Courtroom on July 14, 1998.

USA v. Jimmy COUCH, D. Col., USP Florence

Inmate charged with possession of contraband (drugs). The inmate pled guilty at proceedings on July 24 before Magistrate Borchers in ADX Courtroom and was immediately sentenced to six months each on two counts, consecutive to each other and to all other sentences.

USA v. RIDDLE and BLACK, D. Col., USP Florence

Giglio information turned over to USAO. It appears inmate will plea to second degree murder in order to avoid being tried for capital murder.

PERSONNEL ISSUES

Vince Shaw will be starting at the Attorney-Advisor at FCI Oxford this month. Tracy Knutson, Honors Attorney, assumes duties at the NCRO August 17, 1998. Legal Intern Lisa McKnight returns to UMKC School of Law and will begin working part-time.

STAFF TRAVEL AND LEAVE

John	August 21-28	A/L
Daryl	August 24-25	FPC Yankton
Dan	August 26-27 August 28	CMC Training A/L
Gwen	August 7 August 30 - September 2	A/L Denver - Sentencing Tng
Vince	August 28	Last Day at NCRO
Tracy	None Scheduled	
LeeAnn	None Scheduled	
Janet	None Scheduled	
Lisa	None Scheduled	
Beth	None Scheduled	

Tort dBASE Files sent via e-mail to Delores Johnson, OGC, on 07/31/98.