

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

Kansas City, KS 66101

October 8, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: *Quarterly*
~~MONTHLY~~ REPORT (September, 1998).

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
NCR	45	21	2	5	5	18	444	10	0	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	95	73			

Total for Calendar Year 654
Pending 272

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198	249	202	241	241	223			

Total for Calendar Year 1918

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	26	10
ACTUAL RECEIVE D	67	25
ACTUAL PROCESSED	56	18
ACTUAL BACKLOG	1*	0

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

* Awaiting records from archives.

ADVERSE DECISIONS

Washington v. Hedrick, 97-941-JPG, USP Marion

A motion for summary judgment was denied and the petitioner's request for writ of habeas corpus was granted. The Court ordered that the BOP recalculate the petitioner's sentence by awarding credit for time served between July 23, 1995 and March 27, 1996. A motion to reconsider has been filed by the government. The petitioner was released from BOP custody on August 19, 1998 to law enforcement officials acting on behalf of the State of Couth Carolina to serve the remainder of his parole violator term.

SETTLEMENTS OR JUDGMENTS

Sartin v. United States, 97-2780-G BRE, FPC Marion

This FTCA case originated from a chair that collapsed during Ms. Sartin's visit with her son at FPC Marion. Though claiming to be alright the time of the accident, she subsequently sought \$50,000 in damages for injuries, pain & suffering, mental anguish, loss of earnings and medical expenses. This case was settled for \$12,000.00.

DECISIONS OF INTEREST

Segien v. Scott and Hanson, 95-3185-RDR, USP Leavenworth

On September 23, 1998, the court granted defendant's motion for summary judgment in part and denied it in part. All official capacity claims against Warden Scott and Lt. Hanson have been dismissed. Summary Judgment was granted in favor of Warden Scott on all individual capacity claims. The only claim remaining in this case involves an allegation of excessive force against Lt. Hanson. Lt. Hanson is represented by a private attorney. Retention of private counsel was authorized in accordance with the provisions of 28 C.F.R. sections 50.15, 50.16, and Civil Division Directive 2120A in 1995.

Johnson v. Warden J.T. O'Brien, 98-C-0528-S, FCI Oxford

Inmate alleged that his three witnesses were not called to his DHO hearing. The DHO report stated that the witnesses did appear at the hearing and testified. Subsequent investigations revealed that the witnesses were not called to the hearing. The inmate will be granted a new DHO hearing with a new DHO officer.

Malik v. Mack, et al, 95-3213-RDR, USP Leavenworth

Defendant's Motion for Summary Judgment is granted. Plaintiff alleged that defendant correctional officers violated his First, Fourth, Fifth and Eighth Amendments by using excessive force during a cell move.

PENDING CASES OF INTEREST

Yousef (Ramzi Ahmed) v. Reno, Hawk and Hurley, 98- -2008, FCI Florence

Local papers ran a story about a civil suit filed by inmate Yousef challenging his 501.3 conditions of confinement. Inmate challenges his various special restrictions, including the English only rules.

In re Jody Dunn, USP Florence

An emergency ex parte application was filed to allow forced feeding, rehydration and testing of inmate Dunn, who was refusing to eat or cooperate in necessary testing. Mr. Dunn's condition was becoming serious. Judge Miller ordered an immediate hearing on the matter. Although Mr. Dunn had agreed to eat and drink during the time between the filing and the hearing, the hearing continued. The court ordered inmate Dunn to cooperate with efforts to feed and test him medically. Matter is to remain open until mid November when a status report will be filed.

Shinpaugh v. T. Carlson, 98-WM-706, FCI Florence

Civil rights case which claims that plaintiff's mail was improperly read and censored by defendants in violation of his 1st Amendments rights. Plaintiff also claims that the UDC found him guilty of insolence based on the letter and thereby denied him due process in violation of the 5th Amendment.

Plaintiff filed notice of intent to challenge PLRA as violating Article III, equal protection and as a bill of attainder under Article III.

Blanche Dyer v. U.S.A., 4-92-CV-70077, 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. The Iowa court granted summary judgement for the government, and the CTA reversed, remanding to N.D. Illinois. Case now focuses on treatment she received from Bureau of Prisons.

Victor A. Age v. Warden J. T. O'Brien, 98-C-686-S, FCI Oxford

Petitioner alleges in this habeas that he is illegally confined at FCI Oxford due to CIMS violations. He alleges that he is to be separated from Mexican Mafia inmates, but Mexican Mafia inmates are present at FCI Oxford.

Hampton v. Keohane, et al, 98-3390-CV-S-RGC-H, USMCFP Springfield

Petitioner contends that the BOP should activate a heart transplant procedure necessary to preserve his life or grant him an immediate release from custody to arrange for a heart transplant.

RELIGIOUS FREEDOM RESTORATION ACT CASES

None.

HEARINGS AND TRIALS

None.

UPCOMING HEARINGS OR TRIALS

Timothy Ueland v. United States of America, D.Minn., FCI Sandstone

Oral argument set for October 8, 1998 at 11:00 a.m.

Lozano v. Reno, 95-S-2661, NCRO

Plaintiff is a former BOP staff member who was terminated for not disclosing certain information in his background investigation. The plaintiff claims he was fired because of his national origin and in retaliation for utilizing the EEO process. The BOP lost at the administrative level and the plaintiff is seeking nearly \$300,000 in backpay and attorney's fees. Assistant Regional Counsel Dan Eckhart will assist at trial.

U.S. v. Larkin (98-10026), FCI Pekin

Sentencing on Introduction of Contraband Charge set for October 15, 1998.

U.S. v. Payne (98-10028), FCI Pekin

Sentencing on Assault on a Correctional Officer set for October 16, 1998.

U.S. v. Miller (98-10046), FCI Pekin

Jury Trial on Introduction and PWID Contraband. This charge makes the inmate a career offender. He is looking at a guideline range of 262+ months. The inmate's attorney has attempted repeatedly to get the inmate to plead but has been unsuccessful.

U.S. v. Petty (98-10027), FCI Pekin

Sentencing of Introduction of Contraband charge set for October 23, 1998.

CRIMINAL MATTERS

U.S. v. Missra Araiza-Reyes, FCC Florence

Inmate pleaded guilty to Voluntary Manslaughter on August 28, 1998. Sentencing set for November 5.

U.S. v. Francis and Haney, USP Florence

Inmates charged with attempted escape from USP and possession of contraband (escape paraphernalia). Defense counsel concerned about ability of inmates to have telephonic contact with court. A form order was prepared concerning the contact procedures. Another motions hearing set to discuss discovery requests for plans and blueprints showing all security devices at USP Florence. We have objected strenuously, providing an in camera declaration from Warden Holt as to the dangers of releasing such information.

U.S. v. Mills, USP Florence

This civil rights trial involving former counselor striking an inmate who was in restraints at USP Florence was held from June 29 through July 2. Jury returned a guilty verdict, finding he violated 18 USC 242. Several BOP staff, and former staff, traveled to testify. Sentencing hearing was held on September 23. Mills was sentenced to 33 months, 3 years supervised release with a mental health aftercare provision. When imposing sentence, Judge Daniel was concerned about a possible placement. Court is "strongly recommending" placement in a state facility. This case received press coverage.

U.S. v. Riddle and Black, USP Florence

Plea negotiations ongoing regarding the charge of an inmate murder at USP.

U.S. v. McElhiney, USP Leavenworth

On September 9, 1998, inmate Michael McElhiney, Reg. No. 04198-09 was indicted in the District of Kansas for possession with intent to distribute and distribute heroin, in violation of Title 21 U.S.C. § 846 and § 841(b)(1)(C) and Title 18 U.S.C. § 2 in connection with an offense on or about

the 1st day of January 1995, to on or about the 30th day of December 1995. McElhiney is currently being temporarily housed at USP Leavenworth and he has decided to represent himself in this matter.

PERSONNEL ISSUES

STAFF TRAVEL AND LEAVE

John	October 13 - 14	Annual Leave
Daryl	None scheduled	
Dan	October 20-22 October 26-29	Trial preparation @ Denver (Lozano) Trial @ Denver (Lozano)
Gwen	None scheduled	
LeeAnn	None scheduled	
Janet	None scheduled	
Tracy	September 28-October 9 October 17-November 7	IF (USP Leavenworth) Glynco, Georgia
Lisa E.	September 28-October 9	IF (USP Leavenworth)
Lisa M.	None scheduled	
Beth	None scheduled	

Tort dBASE Files sent via e-mail to Delores Johnson, OGC, on 10/11/98.

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Kansas City, KS 66101

November 9, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (October, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

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NCR	39	18	5	12	10	13	456	26	10	5	0

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

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ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66	81	56	74	98	95	73	70		

Total for Calendar Year 724

Pending 286

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198	249	202	241	241	223	248		

Total for Calendar Year 2166

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	34	18
ACTUAL RECEIVED	55	19
ACTUAL PROCESSED	60	9
ACTUAL BACKLOG	1	1

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

* Awaiting records from archives.

ADVERSE DECISIONS

Bellis v. Herrera & BOP, CIV98-4099, FPC Yankton

Inmate filed habeas petition alleging improper classification by BOP as ineligible for early release under 18 U.S.C. § 3621(e)(2)(B), and requested an order from the court directing the BOP to reconsider his classification in accordance with the 8th Circuit decision in Martin. On October 23, 1998, the Court granted the petition and ordered the BOP to reconsider Bellis's eligibility for early release in accordance with their opinion. A motion to Alter or Amend Judgment was filed by the government.

Shields v. Herrera, CIV98-4123, FPC Yankton

Identical issue to Bellis. Court ordered that the BOP promptly reconsider the eligibility of petitioner in accordance with their opinion in Bellis.

Pierson v. Herrera, CIV98-4113, FPC Yankton

Identical issue to Bellis. Court ordered that the BOP promptly reconsider the eligibility of petitioner in accordance with their opinion in Bellis.

U.S. v. Brandon, 1998 WL 735839 (6th Cir.), FMC Rochester

An adverse decision in this case of a pretrial detainee committed to the custody of the Attorney

General for restoration of competence to stand trial pursuant to 18 U.S.C. § 4241(d). The issue before the Sixth Circuit was whether a pretrial detainee is entitled to a judicial hearing prior to the involuntary administration of antipsychotic medication to restore competence. The Court held that due process requires that a non-dangerous pre-trial detainee be provided a judicial evidentiary hearing prior to being involuntarily medicated for the purpose of rendering him/her competent to stand trial. The Court then held that the government's request to forcibly medicate a non-dangerous pre-trial detainee must survive the strict scrutiny standard, and that the government must prove its case for involuntary medication by clear and convincing evidence.

SETTLEMENTS OR JUDGMENTS

Barnes v. United States, 96-3280-CV-S-4, MCFP Springfield

Plaintiff filed an FTCA against government officials alleging negligence when officials allowed him to retain a razor blade and his eye glasses thus facilitating his suicide attempt. He also alleged medical negligence by the physician in failing to properly diagnose and treat his heart attack. A settlement agreement was reached in the amount of \$20,000.00.

Boyd v. United States, 98-S-1026, ADX Florence

Plaintiff was offered \$25 to settle this FTCA case on October 15, 1998. The inmate agreed to settle for this amount, but was concerned about how much of his settlement would go toward his filing fee of \$150. The inmate was informed that twenty percent of all deposits would be applied to the filing fee because he remained liable for this accrued cost. The judge closed the case on October 20, 1998.

Cuoco v. United States, 97-CIV-1268, FCC Florence

NERO case. On October 1, 1998, an Offer of Judgment for \$10,000 in favor of the Plaintiff in this case was received from the AUSA for the Southern District of New York. The inmate agreed to the offer on Monday, October 5. The AUSA arranged to have judgment entered against the United States. The judge closed the case in the matter. ADX staff continue to work with the NERO and the U.S. Attorney's Office regarding the receipt of the settlement amount due to the fact that the inmate owes the ADX \$946.02 in DHO restitution, copies, postage, and a court filing fee.

Cuoco v. United States, 93-CIV-2806, FCC Florence

NERO case. On October 13, 1998, an Offer of Judgment for \$3,500 in favor of the Plaintiff in this case was received the AUSA for the Southern District of New York. Again, the inmate accepted the offer of judgment and the judge closed the case in the matter. As stated in the above referenced case, ADX staff continue to work with the NERO and the U.S. Attorney's Office regarding the receipt of the settlement amount due to the fact that the inmate owes the ADX \$946.02 in DHO restitution, copies, postage, and a court filing fee.

Hernandez v. BOP, et al., 98-S-731, FCI Englewood

Plaintiff alleged defendants improperly refused to allow her to visit her husband while he was

confined at FCI Englewood. Case was settled when inmate was accepted for halfway house placement.

DECISIONS OF INTEREST

Lozano v. Reno, 95-WM-2261, FCI Englewood

After a three-day trial, U.S. District Court Judge Walker Miller found for the United States and ruled that a former employee was not discriminated or retaliated against when he was removed from his position for falsification of preemployment documents. The case was very close because while the judge ultimately found for the United States, he found that there were several problems with the way the BOP conducted the preemployment screening process and did not think the plaintiff was treated fairly. The judge gave considerable weight to the testimony of former FCI Englewood Warden Anthony Belaski and his employees who felt that Belaski was fair and supportive of minority employees. Since this case was filed before the enactment of the 1991 Civil Rights Act, the plaintiff was limited to seeking eight years of backpay and attorneys' fees. Based on the amount of time opposing counsel has invested in the case, it is expected they will appeal the decision to the Tenth Circuit. The case was handled by legal staff at the NCRO.

Brown v. Helman, 98-1232, FCI Pekin

Habeas petition in which petitioner was alleging that she was wrongfully removed from her job. She requested back wages. Case terminated on October 20, 1998 for two reasons: inmates have no constitutional right to a job and monetary damages are not an appropriate remedy under § 2241.

Freeman v. True, et al., 97-2378-KHV, USP Leavenworth

In this case, plaintiff alleged that certain officers were negligent and deliberately indifferent to his safety in allowing him to be attacked by a fellow prisoner in the Special Housing Unit recreation pen while he was in restraints. The plaintiff's negligence claim was dismissed in November 1997 for failure to comply with the Federal Tort Claims Act. In granting the defendant's motion for summary judgment, the court concluded that the plaintiff's 292's do not support an inference that the defendants' conduct exceeded mere negligence, at worst. To the extent that the Form 292's reflect a reference of "SEP ALL" status the day he was attacked, there is no indication that the defendants actually drew an inference from these forms that plaintiff was in danger. The evidence established that the defendants' normal procedure was to determine an inmate's separation status using the SHU Roster.

Rollins v. Tom Wooten, Warden et al., 94-CV-1585, USP Leavenworth

On May 25, 1995 judgment was entered in favor of the defendants and against plaintiff

dismissing action and complaint. Plaintiff had alleged in this Bivens -styled action that the defendants failed to protect him and as a result he was assaulted by 4-5 other inmates.

Nguyen v. J.W. Booker, Jr., 97-3382-RDR, 10th Cir. Case No. 97-3338, USP Leavenworth
On September 3, 1998 the 10th Circuit Court of Appeals affirmed the decision of the District Court and ruled that it was correct for the District Court to dismiss this 2241 petition for writ of habeas corpus for failure to exhaust. However, the District Court should not have based the dismissal on the Prison Litigation Reform Act (PLRA). According to the 10th Circuit Court of Appeals, this petition did not fall within the PLRA's language barring suits challenging prison conditions before administrative remedies have been exhausted.

Stotts v. Keohane, 98-3172-CV-S-RGC-H, MCFP Springfield

Petitioner contends a constitutional violation in being denied a specific treatment for liver disease or given a liver transplant. The Court noted that while the petitioner believes he is a suitable candidate for a liver transplant, there was nothing in the file to support his claim. The Court agreed with the Magistrate that petitioner's contentions regarding a deliberate indifference to his serious was without merit. The Court dismissed petition without prejudice. (Petitioner also filed a motion seeking to join with several other inmates in a class action on the issue of the BOP's policy on organ transplants. Because a habeas corpus petition is not the appropriate means by which to pursue a class action the motion was denied).

PENDING CASES OF INTEREST

Teich v. U.S.A., et al., CV-S-98-01231-HCM, MCFP Springfield

Defendants negligent medical care led to the plaintiff's descendant's (Patrick Friel, Reg. No. 26914-048) death. Bivens/Negligence claim regarding the death of a quadriplegic patient.

Gilliam v. Bureau of Prisons, et al., 98-3424-CV-S-RGC-H, MCFP Springfield

Petitioner contended that he is in custody unlawfully because he was hypnotized with LSD by the U.S. Army to commit his crime.

Massey v. Wheeler and Helman, 98-1348, FCI Pekin

Bivens claim alleging the defendants have denied the plaintiff unmonitored attorney calls in violation of his fifth amendment rights. This is the same plaintiff/attorney team who lodged the "class action" medical suit against the institution last October.

Coriano v. Sieter, et al., 98- 2240, FCI Florence/FCI Greenville

Inmate claims he is being discriminated against because of his race, that he is being improperly designated as a gang member due to his race, and that he is being improperly subjected to urine surveillance because of his race. Plaintiff sues defendants at both Greenville and Florence. Plaintiff seeks \$14 million, as well as a variety of declaratory and injunctive relief.

Couco v. Lopez, 98-D-1182, USP Florence

Plaintiff seeks \$25,000 from defendant for an alleged assault upon him when he arrived at ADX July 9, 1997. Court dismissed the FTCA claim as frivolous (missing the assault and battery proviso) but allowed the Bivens and 1985(3) claims to proceed.

Palozie, In re Jonathan, USP Florence

Inmate with severe hypertension refused to take his required medication for over nine days. Clinical director was concerned that the inmate would suffer a stroke, as he has in the past, and asked for a forced medication order. Court ordered a hearing that was set for October 23. The hearing was held via video conference, with the inmate being appointed counsel. At the close of the hearing, the inmate agreed to take the medications as prescribed and to allow our medical staff to take blood pressure and EKG's. Government moved to dismiss as moot, without prejudice.

Akbar v. Hawk and Pugh, 98-WM-0968, FCI Florence

Habeas challenge to the Bureau's IFRP and the court's delegation of determining a payment schedule to the BOP, a la Mortimer and Workman in the Third Circuit.

Bignotte v. Ontivero, et al., 97-3506-GTV, USP Leavenworth

In this Bivens styled action, plaintiff alleges the three named defendants violated his civil rights on or about July 12, 1996 while he was confined at USP Leavenworth. Specifically, plaintiff alleges that defendants were made aware that plaintiff was in fear of his safety and failed to move him from the unit where he was housed. As a result, plaintiff alleges that he was attacked by another inmate with a razor which caused serious permanent injuries. Plaintiff seeks monetary damages from defendants in their official and individual capacities.

Char Thomasson, Trustee in wrongful death v. U.S., et al., 98-CV-2167, USP Leavenworth

Plaintiffs alleges defendants negligently caused the death of Stanley Thomasson, in violation of his Eighth Amendment rights, the Federal Tort Claims Act, and the Violence Against Women Act. Thomasson died on September 26, 1996 as a result of blunt trauma to the head. An administrative claim was never filed on this case.

Garraway v. Kathleen Hawk, et al., 97-3023, USP Leavenworth

In this case which was transferred from the Central District of California, plaintiff asserts a claim of cruel and unusual punishment against three of the defendants for an alleged assault in the Special Housing Unit at USP Leavenworth in June 1995. In his second claim, plaintiff asserts four other defendants refused his request over a 72 hour period to release him from restraints. He argues their actions violated his rights under the First Amendment and Religious Freedom Restoration Action by preventing him from washing and praying as required by his religious beliefs. In his final claim, he contends that he was denied due process when defendant Kenny


intentionally filed a false incident report regarding the physical confrontation that resulted in plaintiff being placed in restraints. The court has dismissed defendant True and Director Hawk. Plaintiff is allowed to proceed against the remaining defendants.

Alvarez v. United States, 98-C-3676, MCC Chicago

Plaintiff in this FTCA action alleges that medical staff negligently provided or failed to provide him with medical care for his ankle and broken leg, after he had injured himself during a basketball game.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Kikumura v. Hurley, et al., 98-B-1442, USP Florence

Inmate challenges the denial of pastoral visits. As the inmate expressly raises his complaint, outside representation was sought on the case. The AUSA has for extension of time given that outside counsel is being considered in this case.  : in on

Garraway v. Kathleen Hawk, et al., Case No. 97-3023, USP Leavenworth

In this case which was transferred from the Central District of California, plaintiff asserts a claim of cruel and unusual punishment and he argues the defendants actions violated his rights under the First Amendment and Religious Freedom Restoration Action by preventing him from washing and praying as required by his religious beliefs.

HEARINGS AND TRIALS

None.

UPCOMING HEARINGS OR TRIALS

Gonzales-Melebe v. Pugh, 97-WM-2470, FCI Florence

Petitioner is a Mariel Cuban housed at FCI Florence. He filed a petition seeking immediate release on parole. The petition was denied with one exception. The exception is that petitioner has apparently not been reviewed for possible parole on a regular basis and the court intends to evaluate the last parole denial. The Court ordered that an evidentiary hearing will be held via video conference to determine whether petitioner was denied parole appropriately. Hearing set for November 18, 1998.

Bustillos v. Hawk, et al., 95-WM-2242, USP Florence

Plaintiff filed motions to compel BOP to provide him a pen. Pens restricted due to plaintiff's aggressive actions using them to assault staff. Hearing for plaintiff's Motion for TRO set for

November 24, 1998 in Denver. Court orders that plaintiff will attend via video-conference from USP Florence. Witnesses can be at either location.

U.S. v. Zepeda, 98-10073, FCI Pekin

At the final pretrial on October 21, 1998, the defendant made a motion to dismiss based upon lack of subject matter jurisdiction. The motion argued that the United States had never accepted jurisdiction of the FCI Pekin site in accordance with Title 40 U.S.C. § 255. The case was continued until October 30, 1998. The AUSA was provided with the necessary jurisdiction documents and filed a response containing such. The court denied the jurisdiction motion. A final pretrial hearing is scheduled for November 6, 1998.

Bolivar v. BOP, et al., 98-C-204-S, FCI Oxford

Plaintiff was given an extension to respond to defendant's motion for summary judgement until November 5, 1998. Judge Shabaz has set a trial date for November 23, 1998.

CRIMINAL MATTERS

U.S. v. Missra Araiza-Reyes, FCC Florence

Inmate pleaded guilty to Voluntary Manslaughter on August 28, 1998. Sentencing set for December 16, 1998.

U.S. v. Francis and Haney, USP Florence

Inmates charged with attempted escape from USP and possession of contraband (escape paraphernalia). Motions hearing set for November 5, 1998.

U.S. v. Riddle and Black, USP Florence

Plea negotiations ongoing regarding the charge of an inmate murder at USP. Plea set for November 6, 1998.

USA v. Simmonds, ADX Florence

Arraigned on two counts of assault on staff at ADX. Matter initially charged as misdemeanors but due to history of assaultive behavior, inmate indicted on felony counts. Trial postponed to December 7, 1998.

USA v. Van Meter, ADX Florence

Inmate plead guilty to count one and was sentenced to six months on October 6, 1998 for possession of a weapon at the ADX.

U.S. v. Larkin, 98-10026, FCI Pekin

Inmate sentenced to 18 months on an 18-24 month guideline for Possession of Marijuana. The court specifically found that the inmate failed to show acceptance of responsibility for his actions.

U.S. v. Miller, 98-10046, FCI Pekin

Jury trial in which the defendant was accused of Possession of Heroin with Intent to Distribute and Possession of Contraband in a Federal Penal Institution. Five FCI Pekin staff testified in the course of the proceeding. The defendant conceded the second count but argued that he intended the 4.4 grams of heroin for personal use. The jury returned a verdict of guilty on both counts. Sentencing is set for February 28, 1998. [This was the first trial of any type at Pekin. They were successful in having a Lieutenant certified as an expert with regard to the introduction, trafficking and use of narcotics in a federal prison].

U.S. v. Payne, 98-10028, FCI Pekin

Inmate was involved in an altercation which staff which resulted in two Assault on a Correctional Officer charges. One count was dropped with the defendant's agreement to plead guilty and to waive his right to appeal. The inmate was sentenced to 8 months on a 4-10 month guideline.

U.S. v. Petty, 98-10027, FCI Pekin

At the sentencing for Possession of Marijuana, the inmate was given an opportunity to show acceptance of responsibility for his action by informing the court of how he obtained the balloons. He told the court he found the balloons in the change return on the vending machine and then placed them in his chip bag. The AUSA put the investigator on the stand and submitted the video as evidence in the matter. The judge clearly saw that the balloons were placed in the chip bag by the inmates visitor. The inmate was charged with Obstruction of Justice in addition to his possession charges. He was sentenced to 21 months on what was initially an 8-14 month guideline.

PERSONNEL ISSUES

STAFF TRAVEL AND LEAVE

[REDACTED]

[REDACTED]

[REDACTED]

b6

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

Kansas City, KS 66101

December 14, 1998

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (November, 1998)

inst	num	hc	ftc	biv	oth	ans	pen	cid	h/t	set	awd
NCR	47	26	4	12	5	6	472	21	2	0	0

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Total for Calendar Year 801
Pending 251

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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Total for Calendar Year 2377

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ACTUAL PROCESSED	63	15
ACTUAL BACKLOG	0	0

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

* Awaiting records from archives.

ADVERSE DECISIONS

Capote v. Page True, Case No. 97-3156-RDR, USP Leavenworth

On September 18, 1998, the court granted this petition for writ of habeas corpus and vacated the petitioner's conviction and sentences on counts 3 and 4 under 18 U.S.C. section 924 (c)(1) .

Hicks v. Brooks, Case No 97-D-785, FCI Englewood

Judge Daniel invalidated the BOP's use of sentence enhancements to deny an inmate early release eligibility under § 3621(e). In coming to his conclusion, the judge relied on the Fristoe opinion and found that the BOP was wrong for considering factors other than the offense an inmate was convicted of when making early release determinations. The case involved application of the BOP's Categorization of Offenses program statement.

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

Victor v. Romine, Case No. 97-2030, FCI Sandstone

Habeas corpus action wherein petitioner alleged his 18 USC § 922(g) charge, was not violent in the 9th Circuit, therefore, he should be eligible for one year off for RDAP. District Court

dismissed petition without prejudice.

PENDING CASES OF INTEREST

Kelly (a/k/a Harun Abdul-Walli Ghaffar), Case No. 97-3254-GTV, USP Leavenworth

In this case, petitioner seeks a court ordered for change in his name in which he was convicted and sentenced. He has filed a Request for Issuance of a New Judgment & Commitment Order, or an Order of Compliance to Recognize Defendant's Change of Name.

Lewis v. United States, Case No. 98-64-JP, USP Marion

Plaintiff alleges that staff were negligent in placing him in a housing unit with an inmate who posed a threat, resulting in a serious assault. He seeks \$50,000 in compensatory damages for pain suffered, periodic headaches and physical deformity at the injury site.

Valdez v. INS and John T. O'Brien, Case No. 98-C-687-S, FCI Oxford

The petitioner is a refugee from Mariel, Cuba. Petitioner alleges that the INS did not execute a valid contract in 1981 which contained a provision for petitioner to become a citizen. He further alleges that the INS did not follow the APA, and that the INS did not grant him meaningful review when they denied his parole. Initially this was an action involving only the INS, however, the Court subsequently ordered that the petitioner refile his §2241 action and name the proper respondent as the Warden.

Celestin v. John Doe, et al., Case No. 98-D-1488, USP Florence

Plaintiff alleges he was assaulted and denied medical care after he arrived at USP Florence from FCI Florence after the October disturbance at the FCI.

Gometz v. Warden, Case No. 98-D-1356, ADX Florence

Plaintiff seeks \$600, inclusive of costs, for alleged destruction of pornographic magazines at ADX. Combination FTCA and Bivens case. However, plaintiff makes no allegations against an individual defendant.

Henderson v. Smith, et al., Case No. 98-WM-1385, FCI Florence/USP Florence

Plaintiff alleges he was assaulted when transferred between the two institutions after the October 1995 riot at the FCI. He seeks \$2.5 million from the defendants.

Jolivet v. USA, Case No. 98-B-0937, ADX Florence

Plaintiff sues under FTCA for alleged improper dental care. He alleges that BOP officials are not providing appropriate dental prosthesis for his needs. He seeks \$60,000.00, an examination and prosthesis provided by a specialist outside the BOP at BOP expense, restoration of his dental health, and costs.

Parrott v. USA, et al., Case No. 98-B-0987, USP Florence

Plaintiff alleges he was placed in SHU for no reason, that he was assigned an assaultive cellmate, that he was disciplined for protecting himself from this cellmate, and that he was denied necessary medical care for the injury he received in this assault. He seeks \$500,000 (\$250,000 from the USA and \$250,000 from the individual defendants, jointly and severally).

Stanley v. Lt. Lima, et al., Case No. 98-D-0760, USP Florence

Plaintiff claims he was assaulted several times at the USP by other inmates and that staff allowed that to happen by refusing to give him single cell status. He alleges he was denied medical care and was coerced into signing an inaccurate affidavit. He seeks a variety of declaratory and injunctive relief, as well as unspecified money damages.

RELIGIOUS FREEDOM RESTORATION ACT CASES

None.

HEARINGS AND TRIALS

Bustillos v. Hawk, et al., Case No. 95-WM-2242, USP Florence

Plaintiff filed motions to compel BOP to provide him a pen. Pens restricted due to plaintiff's aggressive actions using them to assault staff. Hearing for plaintiff's Motion for TRO was held on November 24, 1998 via video conferencing. A decision is still pending.

U.S. v. Zepeda, Case No. 98-10073, FCI Pekin

Final pretrial hearing was held on November 6, 1998. Defendant pled guilty to Count 1 and waived right of appeal. Sentencing set for February 26, 1998.

UPCOMING HEARINGS OR TRIALS

U.S. v. Francis and Haney, USP Florence

Inmates charged with attempted escape from USP and possession of contraband (escape paraphernalia). Motions hearing held on November 5, 1998. The discovery requests for plans and blueprints showing all security devices at USP Florence was discussed. However, the Court did not rule on the security issue, instead the Court set an in camera hearing on the matter for December 30, 1998.

USA v. Simmonds, ADX Florence

Arraigned on two counts of assault on staff at ADX. Matter initially charged as misdemeanors but due to history of assaultive behavior, inmate indicted on felony counts. Trial postponed indefinitely due to AUSA illness. However, motions hearing set for December 10, 1998.

Bernal v. Black, FCI Pekin

The court has delayed the trial in Bernal. It was set to begin on Monday, December 14, 1998. The trial has now been postponed (for the fourth time) until February 3, 1999.

CRIMINAL MATTERS

U.S. v. Missra Araiza-Reyes, FCC Florence

Inmate pleaded guilty to Voluntary Manslaughter on August 28, 1998. Sentencing set for December 16, 1998.

U.S. v. Francis and Haney, USP Florence

See above (Hearings and Trials).

U.S. v. Riddle and Black, USP Florence

Plea negotiations ongoing regarding the charge of an inmate murder at USP. Plea set for November 6, 1998.

U.S. v. Simmonds, ADX Florence

See above (Hearings and Trials).

U.S. v. Jorge Lozano-Guerro, FCI Oxford

Inmate received the maximum 18-months for possession of a weapon.

U.S. v. Reichenbach, FMC Rochester

Inmate plead guilty to Assault on a Federal Officer. On November 18, 1998, inmate received a two year sentence.

U.S. v. Zepeda, Case No. 98-10073, FCI Pekin

See above (Hearings and Trials).

PERSONNEL ISSUES



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

*Tower II, 8th Floor
400 State Street
Kansas City, KS 66101-2421*

January 12, 1999

MEMORANDUM FOR CAROLYN A. SABOL, ACTING GENERAL COUNSEL

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: Monthly Report (December, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
NCR	41	21	8	8	4	19	483	22	4	0	0.00

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

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66	81	56	74	98	95	73	70	77	81

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198	249	202	241	241	223	248	211	209

Total for Calendar Year 2635

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	PRIVACY ACT	FOIA
ACTUAL ON-HAND	27	17
ACTUAL RECEIVED	54	17
ACTUAL PROCESSED	48	12
ACTUAL BACKLOG	2*	1

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

* Awaiting records from archives.

ADVERSE DECISIONS

None.

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

Michael R. Hyde v. Kathy Hawk, Case No. 98-3107-GTV, USP Leavenworth

In this case, plaintiff sought the return of funds withheld under the Inmate Financial Responsibility Program (IFRP). He challenged the authority of the BOP to set up a restitution payment mechanism. The plaintiff admitted that he signed up for the IFRP program, but stated he did so only to keep privileges that would have been impacted if he failed to participate in IFRP. The court found any relief on plaintiff's claim was defeated by the doctrine of invited error. See Brown v. Presbyterian Health care Services, 101 F.3d 1324, 1332 (10th Cir. 1996) (subsequent review precluded where litigant complains of errors he has himself induced or invited).

Duarte v. Hurley, Case No. 98-N-0377, ADX Florence

In this action, the Magistrate Judge recommended that the petition be dismissed. Plaintiff had not met his requirement to prove that but for his testimony in the civil case against the BOP that he would not have received incident reports.

PENDING CASES OF INTEREST

Teich v. U.S.A., et al., Case No. CV-S-98-01213-HDM, MCFP Springfield

Plaintiff's filed a Bivens/FTCA action wherein they allege wrongful death of a quadriplegic inmate who died at the medical center. An answer was filed by the AUSA in the District of Nevada. This will be a difficult case and settlement is being explored.

Clark v. Keohane, et al., Case No. 98-3485-CV-S-RGC-H, MCFP Springfield

Petitioner requests an immediate release from custody so that he can obtain an autologous bone marrow transplant, which the respondents have denied.

Moore v. Keohane, et al., Case No. 98-3487-CV-S-RGC-H, MCFP Springfield

Petitioner requested an immediate kidney transplant or grant him a compassionate release so that he can arrange for a kidney transplant.

Reedus, et al. v. Keohane, et al., Case No. 98-3500-CV-S-RGC-H, MCFP Springfield

Petitioners (members of the Moorish Science Temple of America) alleged that they were denied to partake in the general celebration of Ramadan with other Islamic groups.

Bungard v. U.S.A., et al., Case No. 98-3463-CV-S-RGC-H, MCFP Springfield

Plaintiff alleged that the Medical Center is contaminated with asbestos, lead-based paint surfaces, lead solder in portable water lines, and radon emissions. He also complained that the

Medical Center presents a risk of contaminated waste water, the risk of an outbreak of Legionnaire's disease, a dangerous electrical system, and an inadequate lighting system. Plaintiff further requested release from incarceration and monetary damages against various defendants.

Scott v. Helman, Case No. 98-1399, FCI Pekin

Habeas petition challenging DHO decision finding inmate guilty of minor assault of a staff member. Inmate alleges that the staff member assaulted him. An investigation into the staff members actions was conducted. The inmate requests that the report be expunged or that the be permitted a rehearing with the investigation as evidence of staff wrongdoing.

Parmelee v. True, et al., Case No. 93-C-7362, MCC Chicago

Former inmate alleges that U.S. Marshals and BOP employees used excessive force when the inmate refused to appear in court. Case problematic because a defendant was disciplined by MCC for using excessive force during the incident.

Hall v. USA, et al., Case No. 98-2405 RCL, USP Florence

Inmate sues a variety of BOP staff at various institutions (including USP Florence) for perceived violations of his constitutional rights over the years. He seeks \$29,625,000.00 from the defendants in their official and individual capacities.

Rollins v. Barron, et al., Case No. 98-M02304, USP Florence

Inmate sues former case manager and four correctional officers for various declaratory, injunctive and monetary relief. He alleges the case manager did not properly classify him, resulting in the officers placing a cellmate with him who assaulted him because he was an informant. Plaintiff alleges he tried to advise staff of the problem and the threats to him from the specific cellmate, but that he was left in the cell to be assaulted.

Merritt v. Hurley, Case No. 97-Z-2118, ADX Florence

Petitioner was appointed counsel who seeks to file additional pleadings. Attorney filed motion to have petitioner moved to FCI Englewood pending outcome of this petition. A declaration from the Captain was sent to AUSA setting out security reasons counseling against ordering inmate moved in this habeas matter.

Hall v. USA, et al., Case No. 98-2405-RCL, USP Leavenworth

In this Bivens-styled action plaintiff raises numerous allegations against various defendants beginning from the time of his arrest through various incidents at three separate institutions. First, plaintiff alleges he was assaulted by three correctional officers at USP Leavenworth while he was confined in D-Cellhouse. He also alleges he received inadequate medical treatment at USP Leavenworth as a result of the alleged assault. In addition to naming Director Hawk

Sawyer and Mr. Hershberger as defendants. plaintiff has named in excess of 30 defendants from USP Leavenworth. approximately 20 defendants from USP Florence. and several defendants from FTC Oklahoma and USP Atlanta.

Alan Strong v. United States, Case No. 98-3297-GTV, USP Leavenworth

In this civil action, plaintiff alleges his luxury Cartier eyeglasses valued at \$950.00 were lost by Health Services staff at USP Leavenworth when he turned them over to staff for repairs. As relief, he seeks the replacement value of his glasses and the money he paid for the repair of his glasses.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Kikumura v. Hurley, et al., Case No. 98-B-1442, ADX Florence

Inmate challenges the denial of pastoral visits. As the inmate expressly raises a RFRA issue in his complaint, NCRO was contacted in order to recommend outside representation on the case. Representation materials were sent via Fed Ex to the Department of Justice. The AUSA has drafted a motion for extension of time given that outside counsel is being considered in this case.

HEARINGS AND TRIALS

None.

UPCOMING HEARINGS OR TRIALS

U.S. v. Zepeda, Case No. 98-10073, FCI Pekin

Final pretrial hearing was held on November 6, 1998. Defendant pled guilty to Count 1 and waived right of appeal. Sentencing set for February 26, 1999.

Tuite v. True, et al., Case No. 93-CV-3248, MCC Chicago

Attorney alleges that conversations with his client were recorded by MCC Chicago in 1992. Court set status hearing for April 13, 1999.

Martinez v. Counts, et al., Case No. 90-3224-CV-S-4, MCFP Springfield

The trial for the constitutional tort case will begin on January 19, 1999. This lawsuit is an old one that went up on appeal. 977 F.2d 421(8th Cir. 1992) and resulted in a reversal of the judge's order dismissing the complaint. After the case was remanded, we again attempted to dismiss the case but our efforts were unsuccessful. We continue to believe the three remaining in the case

will prevail.

U.S. v. Francis and Haney, USP Florence

Inmates charged with attempted escape from USP and possession of contraband (escape paraphernalia). The in camera hearing to rule on the security issue of request for plans and blueprints has been moved to January of 1999.

USA v. Simmonds, ADX Florence

Arraigned on two counts of assault on staff at ADX. Matter initially charged as misdemeanors but due to history of assaultive behavior, inmate indicted on felony counts. Trial postponed indefinitely due to AUSA illness. Defendant filed motion to dismiss the indictment due to prosecutorial vindictiveness. Claimed the matter was charged as a felony instead of remaining a misdemeanor because defendant filed civil litigation against BOP staff. Hearing was held December 10, 1998. Court declined to dismiss indictment and set the matter for trial in 1999.

Bernal v. Black, FCI Pekin

The court has delayed the trial in Bernal. Trial set to begin on February 3, 1999.

CRIMINAL MATTERS

U.S. v. Missra Araiza-Reyes, FCC Florence

Inmate pleaded guilty to Voluntary Manslaughter on August 28, 1998. Sentenced December 16, 1998. Inmate received 105 months incarceration, consecutive to current terms, 4 years supervised release.

U.S. v. Francis and Haney, USP Florence

See above (Hearings and Trials).

U.S. v. Riddle and Black, USP Florence

Plea negotiations ongoing regarding the charge of an inmate murder at USP. Discovery and protective order issues continue with respect to inmate Riddle. Inmate Black pleaded guilty to aggravated assault. Sentencing in set for March of 1999. Riddle filed motion for relief from protective order. Hearing held by Judge Sparr on December 16, 1998. At that time, Judge wanted testimony from BOP on what documents had been provided for Riddle to review in accordance with the court orders. BOP testified that all documents had been provided on several occasions for Riddle's review. The Judge held that the BOP had complied with the order and that no relief was necessary.

U.S. v. Simmonds, ADX Florence

See above (Hearings and Trials).

U.S. v. Zepeda, Case No. 98-10073, FCI Pekin
See above (Hearings and Trials).

PERSONNEL ISSUES

Dave Recker. Attorney - Advisor at FCC Florence. announced his resignation from the BOP to accept an attorney position with the Commerce Department. Dave will be missed by his friends and co-workers in the BOP. Dave's departure will be at the end of this month.

STAFF TRAVEL AND LEAVE

b6

[REDACTED]	None scheduled	
[REDACTED]	January 18 - 22	Legal Services Review. SERO
[REDACTED]	January 7 - 8	Annual Leave
[REDACTED]	None scheduled	
[REDACTED]	January 15	Recruitment Ft. Riley, Kansas
[REDACTED]	None scheduled	
[REDACTED]	January 25 - 29	TDY FCI Greenville
[REDACTED]	None scheduled	
[REDACTED]	None scheduled	
[REDACTED]	None scheduled	

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Tort dBASE Files sent via e-mail to Monica Potter, OGC, on 1/4/99.