



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

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January 21, 1999

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: **Quarterly Report (1st QTR FY 1999)**
(October 1, 1998 - December 31, 1998)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
NCR	127	65	17	32	19	48	483	69	16	5	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
SET - Number of settlements
AWD - Number of Awards

ADMINISTRATIVE CLAIMS:

1st QTR (Oct - Dec)	2nd QTR (Jan-Mar)	3rd QTR (Apr - Jun)	4th QTR (Jul - Sep)
228			

Pending 269

ADMINISTRATIVE REMEDIES

1st QTR (Oct - Dec)	2nd QTR (Jan-Mar)	3rd QTR (Apr - Jun)	4th QTR (Jul - Sep)
668			

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOI/PA Received	FOI/PA Processed
1st QTR	202	207
2nd QTR		
3rd QTR		
4th QTR		

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. The Court is evaluating the United States' Motion for reconsideration.

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. The case is being appealed to the 8th Circuit.

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. This case was settled for \$20,000 on December 30, 1998. It will be included in the monthly report for January 1999.

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

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

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. A settlement offer was accepted by the defendants which allowed plaintiff's husband to serve remaining sentence (7 months) in a halfway house.

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).

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.

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.

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 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.

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.

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

Plaintiff is one of the World Trade Center bombers who is confined at ADX Florence. He is under 28 CFR Section 501.3 restrictions. The plaintiff, through his counsel of record in the criminal case, challenges as unconstitutional his various special restrictions, including the English only rules.

Patricia Good Voice Flute v. Pine Medical Center, et al., #98-1735, NCRO/FPC Duluth/FCI Sandstone

Dr. Homeister, from FPC Duluth is a defendant as well as the Pine Medical Center, St. Mary's Duluth Clinic Health System and the Sandstone Medical Group. Plaintiff contends that BOP doctors and contract medical facility were responsible for the wrongful death of her inmate husband who suffered from a fatal heart attack while at FCI Sandstone. NCRO Legal staff have primary responsibility for this case.

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 prerequisites to certify the class; numerosity.

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 while in state custody. Boyce will settle the case if moved to FCI Sheridan.

Rahman v. Keohane, et al., W.D. MO. Civil No. 97-3279-CV-S-RGC

We continue to closely monitor and provide assistance to DOJ attorneys handling this case involving inmate Omar Rahman, a radical cleric for the Sunni Sect of the Islamic religion. Inmate Rahman is serving a life sentence for crimes associated with the bombing of the World Trade Center in New York City. This lawsuit alleges some 41 violations of plaintiff's constitutional rights, as well as violations of the RFRA of 1993. Rahman is represented by former Attorney General Ramsey Clark.

The case remains in limbo as the court in the Western District of Missouri (where the case was filed when Rahman was confined at MCFP Springfield) decides how to handle dispositive pleadings and a suggestion to move the case to Minnesota. We have opposed the Magistrate's suggestion to Judge Clark that the case should be moved.

Greenville Disturbance Cases

In the aftermath of the October, 1995 disturbance at FCI Greenville, some thirteen law suits have been initiated alleging a panoply of civil rights violations. Because staff action was the subject of a civil rights investigation and OIA inquiry, representation requests were scrupulously processed. Due to misconduct of some employees during the disturbance aftermath, and conflicts between employees, several staff were granted outside counsel and several others were denied representation. The Union has been paying for representation by private counsel for some employees. The representation issue has been a contentious subject for Greenville staff. Processing and supervising these cases has been a major drain on regional office staff. Several of these cases are moving toward a probable trial. We have settled one, and hope to settle several more.

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.

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.

UPCOMING HEARINGS OR TRIALS

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 this constitutional tort case was set to commence on January 19, 1999. However, the case has been postponed on motion by the plaintiff. 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 defendants 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. The Court declined to dismiss indictment and set the matter for trial in 1999.

CRIMINAL MATTERS

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 is 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. 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.