

02-06-1995

UNITED STATES GOVERNMENT MEMORANDUM

TO: WALLACE H. CHENEY, GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS
WASHINGTON, D.C. 20534

FROM: DAVE ESSIG, REGIONAL COUNSEL, NORTHEAST REGION
FEDERAL BUREAU OF PRISONS, PHILADELPHIA, PA. 19106

SUBJECT: LEGAL ACTIVITIES REPORT, NORTHEAST REGION

ADMINISTRATIVE LEGAL ACTIVITIES--SUMMARY REPORT

1995 JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
ADMINISTRATIVE REMEDIES

PENDING ON FIRST 49
RECEIVED IN MONTH 154
ANSWERED IN MONTH 88
PENDING END OF MO 115
OVER 30 DAYS 0

TORT CLAIMS (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

PENDING ON FIRST 292
RECEIVED IN MONTH 65
RECONSID. REC'D 7
ANSWERED IN MONTH 74
PENDING END OF MO 290
OVER 6 MONTHS 0

FOI/PRIVACY (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

PENDING ON FIRST 130
RECEIVED IN MONTH 29
ANSWERED IN MONTH 72
PENDING END OF MO 87
OVER 30 DAYS 65

TORT CLAIM INVESTIGATION STATUS: AS OF 1/31/1995

ALW DAN FAI LEW LOR MCK NYM OTV RBK SCH ALF FTD ALP BRN ALM

PENDING 3 8 5 15 4 16 0 9 5 11 3 9 6 0 0
OVER 60 DAYS 0 0 0 0 1 1 0 0 0 2 0 0 0 0 0

LITIGATION ACTIVITY, 1995, NORTHEAST REGION

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
CASES OPEN 427
NEW CASES RECD 29
LIT REP DONE 11
CASES CLOSED 34
HABEAS CORPUS 8
FTCA 6
BIVENS 14
OTHER 0
BIVENS & FTCA 1

SETTLEMENTS AND AWARDS:

1. WHITAKER V. UNITED STATES, 91-7394 (S.D.N.Y.)

INMATE FRANKLIN WHITTAKER, 16416-054, BROUGHT THIS FTCA ACTION ALLEGING PROPERTY WAS LOST WHEN HE WAS TRANSFERRED IN JUNE 1990 FROM MCC NY TO USP LEAVENWORTH. THE INMATE REQUESTED DAMAGES OF \$650. A DISPUTE OF FACT AROSE CONCERNING WHETHER CERTAIN PROPERTY WAS SENT TO A THIRD PARTY. THE CASE WAS SETTLED FOR \$175. TO AVOID COSTS OF TRIAL.

SIGNIFICANT CASES:

1. BERMAN V. LAMER, 95-0054 (E.D.PA.)

BIVENS TYPE COMPLAINT FILED BY ATTORNEY FOR JEFFREY BERMAN, 42588-066, ALLEGING STAFF AT USP LEWISBURG AND FCI FORT WORTH HAVE BEEN DELIBERATELY INDIFFERENT TO HIS MEDICAL NEEDS. BERMAN HAD MUCH OF HIS LOWER DIGESTIVE TRACT SURGICALLY REMOVED OVER 20 YEARS AGO AND ELIMINATES WASTE THROUGH AN ILEOSTOMY. HE ALLEGES THAT HIS HEALTH WAS COMPROMISED THROUGH IMPROPER CARE FOR HIS ILEOSTOMY. BERMAN IS PRESENTLY AT FCI FORT WORTH. HIS ATTORNEY MOVED THE COURT TO RESTRAIN A TRANSFER TO FMC ROCHESTER AND TO ORDER FORT WORTH TO ALLOW HIM TO BE EXAMINED BY A PRIVATE SPECIALIST.

JUDGE KATZ HELD AN EMERGENCY HEARING ON FRIDAY, JANUARY 27, 1995. HANK SADOWSKI ASSISTED THE AUSA AT THE HEARING. THE JUDGE DENIED THE MOTIONS FOR A RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION. THE JUDGE SAID THAT BOTH QUESTIONS NEEDED TO BE DECIDED BY THE BUREAU FIRST.

2. MERUELO V. LAMER, CIVIL NO. 94-1822 (MDPA)

THIS HABEAS CASE WAS DISCUSSED IN LAST MONTH'S REPORT. A HEARING WAS HELD BEFORE MAGISTRATE JUDGE SMYSER ON JANUARY 6, 1995.

INMATE HOMERO MERUELO, 27893-048, THROUGH HIS ATTORNEY, FILED A HABEAS CORPUS ACTION CHALLENGING ACTIONS AGAINST HIM AT THE INTENSIVE CONFINEMENT CENTER, LEWISBURG. THE INMATE HAD REPORTED FOR HIS CLASS ONE DAY AFTER A & O WAS COMPLETED AND WAS PLACED IN THE NEXT CLASS, TWO MONTHS LATER. AFTER STARTING HIS CLASS, HE HAD BEEN FOUND GUILTY BY THE UDC OF LYING TO STAFF. THE UDC ORDERED HIM MOVED TO THE NEXT CLASS AT THE ICC. THE HABEAS ACTION CHALLENGED EACH OF THESE DECISIONS.

ON DECEMBER 20, 1994, THE INMATE RECEIVED ANOTHER INCIDENT REPORT FOR LYING TO STAFF AND MISUSE OF THE TELEPHONE. THE UDC FOUND HIM GUILTY AND THE ICC ADMINISTRATOR REMOVED HIM FROM THE ICC PROGRAM. THE ATTORNEY AMENDED HIS PETITION, CHALLENGING THE UDC ACTION AND ALLEGING THE INCIDENT REPORT WAS RETALIATORY.

AFTER THE HEARING, THE MAGISTRATE JUDGE ISSUED A REPORT RECOMMENDING THAT THE PETITION BE DISMISSED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES. USP LEWISBURG ATTORNEY MIKE SULLIVAN ASSISTED THE AUSA AT THE HEARING.

3. CONNELL V. HOLLAND, CIVIL NO. 94-1170 (MDPA)

THIS HABEAS CASE WAS DISCUSSED IN LAST MONTH'S REPORT. INMATE TIMOTHY CONNELL, 02819-050, BROUGHT THIS HABEAS ACTION REQUESTING ADDITIONAL EXTRA GOOD TIME UNDER REPEALED 18 USC 4162 FOR WORK PERFORMED WHILE SERVING 10 YEARS OF HIS 25 YEAR FEDEEAL SENTENCE IN STATE CUSTODY. THE REGIONAL INMATE SYSTEMS ADMIN. DECIDED TO AFFORD CONNELL EXTRA GOOD TIME FOR THE

PERIOD FROM NOV. 1989 TO JUNE 1993, WHEN CONNELL WAS RELEASED FROM THE STATE TO COMPLETE HIS FEDERAL SENTENCE IN BUREAU CUSTODY. THE RISA BASED HIS DECISION ON A RECOMMENDATION FROM THE STATE FOR SUCH CREDIT. THE RISA DETERMINED CONNELL THE CREDIT FOR THE PERIOD HE WAS WORKING IN THE POSITION ASSIGNED BY THE STATE WITH ITS RECOMMENDATION. THE RISA DID NOT AFFORD CONNELL EXTRA GOOD TIME PRIOR TO NOV. 1989 SINCE HE HAD NO INFORMATION ON THE INMATE'S PERFORMANCE ON HIS WORK ASSIGNMENTS.

MAGISTRATE JUDGE SMYSER HELD A HEARING ON JANUARY 13, 1995. THE INMATE & THEN RISA BOB STEWARD TESTIFIED AT THE HEARING. THE MAGISTRATE JUDGE FOUND THAT THE BUREAU'S DECISION WAS ARBITRARY. THE MAGISTRATE DETERMINED THAT RISA STEWARD RELIED PRIMARILY ON A RECOMMENDATION FROM STATE PRISON AUTHORITIES TO SUPPORT THE GRANT OF EXTRA GOOD TIME, BUT THAT THERE WAS NO REASON TO ONLY LIMIT THE RECOMMENDATION TO 1989. THE MAGISTRATE JUDGE RECOMMENDED THAT THE COURT ORDER THE BUREAU TO AFFORD CONNELL EXTRA GOOD TIME FOR THE EARLIER PERIOD. EXCEPTIONS TO THE MAGISTRATE JUDGE'S REPORT HAVE BEEN FILED WITH THE DISTRICT COURT.

ALLENWOOD COMPLEX ATTORNEY HOPE MORO AND HANK SADOWSKI ASSISTED THE AUSA AT THE HEARING.

4. PITRONE V. UNITED STATES, 1:94-CV-0989 (N.D.OH.)

THIS FTCA CASE HAS BEEN SCHEDULED FOR MARCH 6, 1995. THIS COMPLAINT IS A WRONGFUL DEATH ACTION FILED BY THE ESTATE OF DECEASED INMATE JAMES HADDAD, 33741-060. HADDAD DIED ON MAY 19, 1992 AT FPC MCKEAN DUE TO AN APPARENT HEART ATTACK. PLAINTIFF ALLEGES THAT FPC MCKEAN MEDICAL STAFF FAILED TO DIAGNOSE AND TREAT HADDAD FOR CONGESTIVE HEART FAILURE. PLAINTIFF ALSO ALLEGES THAT STAFF FAILED TO RESPOND PROPERLY WHEN HADDAD SUFFERED A HEART ATTACK. DISCOVERY IS ALMOST COMPLETE. THUS FAR, THE EVIDENCE SHOWS THAT MCKEAN MEDICAL STAFF ACTED IN ACCORDANCE WITH BUREAU POLICY AND WITHIN ACCEPTED COMMUNITY MEDICAL STANDARDS.

TRIAL IS SCHEDULED TO BE HELD AT CLEVELAND, OHIO. ASSISTANT REGIONAL COUNSEL JOYCE HORIKAWA IS ASSISTING THE AUSA AT THE TRIAL.

TRAVEL AND LEAVE SCHEDULE

DAVE ESSIG -

TRAVEL--FEBRUARY 1-3 -- REGIONAL DHO & SIS MEETING - ALWD COMPLEX
FEBRUARY 14-15-16-SIS TRAINING, AURORA, COLO

ANNUAL LEAVE--NONE SCHEDULED

HANK SADOWSKI -

TRAVEL--FEBRUARY 1 -- FCI FAIRTON, VIDEO TELECONF. MEETING
FEBRUARY 10 -- LAW SCHOOL JOB FAIR, PHILA., PA

ANNUAL LEAVE--NONE SCHEDULED

JOYCE HORIKAWA -

TRAVEL--FEBRUARY 10 -- LAW SCHOOL JOB FAIR, PHILA. PA
FEBRUARY 22-24 -- FCI MCKEAN - WITNESS PREP. - PITRONE V. US

ANNUAL LEAVE--NONE SCHEDULED

STEVE WAGNER -

TRAVEL - JANUARY 17-FEBRUARY 3 -- GLYNCO

ANNUAL LEAVE - NONE SCHEDULED

HILL -
TRAVEL - NONE SCHEDULED

ANNUAL LEAVE - NONE SCHEDULED

03-06-1995

JOYCE
UNITED STATES GOVERNMENT MEMORANDUM

TO: WALLACE H. CHENEY, GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS
WASHINGTON, D.C. 20534

FROM: DAVE ESSIG, REGIONAL COUNSEL, NORTHEAST REGION
FEDERAL BUREAU OF PRISONS, PHILADELPHIA, PA. 19106

SUBJECT: LEGAL ACTIVITIES REPORT, NORTHEAST REGION

ADMINISTRATIVE LEGAL ACTIVITIES--SUMMARY REPORT

1995 JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
ADMINISTRATIVE REMEDIES

PENDING ON FIRST 49 115
RECEIVED IN MONTH 154 111
ANSWERED IN MONTH 88 132
PENDING END OF MO 115 94
OVER 30 DAYS 0 0

TORT CLAIMS (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

PENDING ON FIRST 292 290
RECEIVED IN MONTH 65 65
RECONSID. REC'D 7 7
ANSWERED IN MONTH 74 86
PENDING END OF MO 290 276
OVER 6 MONTHS 0 0

FOI/PRIVACY (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

PENDING ON FIRST 130 87
RECEIVED IN MONTH 29 20
ANSWERED IN MONTH 72 26
PENDING END OF MO 87 81
OVER 30 DAYS 65 60

TORT CLAIM INVESTIGATION STATUS: AS OF 2/28/1995

ALW DAN FAI LEW LOR MCK NYM OTV RBK SCH ALF FTD ALP BRN ALM

PENDING 1 7 9 9 4 13 6 13 10 9 4 13 12 1 8
OVER 60 DAYS 0 2 0 0 1 3 0 1 0 1 1 1 0 0 1

LITIGATION ACTIVITY, 1995, NORTHEAST REGION

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
CASES OPEN 427 440
NEW CASES RECD 29 26
LIT REP DONE 11 22
CASES CLOSED 34 13
HABEAS CORPUS 8 9
FTCA 6 7
BIVENS 14 9
OTHER 0 1
BIVENS & FTCA 1 0

SETTLEMENTS AND AWARDS:

1. NELSON V. UNITED STATES, 93-2255 (E.D.N.Y.)

INMATE SAMUEL NELSON, 37748-053, BROUGHT THIS FTCA ACTION ALLEGING THAT SOMETHING HE HAD WHEN HE WAS ADMITTED TO MCC NY IN MAY 1992 WAS LOST. HE REQUESTED \$2150 IN DAMAGES. THE EVIDENCE SUPPORTED HIS CLAIM HE HAD THE CLOTHING AT MCC NY. THERE WAS EVIDENCE SOME OF THE PROPERTY WAS SENT TO A THIRD PARTY. CASE SETTLED FOR \$275 TO AVOID COSTS OF TRIAL.

2. PITRONE V. UNITED STATES, 1:94-CV-0989 (N.D.OH.)

THIS FTCA CASE WAS SCHEDULED FOR TRIAL MARCH 8, 1995. THIS COMPLAINT WAS A WRONGFUL DEATH ACTION FILED BY THE ESTATE OF DECEASED INMATE JAMES HADDAD, 33741-060. HADDAD DIED ON MAY 19, 1992 AT FPC MCKEAN DUE TO AN APPARENT HEART ATTACK. PLAINTIFF ALLEGES THAT FPC MCKEAN MEDICAL STAFF FAILED TO DIAGNOSE AND TREAT HADDAD FOR CONGESTIVE HEART FAILURE. PLAINTIFF ALSO ALLEGES THAT STAFF FAILED TO RESPOND PROPERLY WHEN HADDAD SUFFERED A HEART ATTACK. ALTHOUGH THE EVIDENCE SHOWED THAT MCKEAN MEDICAL STAFF ACTED WITHIN ACCEPTED COMMUNITY STANDARDS, THE JUDGE PLACED A GREAT DEAL OF PRESSURE ON THE PARTIES TO SETTLE THE CASE. THE UNITED STATES AGREED TO SETTLE THIS CASE FOR \$20,000, SLIGHTLY MORE THAN NUISANCE VALUE. THE PLAINTIFF HAD REQUESTED DAMAGES IN EXCESS OF \$1 MILLION.

SIGNIFICANT CASES:

1. UNITED STATES V. TOMASINO, CRIM. NO. 92-171 (D.N.J.)

ON OCTOBER 7, 1994, SENTENCING JUDGE BARRY ENTERED AN EX PARTE ORDER DIRECTING FCI ALLENWOOD TO PERMIT INMATE PETER TOMASINO, 39353-053, TO RECEIVE, AT HIS EXPENSE, CERTAIN HERBAL AND VITAMIN TYPE "MEDICATIONS," A NATURAL REMEDY TREATMENT FOR HIS HODGKINS LYMPHOMA. THE AUSA WAS ALERTED TO THE OBJECTIONS OF FCI ALLENWOOD IN NOVEMBER 1994. THE AUSA ADVISED HE WOULD FILE A MOTION TO VACATE AND ADVISED THAT THE FCI DID NOT NEED TO COMPLY AT THIS TIME.

THE AUSA DID NOT FILE A MOTION TO VACATE THE ORDER UNTIL JANUARY 27, 1995. THE JUDGE SET A HEARING FOR FEBRUARY 27, 1995. ALLENWOOD COMPLEX ATTORNEY LORI CUNNINGHAM REPRESENTED THE FCI AT THE HEARING, THE JUDGE RESERVED HER DECISION CONCERNING THE MOTION TO VACATE. THE JUDGE FOCUSED ON THE DELAY IN NOTIFYING HER THAT THERE WAS A PROBLEM WITH THE ORDER, AND ON THE FAILURE OF THE FCI TO COMPLY WITH THE ORDER IN THE INTERIM. SHE DIRECTED THE FCI TO PROVIDE THE "MEDICATIONS" PER HER ORDER WHILE SHE RULED ON THE MOTION. AS A SHOWING OF GOOD FAITH, THE "MEDICATIONS" WERE PROVIDED TO THE INMATE AT HIS COST. WE ARE AWAITING A RULING FROM THE JUDGE.

TRAVEL AND LEAVE SCHEDULE

DAVE ESSIG -

TRAVEL--NONE SCHEDULED

ANNUAL LEAVE--MARCH 2

MARCH 23-24

HANK SADOWSKI -

TRAVEL--MARCH 30-31 PRESENTATION OF BOP LEGAL ISSUES - NAT'L FEDERAL PUBLIC DEFENDERS CONFERENCE, DENVER, CO

ANNUAL LEAVE--MARCH 8, 20

YCE HORIKAWA -

TRAVEL--MARCH 1-2 FCI ALLENWOOD - AFTER ACTION COMMITTEE ON INMATE
DEATH

ANNUAL LEAVE--NONE SCHEDULED

STEVE WAGNER -

TRAVEL - NONE SCHEDULED

ANNUAL LEAVE - MARCH 3

RON HILL -

TRAVEL - NONE SCHEDULED

ANNUAL LEAVE - MARCH 3

04-07-1995

UNITED STATES GOVERNMENT MEMORANDUM

TO: WALLACE H. CHENEY, GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS
WASHINGTON, D.C. 20534

FROM: DAVE ESSIG, REGIONAL COUNSEL, NORTHEAST REGION
FEDERAL BUREAU OF PRISONS, PHILADELPHIA, PA. 19106

SUBJECT: LEGAL ACTIVITIES REPORT, NORTHEAST REGION

ADMINISTRATIVE LEGAL ACTIVITIES--SUMMARY REPORT

1995 JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
ADMINISTRATIVE REMEDIES

# PENDING ON FIRST	49	115	94
# RECEIVED IN MONTH	154	111	149
# ANSWERED IN MONTH	88	132	164
# PENDING END OF MO	115	94	79
# OVER 30 DAYS	0	0	0

TORT CLAIMS (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# PENDING ON FIRST	292	290	276
# RECEIVED IN MONTH	65	65	91
# RECONSID. REC'D	7	7	13
# ANSWERED IN MONTH	74	86	102
# PENDING END OF MO	290	276	278
# OVER 6 MONTHS	0	0	0

FOI/PRIVACY (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# PENDING ON FIRST	130	87	81
# RECEIVED IN MONTH	29	20	38
# ANSWERED IN MONTH	72	26	52
# PENDING END OF MO	87	81	67
# OVER 30 DAYS	65	60	28

TORT CLAIM INVESTIGATION STATUS: AS OF 3/31/1995

ALW DAN FAI LEW LOR MCK NYM OTV RBK SCH ALF FTD ALP BRN ALM

PENDING	2	3	6	8	1	13	6	13	10	3	5	10	10	2	7
OVER 60 DAYS	0	0	0	0	0	4	0	4	1	1	0	0	0	0	0

LITIGATION ACTIVITY, 1995, NORTHEAST REGION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# CASES OPEN	427	440	453									
# NEW CASES RECD	29	26	30									
# LIT REP DONE	11	22	15									
# CASES CLOSED	34	13	17									
# HABEAS CORPUS	8	9	5									
# FTCA	6	7	3									
# BIVENS	14	9	16									
# OTHER	0	1	5									
# BIVENS & FTCA	1	0	1									

APR 10 95

OFFICE OF THE
DIRECTOR OF PRISONS

SETTLEMENTS AND AWARDS:

NE RO

1. WRIGHT V. UNITED STATES, CV-91-2223 (EDNY)

FORMER STAFF MEMBER BROUGHT EEO CASE ALLEGING HE WAS TERMINATED BECAUSE OF RACE. OUR RECORDS SHOW HE WAS TERMINATED FOR CAUSE. HE ALLEGED THAT THE STRESS OF THE WORK CAUSED MEDICAL PROBLEMS WHICH ESSENTIALLY DISABLED HIM. THE CASE WAS SETTLED BECAUSE OPM GRANTED HIM DISABILITY FOR A WORK RELATED INJURY. WE AGREED TO MODIFY OUR EMPLOYMENT RECORDS TO MATCH OPM'S DECISION. NO MONEY DAMAGE WAS AWARDED TO PLAINTIFF. THE AUSA AGREED TO ATTORNEY FEES OF \$1500.

2. KNIGHT V. UNITED STATES, CV-94-1992 (MDPA)

INMATE JACK KNIGHT, 22988-008, BROUGHT A FTCA ACTION ALLEGING STAFF FAILED TO SECURE HIS PROPERTY AT USP LEWISBURG RESULTING IN LOSS OF \$223. CASE SETTLED FOR \$100. WE SETTLED BECAUSE OF A LACK OF DOCUMENTATION TO SUPPORT OUR ACTIONS IN THE CASE.

SIGNIFICANT CASES:

1. BROWN V. WIGIN, CIVIL ACTION NO. 94-2240 (EDPA)

INMATE JACKIE LEE BROWN, 24892-083, BROUGHT THIS BIVENS ACTION AGAINST THE WARDEN AND A PHYSICIAN'S ASSISTANT AT FCI SCHUYLKILL. BROWN WAS ON THREE TYPES OF MEDICATION AS A RESULT OF AN EARLIER MYOCARDIAL INFARCTION. BROWN ALLEGED THAT THE DEFENDANTS WERE DELIBERATELY INDIFFERENT TO HIS MEDICAL NEEDS SINCE THERE WAS ABOUT A FIVE DAY DELAY IN ADMINISTERING HIM HIS MEDICATION. WE MOVED FOR SUMMARY JUDGMENT/DISMISSAL, ASSERTING THAT AT BEST THERE WAS A MINOR DELAY WHICH DID NOT RESULT IN ADDITIONAL MEDICAL COMPLICATIONS. JUDGE SHAPIRO SCHEDULED A HEARING ON THE MOTION FOR APRIL 12, 1995. HANK SADOWSKI WILL ASSIST THE AUSA AT THE HEARING.

Hearing held - Judge taking addl time to look at alleg.

BROWN V. HAWK, CIVIL ACTION NO. 94-3640 (EDPA)

INMATE JACKIE LEE BROWN, 24892-083, ALSO FILED ANOTHER BIVENS ACTION ALLEGING THAT HIS TRANSFER TO FCI SCHUYLKILL WAS DISCRIMINATORY AND CAUSED A HARDSHIP TO HIM SINCE HE WAS TOO FAR AWAY FROM HIS FAMILY. AFTER THIS ACTION WAS FILED, BROWN WAS TRANSFERRED TO FPC SEYMOUR JOHNSON, ONE OF THE INSTITUTIONS HE REQUESTED. WE MOVED FOR DISMISSAL/SUMMARY JUDGMENT. JUDGE SHAPIRO WAS SCHEDULED A HEARING OF THIS MOTION ON APRIL 12, 1995. HANK SADOWSKI WILL ASSIST THE AUSA AT THIS HEARING.

Hearing held - Dismissed

TRAVEL AND LEAVE SCHEDULE

DAVE ESSIG -

TRAVEL--APRIL 4-6 GENERAL COUNSEL'S MEETING - WASHINGTON, DC
APRIL 24 - KORAY ARGUMENT - SUPREME COURT
ANNUAL LEAVE--APRIL 10-14

HANK SADOWSKI -

TRAVEL--APRIL 20 - KORAY MOOT COURT, WASHINGTON, DC
APRIL 24 - KORAY ARGUMENT - SUPREME COURT

ANNUAL LEAVE--APRIL 17-18

JOYCE HORIKAWA -

TRAVEL--APRIL 17-19 FCI BUTNER - AFTER ACTION COMMITTEE ON INMATE

DEATH

ANNUAL LEAVE--APRIL 10-11

STEVE WAGNER -
TRAVEL - NONE SCHEDULED
ANNUAL LEAVE - APRIL 7

RON HILL -
TRAVEL - NONE SCHEDULED
ANNUAL LEAVE - APRIL 28-MAY 5

05-08-1995

UNITED STATES GOVERNMENT MEMORANDUM

TO: WALLACE H. CHENEY, GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS
WASHINGTON, D.C. 20534

FROM: DAVE ESSIG, REGIONAL COUNSEL, NORTHEAST REGION
FEDERAL BUREAU OF PRISONS, PHILADELPHIA, PA. 19106

SUBJECT: LEGAL ACTIVITIES REPORT, NORTHEAST REGION

ADMINISTRATIVE LEGAL ACTIVITIES--SUMMARY REPORT

1995 JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
ADMINISTRATIVE REMEDIES

# PENDING ON FIRST	49	115	94	79
# RECEIVED IN MONTH	154	111	149	136
# ANSWERED IN MONTH	88	132	164	126
# PENDING END OF MO	115	94	79	89
# OVER 30 DAYS	0	0	0	0

TORT CLAIMS (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# PENDING ON FIRST	292	290	276	278
# RECEIVED IN MONTH	65	65	91	75
# RECONSID. REC'D	7	7	13	6
# ANSWERED IN MONTH	74	86	102	40
# PENDING END OF MO	290	276	278	319
# OVER 6 MONTHS	0	0	0	0

FOI/PRIVACY (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# PENDING ON FIRST	130	87	81	67
# RECEIVED IN MONTH	29	20	38	37
# ANSWERED IN MONTH	72	26	52	34
# PENDING END OF MO	87	81	67	70
# OVER 30 DAYS	65	60	28	27

TORT CLAIM INVESTIGATION STATUS: AS OF 4/30/1995

ALW DAN FAI LEW LOR MCK NYM OTV RBK SCH ALF FTD ALP BRN ALM

PENDING	0	8	6	14	2	15	9	12	8	6	3	10	7	2	9
OVER 60 DAYS	0	0	0	0	0	8	0	5	2	0	0	0	0	0	1

LITIGATION ACTIVITY, 1995, NORTHEAST REGION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# CASES OPEN	427	440	453	465								
# NEW CASES RECD	29	26	30	26								
# LIT REP DONE	11	22	15	14								
# CASES CLOSED	34	13	17	14								
# HABEAS CORPUS	8	9	5	8								
# FTCA	6	7	3	3								
# BIVENS	14	9	16	12								
# OTHER	0	1	5	2								
# BIVENS & FTCA	1	0	1	1								

SETTLEMENTS AND AWARDS:

1. TAYLOR V. LAMER, 94-2125 (M.D.PA)

INMATE ROBERT TAYLOR, 05691-067, BROUGHT A FTCA ACTION ALLEGING STAFF AT LEWISBURG LOST HIS PERSONAL PROPERTY WORTH \$1200. WE WERE ABLE TO SUIT FOR ALL THE PROPERTY EXCEPT FOR A GOLD PARTIAL DENTAL PLATE. WE SETTLED THE CASE FOR \$200, THE APPROXIMATE VALUE OF THE PARTIAL.

SIGNIFICANT CASES:

1. BROWN V. WIGIN, CIVIL ACTION NO. 94-2240 (EDPA)

THIS CASE WAS DISCUSSED IN LAST MONTH'S REPORT.

INMATE JACKIE LEE BROWN, 24892-083, BROUGHT THIS BIVENS ACTION AGAINST THE WARDEN AND A PHYSICIAN'S ASSISTANT AT FCI SCHUYLKILL. BROWN WAS ON THREE TYPES OF MEDICATION AS A RESULT OF AN EARLIER MYOCARDIAL INFARCTION. BROWN ALLEGED THAT THE DEFENDANTS WERE DELIBERATELY INDIFFERENT TO HIS MEDICAL NEEDS SINCE THERE WAS ABOUT A FIVE DAY DELAY IN ADMINISTERING HIM HIS MEDICATION. JUDGE SHAPIRO HELD A HEARING ON OUR MOTION FOR SUMMARY JUDGMENT ON APRIL 12, 1995. THE COURT RESERVED HER RULING ON OUR MOTION. HANK SADOWSKI ASSISTED THE AUSA AT THE HEARING.

2. BROWN V. HAWK, CIVIL ACTION NO. 94-3640 (EDPA)

THIS CASE WAS ALSO DISCUSSED IN LAST MONTH'S REPORT. INMATE BROWN HAD ALSO FILED A COMPLAINT ALLEGING HIS TRANSFER TO FCI SCHUYLKILL WAS DISCRIMINATORY. JUDGE SHAPIRO HELD A HEARING ON THIS COMPLAINT ALSO ON APRIL 12, 1995. THE COURT DISMISSED THIS CASE FROM THE BENCH.

3. MALIK V. HERSHBERGER, 93 CIV 4396 (S.D.N.Y.)

INMATE ABDEL-JABBOR MALIK, 80768-054, BROUGHT THIS BIVENS ACTION ALLEGING THE FORMER WARDEN AT FCI OTISVILLE VIOLATED HIS CONSTITUTIONAL RIGHT TO CONFER WITH HIS ATTORNEY TO PREPARE FOR HIS CRIMINAL TRIAL. JUDGE PRESKA GRANTED OUR MOTION FOR SUMMARY JUDGMENT IN PART AND DENIED IT IN PART. DESPITE STAFF DECLARATIONS THAT STAFF HAD VISUAL, BUT NOT AUDITORY SUPERVISION, THE COURT DENIED OUR MOTION ON AN UNSWORN CLAIM BY MALIK THAT OFFICERS IN THE VISITING ROOM WERE LISTENING TO HIS CONVERSATIONS WITH HIS ATTORNEY. OUR MOTION TO RECONSIDER WAS ALSO DENIED. THE CASE IS LISTED FOR TRIAL IN LATE JUNE, 1995.

4. REHAB V. FEDERAL BUREAU OF PRISONS, CV-92-1699 (E.D.N.Y.)

FORMER PROBATIONARY STAFF MEMBER ALLEGED HE WAS TERMINATED AS A PHYSICIAN'S ASSISTANT AT FCI DANBURY BECAUSE OF HIS NATIONAL ORIGIN, RACE, & RELIGION. BECAUSE OF FACTUAL DISPUTES, CASE IS SCHEDULED FOR TRIAL ON JUNE 21, 1995. EVIDENCE POINTS TO VALID REASONS FOR TERMINATION. JOYCE HORIKAWA WILL ASSIST THE AUSA AT THE TRIAL.

RELIGIOUS CASES:

**THERE WERE NO NEW RELIGIOUS CASES RECEIVED IN APRIL.

**THE FOLLOWING IS A SUMMARY OF PENDING RELIGIOUS CASES, NONE OF WHICH, HOWEVER, RAISE RFRA:

1. COOPER V. TIPPY, CIVIL NO. 94-758 (NDNY)--IN THIS BIVENS CASE, A JEWISH INMATE ALLEGED THAT THE COMMON FARE PROGRAM AT FCI RAY BROOK DID NOT COMPLY WITH BUREAU POLICY AND DID NOT MEET HIS RELIGIOUS NEEDS. HIS COMPLAINTS CENTERED ON SPECIFIC FOOD ITEMS AND THE ALLEGED FAILURE TO PROVIDE SEPARATE UTENSILS. INMATE WAS RELEASED IN JULY, 94. MOTION FOR SUMMARY JUDGMENT PENDING SINCE OCTOBER, 1994.

2. BOSTON V. CROOK, CIVIL NO. 94-738 (MDPA) -- ALSO A BIVENS ACTION; MUSLIM INMATE CHALLENGES INCIDENT REPORT FOR GIVING "RELIGIOUS SALUTE." MOTION TO DISMISS FILED 11-09-1994. ON 12-07-1994 MAGISTRATE RECOMMENDS DISMISSAL OF COMPLAINT FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

3. KARRIEM V. RIGGS, CIVIL NO. 93-0224 (DDC) --MUSLIM INMATE AND NON-INMATE MINISTER FILED FOR INJUNCTION TO REQUIRE BOP TO RECOGNIZE A RIGHT TO HAVE A SPECIAL RELIGIOUS FEAST FOR RAMADAM IN DECEMBER, 1993, NOT IN NINTH LUNAR MONTH AS IS RECOGNIZED AT PRESENT. THE CASE WAS ORDERED TRANSFERRED TO MDPA WHERE INMATE HAD BEEN HOUSED. HOWEVER, THE INMATE APPEALED THE TRANSFER ORDER WHICH STAYED THE TRANSFER PENDING APPEAL. NO ACTION IN CASE SINCE JULY 6, 1993.

TRAVEL AND LEAVE SCHEDULE

DAVE ESSIG -

TRAVEL--MAY 23-26 PRISON LIT. SEMINAR, TUCSON, AZ

ANNUAL LEAVE--MAY 19

HANK SADOWSKI -

TRAVEL--MAY 15 - SUP. CT. BAR ADMISSION & MEETING ON NAT'L LEGAL CON
CONFERENCE, OGC

MAY 18 - FCI FAIRTON - VIDEO TELECONFERENCE MEETING

MAY 23-26 PRISON LIT. SEMINAR, TUCSON, AZ

ANNUAL LEAVE--MAY 5 1/2 DAY

JOYCE HORIKAWA -

TRAVEL--MAY 9-10 MCC NY TO INVESTIGATE EEO LITIGATION ALLEGING
SEXUAL HARASSMENT BETWEEN STAFF

MAY 16 - FCI ALLENWOOD-AFTER ACTION COMM. - INMATE DEATH

ANNUAL LEAVE--NONE SCHEDULED

STEVE WAGNER -

TRAVEL - NONE SCHEDULED

ANNUAL LEAVE - MAY 1,2,4,5 (PATERNITY LEAVE)

RON HILL -

TRAVEL - MAY 23-26 PRISON LIT. SEMINAR, TUCSON, AZ

ANNUAL LEAVE - MAY 1-5

JIM VOGEL -

TRAVEL - MAY 7-19 MSTC FOR CONTINUED PARALEGAL TRAINING COURSE

ANNUAL LEAVE - NONE SCHEDULED

06-08-1995

Spjce

 UNITED STATES GOVERNMENT MEMORANDUM

TO: WALLACE H. CHENEY, GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS
WASHINGTON, D.C. 20534

FROM: DAVE ESSIG, REGIONAL COUNSEL, NORTHEAST REGION
FEDERAL BUREAU OF PRISONS, PHILADELPHIA, PA. 19106

SUBJECT: LEGAL ACTIVITIES REPORT, NORTHEAST REGION

!!!THE LOSS OF ANNEMARIE TOBIN, LEGAL CLERK, AND RESIGNATION OF STEVE WAGNER, HONORS ATTORNEY, ALONG WITH SUBSTANTIAL INCREASE IN NEW CASES FILED DURING MAY, HAVE IMPACTED THE NUMBER OF TORT CLAIMS AND FOI/PRIVACY WE WERE ABLE TO PROCESS THIS PAST MONTH. ANNEMARIE'S REPLACEMENT, CARYN BURTON, WILL JOIN US THIS MONTH. THE NEW HONORS ATTORNEY, MARIA CRUSE WILL NOT ARRIVE UNTIL SEPTEMBER.

ADMINISTRATIVE LEGAL ACTIVITIES--SUMMARY REPORT

1995 JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
ADMINISTRATIVE REMEDIES

# PENDING ON FIRST	49	115	94	79	89
# RECEIVED IN MONTH	154	111	149	136	127
# ANSWERED IN MONTH	88	132	164	126	158
# PENDING END OF MO	115	94	79	89	58
# OVER 30 DAYS	0	0	0	0	0

TORT CLAIMS (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# PENDING ON FIRST	292	290	276	278	319
# RECEIVED IN MONTH	65	65	91	75	81
# RECONSID. REC'D	7	7	13	6	7
# ANSWERED IN MONTH	74	86	102	40	52
# PENDING END OF MO	290	276	278	319	355
# OVER 6 MONTHS	0	0	0	0	0

FOI/PRIVACY (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# PENDING ON FIRST	130	87	81	67	70
# RECEIVED IN MONTH	29	20	38	37	49
# ANSWERED IN MONTH	72	26	52	34	5
# PENDING END OF MO	87	81	67	70	117
# OVER 30 DAYS	65	60	28	27	69

TORT CLAIM INVESTIGATION STATUS: AS OF 5/31/1995

ALW DAN FAI LEW LOR MCK NYM OTV RBK SCH ALF FTD ALP BRN ALM

PENDING	0	10	9	23	3	14	7	9	7	14	5	19	11	1	15
OVER 60 DAYS	0	0	0	0	1	0	0	0	0	0	0	2	0	0	1

LITIGATION ACTIVITY, 1995, NORTHEAST REGION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# CASES OPEN	427	440	453	465	488							
# NEW CASES RECD	29	26	30	26	38							
# LIT REP DONE	11	22	15	14	30							
# CASES CLOSED	34	13	17	14	15							
# HABEAS CORPUS	8	9	5	8	5							

LITIGATION REPORT

JUN 08 95

# FTCA	6	7	3	3	5
# BIVENS	14	9	16	12	24
# OTHER	0	1	5	2	4
# BIVENS & FTCA	1	0	1	1	0

SETTLEMENTS AND AWARDS: NONE

SIGNIFICANT CASES:

1. UNITED STATES V. SIMONE, CRIM. NO. 91-569-1 (E.D.PA.)

INMATE ROBERT SIMONE, 33989-066, IS SERVING AN OLD LAW SENTENCE OF 4 YEARS AND A NEW LAW CONCURNET SENTENCE OF 15 MONTHS. THE TWO SENTENCING JUDGES EACH RECOMMENDED THAT HE BE DESIGNATED TO FPC NELLIS TO BE NEAR FAMILY. TO BE CONSIDERED FOR FPC NELLIS, SIMONE WAIVED PAROLE CONSIDERATION (NO PAROLE HEARINGS ARE HELD AT FPC NELLIS). IN A MOTION TO REDUCE THE OLD LAW SENTENCE, ATTORNEYS FOR SIMONE CITED THAT HE WOULD NOT BE CONSIDERED FOR PAROLE. SENTENCING JUDGE GILES HELD A HEARING ON JUNE 6, 1995. HANK SADOWSKI ASSISTED AT THE HEARING. THE COURT DENIED THE MOTION WITH THE UNDERSTANDING THAT SIMONE WOULD BE CONSIDERED ON THE RECORD BY THE PAROLE COMMISSION, ASSUMING HE APPLIES FOR PAROLE AND WAIVES HIS RIGHT TO AN IN PERSON HEARING.

2. UNITED STATES V. DIAZ, CRIM. 94-328 (N.D.N.Y.)

PRETRIAL DETAINEE WALTER DIAZ, 05988-052, FILED A MOTION CHALLENGING THE ADEQUACY OF THE LAW LIBRARY IN THE SHU AT FCI OTISVILLE. DIAZ HAS BEEN IN SHU SINCE NOVEMBER 1994 AND WILL BE IN DISCIPLINARY SEGREGATION UNTIL AT LEAST AUGUST 1995. DIAZ ALLEGES THAT HIS ABILITY TO ASSIST HIS APPOINTED ATTORNEYS IN HIS DEFENSE AT THE CRIMINAL TRIAL IS IMPAIRED. CHIEF JUDGE MCAVOY HAS SCHEDULED A HEARING FOR JUNE 12, 1995 AND REQUESTED SOMEONE FROM FCI OTISVILLE TO EXPLAIN DIAZ'S CONFINEMENT STATUS. PARALEGAL CAROL HAWTHORNE WILL ATTEND THE HEARING.

3. REHAB V. FEDERAL BUREAU OF PRISONS, CV-92-1699 (E.D.N.Y.)

THIS CASE WAS DISCUSSED IN LAST MONTH'S REPORT. FORMER PROBATIONARY STAFF MEMBER ALLEGED HE WAS TERMINATED AS A PHYSICIANS ASSISTANT AT FCI DANBURY BECAUSE OF HIS NATIONAL ORIGIN, RACE, & RELIGION. BECAUSE OF FACTUAL DISPUTES, CASE IS LISTED FOR TRIAL. EVIDENCE POINTS TO VALID REASONS FOR TERMINATION. JOYCE HORIKAWA WILL ASSIST THE AUSA AT THE TRIAL. TRIAL HAS BEEN POSTPONED FROM JUNE 1995 TO SEPTEMBER 11, 1995.

RELIGIOUS CASES:

**THERE WAS ONE NEW RELIGIOUS CASES RECEIVED IN MAY.

1. MUHAMMAD V. REICH, 95-2318 (S.D.N.Y.)

PRETRIAL DETAINEE ABDUL-SHAHID FARRAKHAN MUHAMMAD, 36641-054, FILED THIS BIVENS ACTION ALLEGING THAT THE WARDEN AT MCC NY DID NOT SAFEGUARD THE RELIGIOUS INTERESTS OF THE NATION OF ISLAM. HE ALLEGES A DENIAL OF ACCESS TO MINISTERS OF HIS FAITH AND DENIAL OF ACCESS TO A DECEMBER FAST. RFRA IS NOT CITED IN THE COMPLAINT.

**THE FOLLOWING IS A SUMMARY OF PENDING RELIGIOUS CASES, NONE OF WHICH,

HOWEVER, RAISE RFRA:

1. COOPER V. TIPPY, CIVIL NO. 94-758 (NDNY)--IN THIS BIVENS CASE, A JEWISH INMATE ALLEGED THAT THE COMMON FARE PROGRAM AT FCI RAY BROOK DID NOT COMPLY WITH BUREAU POLICY AND DID NOT MEET HIS RELIGIOUS NEEDS. HIS COMPLAINTS CENTERED ON SPECIFIC FOOD ITEMS AND THE ALLEGED FAILURE TO USE SEPARATE UTENSILS. INMATE WAS RELEASED IN JULY 1994. MOTION FOR SUMMARY JUDGMENT PENDING SINCE OCTOBER 1994. NO NEW INFORMATION.

2. BOSTON V. CROOK, CIVIL NO. 94-738 (MDPA) -- ALSO A BIVENS ACTION; MUSLIM INMATE CHALLENGES INCIDENT REPORT FOR GIVING "RELIGIOUS SALUTE." MOTION TO DISMISS FILED 11-09-1994. ON 05-19-1995, JUDGE VANASKIE DISMISSED COMPLAINT FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

3. KARRIEM V. RIGGS, CIVIL NO. 93-0224 (DDC) --MUSLIM INMATE AND NON-INMATE MINISTER FILED FOR INJUNCTION TO REQUIRE BOP TO RECOGNIZE A RIGHT TO HAVE A SPECIAL RELIGIOUS FEAST FOR RAMADAM IN DECEMBER, 1993, NOT IN NINTH LUNAR MONTH AS IS RECOGNIZED AT PRESENT. THE CASE WAS ORDERED TRANSFERRED TO MDPA WHERE INMATE HAD BEEN HOUSED. HOWEVER, THE INMATE APPEALED THE TRANSFER ORDER WHICH STAYED THE TRANSFER PENDING APPEAL. NO ACTION IN CASE SINCE JULY 6, 1993. NO ACTION SINCE LAST REPORT.

TRAVEL AND LEAVE SCHEDULE

DAVE ESSIG -
TRAVEL--NONE SCHEDULED

ANNUAL LEAVE--JUNE 2

HANK SADOWSKI -
TRAVEL--JUNE 12 - CENTRAL OFFICE - MEETING - SENTENCING TRAINING
FOR ATTORNEYS

ANNUAL LEAVE--NONE SCHEDULED

JOYCE HORIKAWA -
TRAVEL--JUNE 19-26 - STAFF ASSIST - USP LEWISBURG

ANNUAL LEAVE--NONE SCHEDULED

RON HILL -
TRAVEL--NONE SCHEDULED
ANNUAL LEAVE--JUNE 6

JIM VOGEL -
TRAVEL--NONE SCHEDULED
ANNUAL LEAVE--JUNE 30 - JULY 7

07-06-1995

UNITED STATES GOVERNMENT MEMORANDUM

WALLACE H. CHENEY, GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS
WASHINGTON, D.C. 20534

FROM: DAVE ESSIG, REGIONAL COUNSEL, NORTHEAST REGION
FEDERAL BUREAU OF PRISONS, PHILADELPHIA, PA. 19106

SUBJECT: LEGAL ACTIVITIES REPORT, NORTHEAST REGION

ADMINISTRATIVE LEGAL ACTIVITIES--SUMMARY REPORT

1995 JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
ADMINISTRATIVE REMEDIES

# PENDING ON FIRST	49	115	94	79	89	58
# RECEIVED IN MONTH	154	111	149	136	127	138
# ANSWERED IN MONTH	88	132	164	126	158	150
# PENDING END OF MO	115	94	79	89	58	46
# OVER 30 DAYS	0	0	0	0	0	0

TORT CLAIMS (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# PENDING ON FIRST	292	290	276	278	319	355
# RECEIVED IN MONTH	65	65	91	75	81	60
# RECONSID. REC'D	7	7	13	6	7	10
# ANSWERED IN MONTH	74	86	102	40	52	115
# PENDING END OF MO	290	276	278	319	355	310
# OVER 6 MONTHS	0	0	0	0	0	0

PRIVACY (1995) JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# PENDING ON FIRST	130	87	81	67	70	114
# RECEIVED IN MONTH	29	20	38	37	49	30
# ANSWERED IN MONTH	72	26	52	34	5	30
# PENDING END OF MO	87	81	67	70	114	114
# OVER 30 DAYS	65	60	28	27	69	84

TORT CLAIM INVESTIGATION STATUS: AS OF 6/30/1995

ALW DAN FAI LEW LOR MCK NYM OTV RBK SCH ALF FTD ALP BRN ALM

PENDING	0	10	6	18	2	14	4	8	4	9	7	16	11	3	9
OVER 60 DAYS	0	1	1	0	1	3	0	1	1	0	0	7	0	0	0

LITIGATION ACTIVITY, 1995, NORTHEAST REGION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# CASES OPEN	427	440	453	465	488	492						
# NEW CASES RECD	29	26	30	26	38	24						
# LIT REP DONE	11	22	15	14	30	20						
# CASES CLOSED	34	13	17	14	15	20						
# HABEAS CORPUS	8	9	5	8	5	5						
# FTCA	6	7	3	3	5	3						
# BIVENS	14	9	16	12	24	12						
# OTHER	0	1	5	2	4	2						
# BIVENS & FTCA	1	0	1	1	0	0						

ETTLEMENTS AND AWARDS:

ORTIZ V. UNITED STATES, CIVIL NO. 93-513 (D.N.J.)

INMATE MANUEL ORTIZ, 17373-038, BROUGHT THIS FEDERAL TORT CLAIM ACT COMPLAINT ALLEGING THAT HE LOST PERSONAL PROPERTY VALUED AT \$287.83 ON A TRANSFER FROM FCI FAIRTON TO FCI DANBURY. OUR INVESTIGATION DURING THE ADMINISTRATIVE TORT CLAIM VERIFIED THAT SOME PROPERTY HAD BEEN LOST. THE INMATE REJECTED AN ADMINISTRATIVE OFFER TO SETTLE FOR \$100. WE FILED A MOTION FOR SUMMARY JUDGMENT FIXING THE DAMAGES AGAINST THE UNITED STATES TO THE AMOUNT OF \$138.21. THE DISTRICT COURT GRANTED OUR MOTION AND ENTERED JUDGMENT AGAINST THE UNITED STATES IN THE AMOUNT OF \$138.21.

SIGNIFICANT CASES:

~~MALIK V. HERSHBERGER, 93 CIV. 4396 (S.D.N.Y.)~~

INMATE ABDEL-JABBAR MALIK, 80768-054, BROUGHT THIS BIVENS ACTION AGAINST THEN FCI OTISVILLE WARDEN HERSHBERGER ALLEGING CONSTITUTIONAL INFRINGEMENT OF HIS ATTORNEY VISITS DURING HIS CRIMINAL TRIAL. ON MARCH 27, 1995, JUDGE PRESKA GRANTED IN PART AND DENIED IN PART A MOTION FOR SUMMARY JUDGMENT ON THE WARDEN'S BEHALF. THE JUDGE HELD THAT AN ALLEGATION BY THE INMATE THAT CORRECTIONAL OFFICERS WERE POSITIONED TO HEAR HIS ATTORNEY CLIENT MEETING MUST PROCEED TO TRIAL. A MOTION FOR RECONSIDERATION WAS DENIED. ~~THE TRIAL IS SCHEDULED FOR JULY 18-19, 1995.~~ HANK SADOWSKI WILL ASSIST THE AUSA AT THE JURY TRIAL. *postponed*

2. UNITED STATES V. DIAZ, CRIM. 94-328 (N.D.N.Y.)

PRETRIAL DETAINEE WALTER DIAZ, 05988-052, FILED A MOTION CHALLENGING THE ADEQUACY OF THE LAW LIBRARY IN THE SHU AT FCI OTISVILLE. DIAZ HAS BEEN IN SHU SINCE NOVEMBER 1994 AND WILL BE IN DISCIPLINARY SEGREGATION AT LEAST AUGUST 1995. DIAZ ALLEGES THAT HIS ABILITY TO ASSIST HIS APPOINTED ATTORNEYS IN HIS DEFENSE AT THE CRIMINAL TRIAL IS IMPAIRED. CHIEF JUDGE MCAVOY HELD A HEARING ON JUNE 12, 1995 AT WHICH OTV PARALEGAL CAROL HAWTHORNE AND OTV SUPT. OF EDUCATION DIANE LOEVEN TESTIFIED AT LENGTH CONCERNING THE CONDITIONS OF SPECIAL HOUSING AND THE ACCESS OF THE INMATE TO THE LAW LIBRARY AND TO HIS ATTORNEY. THE COURT WAS SATISFIED THE FCI OTISVILLE WAS NOT IMPAIRING THE INMATE'S PREPARATION FOR TRIAL.

~~ROSARIO V. HORVATITS, CIVIL NO. 90-80 (W.D.PA)~~

INMATE GREGORIO ROSARIO, 16973-038, BROUGHT THIS BIVENS ACTION AGAINST FORMER FCI MCKEAN CORRECTIONAL OFFICER, DANIEL HORVATITS, ALLEGING THAT HE WAS ASSAULTED AND DRAGGED 75 FEET BY THE DEFENDANT ON JANUARY 23, 1990. THIS CASE WAS INITIALLY DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED. THE DISMISSAL WAS VACATED AND REMANDED TO THE DISTRICT COURT TO DETERMINE THE NECESSITY AND REASONABLENESS OF THE DEFENDANT'S ACTIONS GIVEN THE INMATE'S OBDURANT BEHAVIOR AND WHETHER THE DEFENDANT REASONABLY BELIEVED HIS USE OF FORCE WAS NOT EXCESSIVE. A HEARING HAS BEEN SCHEDULED FOR JULY 10, 1992. JOYCE HORIKAWA WILL ASSIST THE AUSA AT THE HEARING.

RELIGIOUS CASES:

*THERE WERE NO NEW RELIGIOUS CASES RECEIVED IN JUNE.

*THE FOLLOWING IS A SUMMARY OF PENDING RELIGIOUS CASES, NONE OF WHICH, HOWEVER, RAISE RFRA:

1. COOPER V. TIPPY, CIVIL NO. 94-758 (NDNY) -- IN THIS BIVENS CASE, A WHITE INMATE ALLEGED THAT THE COMMON FARE PROGRAM AT FCI RAY BROOK DID NOT COMPLY WITH BUREAU POLICY AND DID NOT MEET HIS RELIGIOUS NEEDS. HIS COMPLAINTS CENTERED ON SPECIFIC FOOD ITEMS AND THE ALLEGED FAILURE TO KEEP SEPARATE UTENSILS. INMATE WAS RELEASED IN JULY 1994. MOTION FOR SUMMARY JUDGMENT PENDING SINCE OCTOBER 1994. NO NEW INFORMATION.

2. KARRIEM V. RIGGS, CIVIL NO. 93-0224 (DDC) -- MUSLIM INMATE AND NON-INMATE MINISTER FILED FOR INJUNCTION TO REQUIRE BOP TO RECOGNIZE A RIGHT TO HAVE A SPECIAL RELIGIOUS FEAST FOR RAMADAN IN DECEMBER, 1993, NOT IN NINTH LUNAR MONTH AS IS RECOGNIZED AT PRESENT. THE CASE WAS ORDERED TRANSFERRED TO MDPA WHERE INMATE HAD BEEN HOUSED. HOWEVER, THE INMATE APPEALED THE TRANSFER ORDER WHICH STAYED THE TRANSFER PENDING APPEAL. NO ACTION IN CASE SINCE JULY 6, 1993. NO ACTION SINCE LAST REPORT.

3. MUHAMMAD V. REICH, 95-2318 (S.D.N.Y.)

PRETRIAL DETAINEE ABDUL-SHAHID FARRAKHAN MUHAMMAD, 36641-054, FILED THIS BIVENS ACTION ALLEGING THAT THE WARDEN AT MCC NY DID NOT SAFEGUARD THE RELIGIOUS INTERESTS OF THE NATION OF ISLAM. HE ALLEGES A DENIAL OF ACCESS TO MINISTERS OF HIS FAITH AND DENIAL OF ACCESS TO A DECEMBER FAST. RFRA IS NOT CITED IN THE COMPLAINT. NO NEW INFORMATION.

TRAVEL AND LEAVE SCHEDULE

DAVE ESSIG -

TRAVEL--JULY 10-14 STAFF ASSIST - USP LEWISBURG & USP ALLENWOOD

ANNUAL LEAVE--NONE SCHEDULED

HANK SADOWSKI -

TRAVEL--JULY 19-20 MALIK V HERSHBERGER TRIAL - SDNY

ANNUAL LEAVE--JULY 3-7, JULY 17

JOYCE HORIKAWA -

TRAVEL--JULY 9-10 ROSARIO V. HORVATITS EVIDENTIARY HEARING - WDPA

ANNUAL LEAVE--JULY 17-21

RON HILL -

TRAVEL--NONE SCHEDULED

ANNUAL LEAVE--NONE SCHEDULED

JIM VOGEL -

TRAVEL--NONE SCHEDULED

ANNUAL LEAVE--JULY 3