

UNITED STATES GOVERNMENT

memorandum

Date: February 13, 1997

Reply to David R. Essig, Regional Counsel, Northeast Region
Attn of: Federal Bureau of Prisons, Philadelphia, Pa. 19106

Subject: Monthly Report - January 1997

To: Wallace H. Cheney, General Counsel and
Assistant Director, Federal Bureau of Prisons
Washington, D.C. 20534

ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

Administrative Remedies - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	64										
Rec'd in month	117										
Ans'd in month	115										
Pending at End	66										
Over 30 days	0										

Administrative Tort Claims - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	243										
Rec'd in month	53										
Recons. rec'd	6										
Ans'd in month	100										
Pending at End	202										
Over 180 days	0										

Tort Claim Investigation Status: As of January 31, 1997

[illegible]

FOI/Privacy Act Requests - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	34										
Rec'd in month	35										
Ans'd in month	30										
Pending at End	39										
Over 30 days	14										

FOIA Requests for records: As of January 31, 1997

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	1	1	4	4	1	3	0	0	3	0	3	2	0	2	1
Over 30 days	0	1	1	0	0	1	0	0	0	0	0	0	0	0	1

LITIGATION ACTIVITY - 1997 NORTHEAST REGION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Cases Open	574										
New Cases	16										
Lit Reports	8										
Cases Closed	12										
Habeas Corpus	8										
FTCA	5										
Bivens	3										
Other	1										
Bivens/FTCA	0										

SETTLEMENTS AND AWARDS: None

SIGNIFICANT CASES OR TRIALS:

1. Li v. Canarozzi, et al., 95 Civ. 0706 (S.D.N.Y.)

Jury trial commenced on February 3, 1997 in this Bivens complaint brought by former pretrial detainee Jian An Li, 44661-053, who alleges that six officers at MCC NY assaulted

him on an elevator on November 10, 1994. Staff were responding to a disturbance involving a fight among numerous inmates. Judge Sand dismissed the FTCA count and permitted the Bivens case to proceed to trial. Plaintiff sustained serious injuries that day, including a broken arm. Plaintiff alleges that staff caused the injuries. Our version is that the injuries were sustained during the fight among the inmates. Trial is expected to finish February 13, 1997. Dominique Raia and Alma Lopez are assisting the AUSAs.

2. United States v. Price, Crim. No. 96-145-01 (E.D.Pa.)

Pretrial releasee Kenneth Price had a sentencing hearing before Judge Rendell on February 7, 1997. The defendant is arguing that his advanced liver condition is an extraordinary circumstance justifying downward departure from the sentencing guidelines of 21-27 months. Defendant's medical expert testified that defendant has cirrhosis of the liver and has a 50% chance of catastrophic internal bleeding within the next two years. The AUSA retained a medical expert to testify that the medical condition is not as severe as presented by defendant. The AUSA requested the Bureau's assistance to address the ability of the Bureau to care for the defendant. Medical records were reviewed by Health Services Division. Hank Sadowski testified at the hearing concerning the probable designation to a medical facility and the medical services available for federal prisoners. The court found defendant's medical condition to be "an extraordinary physical impairment" under Sentencing Guideline § 5H1.4 and sentence him to probation with 12 months home detention.

3. Palmer v. United States, CV-95-383 (M.D.Pa.)

This Federal Tort Claims Act case was filed by Inmate Lovell Palmer, 23307-083, who alleged that he slipped and fell in January 1994 at USP Lewisburg. His administrative tort claim was for \$1000. In his complaint, he requested damages in excess of \$25,000. Judge Kosik listed the case for trial on January 15, 1997. We filed a motion to limit the inmate to the \$1000. On pressure from the court (and to save expense of trial), we offered settlement to the inmate in the amount of \$1000 which the inmate refused. We moved for partial summary judgment against the United States in the amount of \$1000. The court granted our request for a bifurcated trial limited to the issue of whether the inmate can claim damages above that requested in his administrative claim. This part of the trial was held on January 15, 1997. The court heard testimony from Dr. Keiper (retired) formerly at USP Lewisburg and Dr. Klinkerfuss (now

at FMC Springfield). The Springfield doctor testified via video teleconference. This saved the expense of bring the doctor to the trial. This was the first time this equipment was used in a BOP case in this court. Before ruling on our motion for summary judgment, Judge Kosik requested an exam of the inmate by a non-BOP doctor. Attorney Mike Sullivan assisted at the trial.

4. United States v. Medina, 97- CR- (S.D.N.Y.)

Pretrial detainee Jose Medina, 43311-054, is one of the defendants charged with the attempted extortion of Bill Cosby.

On January 24, 1997, the legal office at MCC NY was advised by the AUSA that, at a bail hearing earlier that day, inmate Medina

alleged that he had not been allowed to see a Rabbi and that he had not eaten since he arrived at MCC on January 18, 1997. The inmate requested an order directing the Warden to provide him Kosher food and to permit him to meet with a Rabbi. A hearing on these issues was scheduled for 2:30 p.m. that day.

The Warden immediately decided to place the inmate on common fare until the Chaplain's return to the institution on Sunday. (The Chaplain later concurred with this decision.) Arrangements were made for the inmate to see the Rabbi. Attorney Alma G. Lopez attended the hearing.

Prior to the hearing, Ms. Lopez explained the MCC's position to the AUSA and defense counsel. MCC records showed that inmate Medina had received all his meals, except for one refusal, since his arrival at the MCC. Defense counsel understood the MCC's position and only requested documentation showing that the common fare meals are kosher so that his client could be appeased.

During the hearing, defense counsel indicated that although his client had received all his meals, he was flushing down the foods that he was prohibited from eating by his religion. Magistrate Judge Peck was not receptive to the inmate's position since the inmate had received all his meals. The Judge was in agreement with the MCC's solution and the Judge only requested that the MCC provide inmate Medina with a copy of the policy statement which indicated that common fare meals are kosher. A copy of the Operations Memorandum was provided to the attorney.

RELIGIOUS CASES: New cases: See Medina Hearing above.

Significant activity in pending cases: None

TRAVEL AND LEAVE SCHEDULE FOR FEBRUARY 1997:

Dave Essig -

Travel - Feb. 5-6 - Office of General Counsel meeting

Feb. 18-21 Glynco - DHO Training for Trainers

Annual Leave - Feb. 7

Hank Sadowski -

Travel - Feb. 3-4 - Boston, Mass - Accompany Regional Director on visit to US Marshal, US Attorney, Chief US Probation Officer, and Federal Judges

Feb. 27 - Albany, NY - Meeting with US Attorney, Warden and Paralegal Specialist, FCI Ray Brook
Annual Leave - None scheduled

Joyce Horikawa -

Travel - Feb. 7 Philadelphia area Law School Job Fair
Annual Leave - None scheduled

Ron Hill -

Travel - None scheduled
Annual Leave - None scheduled

Jay Furtick -

Travel - Feb. 7 - Philadelphia area Law Schools Job Fair

Feb. 10-28 - Glynco
Annual Leave - None scheduled

cc: Regional Director, NER

Deputy Regional Director, NER

All NER CEOs

All Regional Counsel

All NER institution attorneys and paralegals

Attorneys at GLYNCO and MSTC, Aurora

UNITED STATES GOVERNMENT
memorandum

Date: March 10, 1997

Reply to David R. Essig, Regional Counsel, Northeast Region
Attn of: Federal Bureau of Prisons, Philadelphia, Pa. 19106

Subject: Monthly Report - February 1997

To: Wallace H. Cheney, General Counsel and
Assistant Director, Federal Bureau of Prisons
Washington, D.C. 20534

ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

Administrative Remedies - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	64	66									
Rec'd in month	117	100									
Ans'd in month	115	121									
Pending at End	66	45									
Over 30 days	0	0									

Administrative Tort Claims - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	243	202									
Rec'd in month	53	67									
Recons. rec'd	6	7									
Ans'd in month	100	55									
Pending at End	202	221									
Over 180 days	0	0									

Tort Claim Investigation Status: As of February 28, 1997

FOI/Privacy Act Requests - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	34		39								
Rec'd in month	35		34								
Ans'd in month	30		28								
Pending at End	39		45								
Over 30 days	14		17								

FOIA Requests for records: As of February 28, 1997

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	1	1	1	0	0	3	0	1	3	0	1	2	0	3	1
Over 30 days	0	1	0	0	0	1	0	0	0	0	0	0	0	0	1

LITIGATION ACTIVITY - 1997 NORTHEAST REGION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Cases Open	574	576									
New Cases	16	15									
Lit Reports	8	6									
Cases Closed	12	13									
Habeas Corpus	8	4									
FTCA	5	5									
Bivens	3	4									
Other	1	0									
Bivens/FTCA	0	2									

SETTLEMENTS AND AWARDS:

1. Matos v. United States, CV-94-8977 (S.D.N.Y.)

Civilian filed a Federal Tort Claims Act complaint alleging negligence of MCC NY caused her to slip and fall on stairs in the institution. She had sought \$1 million. We recently learned that, about 6 months, ago, the AUSA settled this case for \$6000 without our knowledge. Although we concur at this time in the settlement (there was an injury from the

fall - but there is little evidence of negligence), Dominique Raia and this office contacted the AUSA to ensure that we have prior knowledge of any settlement in future cases.

SIGNIFICANT CASES OR TRIALS:

1. Li v. Canarozzi, et al., 95 Civ. 0706 (S.D.N.Y.)

Jury trial commenced on February 3, 1997 in this Bivens complaint brought by former pretrial detainee Jian An Li, 44661-053, who alleged that six officers at MCC NY assaulted him on an elevator on November 10, 1994. Staff were responding to a disturbance involving a fight among numerous inmates. Plaintiff sustained injuries that day, the most serious was a broken arm. Plaintiff

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alleged that staff caused the injuries. Our version was that the injuries were sustained during the fight among the inmates. Dominique Raia and Alma Lopez assisted the AUSAs.

Trial was completed on February 14, 1997. The jury returned a verdict late that day in favor of all defendants. The jury found that the injuries sustained by the Plaintiff occurred during the disturbance on the unit, not in the elevator.

2. Leonard Falzone v. Federal Bureau of Prisons, et al.,
Civil Action No. 97-574 (E.D.Pa.) (formerly Case No. 96-215 (E.D.Ky.)

Inmate Leonard Falzone, 83361-020, filed a petition for habeas corpus in E.D. Ky. challenging the disallowance of 14 days good conduct time for an infraction committed at Lewisburg Camp. The DHO hearing summary erroneously did not specify the loss of GCT. When it was brought to the attention of the DHO, an amended DHO summary was prepared. The inmate challenges the authority of the DHO to amend the summary. The MARO and Ashland had responsibility for this litigation and a response was duly filed in E.D. Ky. After the inmate was transferred to FCI Schuylkill, apparently the case was transferred to E.D.Pa. On February 26, 1997, a hearing was held before U.S. Magistrate Judge Rueter on the petition. We offered our assistance to MARO who agreed to let us assist the AUSA at the hearing. DHO Zimany testified that his notes and

contemporaneous records showed that he had disallowed the good conduct time for the inmate. The only document which did not reflect the disallowance was the DHO summary. The DHO issued an amended DHO summary and the inmate was afforded the right to appeal. The judge questioned the inmate and focused on the lack of prejudice. The judge reserved ruling. Joyce Horikawa assisted at the hearing.

3. Linn v. Wigen, Civ 96-3147 (E.D.Pa.)

Former inmate Michael Linn, 81843-054, brought a Bivens action against staff at FCI Schuylkill, Regional Counsel, and Central Office Appeals Administrator Ed Crosley alleging primarily that (1) he was denied CCC placement because he was Jewish; and (2) he was denied surgery for a shoulder injury and was given work assignment contrary to his medical problem. He asserts that one similarly situated non-Jewish prisoner was given a CCC placement. He also alleges that the shoulder surgery was recommended by a contract specialist and the defendant denied it anyway. Judge Dalzell denied our motion to dismiss in December 1996. After discovery, the court denied cross-motions for summary judgment on March 3, 1997 and scheduled a non-jury trial for March 13-14, 1997. The court determined that there were issues of facts which require him to assess credibility. CCC placement was denied because Linn had a 10 month sentence and had a residence and a job. The inmate he compared himself with who was granted CCC placement, had a 12 month old law sentence, a residence and a job. There is no evidence (at least so far) that the CCC denial was based on his religion. The surgery was denied originally because Linn had the shoulder problem for 10 years prior to incarceration. Joyce Horikawa will assist the AUSA at the trial.

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4. United States v. Hammer, 4:CR-96-239 (M.D.Pa.)

Inmate David Hammer, 24507-077, has been charged with the April 1996 murder of an inmate at USP Allenwood. The United States Attorney has requested authorization from DOJ to seek the death penalty. The request is scheduled to be reviewed by DOJ on

March 7, 1997. Judge Muir has scheduled a hearing for March 10, 1997 on defense attorneys's motions pertaining to telephone access and special mail. Inmate Hammer is under telephone and correspondence restrictions for disciplinary reasons. Defense attorneys asked the court to order USP Allenwood to permit Hammer to make unmonitored call to defense experts. They also requested the court to order USP Allenwood to permit Hammer to make monitored calls to any defense witness (including another inmate now in a state system). Defense attorneys are also asserting the Clerk of Court mail should be automatically included in Special Mail. Hope Moro will attend the hearing and

probably testify concerning some of these issues.

5. United States v. Coleman, Criminal No. ---- (E.D.N.Y.)

Pretrial detainee Leonard Coleman, 47321-019, requested an emergency hearing before the criminal trial judge to address alleged lack of medical care at MDC Brooklyn. In addition the attorney complained that her client was being held in administrative detention (pending investigation of a threat against the detainee). A hearing was held on March 5, 1997. Azzmeiah Vazquez attended the hearing. On the administrative detention issue, Judge Platt found that he did not have jurisdiction since the detainee did not pursue administrative remedies. On the medical issue, the defense attorney advised the court she was not ready to proceed. The MDC Clinical Director was prepared to testify concerning the medical care afforded the detainee for a lesion on his left shoulder. This became somewhat moot since the AUSA was not opposed to release under strict conditions. The court ordered the AUSA to draft a proposed order of release.

RELIGIOUS CASES: New cases: None

Significant activity in pending religious cases: See Linn case above - No RFRA issue - alleged equal protection violation.

ENSIGN AMENDMENT CASES: None

TRAVEL AND LEAVE SCHEDULE FOR MARCH 1997:

Dave Essig -

Travel - March 3-7 - Aurora - DHO Training

March 11-12 - General Counsel/Regional Counsel
meeting - Annapolis

March 13-14 - Linn trial - Philadelphia

March 17-21 - GLYNCO, Staff Trng Assist

Annual Leave - None scheduled

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Hank Sadowski -

Travel - March 11-13 - General Counsel/Regional Counsel
meeting - Annapolis

March 23-27 - Aurora - Sentence Training for
Attorneys

Annual Leave - None scheduled

Joyce Horikawa -

Travel - March 13-14- Linn trial - Philadelphia

Annual Leave - None scheduled

Ron Hill -

Travel - None scheduled

Annual Leave - None scheduled

Jay Furtick - Has now completed IF and GLYNCO Training
Requirements.

Travel - None scheduled

Annual Leave - None scheduled

cc: Regional Director, NER

Deputy Regional Director, NER

All NER CEOs

All Regional Counsel

All NER institution attorneys and paralegals

Attorneys at GLYNCO and MSTC, Aurora

UNITED STATES GOVERNMENT

memorandum

Date: April 8, 1997

Reply to David R. Essig, Regional Counsel, ~~Northeast Region~~
Attn of: Federal Bureau of Prisons, Philadelphia, Pa. 19106

Subject: ~~Monthly Report - March 1997~~

To: Wallace H. Cheney, General Counsel and
Assistant Director, Federal Bureau of Prisons
Washington, D.C. 20534

ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

Administrative Remedies - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	64	66	45								
Rec'd in month	117	100	156								
Ans'd in month	115	121	114								
Pending at End	66	45	87								
Over 30 days	0	0	0								

Administrative Tort Claims - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	243	202	221								
Rec'd in month	53	67	69								
Recons. rec'd	6	7	9								
Ans'd in month	100	55	84								
Pending at End	202	221	215								
Over 180 days	0	0	0								

Tort Claim Investigation Status: As of March 31, 1997

[illegible]

FOI/Privacy Act Requests - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	34	39	45									
Rec'd in month	35	34	28									
Ans'd in month	30	28	29									
Pending at End	39	45	44									
Over 30 days	14	17	16									

FOIA Requests for records: As of March 31, 1997

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	0	2	6	0	0	4	0	0	3	1	4	2	0	3	3
Over 30 days	0	2	1	0	0	1	0	0	1	0	1	2	0	0	1

LITIGATION ACTIVITY - 1997 NORTHEAST REGION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	574	576	573									
New Cases	16	15	22									
Lit Reports	8	6	8									
Cases Closed	12	13	25									
Habeas Corpus	8	4	9									
FTCA	5	5	2									
Bivens	3	4	7									
Other	1	0	4									
Bivens/FTCA	0	2	0									

SETTLEMENTS AND AWARDS:

1. Rivera-Torres v. United States, CV-95-233 (M.D.Pa.)

Inmate Carlos Rivera-Torres, 33217-054, brought a Federal Tort Claims Act complaint alleging that he slipped and fell on ice at LSCI Allenwood in March 1994. The case was scheduled for trial on March 27, 1997. The inmate sustained a fracture to his right ankle, which required a cast for several months. His recovery was hampered by his diabetes.

No specific records could be located for snow and ice removal for the day in question. Case settled for \$12,500.

2. Allen v. United States, CV-96-615 (M.D.Pa.)

Inmate Royal Allen, 36863-019, filed a Federal Tort Claims Act complaint alleging that his property was lost when he was taken to the Special Housing Unit at LSCI Allenwood. Our investigation revealed probable liability for the loss of the property.

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Attempts to settle with the inmate proved fruitless. We filed a motion for summary judgment against the United States for the amount demanded in the administrative tort claim, which we felt was appropriate for the loss. On January 31, 1997, the court granted our motion and entered summary judgment against the United States for \$174.65 and for costs of \$83.22 (the filing fee paid by the inmate).

SIGNIFICANT CASES OR TRIALS:

1. Leonard Falzone v. Federal Bureau of Prisons, et al.,
Civil Action No. 97-574 (E.D.Pa.) (formerly Case No. 96-215 (E.D.Ky.)

This case was discussed in prior monthly reports. Inmate Leonard Falzone, 83361-020, filed a petition for habeas corpus in E.D. Ky. challenging the disallowance of 14 days good conduct time for an infraction committed at Lewisburg Camp. The DHO hearing summary erroneously did not specify the loss of GCT. An amended DHO summary was later prepared. The inmate challenged the authority of the DHO to amend the summary. The MARO and Ashland had responsibility for this litigation and a response was duly filed in E.D. Ky. After the inmate was transferred to FCI Schuylkill, the case was transferred to E.D.Pa. On February 26, 1997, a hearing was held before U.S. Magistrate Judge Rueter on the petition. We offered our assistance to MARO who agreed to let us assist the AUSA. Joyce Horikawa assisted at the hearing. DHO Zimany testified that his notes and contemporaneous records showed that he had

disallowed the good conduct time for the inmate. The only document which did not reflect the disallowance was the DHO summary. The error was cured when the DHO issued an amended DHO summary and the inmate was afforded the right to appeal. On February 27, 1997, the Magistrate Judge recommended that the petition be denied. On March 17, 1997, Judge Katz adopted the Report and Recommendation, dismissing the petition.

2. Linn v. Wigen, Civ 96-3147 (E.D.Pa.)

Former inmate Michael Linn, 81843-054, brought a Bivens action against staff at FCI Schuylkill, Regional Counsel, and Central Office Appeals Administrator Ed Crosley alleging primarily that (1) he was denied CCC placement because he was Jewish; and (2) he was denied surgery for a shoulder injury and was given work assignment contrary to his medical problem. He asserts that one similarly situated non-Jewish prisoner was given a CCC placement. He also alleges that the shoulder surgery was recommended by a contract specialist and the defendant denied it anyway. A non-jury trial was held before Judge Dalzell on March 13, 1997. Joyce Horikawa assisted the AUSA at the trial. At the close of evidence, the Judge ruled from the bench and entered a judgement for all defendants. The Judge held that the plaintiff failed to present evidence that the CCC decision was based on his religion and had failed to show that medical staff was deliberately indifferent to his medical needs.

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3. United States v. Hammer, 4:CR-96-239 (M.D.Pa.)

Inmate David Hammer, 24507-077, has been charged with the April 1996 murder of an inmate at USP Allenwood. The United States Attorney has requested authorization from DOJ to seek the death penalty. The request is scheduled to be reviewed by DOJ on March 7, 1997. Judge Muir held a hearing on March 10, 1997 on defense attorneys's motions pertaining to telephone access and special mail. Inmate Hammer is under phone and correspondence restrictions for disciplinary reasons. Defense attorneys asked the court to order USP Allenwood to permit Hammer to make unmonitored calls to defense experts. They also requested the court to order USP Allenwood to permit Hammer to make monitored calls to any defense witness (including another inmate now in a state system). Defense attorneys are also asserting the Clerk of Court mail should be automatically included in Special Mail. Hope Moro attended the hearing and testified concerning some of these issues. The AUSA advised that the court denied all of the defense motions with the exception of special mail. The court apparently

held that clerk of court mail should be treated as Special Mail. After we receive a copy of the decision, we will probably move for reconsideration.

5. Curran v. United States, 3:93CV1749 (D.Conn.)

Former inmate Kimberly Curran, 07921-026, filed this Federal Tort Claims Action complaint alleging that a staff member at FCI Danbury had sexually harassed and assaulted her. On March 18, 1997, Judge Thompson granted our motion to dismiss. The court held: (1) any alleged actions by the staff member were outside the scope of his employment; and (2) decisions concerning staff discipline and inmate transfers and furloughs fall within the discretionary function exception to the FTCA.

6. Dobson v. Bureau of Prisons, CV-96-01767 (D.D.C.)

Inmate Sherman Dobson, 00003-099, filed an action under the Freedom of Information Act challenging the denial of memoranda and staff statements which were generated after the disturbance at USP Lewisburg in October 1995. With one exception, Judge Sporkin upheld that denial and excisions in the FOIA processing. The court found that the inmate was also requesting statements of witnesses relating to an inmate discipline hearing. The court found no exemption applied to these statements since they had been provided to the inmate at the DHO hearing. The original FOIA request we processed did not request these statements. We complied with the court order and sent the inmate the additional statements.

7. United States v. Marino, Crim. No. ---- (S.D.N.Y.)

Inmate Daniel Marino, 99111-012, arrived at MCC NY on

February 12, 1997 to face prosecution of criminal charges in S.D.N.Y. He was moved from FCI Ashland pursuant to a writ ad prosequendum. On March 27, 1997, the AUSA contacted the MCC NY and advised that Judge Sterling Johnson scheduled a hearing for March 28, 1997 to address allegations by the defendant concerning medical care at MCC NY. The Judge required the Warden to appear at the hearing. Attorney Alma Lopez accompanied the Warden. The defendant alleged that he had blood in his stool and he had not been examined since he was at MCC. BOP records show that he was examined by the Staff Physician on March 17, 1997 and was scheduled for a colonoscopy. The Judge stated he did not want to get involved in the details of the defendant's medical care. He suggested a meeting to resolve the dispute. A meeting was held following the hearing and defense counsel requested that a private doctor examine the inmate. The defense counsel were requested to send their request with supporting documents in writing. The inmate received his scheduled colonoscopy on April 2, 1997. The Warden will decide whether to grant the request after the results of the tests are received.

→ 8. Colon v. Meniffee, Appeal No. 96-7588 (3d Cir.)

This is an appeal from the grant of a habeas corpus petition by Judge Muir in 4:CV-96-0807 (M.D.Pa. June 28, 1996). Petitioner Jimmy Colon, 19968-038, challenged the Bureau's decision that his conviction for felon in possession of a firearm under 18 U.S.C. § 922(g) was a crime of violence precluding him from early reduction consideration under 18 U.S.C. § 3621(e). Judge Muir held that the Bureau was not entitled to conclude that the possession of a firearm by a felon is a crime of violence for purposes of 18 U.S.C. § 3621(e) eligibility. The Third Circuit advised the AUSA that the case may be scheduled for oral argument on Friday, May 9, 1997.

RELIGIOUS CASES: New cases: None

Significant activity in pending religious cases:

1. Hewlett v. Holland, 3:CV-96-1075 (M.D.Pa.)

On March 5, 1997, Magistrate Judge Smyser recommend that our motion for summary judgement be granted in the above case. Inmate William Hewlett, 37305-133, filed a petition for writ of habeas corpus alleging mostly non-religious issues (not receiving adequate treatment for his multiple personalities). He also alleged that USP Allenwood will not permit him to practice a Native American religious ceremony to exorcize the spirit of a relative. USP Allenwood permits him to conduct his pipe ceremony on Saturdays near the Sweat

Lodge. Hewlett alleged that there is violence between Sioux inmates and Cherokee-Shawnee inmates and, thus, he cannot perform his ceremony then because he would be subjected to violence. The Magistrate Judge found no evidence to support an inference that the institution's limitation of the time and space substantially burdened the inmate's free exercise of his religion.

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See Linn case above - No RFRA issue - alleged equal protection violation.

ENSIGN AMENDMENT CASES: None

TRAVEL AND LEAVE SCHEDULE FOR APRIL 1997:

Dave Essig -

Travel - April 10 - MCC New York - Legal Peer Review
Annual Leave - April 23-25, 30, May 1, 2.
Administrative Leave May 5-9, 1997
Report to GLYNCO Monday, May 12, 1997.

Hank Sadowski -

Travel - April 10 - MCC NY - Legal Peer Review
Annual Leave - April 3-4

Joyce Horikawa -

Travel - None scheduled
Annual Leave - April 4

Ron Hill -

Travel - None scheduled
Annual Leave - April 15

Jay Furtick -

Travel - None scheduled
Annual Leave - None scheduled

cc: Regional Director, NER
Deputy Regional Director, NER

All NER CEOs

All Regional Counsel

All NER institution attorneys and paralegals

Attorneys at GLYNCO and MSTC, Aurora

UNITED STATES GOVERNMENT

memorandum

Date: May 12, 1997

Reply to Henry J. Sadowski, Regional Counsel, Northeast Region
Attn of: Federal Bureau of Prisons, Philadelphia, Pa. 19106

Subject: Monthly Report - April 1997

To: Wallace H. Cheney, General Counsel and
Assistant Director, Federal Bureau of Prisons
Washington, D.C. 20534

ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

Administrative Remedies - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	64	66	45	87							
Rec'd in month	117	100	156	157							
Ans'd in month	115	121	114	141							
Pending at End	66	45	87	103							
Over 30 days	0	0	0	0							

Administrative Tort Claims - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	243	202	221	215							
Rec'd in month	53	67	69	58							
Recons. rec'd	6	7	9	5							
Ans'd in month	100	55	84	46							
Pending at End	202	221	215	232							
Over 180 days	0	0	0	0							

Tort Claim Investigation Status: As of April 30, 1997

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	4	4	2	2	4	7	5	8	20	4	0	8	3	7	3

Over 60 days 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0

FOI/Privacy Act Requests - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	34	39	45	44							
Rec'd in month	35	34	28	34							
Ans'd in month	30	28	29	27							
Pending at End	39	45	44	51							
Over 30 days	14	17	16	17							

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FOIA Requests for records: As of April 30, 1997

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	1	2	2	4	0	3	0	1	2	0	3	3	1	0	3
Over 30 days	1	0	0	0	0	2	0	0	0	0	0	3	0	0	3

LITIGATION ACTIVITY - 1997 NORTHEAST REGION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Cases Open	574	576	573	579							
New Cases	16	15	22	23							
Lit Reports	8	6	8	10							
Cases Closed	12	13	25	17							
Habeas Corpus	8	4	9	8							
FTCA	5	5	2	4							
Bivens	3	4	7	8							
Other	1	0	4	2							
Bivens/FTCA	0	2	0	1							

SETTLEMENTS AND AWARDS:

1. Hammed v. United States, CV-95-10306 (S.D.N.Y.)

In this Federal Tort Claims Act complaint, former inmate Ali Hammed, 03822-070, alleged that FCI Otisville lost his

property on an institution transfer. Inmate requested \$180 in damages. The major issue was the evaluation of the property. Case settled for \$120.

SIGNIFICANT CASES OR TRIALS:

1. Colon v. Meniffee, Appeal No. 96-7588 (3d Cir.)

This is an appeal from the grant of a habeas corpus petition by Judge Muir in 4:CV-96-0807 (M.D.Pa. June 28, 1996). Petitioner Jimmy Colon, 19968-038, challenged the Bureau's decision that his conviction for felon in possession of a firearm under 18 U.S.C. § 922(g) was a crime of violence precluding him from early reduction consideration under 18 U.S.C. § 3621(e). Judge Muir held that the Bureau was not entitled to conclude that the possession of a firearm by a felon is a crime of violence for purposes of 18 U.S.C. § 3621(e) eligibility. Oral argument was held before the Third Circuit on Friday, May 9, 1997. The court focused on the nature of deference the court should accord the interpretation of the Bureau.

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2. Wang v. Department of Justice, Civil No. 97-2462
(E.D.Pa.)

Attorney Helen Wang filed this complaint requesting a temporary restraining order and injunctive relief. On February 27, 1997, Attorney Wang was found in possession of ammunition when trying to see some inmates at USP Lewisburg. The case was referred to the FBI for criminal investigation. Her visits at USP Lewisburg were suspended. Counsel for Attorney Wang argued that her visits to all federal institutions have been suspended because of the investigation. The complaint requested the court to order the Bureau to permit her access to federal institutions. On

April 25, 1997, Judge Brody held a status conference in chambers. Attorney Wang was represented by two attorneys; the Deputy Chief of the Civil Division and Hank Sadowski represented the Bureau. The Judge recognized that the investigation must be given sufficient time and denied the TRO. The court scheduled a pretrial conference for September 3, 1997.

3. **Gibbons v. United States**, CV-95-4654 (S.D.N.Y.)

Inmate Gary Gibbons, 34115-054, filed a FTCA case alleging that he injured his hand as a result of using defective and dangerous weight lifting equipment at MCC NY. The inmate claims that he was using a piece of equipment when it disengaged, striking him. His primary argument seems to be that the MCC NY had a duty to instruct him on proper use of the equipment. Trial occurred on April 8, 1997. Alma Lopez assisted the AUSA. After the trial, the court requested additional briefing. Plaintiff is seeking \$300,000 in damages.

4. **United States v. Marino**, Crim. No. ---- (S.D.N.Y.)

Inmate Daniel Marino, 99111-012, arrived at MCC NY on February 12, 1997 to face prosecution of criminal charges in S.D.N.Y. He was moved from FCI Ashland pursuant to a writ ad prosequendum. On March 27, 1997, the AUSA contacted the MCC NY and advised that Judge Sterling Johnson scheduled a hearing for March 28, 1997 to address allegations by the defendant concerning medical care at MCC NY. The Judge required the Warden to appear at the hearing. Attorney Alma Lopez accompanied the Warden. The defendant alleged that he had blood in his stools and he had not been examined since he was at MCC. BOP records show that he was examined by the Staff Physician on March 17, 1997 and was scheduled for a colonoscopy. The Judge stated he did not want to get involved in the details of the defendant's medical care. He suggested a meeting to resolve the dispute. A meeting was held following the hearing and defense counsel

requested that a private doctor examine the inmate. The defense counsel were requested to send their request with supporting documents in writing. The

inmate received his scheduled colonoscopy on April 2, 1997. The Warden will not decide whether to grant their request until the results of the tests are received.

5. United States v. Papagni, 95-CR-31 (E.D.N.Y.)

In the above case, Judge Frederic Block issued an order to show cause on April 8, 1997 to determine whether the United States Attorney's office must obtain all phone tapes made by a Witsec inmate, who is a scheduled witness in this case. The court entered an order requiring the Bureau to preserve all phone tapes pending a hearing. The court requested representatives of the Bureau of Prisons appear at the hearing, which was held on April 17, 1997. Hank Sadowski and Craig Trout assisted the AUSA. The AUSA submitted a motion to vacate the preservation order supported by an excellent brief (with exhibits) which focused the court on whether BOP phone tapes can be deemed to be in the possession of the prosecution.

The court praised the submission by the AUSA. The court opined that he was inclined to find that the tapes were not in the possession of the prosecution, thus, they were not automatically Jencks/Brady/Giglio material. The court decided to treat the defense attorney request as a subpoena under Rule 17. The court put the burden on the defense to make a proffer why information on calls to specific persons were needed. The court heard from the defense counsel ex parte and found that certain calls to friends of the inmate/witness may have to be produced. Before issuing a final ruling, the court permitted (1) the defense to submit a brief in response to the motion by the AUSA, and (2) the AUSA to submit a brief on the propriety of defense counsel making ex parte submissions to the court. The court held a second hearing on May 1, 1997, and modified his preservation order to require the institution to preserve hits for certain numbers.

We are checking to see how burdensome this order will be.

6. United States v. Felipe, 94 CR 395 (S.D.N.Y.)

On April 16, 1997, Judge Martin held a hearing addressing whether restrictions on confinement he imposed on a sentence for Luis Felipe, 14067-074, were within his authority. The AUSA argued that, under the facts of this case, the court

had the authority to impose restrictions under 18 U.S.C. § 3582(d). Felipe is the leader of the Latin Kings and the evidence before the court

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showed that Felipe had ordered murders while in pretrial detention. Defense counsel stressed the unprecedented nature of the restrictions. On April 29, 1997, the court issued an opinion upholding the restriction under § 3582(d). In dicta the court also opined that it had the inherent authority to order such restrictions.

8. United States v. Rosario, Crim. No. ---- (S.D.N.Y.)

Inmate David Rosario, 39665-054, arrived at MCC NY on January 23, 1997 to face prosecution of federal racketeering charges. Rosario arrived from New York state custody, where he was serving a forty year plus life sentence. He was placed in administrative detention on his arrival. MCC NY deemed him to be a high security risk based on his state sentence. In addition MCC held him in AD pending classification. The inmate had separatees and MCC had heard (without documentary confirmation) that the inmate had an extensive disciplinary record in the state. Judge Keenan (the criminal trial judge) held a hearing on April 7, 1997 to address complaints from defense counsel concerning this placement. Alma Lopez represented the Bureau. Judge Keenan expressed concern that the inmate had been in AD since January 1997 and the MCC still had not receive documentation from the state concerning his disciplinary problems. The court asked the AUSA to submit a report by April 19, 1997 setting forth whether the MCC will continue to house the inmate in AD.

9. United States v. Shapiro, Crim. No. 96-1019 (E.D.N.Y.)

On April 1, 1997, Judge Block held a hearing addressing complaints made by inmate Robert Shapiro (a.k.a. Robert Weldon), 43063-053, that he had insufficient access to a law library.

The inmate is serving a federal sentence and was brought back via writ to face federal charges of attempting escape and forging a Judgment & Commitment order. The inmate wants to proceed pro se and has rejected attempts by the

court to appoint him counsel. Azzmeiah Vazquez represented the Bureau at the hearing. The inmate demanded more access to law library, access to a fax machine, and access to a copy machine. Azzmeiah was able to show that the inmate requested access to the law library only three times in the last three months. She also went over the inmate's commissary account to show he was able to afford copies. The court advised the inmate of the difficulties of appearing pro se. The court stated that it was not going to ask the MDC to change policy solely because the inmate refused appointed counsel.

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10. United States v. Coffey, Crim. 94-282 (D.Nevada)

On April 8, 1997, U.S. District Judge Pro held a hearing via telephone concerning the 18 month federal sentence he imposed on inmate John Alexander Coffey, 30281-048 on July 28, 1995. The issue was whether the federal sentence was to run concurrently with a state term. The inmate had been in the primary custodial jurisdiction of Arizona state authorities. The inmate was taken to federal court via writ and received the 18 month federal sentence prior to the imposition of the state sentence. The Judgement and Commitment Order did not reference the state sentence. The inmate was returned to state custody and was sentenced to a term of about 2½ years. He completed service of this state sentence on or about December 9, 1996. The inmate was designated to FCI Fort Dix.

We computed his federal sentence to be consecutive to the state. This computation was based on the fact that the Federal Judgement and Commitment Order was silent concerning the federal judge's intention. In the hearing, Judge Pro stated for the record that his intention was that his federal sentence was to be served concurrently. Since the court's intention was now clear, the judge was advised that we would recompute his federal sentence to run concurrently with the state.

On the telephone for this hearing, at the Judge's request, were Warden Hurley, FCI Fort Dix, Regional Counsel Harlan Penn, WRO, Deputy Regional Counsel Hank Sadowski, NER, and the inmate.

11. United States v. M.S., Crim. No. ----- (E.D.N.Y.)

Late in the day on April 24, 1997, we learned that the court was presented with a proposed order to direct MDC Brooklyn to accept 17 year old juvenile, M.S. Azzmeiah Vazquez tracked down the AUSA, who advised the court that the Bureau of Prisons needed to be heard before the order was signed. At about 6:00 pm, the court had an emergency hearing at which the AUSA advised the court of the statute requiring segregation of juveniles and the practical problems for housing him at the MDC. The court decided not to sign the order placing the juvenile in MDC.

RELIGIOUS CASES: New cases:

Significant activity in pending religious cases:

1. Davidson v. Chestnut, 96 Civ. 1228 (S.D.N.Y.)

New York State inmate Ronald Davidson, 05899-054, was held at MCC

NY on federal writ from July 3 to July 8, 1995. His original complaint alleged he was denied prescription medicine while at MCC NY. In his amended complaint, Davidson (represented by an attorney) cites RFRA and alleges that he was denied a religious diet during his stay notwithstanding his request for common fare. He alleges that the diet was denied in retaliation for a prior lawsuit he had filed against staff at MCC NY.

ENSIGN AMENDMENT CASES:

1. Lapinsky v. Harding, 4:CV-96-1975 (M.D.Pa.)

Inmate Lawrence J. Lapinsky, 02325-284, has filed a request for a temporary restraining order and an injunction to prohibit implementation of the Ensign Amendment at FCI Allenwood. The inmate is alleging that the Ensign Amendment is in violation of the First Amendment.

2. Amatel, Moore, Levitan v. Reno, CV 96-02774 (D.D.C.)

Three cases were consolidated in District of Columbia challenging the Ensign Amendment and the Bureau's implementation thereof. One of the inmates is from USP Lewisburg. The consolidated case is being handled through Litigation Branch in OGC.

PLRA 1915 DISMISSALS: None.

TRAVEL AND LEAVE SCHEDULE FOR APRIL 1997:

Hank Sadowski -

Travel - None scheduled

Annual Leave - None scheduled

Mike Tafelski -

Travel - May 16 - CLE Training - Philadelphia, PA

May 27-30 USP Lewisburg

Annual Leave - None scheduled

Joyce Horikawa -

Travel - None scheduled

Annual Leave - May 19, 1997

Ron Hill -

Travel - None scheduled

Annual Leave - None scheduled

Jay Furtick -

Travel - May 21-30 - Relocation trip - Seatac

Annual Leave - None scheduled

Rosalind Bingham -

Travel - April 28 - May 9 Paralegal training, Aurora,
CO

Annual Leave - None scheduled

Personnel:

On May 12, 1997, Dave Essig reported as Associate General Counsel, Legal Training and Review. On that same day, Hank Sadowski assumed duties of Regional Counsel; Mike Tafelski reported as Deputy Regional Counsel; and Lori Cunningham reported as Supervisory Attorney at USP Lewisburg. I thank Dave for many years of guidance to the Region (and to me) and we wish him well in his new position. We will strive to keep the same high standards established by Dave during his long tenure as Regional Counsel.

cc: Regional Director, NER
Deputy Regional Director, NER
All NER CEOs
All Regional Counsel
All NER institution attorneys and paralegals
Attorneys at GLYNCO and MSTC, Aurora

memorandum

Date: June 17, 1997

Reply to Henry J. Sadowski, Regional Counsel, Northeast Region
Attn of: Federal Bureau of Prisons, Philadelphia, Pa. 19106

Subject: Monthly Report - May 1997

To: Wallace H. Cheney, General Counsel and
Assistant Director, Federal Bureau of Prisons
Washington, D.C. 20534

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	64	66	45	87	103						
Rec'd in month	117	100	156	157	196						
Ans'd in month	115	121	114	141	141						
Pending at End	66	45	87	103	158						
Over 30 days	0	0	0	0	0						

B. Administrative Tort Claims - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	243	202	221	215	232						
Rec'd in month	53	67	69	58	63						
Recons. rec'd	6	7	9	5	2						
Ans'd in month	100	55	84	46	45						
Pending at End	202	221	215	232	252						
Over 180 days	0	0	0	0	0						

C. Tort Claim Investigation Status: As of May 31, 1997

[illegible]

D. FOI/Privacy Act Requests - 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	34	39	45	44	44						
Rec'd in month	35	34	28	34	41						
Ans'd in month	30	28	29	27	17						
Pending at End	39	45	44	51	68						
Over 30 days	14	17	16	17	27						

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E. FOIA Requests for records: As of May 31, 1997

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	2	1	2	2	0	2	0	2	4	1	2	2	2	0	3
Over 30 days	1	0	0	0	0	1	0	0	0	0	0	0	0	0	2

II. LITIGATION ACTIVITY - 1997 NORTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Cases Open	574	576	573	579	585						
New Cases	16	15	22	23	17						
Habeas Corpus	8	4	9	8	3						
FTCA	5	5	2	4	3						
Bivens	3	4	7	8	6						
Other	1	0	4	2	5						
Bivens/FTCA	0	2	0	1	0						
Lit Reports	8	6	8	10	8						
Cases Closed	12	13	25	17	11						

B. SETTLEMENTS AND AWARDS:

1. Dennie v. Teague, Civ. No. 96-CV-634 (N.D.N.Y.) - Inmate Akali Dennie, 11762-014, filed Bivens case alleging failure to protect him from assault by another inmate while at FCI Ray Brook. Our records show placement of Dennie into SHU cell with inmate who assaulted him the night before. Due to possible exposure, we agreed to convert into FTCA case and

settle for \$5000.00.

2. Allied Imaging Inc. v. FCI Ft. Dix, Civ Action No DC-2793-97 (Superior Court of N.J.)- Plaintiff filed complaint requesting payment of \$2600.00 due and owing for goods and services rendered. After a review of the facts, institution realized payment was due and a check was paid to the Plaintiff. Stipulation of dismissal was filed.

C. SIGNIFICANT CASES OR TRIALS:

1. Ferguson v. U.S. B.O.P., 96 Civ 6163 (KMW) (S.D.N.Y.)

Inmate Sylbourne Ferguson, 06026-067, alleges he was physically assaulted by staff member at FCI Otisville. Case is significant because of DOJ's decision NOT to grant representation to one of four BOP defendants. Although that particular defendant's

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version of facts differed from the other three defendants, we recommended private counsel be approved since, under either version, the use of force still did not rise to level of constitutional violation (bump with chest). Defendant had been disciplined (5 day suspension).

2. Starzecpyzel v. U.S., 97 Civ 1349 (LLM) (S.D.N.Y.)

Attorney Stephen Roen filed this complaint challenging the decision by the Warden at FCI Danbury to restrict the attorney's visiting privileges for 30 days. Trying to graft this complaint to a pending 2255 motion, Roen requested a temporary restraining order and bail for the inmate Eileen Strazecpyzel, Reg. No. 34792-054. The attorney alleged this decision interfered with the ability to represent the inmate in the 2255 motion to vacate her sentence. On May 22, 1997, Judge McKenna held a hearing. Mike Tafelski assisted the AUSA. Judge ruled that his Court did not have jurisdiction over the matter. Attorney then filed an administrative appeal with Regional Director concerning the suspension. Although suspension was upheld, time period was reduced by seven days with the attorney visits limited to the general visiting area for enhance staff supervision. (Attorney was seen by staff massaging the inmate's shoulders, etc.).

Attorney has renewed the same complaint in the District of Connecticut.

3. U.S. v. Barrios, S1 95 CR 524 (LLS) (S.D.N.Y.) - On May 1, 1997, inmate Joe Barrios, 37320-054, appeared before Judge Stanton for sentencing under the influence of heroin and cocaine. Sentencing was canceled and the Judge requested an explanation as to how this could occur and the BOP's drug rehabilitation programs. MCC NY Attorney Dominique Raia attended a hearing (and later through Warden Reish submitted a letter) responding to the Court's concerns. On May 23, 1997, Judge Stanton sent a letter to Warden Reish thanking him for the thoughtful and thorough letter.

4. U.S. v. Salvatore Brunetti, (D.N.J.) - On May 8, 1997, FCI Fairton attorney Bobbi Truman and Chief Psychologist attended sentencing for pretrial detainee Salvatore Brunetti, Reg. No. 07781-062. Brunetti was requesting a downward departure from sentencing guidelines based on mental instability. Psychologist was subpoenaed by defense attorney because of a report he prepared over a year ago questioning Brunetti's stability. Psychologist testified that he feels Brunetti duped him in the past and that Brunetti is stable. Defendant was sentenced to forty years.

5. People of State of New York v. David Watson,

On May 13, 1997, Azzmeiah Vazquez, Attorney Advisor at MDC Brooklyn, along with an AUSA for the EDNY appeared before a state court judge who threatened to hold a MDC Brooklyn staff member in contempt of court for not producing an inmate (David Watson, Reg. No. 26104-053) pursuant to a state writ requested by the Brooklyn District Attorney's office. During the hearing, the court was advised that the MDC did not oppose the production of the inmate but the DA's office did not complete the necessary paperwork (requested by the MDC prior to the hearing) to enable the Warden to authorize the release of the inmate to state agents. The Judge did not hold staff in contempt and admonished the DA's office for not following through with the necessary information.

6. Gibbons v. United States, CV-95-4654 (S.D.N.Y.)

This is an update of the April 8, 1997 trial in Inmate Gary Gibbons, 34115-054. Inmate filed a FTCA case alleging that he injured his hand as a result of using defective and dangerous weight lifting equipment at MCC NY. The inmate claimed that he was using a piece of equipment when it disengaged, striking him. After the trial, the court requested additional briefing on the duty of the United States to instruct the inmates on the operation of the equipment. Plaintiff sought \$300,000 in damages. The court recently ruled in favor of the United States.

D. RELIGIOUS CASES: New cases: None

Significant activity in pending religious cases:

1. Pollard v. Secor, et.al, 95 Civ. 5599 (E.D.P.A.)

Inmate Rodney Pollard, Reg. No. 14640-050, alleged, in Bivens action, that while he was at FCI Schuylkill he was improperly placed in administrative detention as a result of the practice of his religion. Defendants' Motion for Summary Judgement was denied as to placement in SHU and alleged retaliatory transfer. Court recently allowed AUSA to file supplemental brief on administrative detention placement issue. Case scheduled for jury trial before Judge Ludwig on June 23, 1997. Attorney Jay Furtick will assist the AUSA.

E. ENSIGN AMENDMENT CASES:

1. Wolf v. Hahn, et.al. , CV 97-8 Erie (W.D.Pa.)

Inmate Carl Wolf, Reg. No. 40661-066, has filed a Bivens

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complaint in which he challenges the implementation of the Ensign Amendment and "no frills" prison amendments. He did not exhaust his administrative remedies.

F. PLRA 1915 DISMISSALS: None.

III. TRAVEL AND LEAVE SCHEDULE FOR JUNE 1997:

Hank Sadowski -

Travel - June 2-5 -- Sentencing Training, Denver

Annual Leave - June 26 - 27, 1997

Mike Tafelski -

Travel - June 17 - FCI Danbury - tort claim investigation

Annual Leave - June 30 - July 3, 1997

Joyce Horikawa -

Travel - June 2- 5 Sentencing Training, Denver

June 10 - FCI Schuylkill regarding EEO case

Annual Leave - None Scheduled

Ron Hill -

Travel - June 23 - 27 -- USMCFP Springfield - Legal Management Review

Annual Leave - None scheduled

Jay Furtick -

Travel - June 9 - 13 -- FCC Allenwood -- Staff assist

Annual Leave - None scheduled

Rosalind Bingham -

Travel - None scheduled

Annual Leave - June 30 - July 3, 1997

Personnel:

On June 9, 1997, Nellie Torres, Attorney, reported to FCC Allenwood as a new Honors Attorney. Jay Furtick has a reporting date of July 20, 1997 to MDC Seatac. NCRO Honors Attorney Tom Mueller has a July 20, 1997 reporting date to FCC Allenwood.

cc: Regional Director, NER
Deputy Regional Director, NER
All NER CEOs
All Regional Counsel
All NER institution attorneys and paralegals
Attorneys at GLYNCO and MSTC, Aurora