

memorandum

Reply to Henry J. Sadowski, Regional Counsel, Northeast Region (NERO)
Attn of: Federal Bureau of Prisons, Philadelphia, PA 19106

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

A. Administrative Remedies - 1997

B. Administrative Tort Claims - 1997

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

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	68	75
Rec'd in month	35	34	28	34	41	48	22
Ans'd in month	30	28	29	27	17	40	27
Pending at End	39	45	44	51	68	75	70
Over 30 days	14	17	16	17	27	27	48

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

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	0	0	1	2	1	7	1	3	4	1	6	0	1	2	3
Over 30 days	0	0	0	0	0	2	1	0	0	0	1	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	600	618				
New Cases	16	15	22	23	17	23	32				
Habeas Corpus	8	4	9	8	3	11	18				
FTCA	5	5	2	4	3	4	4				
Bivens	3	4	7	8	6	5	7				
Other	1	0	4	2	5	3	1				
Bivens/FTCA	0	2	0	1	0	0	2				
Lit Reports	8	6	8	10	8	9	7				
Cases Closed	12	13	25	17	11	8	14				

B. SETTLEMENTS AND AWARDS:

1. None

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1) Roussos v. Meniffee, No. 97-7011, 1997 WESTLAW 401319 (3d Cir.)

On July 18, 1997, a mere ten days after oral argument, the Third Circuit, following the 9th Circuit decision in Downey, held that the BOP could not use the two point firearm enhancement to find a "crime of violence" for purposes of denying 3621(e) eligibility. As small consolation, the Court of Appeals did agree with our position that the appropriate remedy was to remand the case for the Bureau to reconsider Inmate Victor Roussos, 30950-054, eligibility consistent with the court decision (not to order immediate release).

2) United States v. Perafan-Homen, Crim. No. -----
(S.D.N.Y.)

The attorney for Pastor Perafan-Homen, Reg. No. 53476-053, (the last leader of the Cali Cartel to be incarcerated) filed a motion with the sentencing court to have him released into general

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population. Dominique Raia convinced the judge that a motion before the criminal judge is not the proper jurisdiction basis for such a challenge. After investigation into his continued placement in administrative detention, he was released into general population.

3) M.B. v. Reish, No. 96-2347 (2d Cir. July 30, 1997)

On July 31, 1997, the Court of Appeals affirmed the decision of the district court in favor of the Bivens defendant in this case. WITSEC inmate M.B. appealed the grant of summary judgement to 9 MCC NY staff members in a Bivens action in which he alleges that alleged that adjudication of disciplinary charges violated his constitutional rights. Plaintiff contended that the district court did not notify him of the consequences of defaulting on defendants' summary judgment motion, even though he had submitted a voluminous response. Oral argument was heard on July 18, 1997.

4) McCarthy v. United States, No. 96-7701 (3d Cir).

On July 21, 1997, the Third Circuit heard oral argument in this appeal of a habeas corpus denial. Inmate Arthur McCarthy, Reg. No. 49352-080, filed the petition challenging the recalculation of his federal sentence days before his "parole eligibility" date (after it was determined that the sentence had been improperly computed). This calculation changed the inmate's parole eligibility date from February 9, 1996 to September 20, 1998. Petitioner alleged, inter alia, that the BOP was estopped from performing the recalculation since the Petitioner had relied on it. He also alleged the recalculation was in retaliation for the Plaintiff receiving a settlement in an FTCA action he brought alleging negligent medical care. On October 29, 1996, the District Court denied the petition stating that the sentence computation was a proper exercise of BOP's discretion. Mike Tafelski assisted the AUSA at the argument before the Third Circuit.

5) Michael Lloyd v. Ronald Levine, et. al., No. 96- , (3d

Cir)

On July 21, 1997, the Third Circuit also heard oral argument concerning the dismissal of a Bivens complaint relating to CCC denial. In July 1996, inmate Michael Lloyd, Reg. No. 44935-066, filed, through counsel, a request for preliminary injunction and a Bivens complaint alleging that the decision of the Warden at FCI Ft. Dix to deny him CCC placement was based upon the improper influence and retaliatory motives of the prosecuting AUSA and

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sentencing Judge. On November 4, 1996, the district court granted Defendants' Motion for Summary Judgement stating that "decision to deny plaintiff CCC placement is not judicially reviewable absent a constitutional violation" and no reasonable fact finder would find one in this case. The district court also held it did not have personal jurisdiction over AUSA and FBI agent and that AUSA and Judge have absolute immunity. The Court of Appeals focused on the absolute immunity question.

6) Moore v. Agosto, 93 Civ. 4835 (MGC)

On July 21, 1997, a trial commenced in this Bivens case in which the plaintiff, inmate Christopher Moore, Reg. No. 39228-053, alleged excessive use of force was used when removing him from the roof top recreation area at MCC NY. Plaintiff testified that after he refused to put on his orange jumpsuit, he was grabbed and dragged into the grill area and beat up by two staff members. Plaintiff claimed that a third staff member grabbed his head and slammed it against the wall. Plaintiff claimed that when he regained consciousness he was suspended in the air with both feet off the ground. Plaintiff also alleged he heard staff indicate that they were going to throw him down the stairs. Plaintiff contended he has permanent injury to his shoulder. During the trial, numerous depositions were also permitted by the Court. On July 23, 1997, after two hours deliberations, the jury returned a verdict in favor of each defendant. Dominique Raia and James Vogel assisted.

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

On July 22, 1997, an emergency hearing was called by Judge Batts in regard to the housing locations of inmate Xavier

Carrillo, Reg. No. 37934-054, and Julio Carillo-Sanchez, Reg. No. 37295-054. Judge Batts misunderstood the request of the inmate's attorney --she thought it was a security concern. When the court learned it was just a matter of inmate preference and there were legitimate management concerns of MCC, the court deferred to the MCC. Dominique Raia assisted the AUSA.

8) United States v. Fredrick Butler,
Crim.No.97-CR-846(E.D.N.Y.)

On Wednesday, July 30, 1997, the SIS Lieutenant at MDC Brooklyn testified in the above-referenced case with regard to the telephone recording procedures used at MDC Brooklyn. Paralegal Specialist James Vogel assisted at the hearing.

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D. RELIGIOUS CASES: No new cases and no significant information concerning pending cases.

E. ENSIGN AMENDMENT CASES:

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

As discussed last month, inmate Carl Wolf, Reg. No. 40661-066, has filed a Bivens complaint in which he challenges the implementation of the Ensign Amendment and "no frills" prison amendments. He did not exhaust his administrative remedies. As of July 7, 1997, the case is being handled by the Main Justice.

F. PLRA 1915 DISMISSALS: None.

III. TRAVEL AND LEAVE SCHEDULE FOR AUGUST 1997:

Hank Sadowski -
Travel - None
Annual Leave - August 25 - 29, 1997

Mike Tafelski -
Travel - August 18 - 21, 1997 -- LEW/ALW Tour with
Polish Correctional Officials and with General Counsel
Annual Leave - None Scheduled

Joyce Horikawa -

Travel - None

Annual Leave - August 8 - 18, 1997

Ron Hill -

Travel - None Scheduled

Annual Leave - None scheduled

Rosalind Bingham -

Travel - None scheduled

Annual Leave - August 18 and August 22, 1997

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: September 12, 1997

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

Subject: **Monthly Report - August 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	158	159	116			
Rec'd in month	117	100	156	157	196	160	133	125			
Ans'd in month	115	121	114	141	141	159	176	129			
Pending at End	66	45	87	103	158	159	116	112			
Over 30 days	0	0	0	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	252	226	157			
Rec'd in month	53	67	69	58	63	65	40	50			
Recons. rec'd	6	7	9	5	2	4	3	1			
Ans'd in month	100	55	84	46	45	94	112	39			
Pending at End	202	221	215	232	252	227	157	169			
Over 180 days	0	0	0	0	0	0	0	0			

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

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK
SCH														
Pending	4	3	4	1	1	6	5	12	26	2	5	4	3	0 10
Over 60 days	0	0	0	0	0	1	0	1	*	0	1	0	0	0

* Due to lockdown at LEW no number will be reported.

D. FOI/Privacy Act Requests - 1997

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

Pending on 1st	34	39	45	44	44	68	75	70
Rec'd in month	35	34	28	34	41	48	22	55
Ans'd in month	30	28	29	27	17	40	27	71
Pending at End	39	45	44	51	68	75	70	54
Over 30 days	14	17	16	17	27	27	48	23

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

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	0	0	1	5	0	0	0	1	4	0	4	0	0	2	5
Over 30 days	0	0	0	2	0	0	0	1	*	0	1	0	0	0	0

* Due to lockdown at LEW no data will be reported.

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	600	618	622			
New Cases	16	15	22	23	17	23	32	25			
Habeas Corpus	8	4	9	8	3	11	18	15			
FTCA	5	5	2	4	3	4	4	3			
Bivens	3	4	7	8	6	5	7	6			
Other	1	0	4	2	5	3	1	1			
Bivens/FTCA	0	2	0	1	0	0	2	0			
Lit Reports	8	6	8	10	8	9	7	14			
Cases Closed	12	13	25	17	11	8	14	21			

B. SETTLEMENTS AND AWARDS:

1. Oriahki v. U.S., 3:CV-95-2114 (M.D.Pa) - Inmate Felix Oriahki, Reg. No. 51338-079 signed a stipulation agreement to settle for \$176.50. FTCA case involved allegations of loss of property which was mailed overseas. BOP had no evidence staff actually mailed it. U.S. Magistrate Judge recommended our motion for summary judgement be denied.

2. Administrator of Estate of Harris v. U.S., 96-6549 (E.D.Pa) - FTCA case settled for \$1,500.00. Case involved allegations of medical malpractice (delay in receiving appropriate eye care) filed by former inmate William Harris, Reg. No. 44917-066. Government's expert indicated potential liability. Death of inmate unrelated to issues in case.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. Drino v. Wigen, et. al., Civil No. 96-7308 (E.D.Pa.)- This Bivens case went to trial in Philadelphia on Tuesday, August 12, 1997. It was filed by FCI Schuylkill inmate Gary Drino, Reg. No. 02906-015, as a result of an incident report he received for "Assaulting any Person" (Code 224) after an altercation with his

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cellmate. Plaintiff, who was found to have committed the prohibited act, alleges the finding was racially motivated. The inmate's administrative remedy appeals were denied. The bench trial lasted one day. The Court ruled in favor of the defendants. The AUSA is interested in pursuing PLRA sanctions based on the inmate testifying falsely.

2. United States v. Hammer, M.D.Pa. -- Inmate David Hammer, 34507-077, is charged with the murder of another inmate at USP Allenwood. On August 22, 1997, a hearing was held to determine whether the government would be required to disclose the home addresses of witnesses (non BOP staff) and prospective jurors in the criminal trial. Additional issues involved the use of telephones and mail by the inmate and his attorney. Teresa Cruse assisted the AUSA.

3. United States v. Paraffin-Homen, Crim. No. -----
(S.D.N.Y.)

In early August, the attorney for Pastor Perafan-Homen, Reg. No. 53476-053, (the last leader of the Cali Cartel to be incarcerated) filed a motion with the sentencing court to have him released into general population. Dominique Raia convinced the judge that a motion before the criminal judge is not the proper jurisdiction basis for such a challenge. His attorney then filed a Petition for Writ of Habeas Corpus. Responsive papers were filed, including an affidavit by Warden Hasty. Oral argument was held on August 15, 1997, before the Honorable Sidney H. Stein. Recognizing the discretion accorded to the Bureau of Prisons and the petitioner's failure to demonstrate that the Bureau of Prisons has abused that discretion, Judge Stein denied the Writ.

On that same day, Paraffin-Homen's attorney filed an expedited appeal in the Second Circuit. Respondent's brief is due September 15, 1997. The Petitioner's reply is due

September 24, 1997. On or about September 29, 1997, oral arguments will be heard.

4. Donovan Tulloch, et al. v. U.S., 92-Civ.-4866 (S.D.N.Y). This is an FTCA claim filed in June 1992. Six inmates from brought suit alleging that, on June 27, 1991, the institution's elevator suddenly plunged downward (with them on it) and came to rest in the basement area. As a result of this incident, the inmates alleged to have sustained injuries. Settlement negotiations were attempted but failed after unreasonable demands by the Plaintiffs. Trial is scheduled for September 29, 1997.

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5. U.S. v. Russo, et al., 96-CR-696 (S-2) (D.R.H.) -- On August 12, 1997, the MCC New York Legal Department received a copy of a proposed order requiring MCC New York to continue to house inmate Andrew Russo, Register Number 15043-053, until such time as he can make bail or there is a final disposition of the referenced case. The AUSA did not have any objections to the Order. In a letter dated August 12, 1997, Warden Hasty expressed his objections to an order directing MCC New York to continue to house inmate Russo. A status conference was held on August 13, 1997, but the Magistrate Judge did not rule since the district court had not ordered him to render a decision. The inmate's attorney wrote Judge Hurley asking that he consider the proposed Order. On August 25, 1997, a copy of Warden Hasty's letter to the Magistrate Judge was faxed to Judge Hurley. To date, no ruling has been made.

6. U.S. v. Motto, Crim No. --- (E.D.PA) - On August 22, 1997, a hearing concerning the sentence computation of inmate William Motto, Reg. No. 35088-066 was held in front of Judge Shapiro. Originally, the Court ordered a sentence of 34 days for probation violation. The inmate was released by FCI Fairton since his presentence credit amounted to over 34 days. The court's intention was that the inmate served an additional 34 days from date of sentence. At the hearing of August 22, 1997, the court vacated the earlier sentence and ordered a 74 days sentence to approximate her intended release date for the inmate. Assisting the AUSA was Bobbie Truman, Attorney Advisor at FCI Fairton.

7. United States v. Paul Rivera, Crim.No.---(E.D.N.Y.)

On August 12, 1997, Lieutenant Pitts of MDC Brooklyn

testified at the request of the AUSA concerning the institutional adjustment and disciplinary history of the defendant, inmate Paul Rivera, Reg. No. 46704-053. in the above-referenced case with regard to the telephone recording procedures used at MDC Brooklyn. Azzmeiah Vazquez, Attorney Advisor, MDC Brooklyn, assisted at the hearing.

D. RELIGIOUS CASES: No new cases and no significant information concerning pending cases.

E. ENSIGN AMENDMENT CASES: No new cases and no significant information concerning pending cases.

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F. PLRA 1915 DISMISSALS: None.

III. TRAVEL AND LEAVE SCHEDULE FOR AUGUST 1997:

Hank Sadowski -

Travel - 9/9/97 -- Staff assist visit to MCC NY.
- 9/11/97 -- FCC ALW Sewer meeting in

Harrisburg. Annual Leave - None scheduled

Mike Tafelski -

Travel - None scheduled
Annual Leave - None Scheduled

Joyce Horikawa -

Travel - None scheduled
Annual Leave - None scheduled

Ron Hill -

Travel - None Scheduled
Annual Leave - None scheduled

Rosalind Bingham -

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: October 7, 1997

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

Subject: Monthly Report - September 1997

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

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DEC											
Pending on 1st	64	66	45	87	103	158	159	116	112		
Rec'd in month	117	100	156	157	196	160	133	125	147		
Ans'd in month	115	121	114	141	141	159	176	129	128		
Pending at End	66	45	87	103	158	159	116	112	130		
Over 30 days	0	0	0	0	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	252	226	157	169		
Rec'd in month	53	67	69	58	63	65	40	50	52		
Recons. rec'd	6	7	9	5	2	4	3	1	0		
Ans'd in month	100	55	84	46	45	94	112	39	52		
Pending at End	202	221	215	232	252	227	157	169	169		
Over 180 days	0	0	0	0	0	0	0	0	0		

C. Tort Claim Investigation Status: As of September 30, 1997

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK
SCH														
Pending	4	7	7	1	2	8	6	13	32	2	6	2	1	0 2
Over 60 days	0	0	0	0	0	1	0	2	*	1	2	0	0	0 0

* Due to lockdown at LEW no number will be reported.

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	68	75	70	54		
Rec'd in month	35	34	28	34	41	48	22	55	39		
Ans'd in month	30	28	29	27	17	40	27	71	58		
Pending at End	39	45	44	51	68	75	70	54	35		
Over 30 days	14	17	16	17	27	27	48	23	20		

E. FOIA Requests for records: As of September 30, 1997

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

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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	600	618	622	626		
New Cases	16	15	22	23	17	23	32	25	33		
Habeas Corpus	8	4	9	8	3	11	18	15	20		
FTCA	5	5	2	4	3	4	4	3	1		
Bivens	3	4	7	8	6	5	7	6	7		
Other	1	0	4	2	5	3	1	1	4		
Bivens/FTCA	0	2	0	1	0	0	2	0	1		
Lit Reports	8	6	8	10	8	9	7	14	12		
Cases Closed	12	13	25	17	11	8	14	21	12		

B. SETTLEMENTS AND AWARDS:

1) Tulloch et. al. v. U.S., 92-4866 (SDNY) - FTCA case filed in June 1992 filed by six inmates who allege that while on the elevator at MCC new York en route to the roof area the elevator suddenly plunged to the basement. On the eve of trial, and facing potential liability as a result of overcrowding on the elevator and evidence of injuries, a settlement was reached. The amounts varied by inmate with a total of nearly \$90,000.00.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1) United States v. Coleman, Crim. No. ---- E.D.PA -- On September 8, 1997, an evidentiary hearing was held in this criminal prosecution before Judge Robert Kelly in the United States District Court for the Eastern District of Pennsylvania. Defendant, Arthur Coleman, Reg. No. 01030-158, was charged with escape for failing to return to his community corrections center after a weekend pass. He maintained that technically he did not escape because at the time he failed to return to the CCC he was not in lawful BOP custody, since, he alleged, his prior sentence had expired. Tom Peoples, Regional Community Corrections Inmate Systems Specialist appeared as a witness on behalf of the United States. He testified as to the manner in which the defendant's sentence was computed and that according to his audit the computation was correct. The judge ruled from the bench that the defendant was in lawful BOP custody at the time of his escape. Assistant Regional Counsel Joyce Horikawa assisted the AUSA at the hearing.

2) Wang v. Department of Justice, et. al. ---- E.D.PA. On September 8, 1997, via a conference call, the Judge permitted the Plaintiff's attorney to withdrawal, without prejudice, the pending request for injunctive relief. Plaintiff Helen Wang is the attorney who was stopped at USP Lewisburg in February 1997, with six rounds of ammunition in her briefcase. As a result of that action, and the pending criminal investigation by the U.S. Attorney's office, Ms. Wang was prohibited from entering various federal institutions by the respective Wardens pending completion of the investigation. Her attorney requested injunctive relief (lifting of an alleged nationwide ban during investigation). The matter was held in abeyance by the Court pending the completion of the criminal investigation. The AUSA declined prosecution. The Plaintiff was informed by the BOP to initiate a request to the Warden at each institution as it is within his/her discretion to allow Ms. Wang to visit. Michael Tafelski assisted the AUSA during the call.

3) United States v. Molinari, Criminal No. 95-672 (E.D.PA) - On Friday, September 12, 1997, a sentencing hearing was held in the above-referenced criminal case. At issue, as far as the BOP was concerned, was the Defendant's argument for a downward departure

based upon the argument that the BOP could not house, care for and treat this defendant. Defense counsel argued that Mr. Molinari had an extensive documented history of

agoraphobia and panic attacks and that incarceration would result in immediate death. Dr. Gerard Bryant, Northeast Regional Psychology Services Administrator, testified at length concerning the BOP's ability to manage this inmate. Specifically, Dr. Bryant informed the court of numerous agoraphobics that are currently being managed in the system. The Judge agreed the BOP could properly house the defendant and sentenced the defendant to a 71 month term of imprisonment.

4) Stiver v. Meko, 96-3400 (3d Cir) --- This habeas case was argued before the Third Circuit Court of Appeals, on Tuesday September 23, 1997. Appellee Robert C. Stiver, 04540-068, is an inmate at FCI McKean. He alleged that he was unlawfully denied 3621(e) early release eligibility because of prior convictions for aggravated assault and armed robbery. Through his appointed attorney, he argued that the decision to include prior violent offenses when determining early release eligibility for completion of the Drug Abuse Program violates the Double Jeopardy and Ex Post Facto Clauses of the United States Constitution. Paul Brysh, AUSA, W.D.Pa. represented the Bureau and did an outstanding job. Joyce Horikawa sat at counsel table and provided assistance during the argument. The focus of the argument was whether the Bureau of Prisons use of a prior conviction for robbery and aggravated assault to exclude an inmate from early release eligibility was a reasonable interpretation of 18 USC Section 3621(e). The Court of Appeals took the case under advisement.

5) United States v. Brian Brennan, 97 Cr. 393 (SDNY) - On September 16, 1997, Raymond Voulo, M.D., MCC New York Health Services Department met with AUSA Andrew J. Frisch regarding the criminal case of United States v. Brian Brennan, 97 Cr. 393 (DGT). Further, Physicians Assistant Ruben Ustarus and AUSA Frisch had a telephone conference on September 23, 1997. Mr. Frisch considers both Dr. Voulo and P.A. Ustarus as potential witnesses in the referenced case. Mr. Frisch seeks to have Dr. Voulo and P.A. Ustarus establish at trial that inmate Brennan, 48126-053, was addicted to heroin upon his admission to MCC New York. During inmate Brennan's admission to MCC New York on or about April 2, 1997, he told the Physician's Assistant that he

used heroin six days a week and that he had last used the narcotic two hours prior to his medical screening. Inmate Brennan was referred to detox. Staff Attorney Clinton Stroble attended the meeting. Trial is scheduled for October 20 and 21, 1997.

6) United States v. Kelp, et. al., Criminal No. 97-14 (E.D.PA) - On Wednesday, September 23, 1997, a sentencing hearing was held in the above-referenced criminal case. The case involves the prosecution and conviction of three individuals who were formerly correctional officers at the local county jail. One of the issues was whether the BOP could house these individuals safely. An affidavit was submitted by the Regional Designator and testimony was expected to be provided by the Assistant Correctional Programs Administrator. Joyce Horikawa has been assisting the AUSA. During the hearing, the Judge did not provide the AUSA the opportunity to present the BOP's position.

Under the Supreme Court decision in Koon, the court found that the possible risk to the defendants in prison was justification to support a downward departure from the sentencing guidelines. The court imposed sentences of two defendants (the third was continued) of 51 and 41 months, roughly half of the sentencing guidelines.

7) United States v. Clements, Criminal No. 97- (E.D.PA) On Tuesday, September 30, 1997, a conference call was held with the District Court concerning the available psychological treatment available to the defendant, inmate Donald Patrick Clements, 12847-056. While housed at FCI Schuylkill serving a federal sentence, inmate Clemens assaulted a correctional officer. After he was convicted, and prior to sentencing, the court ordered a mental examination be performed at FCI Butner. The study concluded that the inmate has an Axis 2 personality disorder. Defense counsel, in an effort to get a downward departure for post-conviction rehabilitation, requested an order to have the BOP house the defendant at FCI Butner so he could receive "intensive therapy". During the conference call with Judge Van Antwerpen, Michael Tafelski explained that, according to the BOP's psychologists, the services available at the inmate's designated institution (USP Atlanta) were appropriate and the same as any other facility for treating this individual. The Judge, in denying defense counsel's motion, stated that he was

deferring to the expertise and opinion of the BOP.

D. RELIGIOUS CASES: No new cases and no significant information concerning pending cases.

E. ENSIGN AMENDMENT CASES: No new cases and no significant information concerning pending cases.

F. PLRA 1915 DISMISSALS: Toolasprashad v.Lane, 4:CV-97-0691
MDPa

III. TRAVEL AND LEAVE SCHEDULE FOR AUGUST 1997:

Hank Sadowski - Travel - October 21 - 24 -- OGC Meeting/New
Attorney Training

Annual Leave - None scheduled

Mike Tafelski - Travel - None scheduled

Annual Leave - October 9 - 10

Joyce Horikawa -Travel - None scheduled

Annual Leave - October 27

Les Owen - Travel - October 20 - 24 New Attorney
training

Annual Leave - None Scheduled

Ron Hill - Travel - None Scheduled

Annual Leave - None scheduled

Ros Bingham- 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: November 6, 1997

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

Subject: Monthly Report - October 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	158	159	116	112	130	
Rec'd in month	117	100	156	157	196	160	133	125	147	146	
Ans'd in month	115	121	114	141	141	159	176	129	128	157	
Pending at End	66	45	87	103	158	159	116	112	130	119	
Over 30 days	0	0	0	0	0	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	252	226	157	169	169	
Rec'd in month	53	67	69	58	63	65	40	50	52	74	
Recons. rec'd	6	7	9	5	2	4	3	1	0	1	
Ans'd in month	100	55	84	46	45	94	112	39	52	69	
Pending at End	202	221	215	232	252	227	157	169	169	175	
Over 180 days	0	0	0	0	0	0	0	0	0	0	

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

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK
SCH														
Pending	2	6	3	1	3	4	4	8	32	1	3	4	5	1
Over 60 days	0	0	0	0	0	1	0	1	*	0	0	0	0	0

* Due to lockdown at LEW no number will be reported.

concerning the property forms contained in their respective central files. On October 31, 1997, inmate Fowler was found guilty of the March 1992 murder of inmate David Hoover, Reg. No. 28852-054. On November 3, 1997, inmate Holiday was acquitted of all charges.

2) Craveiro v. Reno, et. al. and Nyhuis v. Reno, et. al. -- WDPa

On October 30, 1997, a conference call was held concerning the Plaintiff's request for a TRO to prevent the November 1, 1997, implementation of the BOP's revised Program Statement regarding Inmate Personal Property. Taking part in the call were three inmate/Plaintiffs (Carl Wolf, Reg. No. 40661-066, Joseph Craveiro, Reg. No. 02630-070, and Douglas Nyhuis, Reg. No. 06548-040), Paralegal Duran Sheets, Assistant U.S. Attorney Tina Oberdorf, DOJ Attorney (Programs Branch) Marsha Edney, and Magistrate Judge Baxter. Although no ruling was issued, the Magistrate stated that there did not seem to be any irreparable harm occurring since the inmate's were provided the opportunity to mail out the excess items.

3) United States v. Horace Tenny, CR- (EDPA) - Former inmate Horace Tenny, Reg. No. 03030-015, was charged with attempted rape of a staff member (recreation specialist) at FCI Schuylkill in June 1995. The jury returned a verdict of not guilty.

4) United States v. Paster, 4:CR-96-221 (MDPA) - Defendant Mitchell Paster is charged with the murder of USP Lewisburg Staff psychologist on the reservation. Trial is scheduled to begin on November 19, 1997. Numerous USP Lewisburg staff are expected to testify.

5) Hill v. United States, Civil Action No. 97-4435 (EDPA) - Former inmate Richard Hill, Reg. No. 36850-066, filed this FTCA action alleging false imprisonment due to negligence. In October 1992, upon his discharge from federal prison, the Plaintiff was improperly subjected to a three year Special Parole Term. On June 22, 1993, the Plaintiff was committed for parole violations and housed in a state correctional facility until July 28, 1993, when it was determined that the SPT was in error. The Plaintiff alleged that the negligence of government officials (U.S. Parole Commission and Bureau of Prisons) in improperly issuing the Special Parole Certificate entitled him to \$300,000.00 damages.

Initial government settlement offer of \$25.00 a day was

countered with an demand of \$75,000.00. A mediation conference was held on Friday, November 7, 1997, with no resolution. Mike Tafelski assisted the AUSA.

6) Zinner v. U.S., Cr. No. 95-48 (EDPA) -- FCI Loretto inmate Edward Zinner, Reg. No. 48591-066 filed a Section 2255 motion alleging ineffective assistance of counsel. As part of his case, the Court issued an order requiring FCI Loretto to turn over copies of telephone conversations the inmate had placed to his attorney on monitored phone lines. The institution complied by providing access to the tapes. A hearing is scheduled on November 12, 1997 concerning whether access to the tapes was sufficient. Joyce Horikawa will assist the AUSA.

7) U.S. v. Moong Shean Kara Chang, Crim. No. 97-218 (EDPA) - On November 20, 1997, a hearing will be held concerning the defendant's request for a downward departure based upon the argument that "Ms. Chang would be vulnerable in a prison setting." Ms. Chang pled guilty to bank fraud. The defense argument is based upon a report submitted by a defense psychologist that Ms. Chang has spent her life "pleasing others". Joyce Horikawa and Dr. Gerard Bryant, Regional Psychologist.

8) U.S. v. Colon, Crim. No. 97-11(03) (DNJ) Inmate Angel Colon, Reg. No. 01590-049 is charged with the assault of two correctional officers at FCI Ft. Dix in February 1997. The trial, which began on October 24, 1997 and has been continued until November 14, 1997, has generated a great deal of discovery which is being coordinated by James Wills, Attorney at FCI Ft. Dix.

D. RELIGIOUS CASES:

1) Rojas-Edmonson v. Hawk, et. al., 97-CV-1918 (DNJ) Plaintiff, inmate Rojas-Edmonson, Reg. No. 01591-084 (now at FCI Allenwood) alleges that a chaplain at FCI Ft. Dix (who is no longer with the BOP) assaulted him and other inmates while they attempted to pray during Ramadan. The Plaintiff cites Bivens but **NOT** RFRA.

E. ENSIGN AMENDMENT CASES: No new cases and no significant information concerning pending cases.

F. PLRA 1915 DISMISSALS: None reported.

III. TRAVEL AND LEAVE SCHEDULE FOR NOVEMBER 1997:

Hank Sadowski - Travel -
Annual Leave - None scheduled

Mike Tafelski - Travel - None scheduled
Annual Leave - November 13-14, 28

Joyce Horikawa -Travel - November 20-21 Recruiting
Trip/National Asian Pacific American Bar Association
Convention
Annual Leave - None Scheduled

Les Owen - Travel - None Scheduled
Annual Leave - November 10, 28

Ron Hill - Travel - None Scheduled
Annual Leave - None scheduled

Ros Bingham- Travel - None scheduled
Annual Leave - November 10, 26, 28

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: December 8, 1997

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

Subject: Monthly Report - November 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	158	159	116	112	130	119	
Rec'd in month	117	100	156	157	196	160	133	125	147	146	92	
Ans'd in month	115	121	114	141	141	159	176	129	128	157	120	
Pending at End	66	45	87	103	158	159	116	112	130	119	91	
Over 30 days	0	0	0	0	0	0	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	252	226	157	169	169	175	
Rec'd in month	53	67	69	58	63	65	40	50	52	74	58	
Recons. rec'd	6	7	9	5	2	4	3	1	0	1	0	
Ans'd in month	100	55	84	46	45	94	112	39	52	69	36	
Pending at End	202	221	215	232	252	227	157	169	169	175	197	
Over 180 days	0	0	0	0	0	0	0	0	0	0	0	

C. Tort Claim Investigation Status: As of November 28, 1997

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	5	3	8	3	4	2	6	5	25	1	7	5	6	0	8
Over 60 days	0	0	0	0	0	0	0	0	7	0	0	1	0	0	0

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	68	75	70	54	35	21	
Rec'd in month	35	34	28	34	41	48	22	55	39	29	33	
Ans'd in month	30	28	29	27	17	40	27	71	58	43	32	
Pending at End	39	45	44	51	68	75	70	54	35	21	22	
Over 30 days	14	17	16	17	27	27	48	23	20	9	3	

E. FOIA Requests for records: As of November 28, 1997

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

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	600	618	622	626	647	665	
New Cases	16	15	22	23	17	23	32	25	33	29	13	
Habeas Corpus	8	4	9	8	3	11	18	15	20	14	5	
FTCA	5	5	2	4	3	4	4	3	1	2	6	
Bivens	3	4	7	8	6	5	7	6	7	8	1	
Other	1	0	4	2	5	3	1	1	4	3	1	
Bivens/FTCA	0	2	0	1	0	0	2	0	1	1	0	
Lit Reports	8	6	8	10	8	9	7	14	12	11	11	
Cases Closed	12	13	25	17	11	8	14	21	12	10	14	

B. SETTLEMENTS AND AWARDS:

1) Hill v. United States, Civil Action No. 97-4435 (EDPA) - Former inmate Richard Hill, Reg. No. 36850-066, filed this FTCA action alleging false imprisonment due to negligence. In October 1992, upon his discharge from USP Atlanta, the Plaintiff was improperly subjected to a three year Special Parole Term. On June 22, 1993, the Plaintiff was committed for parole violations and housed in a state correctional facility until July 28, 1993, when it was determined that the SPT was in error. The Plaintiff

alleged that the negligence of government officials (U.S. Parole Commission and Bureau of Prisons) in improperly issuing the Special Parole Certificate entitled him to \$300,000.00 damages.

Initial government settlement offer of \$25.00 a day was countered with an demand of \$75,000.00. Mike Tafelski assisted the AUSA at a mediation conference on November 7, 1997. Based on desire to resolve matter and potential for governmental liability, the case was settled for \$5,000.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

- 1) Stiver v. Meko, 96-3400 (3d Cir. November 28, 1997).

On November 28, 1997, the U.S. Court of Appeals for the Third Circuit upheld the denial of early release eligibility on the basis of a prior violent conviction. Appellee, Robert C. Stiver, 04540-068, an inmate at FCI McKean, alleged that he was unlawfully denied 3621(e) early release eligibility because of prior convictions for aggravated assault and armed robbery. He argued that the decision to include prior violent offenses when determining early release eligibility for completion of the Drug Abuse Program was inconsistent with § 3621(e). The Court of Appeals affirmed the District Court and held that the BOP's interpretation of the statute, and subsequent issuance of the regulation, to apply to prior offenses as well as current offenses was a reasonable accommodation of Congress' goals. The Court of Appeals also rejected Appellee's arguments alleging violations of the ex post facto clause and of the double jeopardy clause. Assistant Regional Counsel Joyce Horikawa assisted the AUSA at the oral argument.

- 2) United States v. Paster, 4:CR-96-221 (MDPA) - Defendant Mitchell Paster was charged with the murder of USP Lewisburg Staff psychologist on the reservation. Prior to trial, the defendant pled guilty to second degree murder. Sentencing is scheduled for February 9, 1998.

- 3) Zinner v. U.S., Cr. No. 95-48 (EDPA) -- FCI Loretto inmate Edward Zinner, Reg. No. 48591-066 filed a Section 2255 motion alleging ineffective assistance of counsel. As part of his case, the Court issued an order requiring FCI Loretto to turn over copies of telephone conversations the inmate had placed to his

-4-

attorney on monitored phone lines. The institution complied by providing access to, but not copies of, the tapes. A hearing was held on November 12, 1997 concerning, in part, whether access to the tapes was sufficient. Joyce Horikawa assisted the AUSA. The court felt that this access was sufficient.

- 4) Jolly v. State of New York, et.al. - On November 7, 1997, a telephone hearing was held concerning the placement of New York

state inmate Paul Jolly, 42073-054, who was being held at MCC New York on a federal civil writ. In a letter to the judge earlier that day, the Warden had requested the writ be satisfied so that the inmate, who had become very disruptive at MCC NY, could be returned to the state. The Judge agreed and satisfied the writ and the inmate was returned to New York DOC. MCC NY attorney Clinton Stroble prepared the letter and assisted during the hearing.

5) Li v. Cannorozzi et.al., Civ. No. 97--- (2d Cir.) - The Plaintiff, former inmate, Jian An Li, Reg. No. 44661-053, filed an appeal of the jury verdict returned in favor of the Bivens defendants (case involved allegations of excessive use of force). On November 17, 1997, oral argument was heard before the Court of Appeals for the Second Circuit concerning the District Court's decision to exclude the deposition of a witness unavailable at the time of the trial. AUSA Jonathan Willens argued the case for the government. No decision has been rendered.

UPCOMING HEARING:

1) United States v. Gregory Scarpa, Jr. CR-94-1119(S-4) (RR) (EDNY) On December 11, 1997, a hearing will be held concerning a December 5, 1997, order issued by Judge Raggi in which she ordered the Warden at MCC New York to immediately place inmate Scarpa, 10099-050, in general population. Due to the security concerns associated with complying with this order, a request for a stay was submitted and granted. The inmate, designated to USP Terre Haute, has been at MCC NY on a writ ad pros since June 1995. Due to a confirmed contract against his life issued by the Columbo crime family, the inmate has been in protective custody since June 1995. In addition to request for placement in general population, the inmate alleges improper medical care and record reviews.

-5-

D. RELIGIOUS CASES: - Muhammad v. Wigen, et.al. - Civ. No. 95-3668 (E.D.PA) -- Case previously discussed in which private counsel has been approved to represent BOP defendants against allegations made by Plaintiff (former inmate Ansar El Muh. a/k/a/ Tracy S. Munnerlyn) that while housed at FCI Schuyl was placed in SHU and his "religious mail" was interfered w retaliation of his religious practices. Private Counsel has filed an exception to the Magistrate's Report and Recommendation requesting the Judge review the report in light of Bourne v. Flores.

E. ENSIGN AMENDMENT CASES: No new cases.

F. PLRA 1915 DISMISSALS: None Reported

III. TRAVEL AND LEAVE SCHEDULE FOR DECEMBER 1997:

Hank Sadowski - Travel - December 4 - LSCI Allenwood tour with
Sen. Specter on sewer contract; visit
with Legal Staff, FCC Allenwood
Annual Leave - December 16, 17, 29 - 31, January 2

Mike Tafelski - Travel - None scheduled
Family Leave - December 10-12
Annual Leave - None scheduled

Joyce Horikawa -Travel - None Scheduled
Annual Leave - December 24, January 2

Les Owen - Travel - December 8-19 Institution
Familiarization -FCI Ft. Dix
Annual Leave - December 29-31

Ron Hill - Travel - None Scheduled
Annual Leave - December 5-10, 29-31, January 2

Ros Bingham- Travel - MSTC (Denver) December 1-12
Annual Leave - December 24

cc: Regional Director and Deputy Regional Director, NER
All NER Wardens
All Regional Counsel and Associate General Counsel
All NER institution attorneys and paralegals

UNITED STATES GOVERNMENT

memorandum

Date: December 8, 1997

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

Subject: ~~Monthly Report - November 1997~~

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

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Pending at End	66	45	87	103	158	159	116	112	130	119	91
Over 30 days	0	0	0	0	0	0	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	252	226	157	169	169	175
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Over 180 days	0	0	0	0	0	0	0	0	0	0	0

C. Tort Claim Investigation Status: As of November 28, 1997

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SCH														
Pending	5	3	8	3	4	2	6	5	25	1	7	5	6	0
Over 60 days	0	0	0	0	0	0	0	0	7	0	0	1	0	0

D. FOI/Privacy Act Requests - 1997

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Pending	0	0	0	0	2	1	1	0	2	0	2	0	1	0	0
Over 30 days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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UPCOMING HEARING:

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CR-94-1119(S-4) (RR) (EDNY)

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defendants against allegations made by Plaintiff (former inmate Ansar El Muhammad a/k/a/ Tracy S. Munnerlyn) that while housed at FCI Schuylkill he was placed in SHU and his "religious mail" was interfered with in retaliation of his religious practices. Private Counsel has filed an exception to the Magistrate's Report and Recommendation requesting the Judge review the report in light of Bourne v. Flores.

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F. PLRA 1915 DISMISSALS: None Reported

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with Sen. Specter on sewer
contract; visit with Legal Staff,
FCC Allenwood

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Mike Tafelski - Travel - None scheduled
Family Leave - December 10-12
Annual Leave - None scheduled

Joyce Horikawa - Travel - None Scheduled
Annual Leave - December 24, January 2

Les Owen - Travel - December 8-19 Institution
Familiarization - FCI Ft. Dix Annual Leave -
December 29-31

Ron Hill - Travel - None Scheduled
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Ros Bingham - Travel - MSTC (Denver) December 1-12
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cc: Regional Director and Deputy Regional Director, NER
All NER Wardens
All Regional Counsel and Associate General Counsel
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