

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets
Philadelphia, PA. 19106*

November 21, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - October 2000

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 st	151	158	162	186	159	155	187	156	136	172		
Rec'd in month	175	167	223	165	186	210	157	156	182	241		
Ans'd in month	167	163	199	192	190	178	188	176	146	187		
Pending at End	158	162	186	159	155	187	156	136	172	226		
Over 30 days	0	0	0	0	0	0	0	0	0	0		

B. Administrative Tort Claims - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 st	295	291	284	306	286	266	291	311	290	317		
Rec'd in month	42	64	93	68	70	90	65	74	93	90		
Recons. rec'd	4	1	0	1	1	3	2	3	7	7		
Ans'd in month	50	72	71	89	91	68	57	98	73	84		
Pending at End	291	284	306	286	266	291	311	290	317	350*		
Over 180 days	0	0	0	0	0	0	0	0	0	0		

* Pending tort numbers adjusted due to addition of FCI Elkton cases.

C. Tort Claim Investigation Status: As of October 31, 2000

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	
RBK SCH																	
Pending	5	15	27	3	6	7	14	17	1	18	7	3	6	5	3	3	7
5																	
Over 60 days	0	0	1	0	0	0	0	5	0	0	0	0	0	0	0	0	1
0																	

D. FOI/Privacy Act Requests - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	17	12	11	26	32	46	30	42	31	31		
Rec'd in month	39	53	60	69	57	50	61	49	40	57		
Ans'd in month	34	54	45	63	43	66	49	58	40	54		
Pending at End	12	11	26	32	46	30	42	31	31	34		
Over 20 days	12	11	5*	1*	0	2*	4*	1	*4	1*		

* Note: Archived records.

E. FOIA Requests for records: As of October 31, 2000

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
NER																	
Pending	1	1	6	0	0	3	3	5	1	1	12	1	1	1	0	0	2
0																	
>20 days	0	1*	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0																	

II. LITIGATION ACTIVITY - 2000 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	318	329	330	349	359	362	364	374	377	390		
New Cases	16	18	28	18	27	19	17	19	22	11		
Habeas Corpus	10	11	9	12	16	12	10	8	10	5		
FTCA	0	3	4	2	1	2	0	2	4	1		
Bivens	5	3	8	1	10	5	4	7	5	4		
Other	1	1	6	2	0	0	1	2	2	1		
Bivens/FTCA	0	0	1	1	0	0	2	0	1	0		
Lit Reports	8	10	8		21	15	8	10	7	5		
Cases Closed	12	17	9	8	24	15	7	16	9	11		

B. SIGNIFICANT LITIGATION MATTERS:

OPEN CASES:

- 1) Merlino v. United States, et.al., Civ. No. (E.D.PA.)
FDC Philadelphia inmate and reputed organized crime boss Joseph

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Merlino, 41130-066, filed two actions concerning his continued placement in SHU and his access to attorneys, discovery materials, and codefendants. The matter was resolved by agreement of parties prior to a scheduled hearing. The cases were withdrawn.

C. HEARINGS/TRIALS: -

1) United States v. Macario Garcia, Crim. No. (M.D.PA.)
On November 1, 2000, inmate Macario Garcia, 90041-012, who is a holdover at USP Allenwood, pled guilty to two counts of assaulting a corrections officer. Inmate Garcia was facing a 21 count superceding indictment for assaulting staff at USP Lewisburg and USP Allenwood. As a precursor to the criminal trial, a hearing was held on October 30, 2000, regarding his competency and whether he should be transferred from USP Allenwood over claims of retaliation and abuse. Four inmate witnesses and three staff were subpoenaed by the defense. The hearing did not support the inmate's allegations. The inmate ple guilty before the court made a finding on the allegations. Garcia faces up to six years for the assaults and is scheduled for sentencing in January 2001. As a part of the plea agreement, the U.S. Attorney's office has agreed to recommend that inmate Garcia not be housed at USP Lewisburg or USP Allenwood after sentencing and that he be considered for a transfer to ADX, Florence. FCC Allenwood Supervisory Attorney Mike Sullivan assisted in the hearings.

2) United States v. Maxwell, Cr. No. (S.D.N.Y.)
On October 13, 2000, a hearing was held regarding the conditions of confinement at MCC New York alleged by inmate Kenneth Maxwell, 31259-054. Maxwell apparently swallowed a razor blade on two occasions in the last few weeks and was placed in four-point restraints. He argued that he was not able to prepare his case because he was not allowed to review his legal papers. His attorney requested that he be transferred to another BOP facility and that his sentencing be adjourned. Dominique Raia represented the MCC and argued that, due to his escape history, he is housed in the most appropriate unit and that an adjournment will only give the inmate more time to attempt to escape. Judge Kaplan would not interfere with the Warden's discretion.

3) In re Donald Sheldon, 98 Civ. 6510 (E.D.N.Y.) MCC New York inmate

Donald Sheldon, 42774-054, has been incarcerated on a civil contempt order issued in 1999 by Judge Owen in S.D.N.Y. The Judge had released him based on his representation that he was ready to comply. Later, Judge Owen decided that inmate Sheldon's compliance was insufficient and on May 23, 2000 ordered him to be incarcerated at the MCC for civil contempt. Although the order specified he was to remain at the MCC, Sheldon was moved to FCI Otisville and then to MDC Brooklyn in

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June 2000. While at MDC Brooklyn, Sheldon filed a writ for habeas corpus in the E.D.N.Y., claiming that he was being illegally held. Judge Dearie held a hearing in E.D.N.Y. on September 15, 2000 and ordered Sheldon be immediately released. MDC Brooklyn reviewed the order, checked Sheldon's records and concluded that Sheldon had a pending case requiring his incarceration at MCC New York. The Marshals moved Sheldon back to the MCC that day. On September 22, Judge Owen, upon hearing of recent events, issued a memo and order clarifying why Sheldon was properly incarcerated at the MCC and that the eighteen month statutory time limit had not been exceeded. Inmate Sheldon now appeals Judge Owen's order, MDC Brooklyn's failure to release him, the decision to move him from Brooklyn to Manhattan, and his continued incarceration at the MCC. Dominique Raia has been handling the matter.

4) In re Okenfus (S.D.N.Y.) - On October 25, 2000, a hearing was held before Judge Paterson regarding the designation and transfer of MDC Brooklyn inmate Jon Okenfus, 38887-054, to FCI Safford. On October 2, 2000, Okenfus was designated to FCI Safford with an expected release date of December 6, 2000. Okenfus's attorney stated that the inmate intends to live in New York City and is afraid of returning to Arizona, as he provided testimony for the Government. The Judge amended his judgement to provide that supervision upon release be under the Southern District of New York Probation. The government concurred. Todd Bailey, Staff Attorney and David Williams, Inmate Systems Manager represented MDC Brooklyn at the hearing.

5) United States v. Hayward, Cr. No. (E.D.PA.) - On November 8, 2000, FDC Philadelphia Health Services Administrator, Ralph Ritter and Joyce Horikawa attended the sentencing hearing of defendant Mark Hayward before Judge Pollack. The Defendant pled guilty drug and weapons offenses. Defendant submitted a sentencing memorandum requesting inter alia, that the court make a downward departure because the defendant suffers from an extraordinary physical impairment. Specifically, the defendant produced medical records indicating that he suffers from: asthma, epilepsy, degenerative joint disease, obesity, sleep apnea. Mr. Ritter testified that he was aware of several inmates in federal institutions with either one or a combination of some of Defendant's ailments and that BOP could

may be wrong as to closure since the monitoring period does not end for a couple of more years.

FCI PETERSBURG - On November 2, 2000, new federal judges, along with a member of the Sentencing Commission, toured FCI Petersburg and interviewed inmates as part of their training as newly appointed federal judges.

FPC MILLINGTON - We have recently learned that the Navy wants to excess 104 acres at Millington. Our region would like to obtain all 104 acres to prohibit someone else purchasing the property and using it for a use inconsistent with ours.

Personnel Issues

[REDACTED]

[REDACTED]

[REDACTED]

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Staff Leave and Travel

FMC LEXINGTON - [REDACTED] - annual leave Nov. 20-24.

MXRO - [REDACTED] - annual leave November 20-24.

U.S. Department of Justice

File

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December 15, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - November 2000

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 st	151	158	162	186	159	155	187	156	136	172	226	
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Ans'd in month	167	163	199	192	190	178	188	176	146	187	252	
Pending at End	158	162	186	159	155	187	156	136	172	226	146	
Over 30 days	0	0	0	0	0	0	0	0	0	0	0	

B. Administrative Tort Claims - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 st	295	291	284	306	286	266	291	311	290	317	350	
Rec'd in month	42	64	93	68	70	90	65	74	93	90	64	
Recons. rec'd	4	1	0	1	1	3	2	3	7	7	5	
Ans'd in month	50	72	71	89	91	68	57	98	73	84	80	
Pending at End	291	284	306	286	266	291	311	290	317	350*	339	
Over 180 days	0	0	0	0	0	0	0	0	0	0	0	

* Pending tort numbers adjusted due to addition of FCI Elkton cases.

C. Tort Claim Investigation Status: As of November 30, 2000

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	
RBK SCH																	
Pending	5	11	23	6	9	2	7	9	1	18	7	2	3	5	3	3	2
0																	
Over 60 days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0																	

D. FOI/Privacy Act Requests - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	17	12	11	26	32	46	30	42	31	31	34	
Rec'd in month	39	53	60	69	57	50	61	49	40	57	64	
Ans'd in month	34	54	45	63	43	66	49	58	40	54	59	
Pending at End	12	11	26	32	46	30	42	31	31	34	39	
Over 20 days	12	11	5*	1*	0	2*	4*	1	*4	1*	0	

* Note: Archived records.

E. FOIA Requests for records: As of November 30, 2000

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
NER																		
Pending	4	2	3	1	1	2	4	3	0	1	4	2	4	0	4	1	1	2
0																		
>20 days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0																		

II. LITIGATION ACTIVITY - 2000 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	318	329	330	349	359	362	364	374	377	390	390	
New Cases	16	18	28	18	27	19	17	19	22	11	14	
Habeas Corpus	10	11	9	12	16	12	10	8	10	5	6	
FTCA	0	3	4	2	1	2	0	2	4	1	0	
Bivens	5	3	8	1	10	5	4	7	5	4	3	
Other	1	1	6	2	0	0	1	2	2	1	5	
Bivens/FTCA	0	0	1	1	0	0	2	0	1	0	0	
Lit Reports	8	10	8		21	15	8	10	7	5	6	
Cases Closed	12	17	9	8	24	15	7	16	9	11	15	

B. SIGNIFICANT LITIGATION MATTERS:

OPEN CASES:

1) In re Donald Sheldon, 98 Civ. 6510 (EDNY) Inmate Donald Sheldon, 42774-054, was ordered held for civil contempt by Judge Owen in SDNY.

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Although the order specified he was to remain at the MCC, Sheldon was moved to FCI Otisville and then to MDC Brooklyn in June 2000. While at MDC Brooklyn, Sheldon filed a writ for habeas corpus in the EDNY, claiming that he was being illegally held. Judge Dearie held a hearing in EDNY on September 15, 2000 and ordered Sheldon be immediately released. MDC Brooklyn reviewed the order, checked Sheldon's records and concluded that Sheldon had a pending case requiring his incarceration at MCC New York. The Marshals moved Sheldon back to the MCC that day. On September 22, Judge Owen, upon hearing of recent events, issued a memo and order clarifying why Sheldon was properly incarcerated at the MCC and that the eighteen month statutory time limit had not been exceeded. Inmate Sheldon appealed Judge Owen's order, MDC Brooklyn's failure to release him, the decision to move him from Brooklyn to Manhattan, and his continued incarceration at the MCC. On December 5, 2000, The Second Circuit ordered Sheldon released and an additional response be filed with the Court stating the reasons why he was not released on September 15, 2000 but was transferred to the MCC.

C. HEARINGS/TRIALS: -

1) United Stats v. Alexander (EDNY) - On November 9, 2000, Judge Johnson ordered MDC Brooklyn to remove Inmate David Alexander from the Special Housing Unit and place him in general population or transfer him to FCI Otisville. Alexander was placed in SHU after unidentified inmates threatened him for previously testifying against a former MDC Brooklyn inmate. On November 17, 2000, at our request, the court held a hearing where the Government informed the Court that there are serious safety concerns regarding housing this inmate in either MDC Brooklyn or MCC New York, and that FCI Otisville has changed its mission to house only designated inmates. The court requested the Warden attend the hearing. The hearing ended with the understanding that the Government would explore the option of transferring Alexander. The Court was informed later that day that the Government could not guarantee that Alexander would be placed in general population. The Court asked that the AUSA expedite his request for Alexander to be place in Witness Protection. MDC Brooklyn was represented at the hearing by Warden Dennis Hasty, Associate Warden Linda Thomas and Attorney Todd Bailey.

2) Lyons v. BOP, (D. Ohio) - FCI Elkton inmate requested and received an "emergency" hearing (conducted telephonically) regarding the medical care he was receiving. The matter was resolved when both parties agreed he would visit a urologist.

3. In re Pri-Har (MDPA) - On November 14, 2000, the court held a

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teleconference hearing on Inmate Menacham Pri-Har's claim that he is being denied access to the courts. The court denied the request for TRO. Mike Sullivan assisted the AUSA.

D. RELIGIOUS CASES: No new activity.

E. ENSIGN AMENDMENT CASES: - No new activity.

F. PLRA 1915 DISMISSALS: - None noted.

III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:

REFERRALS:

- 1) USP Lewisburg - 5 referrals (1 assault on staff, 4 introduction of contraband)
- 2) MCC New York - 2 referrals (1 serious assault on staff)

TRIALS/SENTENCING: See above

1) United States v. Martinez - 97-CR-725 (EDNY) - Defendant was one of the MDC Brooklyn staff members indicted in the "Badfellas" sting operation. On November 15, 2000, the defendant was sentenced within sentencing guidelines to 78 months for accepting a bribe and attempting to introduce contraband into MDC Brooklyn.

2) United States v. Powers Crim. No. (DNJ) - From November 27, 2000, through December 1, 2000, the trial of Inmate John Jay Powers occurred. He was charged with escape from a federal prison (FCI Fairton) and transportation of a stolen vehicle across interstate lines. After deliberating for 12 hours, the jury returned with a guilty verdict on both counts. Attorney Advisor Roberta Truman assisted the AUSA.

3) United States v. Asprilla-Perea, and Perlaza-Ortiz (SDNY) - On November 7, 2000, Judge Greisa held a hearing regarding inmates Jorge Elicier Asprilla-Perea, 45020-054, and Milton Perlaza-Ortiz, 49852-054. Defense attorney filed a motion to have Asprilla moved from SHU to general population and to order MCC New York to allow co-

defendant meetings between Asprilla and Perlaza. Judge Greisa said that it was not within his authority to tell the BOP where to house inmates under the discretion afforded to the BOP.

TRAVEL AND LEAVE SCHEDULE FOR DECEMBER 2000:

[REDACTED]

Travel: None
Annual Leave: December 18, 26-29

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[REDACTED]

Travel - Biv Lit Trng December 11-14, 2000
Annual Leave - December 21-22

[REDACTED]

Travel - None scheduled
Annual Leave - December 11-15

[REDACTED]

Travel - None Scheduled
Annual Leave - December 26-27

[REDACTED]

Travel - None Scheduled
Annual Leave - December 27-29

[REDACTED]

Travel - MSTC - December 4-15
Annual Leave - None Scheduled

U.S. Department of Justice
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January 30, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - December 2000

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

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Ans'd in month	167	163	199	192	190	178	188	176	146	187	252	156
Pending at End	158	162	186	159	155	187	156	136	172	226	146	161
Over 30 days	0	0	0	0	0	0	0	0	0	0	0	0

B. Administrative Tort Claims - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 st	295	291	284	306	286	266	291	311	290	317	350	339
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Recons. rec'd	4	1	0	1	1	3	2	3	7	7	5	7
Ans'd in month	50	72	71	89	91	68	57	98	73	84	80	70
Pending at End	291	284	306	286	266	291	311	290	317	350*	339	335
Over 180 days	0	0	0	0	0	0	0	0	0	0	0	0

* Pending tort numbers adjusted due to addition of FCI Elkton cases.

C. Tort Claim Investigation Status: As of December 31, 2000

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	
RBK SCH																	
Pending	5	10	24	3	9	0	2	10	1	20	6	1	4	1	0	3	3
Over 60 days	2	6	7	1	1	0	0	0	0	0	0	0	0	0	0	0	0

D. FOI/Privacy Act Requests - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	17	12	11	26	32	46	30	42	31	31	34	39
Rec'd in month	39	53	60	69	57	50	61	49	40	57	64	63
Ans'd in month	34	54	45	63	43	66	49	58	40	54	59	57
Pending at End	12	11	26	32	46	30	42	31	31	34	39	45
Over 20 days	12	11	5*	1*	0	2*	4*	1	*4	1*	0	4*

* Note: Archived records.

E. FOIA Requests for records: As of December 31, 2000

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
NER																		
Pending	0	3	2	2	2	3	3	9	2	4	6	4	1	0	2	0	3	0
>20 days	0	0	0	0	0	1*	0	0	1*	0	0	0	0	0	2*	0	0	0

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Habeas Corpus	10	11	9	12	16	12	10	8	10	5	6	12
FTCA	0	3	4	2	1	2	0	2	4	1	0	0
Bivens	5	3	8	1	10	5	4	7	5	4	3	2
Other	1	1	6	2	0	0	1	2	2	1	5	2
Bivens/FTCA	0	0	1	1	0	0	2	0	1	0	0	0
Lit Reports	8	10	8		21	15	8	10	7	5	6	10
Cases Closed	12	17	9	8	24	15	7	16	9	11	15	6

B. SIGNIFICANT LITIGATION MATTERS:

SETTLEMENTS:

1) Toombs v. Morton CV 97-0696; Toombs v. U.S. CV 98-2455 (EDNY) In these combined Bivens/FTCA actions, inmate Ricardo Toombs, Reg. No. 38601-054, challenged the medical care he received while housed at MDC

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Brooklyn. Plaintiff was released from FMC Lexington on August 1, 1997. The issue involved an eight-week delay in providing an accurate diagnosis of a ruptured Achilles tendon. Case settled for \$125,000.

Adverse ruling:

1) Rosemond v. Menifee, 00-CV-7415 (SDNY) - On December 22, 2000, the District Court issued an adverse opinion which ordered the Bureau of Prisons to give 87 days of credit to inmate James Rosemond, Reg. No. 17903-054, who was housed at FCI Otisville. Petitioner alleged that he was entitled to the period of time he was on writ to the federal authorities from the New York state authorities because, but for the removal on federal writ two days prior to the execution of his state parole, he would have received all this credit on his federal sentence. Our original response defended our decision because the inmate received credit for his state sentence and any award would be double credit. The Petitioner then obtained a declaration by a New York State Department of Corrections official which basically stated that but for the federal writ, he would have been released on parole two days later.

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C. HEARINGS/TRIALS: -

1) Vorhauer v. Zenk (3:CV-00-0444) (MDPA) (HC) - On December 21, 2000, an evidentiary hearing was held regarding Petitioner's request for 31 days of jail time credit. Chief Judge Vanaskie requested both sides meet and see if a compromise could be reached. The Court was informed that since the state had already granted the credit, the Bureau could not. Evidence was presented which indicated that the petitioner was merely waiting for the U.S. Marshal to pick him up at the conclusion of his state sentence. Had they done so, the Bureau would have granted the credit sought. The Petitioner agreed to file a request with Pennsylvania officials asking them to not include the disputed thirty one days in his state sentence computation. Assistant ISM Al Farley and Attorney Mike Sullivan represented the BOP at the hearing.

2) U.S. v. Martinez, 97-CR-725(EDNY) - At the November 15, 2000 sentencing of former employee, Anthony Martinez, 48362-053, MDC Brooklyn Associate Warden Linda Thomas testified to the ability of the Bureau to safely house Mr. Martinez. The Court sentenced Martinez to

78 months and revoked bail. On December 4, 2000, the government was ordered to appear before the Court and explain why Martinez had not yet been designated and transferred. The Court was advised that the designation was not made until November 27, 2000 because the J&C and the amended pre-sentence investigation report were not immediately received and the designation request had to be referred first to the

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medical designator. Once designated, the U. S. Marshals Service did not immediately move Martinez to his designated institution. Martinez was transferred to his designated institution the same day as the hearing. The Court ordered the U.S. Attorney's Office to investigate the circumstances surrounding these delays and respond with a report to the Court. MDC Brooklyn was represented at the hearing by AW Linda Thomas and Attorney Todd Bailey.

3) U.S. v Tiedemann, 95-CR-406 (EDPA) - The inmate was denied CCC placement because of a pending probation violation warrant from the State of Florida. The CCC denial caused him not to be eligible for a 3621(e) reduction. He challenged this in a habeas petition in MDPA and lost. He then wrote a letter to his sentencing judge, Judge Shapiro, who held a hearing on December 12, 2000. The court was concerned because FCI Schuylkill staff incorrectly told the inmate he was denied because of a detainer. The warrant was not lodged as a detainer because the Sheriff did not want to extradite. I represented the BOP. I explained that the failure of the inmate to resolve the warrant showed a lack of responsibility and the Warden's decision was within his discretion. The court ultimately agreed but asked I call the state probation officer and ensure the warrant was still outstanding. I did so and reported to the court the warrant was still outstanding. The court found no jurisdiction to review the merits.

4) U.S. v. Amsden (WDNY) - Sentencing Judge Skretny scheduled a teleconference on Tuesday, December 12 to discuss the medical treatment of an inmate at FMC Devens who was diagnosed with prostate cancer while a pretrial inmate in Marshal's custody in Buffalo. The Judge was concerned of the ability to return the inmate because the inmate has a second indictment pending scheduled for trial early next year. The Acting Warden and the medical staff did a fine job in explaining the course of treatment for the inmate since his arrival at FMC Devens on October 27, 2000. The Judge was satisfied with the care being afforded the inmate.

5) U.S. v Day, Appeal No. 99-5775 (3d Cir) - On request from the Court of Appeals, I appeared on December 19, 2000 to present the position of the Bureau concerning a complicated state and federal sentencing issue. The case was on direct appeal from the conviction and sentence of Roger C. Day, 12388-050, an inmate now at FCI Schuylkill. One of the issues was the proper application of

Sentencing Guideline 5G1.3. The inmate was arrested in Italy, fought extradition for almost two years, was returned to the United States, went to the State of New Jersey custody, sentenced federally while on writ, sentenced on the state charges, paroled from the state sentence, and now in our custody. The primary issue for the Bureau was whether the federal sentence was to run concurrently with the state term and,

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if so, whether the inmate will receive Willis credit. The present federal sentence was computed as consecutive to the state. I discussed the possibility of concurrent service of the federal sentence with the state and the application of prior custody credit under Willis. The Court of Appeals held the appeal in abeyance pending a consideration by the Bureau of whether the federal sentence should run concurrently with the state sentence.

D. RELIGIOUS CASES: No new activity.

E. ENSIGN AMENDMENT CASES: - No new activity.

III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:

- 1) USP Allenwood - 6 referrals (5 inmate on inmate assaults, 1 intercepted letter)
- 2) FCI Allenwood - 5 referrals (4 inmate on inmate assaults (1 w/ weapon), 1 possession of weapon (toothbrush w/ razor blade)
- 3) LSCI Allenwood - 2 referrals (1 assault on staff (declined), 1 alleged rape)
- 4) USP Lewisburg - 8 referrals (2 inmate assault on staff (1 w/ five punches, 1 by spitting); 4 inmate on inmate assault (1 using metal prosthesis); 1 intercepted money order as drug deal payment)
- 5) MCC New York - 3 referrals (2 inmate on inmate assaults denied, 1 mattress fire pending)
- 6) FCI Otisville - 1 referral to Secret Service for money laundering.

TRAVEL AND LEAVE SCHEDULE FOR DECEMBER 2000:

b6 Travel: January 17 NER Administrators Retreat
Annual Leave: January 11-12

b6 Travel - January 17 - FCI Butner - CD Rom Review
Annual Leave - None

b6 Travel - None scheduled
Annual Leave - None scheduled

b6 Travel - None Scheduled
Annual Leave - January 29