

UNITED STATES GOVERNMENT

memorandum

DATE:

July 30, 1993

REPLY TO
ATTN OF:

David R. Essig, Regional Counsel, NER, BOP

SUBJECT:

Quarterly Report - April 1, 1993 through June 30, 1993

TO:

Wallace H. Cheney, General Counsel & Asst. Director, BOP

Attached are the statistics requested for the quarterly report for the third quarter of FY 1993. I am also enclosing a diskette with a copy of this report.

Following is a synopsis of the significant cases in litigation during the quarter:

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS1. Bourgeois v. United States, 3:CV-91-197 (M.D.Pa.)

Inmate Louis Bourgeois, 39165-066, at USP Lewisburg brought this Federal Tort Claim Act complaint requesting damages for a slip and fall down steps in September 1990. Inmate alleged that he slipped on apple scraps and banana peels left on an outside stairway at USP Lewisburg. Trial was held from April 14-20, 1993 before U.S. Magistrate Judge Blewitt. USP Lewisburg Attorney Hope Moro assisted AUSA at trial. The court has not issued a decision following the trial.

2. Worthington v. Bureau of Prisons, Civil No. 89-7048 (S.D.N.Y.)

This case was discussed in our last two quarterly reports. FTCA case for medical malpractice brought by former inmate Robert Worthington, Register No. 12930-054, alleging improper treatment at FCI Otisville. Worthington was received at FCI Otisville on January 8, 1987 with advanced glaucoma in his left eye. He eventually lost the vision in his eye sometime between July 1987 (according to Worthington) and December 1987 (according to BOP medical records). Our medical expert does not think that the blindness in the eye was caused by his medical treatment in the BOP. However, our expert feels that Worthington had less than optimal follow up by an ophthalmologist during his incarceration. Our main defenses at trial are expected to be lack of causation: that the blindness was to occur in any event and was not the result of BOP negligence, and contributory negligence: inmate did not follow prescribed treatment prior to incarceration and during incarceration. Four settlement conferences were held and Hank Sadowski was present in the last three (January 21, May 26, & June 2, 1993). No settlement was reached and the case is

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3. United States v. Salameh, S3 93 CR 0180 (S.D.N.Y. June 10, 1993).

Three of the pretrial detainees indicted for the bombing of the World Trade Center in New York filed motions before the criminal trial judge (Judge Duffy) challenging aspects of pretrial custody at MCC New York. The detainees challenged their continued placement in administrative detention, and the following conditions of confinement: exercise, clothing, bedding, social phone calls, access to counsel, and inability to worship with fellow Moslems. In a 19 page ruling, Judge Duffy denied the motion, finding reasonable the Warden's security concern of potential retaliation from other inmates. The court also rejected allegations concerning the conditions of confinement.

SETTLEMENTS OR AWARDS

1. Cardiff Circle Ass'n v. United States, 92 CV 4323 (D.N.J.)

This Federal Tort Claims Act complaint was filed as a result of the accidental fire damage to property by FCI Fairton SORT team. On April 15, 1992, the FCI Fairton SORT team were conducting tactical exercises on Plaintiff's property without his permission. Plaintiff had given permission to local police to use his property for training exercises. The local police told the FCI Fairton SORT team they could use the property. The SORT team tossed two smoke grenades into a building. These grenades caused the entire building to catch fire. The fire was extinguished, but the building was destroyed. A warning on the smoke grenades stated that the device was for outdoor use only and that it can cause fires. Plaintiff did not accept a \$10,000.00 settlement offer of his administrative tort claim. We had admitted liability in the litigation. The only remaining issue was the amount of damages. Plaintiff had sought \$63,500.00. Case settled for \$25,000.00.

2. Sheptin v. United States, et al., 93-CV-34 (W.D.Pa)

Inmate Louis Sheptin, Register No. 90355-024, presently housed at USP Leavenworth, filed a combined Bivens and FTCA action alleging medical malpractice and deliberative indifference to medical needs at FCI McKean from February 19, 1992 through February 23, 1992.

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Sheptin Case (Cont.)

On February 19, 1992, Sheptin was returned to FCI McKean after being removed on a writ ad test. HSA Heath performed the medical screening on Sheptin, but failed to fill out the required screening form. Heath said he gave his notes to Physician's Assistant Calvo. Sheptin alleged he told Heath, Calvo, and other medical staff on rounds in the Special Housing Unit repeatedly that he was on medication (Dilantin) for a seizure disorder and that he needed his medication. (Medical records support his need for this medication.) Calvo confirmed that Sheptin requested his medication but Calvo said he could not find the medical file. The medical file for Sheptin was in the "writ hold" section of the medical records area. On February 23, 1992, Sheptin had a grand mal seizure and was taken to an outside hospital. Sheptin alleged that as a result of this seizure, he fell and injured his head and shoulder. Later examinations (including x-rays) showed no evidence of permanent injury. Internal investigation concluded that medical staff were negligent in not obtaining the medical file and in not providing Sheptin his medication.

Sheptin agreed to accept \$3500.00 in full settlement of this litigation (FTCA and Bivens). A special assessment of \$500 will be offset from this amount.

3. Smith v. Lam, 92 Civ. 1876 (S.D.N.Y.)

John Smith, a Witsec inmate at FCI Otisville, filed this Bivens action alleging staff member Lam was deliberately indifferent to his safety at work. On January 11, 1991, Inmate Smith sewed through his finger while working at a sewing machine in the UNICOR Glove factory in the Witsec Unit. Smith alleged that the sewing machine did not have a safety guard around the needle. At the time of the injury, Lam was the UNICOR foreman responsible for the sewing machines. Smith alleged that Lam knew that the sewing machine Smith was using should have had a safety guard but did not. Smith alleged that, prior to the injury, he asked Lam for a safety guard for his sewing machine and Lam told him guards were not needed. The major constitutional claim was that Lam was deliberately indifferent to Smith's safety needs.

Lam executed a June 9, 1992 declaration, in which he claimed that when the new sewing machines arrived at FCI Otisville, he personally placed the safety guards on the machines. Lam implied that the inmates removed the safety guards to speed performance

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Lam Case (Cont.)

on the machines. Lam said he was not aware that the safety guards were not on the machine Smith was working on. Lam denied that Smith asked him for a safety guard prior to the accident. Lam also responded to a host of other allegations made by Smith in the complaint. When the AUSA requested a meeting with Lam to go over the case, Lam admitted to the paralegal at FCI Otisville that he lied in his declaration.

The key material misstatements were the following: (1) Lam admitted that he knew that the safety guards were not installed upon the machine Smith was working on, and (2) he also admitted that he did not install safety guards on the machines when received at FCI Otisville. He further admitted a variety of minor details were false.

The United States continued to represent Lam because important interests had to be protected in this litigation. Information concerning the Witsec inmate had to be kept secure and there was potential for bad precedent on work related issues. Lam was advised that representation would continue but that settlement would be explored. After the AUSA deposed the inmate, the inmate agreed to settle the case for \$100.00. Lam was advised that if he agreed to the settlement that the money would be his personal obligation. Lam was also advised that he could request indemnification, but there was no assurance that it would be approved. Lam agreed to the settlement and the case was dismissed on June 29, 1993.

4. Salami v. Brennan, Civil No. 93-0459 (M.D.PA.)

Federal Tort Claims Act case filed by inmate Oscar A. Salami, Register No. 36430-053, for lost property. Salami alleged that his pair of sneakers were stolen in March 1992 at USP Lewisburg. He later found the sneakers in possession of another inmate and got into an argument. Staff intervened and the sneakers were confiscated as possible contraband. The other inmate could not verify ownership and staff were prepared to give Salami the sneakers. The sneakers could not be located. Case settled for one pair of sneakers.

PENDING PROBLEMATIC LITIGATION1. U.S. v. Hillstrom, No. 92-7237 (3d Cir. March 12, 1993).

The Third Circuit remanded this sentencing guideline case for additional information concerning the nature of Federal Prisons Camp - Allenwood. At issue is which sentencing guideline should apply to an escape from FPC Allenwood: the guideline applicable to walkaways from a community corrections center or the guideline applicable to escape from a secure facility. The Third Circuit instructed the district court to consider whether FPC Allenwood is sufficiently similar to a CCC in its purpose and in its security and safety considerations. The resentencing hearing in this case has been postponed. A separate Allenwood escape case resulted in a sentencing hearing on April 29, 1993 before Judge Muir in Middle District of Pennsylvania. Executive Assistant Peter Weld testified concerning the distinctions between FPC Allenwood and CCCs. Judge Muir issued an opinion in United States v. Petro, 4:CR-92-242 (M.D. Pa. May 10, 1993), which found that FPC Allenwood was not a facility similar to a CCC. The Defense Attorney is taking an aggressive approach in the Hillstrom resentencing. I expect CCM Ed Hughes (to testify about CCCs) and Peter Weld (to testify about FPC Allenwood) will be called as witnesses in the rescheduled Hillstrom resentencing before Judge McClure.

Enclosures: Statistical Reports

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 04/01/93 TO 06/30/93

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NXR											
NER	59	15	7	30	7	57	267	46	3	4	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

NARRATIVE ANALYSIS

DEFINITIONS:

- LOC - LOCATION
- NUM - NUMBER OF TOTAL LAWSUITS FILED IN QUARTER
- HC - NUMBER OF HABEAS CORPUS ACTIONS FILED
- FTC - NUMBER OF FTCA ACTIONS FILED
- BIV - NUMBER OF BIVENS ACTIONS FILED
- OTH - OTHER ACTIONS FILED
- ANS - NUMBER OF LITIGATION REPORTS COMPLETED
- PEN - PENDING
- CLD - NUMBER OF ACTIONS CLOSED
- H/T - NUMBER OF HEARINGS OR TRIALS (INCLUDE INFO IN NARRATIVE)
- SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)
- AWD - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)
- GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE IN NARRATIVE)

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 04-01-1993 TO 06-30-1993

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	292	107	10	19	0	15	6	21	217	57	0
SER											
NCR											
SCR											
WXR											
TOT											

NARRATIVE ANALYSIS

DEFINITIONS

LOC - LOCATION
NUM - NUMBER OF TOTAL AD REMEDIES FILED
DHO - NUMBER OF DHO REMEDIES FILED
SPH - NUMBER OF SPECIAL HOUSING UNIT REMEDIES FILED
MED - NUMBER OF MEDICAL REMEDIES FILED
MH - NUMBER OF MENTAL HEALTH REMEDIES FILED
LEG - NUMBER OF LEGAL REMEDIES FILED
FD - NUMBER OF FOOD REMEDIES FILED
GRT - TOTAL OF NUMBER OF REMEDIES GRANTED
DEN - TOTAL NUMBER OF REMEDIES DENIED
PEN - TOTAL NUMBER OF REMEDIES PENDING
OD - TOTAL NUMBER OF REMEDIES OVERDUE

Tort Claims Third Quarter - FY93 (April 01, 1993 - June 30, 1993)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	154	123	24	4	0	3	27	5469	222	40	0	0	94

Variable Definition

Time Period

- Num - Number of claims filed 04/01/93 =< D_Accept <= 06/30/93
- PP - Personal Property claims 04/01/93 =< D_Accept <= 06/30/93
- PI - Personal Injury claims 04/01/93 =< D_Accept <= 06/30/93
- PPPI - Both PP & PI claims 04/01/93 =< D_Accept <= 06/30/93
- WD - Wrongful Death claims 04/01/93 =< D_Accept <= 06/30/93
- Med - Medical claims 04/01/93 =< D_Accept <= 06/30/93
- Set - Settled/approved claims 04/01/93 =< D_Closed <= 06/30/93
- Amnt - Amount paid 04/01/93 =< D_Closed <= 06/30/93
- Pen - Pending/open claims >> Entire Database
- Den - Number of claims Denied 04/01/93 =< D_Closed <= 06/30/93
- OD - Number of claims OverDue >> Entire Database
- A/O - Avg number of days Overdue 04/01/93 =< D_Closed <= 06/30/93
- A/P - Avg number of days to Process .. 04/01/93 =< D_Closed <= 06/30/93
- > Med = PIM+ WDM+ PPPIM+ PPWDM > WD = WD+ PPWD

> Press any key to continue