

memorandum

DATE: April 19, 1996

REPLY TO
ATTN OF: David R. Essig, Regional Counsel, Northeast Region
Federal Bureau of Prisons, Philadelphia, Pa. 19106

SUBJECT: Quarterly Report - January 1, 1996 through March 31, 1996

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

Attached are the statistics requested for the quarterly report for the second quarter of FY 1996.

The following is a synopsis of the significant litigation during the quarter:

LITIGATION BRANCH

APR 22 96

OFFICE OF GENERAL COUNSEL
BUREAU OF PRISONS

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. Miller v. Reno, 4:CV:93-1475 (M.D.Pa.)

Three day trial in EEO case concluded on February 29, 1996 with a jury verdict adverse to the BOP. The staff member was reassigned to his prior correctional officer position after serving as a case manager trainee for 13 months. The staff member alleged that his reassignment was based on race discrimination. In addition the staff member asserted that the reassignment was retaliatory since it occurred two months after he made a complaint about racial remarks made by his supervisor. The jury found for the staff member on both counts. We are negotiating with Plaintiff to propose a final judgment to the court. Attorney Mike Tafelski assisted the AUSA at the trial.

2. U.S. v. Reyes, (S.D.N.Y.)

Pretrial detainee, Jose Reyes, 43690-004, was a paraplegic awaiting trial confined to a 4 man cell at MCC NY. The detainee moved the criminal trial judge (Judge Scheindlin) for a private cell. The detainee pointed to the privacy needed to perform bathroom functions. At a hearing on February 28, 1996, the judge asked the Warden what could be done. The Warden agreed to try to prepare a two man cell for handicap access and would try to keep him there on single cell status. No order was entered. Attorney Dominique Raia assisted at the hearing.

3. U.S. v. S....., (E.D.N.Y.)

Sentenced inmate G.S., 10099-050, was writted in to MCC NY to face additional criminal charges. Intelligence was received

that the five organized crime families in New York have a contract on him. The Warden denied G.S. co-defendant meetings because his co-defendants were allegedly member of the five families. The first hearing of October 26, 1995 resulted in a court order mandating the meetings due to the finding that the meetings were necessary to prepare a defense for G.S. A second hearing was held on February 27, 1996 to address some of the attorney's complaints about timing of meetings and security. Judge Raggi focused on the security aspects. The MCC were using belly chains and leg irons on all defendants (including those on bail). After some discussion, the Warden agreed to remove the hand restraints but to leave the leg irons. The judge agreed. Paralegal James Vogel assisted at the hearing.

4. U.S. v. Griffin, (S.D.N.Y.)

Pretrial detainee Luis Griffin, 36288-054, complained to his criminal trial judge (Judge Schwartz) that he was being kept in Special Housing, first at FCI Otisville and, now at MCC NY. At a hearing on February 28, 1996, Dominique Raia explained to the court the various reasons for the inmate's placement in AD and DS from September 27, 1995 to the present (incident reports, separation and security). The judge was satisfied and deferred to the discretion of the MCC NY.

5. Maxwell v. Holland, Civil No. 95-1910 (M.D.Pa.)

On February 15, 1996, Judge McClure granted the petition for writ of habeas corpus in the above case. A hearing on this petition was conducted on February 1, 1996. The court held that the record supported the contention of inmate Kenneth Maxwell, 31259-054, that he did not receive credit towards a state sentence for a period of time in state custody. The court ordered the Bureau to credit Maxwell with time in custody from January 3, 1991 to June 22, 1991. This resulted in Maxwell's immediate release from federal custody to a state detainer. Because of the fact specific holding, we recommend against appeal. Attorney Lori Cunningham assisted the AUSA at the hearing.

6. Housely v. Morton, Civil No. 96-305 (E.D.N.Y.)

Staff member at MCC NY filed complaint challenging attempt to evict him from staff housing administered by MDC Brooklyn. The staff member asserted that we were ready to throw him to the street. At the January 29, 1996 hearing, we advised the court that we would only evict through eviction proceedings in state court. Judge Amon requested the parties to try to resolve. Attempts to resolve have been unsuccessful. A motion to dismiss is pending before the court. Attorney Azzmeiah Vazquez assisted the AUSA at the hearing.

7. United States v. Carey Jackson, 95-CR-34 (EDNY)

In a letter to his sentencing judge (Chief Judge Sifton), inmate Carey Jackson, 20520-044, complained about his designation to FCI Texarkana. He asserted that the decision was based on an erroneous address from his prior commitment. Inmate also asked to be housed at FCI Loretto with his brother, Rodney Jackson, 25798-053. The judge held a hearing on March 18, 1996. NER designator confirmed that the correct address would have resulted in a designation to a low institution in the NER. The two brothers were involved in at least 3 prior criminal offenses together. Through the AUSA, we agreed to put the inmate in for a transfer to the NER, but not to FCI Loretto. The judge appeared satisfied. Inmate has been transferred to LSCI Allenwood.

8. United States v. McCarthy, 94 CR 466-01 (E.D.Pa.)

Inmate Leo McCarthy, 48275-066, filed a letter motion with his sentencing judge (Judge Weiner) requesting authorization from the court to be placed in the ICC. The inmate is serving a 44 month sentence for malicious damage of a building by use of an explosive device (18 USC 844(i)). The AUSA advised the court that the offense would preclude him from the ICC and that the sentence length would at best put him on the waiting list. Judge Weiner held a hearing on March 26, 1996. Hank Sadowski represented the BOP. The Judge was advised that he could recommend ICC placement but that the inmate does not fit the criteria for placement. Per request of the Judge, Hank set forth the position of the Bureau in a letter sending a copy to the defense attorney to respond.

9. United States v. Carrasquillo, Crim. 92-339-04, Civil 96-184 (E.D.Pa.)

Inmate Efrain Carrasquillo, 45680-066, filed a motion to vacate sentence under 28 U.S.C. § 2255 alleging ineffective assistance of counsel. The inmate also alleges that he should receive a downward departure for the sentencing guidelines because he suffers from a variety of medical problems, diabetes, arthritis, and heart problems. He alleges that he needs more medical care than he is receiving at LSCI Allenwood. LSCI is providing the care the inmate presently needs and there is no plan to refer him for medical designation. Judge Yohn held a hearing on the motion on April 9, 1996. Hank Sadowski assisted the AUSA at the hearing. The Judge ruled that the inmate's present medical care by the Bureau is not relevant to his decision on the motion to vacate. The Judge stated that if there were a problem with his medical care by the Bureau, he would check into it for the inmate. After testimony, the Judge saw no reason to question the care provided by the Bureau.

10. M.F. v. Reish, 95 Civ. 4904 (S.D.N.Y.)

Witsec inmate at MCC NY filed a Bivens action challenging conditions in the Witsec Unit at MCC NY. On September 11, 1995, Judge Sheindlin held a hearing to address injunctive requests relating to medical care and breach of security. The Judge denied injunctive relief on these allegations. At the hearing, the inmate raised a new issue that general population inmates were contaminating the food being served to Witsec inmates. The judge permitted other Witsec inmates to actively participate in the case. A motion to dismiss the injunctive request and a motion for summary judgment on the Bivens count have been filed. On March 29, 1996, the judge held a second hearing on the injunctive aspects of the case. The inmates presented a list of proposals relating to the Witsec unit. The judge felt that since the Witsec inmates were important to the government, the MCC should see whether it could agree to any of the requested items. On April 16, 1996, another hearing was held. The judge heard evidence on the preliminary injunctive part of the case. The judge reserved ruling. Dominique Raia assisted the AUSA.

11. United States v. Goldberg, CR-94-0039 (M.D.Pa.)

The retrial, ordered by the Third Circuit in United States v. Goldberg, 67 F.3d 1092 (3d Cir. 1995), resulted in a jury verdict on March 14, 1996, again convicting Ronald J. Goldberg, 35657-066, of forgery of an United States District Judge order and making a materially false statement to a federal agency. Goldberg tried to present a forged court order to staff at USP Lewisburg to effectuate unrestricted access to the law library. Attorney Mike Tafelski testified at the trial. At main line, the inmate made an implied admission to Mike that he was responsible for the phony order.

12. United States v. Mark Hobbs, Crim. 95-2070R-01 (D.N.J.)

Inmate Mark Hobbs, 03645-015, has been charged with possession of drugs at FCI Fairton. Drugs were found in his shoes after a shakedown of his cell in SHU. Hobbs gave a statement to FAI staff admitting the drugs were his. The attorney for Hobbs subpoenaed documents for the trial to commence on March 25, 1996. Part of the request was fine; part was objectionable (request for visiting records of all other inmates in SHU at the time). A hearing was held on March 22, 1996 to address a motion to suppress Hobbs's statement to staff and on our motion to quash part of the subpoena. Attorney Bobbie Truman and Fairton staff attended the hearing. Magistrate Judge Rosen denied the motion to suppress the statement given to staff. The trial and the hearing on the motion to quash the subpoena were continued to a later date.

SETTLEMENTS AND AWARDS

1. Sachs v. United States, Civil No. 93-0871 (D.Conn.)

Former Inmate Marvin Sachs, 10290-014, filed this FTCA action alleging institution was liable for his slip and fall on ice at FCI Danbury in January 1993, when he was 69 years old. Due to factual dispute, case would go to trial. U.S. Magistrate Judge Margolis scheduled a settlement conference before a special master for March 25, 1996. Paralegal Patty Gotts assisted the AUSA. The special master recommended that the parties settle for \$15,000. The parties have agreed to settle per the special master's recommendation. The inmate had a medical expert to attribute back and neck injuries to the fall and institution documentation addressing removal of snow and ice on the date in question was missing.

2. Sansbury v. United States, Civil No. 95-71 (D.N.J.)

Inmate Douglas Sansbury, 86125-071, filed a FTCA action alleging FCI Fairton staff lost his property in value of \$1095.85 during a transfer in November 1993. Issues of fact would have caused this case to go to trial at considerable expense. Case settled for \$380.

Enclosures

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 01/01/1996 TO 03/31/1996

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	74	22	8	35	9	50	567	51	12	2	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)

2ND QTR NERC

Tort Claims Second Quarter - FY96 (January 01, 1996 - March 31, 1996)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
MXR	2	2	0	0	0	0	0	0	0	0	0	0	13
NER	251	215	21	1	1	12	26	3409	365	120	0	4	135
SER	0	0	0	0	0	0	0	0	0	0	0	0	0
NCR	1	1	0	0	0	0	0	0	1	0	0	0	0
SCR	0	0	0	0	0	0	0	0	0	0	0	0	0
WXR	0	0	0	0	0	0	0	0	0	0	0	0	0
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	254	218	21	1	1	12	26	3409	366	120	0	4	74

► Press any key to continue

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 01-01-96 TO 03-31-96

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	404	171	12	23	0	8	4	14	330	59	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

July 26, 1996

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

Quarterly Report - April 1, 1996 through June 30, 1996

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

Attached are the statistics requested for the quarterly report for the third quarter of FY 1996.

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

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. Bradley v. Meko, No. 96-3091 (3d Cir. May 31, 1996)

The Third Circuit summarily affirmed the denial of a habeas petition filed by inmate Robert E. Bradley, 02806-036, challenging the denial of his eligibility for a reduction under 18 U.S.C. § 3621(e). The inmate had been convicted of the use of a firearm as part of a drug offense (18 U.S.C. § 924(c)).

2. Urrego v. United States, 94 Civ. 0186 (S.D.N.Y.)

Inmate Charles Urrego, 81032-054, brought this FTCA action for a fall getting into his upper bunk when he was a pretrial detainee at MCC NY in October 1992. The inmate alleged MCC provided no way for him to get in the upper bunk, thereby, forcing him to use a step stool (actually a swivel chair), which rolled backwards causing his fall. The inmate alleged torn ligaments and a possible fracture to his ankle. Our medical records show a second degree sprain. Trial held before Judge Sweet on May 8, 1996. At close of evidence, Judge Sweet ruled from the bench in favor of the United States. Judge found that MCC was under no duty to provide a ladder or alternate means for inmate to get into upper bunk. Dominique Raia assisted the AUSA.

3. M.F. v. Reish, 95 Civ. 4904 (S.D.N.Y.)

Witsec inmate at MCC NY filed a Bivens action challenging conditions in the Witsec Unit at MCC NY. On September 11,

1995, Judge Sheindlin held a hearing to address injunctive requests relating to medical care and breach of security. The Judge denied injunctive relief on these allegations. At the hearing, the inmate raised a new issue that general population inmates were contaminating the food being served to Witsec inmates. The judge permitted other Witsec inmates to actively participate in the case. Motions to dismiss the injunctive request and for summary judgment on the Bivens case were filed. The judge held another hearing on April 16, 1996. Dominique Raia assisted the AUSA. On April 30, 1996, the Judge dismissed the injunctive claims for failure to exhaust and dismissed the money claims against the defendants in their official capacity. On June 18, 1996, the Judge granted our motion to dismiss the Bivens claim, but the court permitted the plaintiffs to refile their Eighth Amendment allegations within 90 days.

4. Felipe v. Reish, 96 CIV. 3325 (S.D.N.Y.)

Inmate Luis Felipe, 14067-054 filed a petition for writ of habeas corpus challenging the conditions of his confinement in Unit 9 South (administrative detention) at MCC NY. The inmate is reputed to be the head of the Latin Kings. Inmate was placed in 9 South detention because he is an escape risk, and his presence in general population would be disruptive due to his leadership position in the Latin Kings. MCC also had information that his life is in danger. Two co-defendants filed similar petitions which were consolidated by the court. Our written response to the petition was filed on May 21, 1996. Judge McKenna held a hearing on May 24, 1996. Dominique Raia assisted the AUSA at the hearing. In an opinion dated July 17, 1996, the court dismissed the petitions.

5. United States v. Shah, 93 Cr. 180 (S.D.N.Y.)

Pretrial detainee Wali Khah Shah, 42799-054, is the inmate charged with attempted escape from the roof of MCC NY. The inmate is also charged with conspiracy to bomb aircraft and conspiracy to murder. The inmate challenged the Miranda warnings given to him on his arrest in a foreign country. The inmate alleged he did not understand English. The AUSA requested a Physician's Assistant from MCC NY to testify concerning his conversations with the inmate. Paralegal Specialist James Vogel accompanied the PA at the hearing. At the May 28, 1996 hearing on the inmate's motion to suppress, the PA testified that he was able to communicate with the inmate in English. Judge Duffy denied the motion to suppress and the trial commenced.

6. United States v. Carrasquillo, Crim. 92-339-04, Civil 96-184 (E.D.Pa.)

Inmate Efrain Carrasquillo, 45680-066, filed a motion to vacate sentence under 28 U.S.C. § 2255 alleging ineffective assistance of counsel. The inmate also alleged that he should receive a downward departure for the sentencing guidelines because he suffers from a variety of medical problems, diabetes, arthritis, and heart problems. He alleged that he needs more medical care than he is receiving at LSCI Allenwood. (LSCI is providing the care the inmate presently needs and there is no plan to refer him for medical designation.) On April 9, 1996, Judge Yohn held a hearing on the motion. Hank Sadowski attended the hearing. The Judge ruled that the inmate's present medical care by the Bureau is not relevant to his decision on the motion to vacate. The Judge stated that if there were a problem with his medical care by the Bureau, he would check into it for the inmate. After testimony, the Judge saw no reason to question the care provided by the Bureau.

7. United States v. Baird, Crim. No. 94-215 (E.D.Pa.)

Pretrial detainee Frank Baird, 47777-066, filed a motion to be released from pretrial detention on the basis of a series of medical problems. In January 1995, Baird had been assaulted by another inmate while in a holding cell in route to trial. He suffered fractures to facial bones on his left side. He had corrective surgery when he was housed in local jail by the U.S. Marshals. Baird alleged that he needed reparation surgery (by an outside specialist) because of continuing problems with his jaw. Baird also alleged he suffered from colitis and food allergies. He alleged he cannot obtain proper food in a prison. Most of his allegations related to Lehigh County Jail. On April 25, 1996, Judge Joiner held a hearing on the motion. The U.S. Marshal had moved Baird to FCI Fairton on April 19, 1996 for this hearing and for the May 20, 1996 trial. Since Baird was now to be housed at FCI Fairton, Hank Sadowski testified for the Bureau of Prisons that: (1) Baird had not brought his medical complaints to the medical staff at FCI Fairton, and (2) if his complaints are confirmed, the Bureau can treat Baird. The Judge found that Baird was not entitled to release (he had been in pretrial status for almost two years). The court directed FCI Fairton to examine Baird and formulate an appropriate diet and to determine whether Baird needs additional surgery to correct his jaw problem.

8. Bernardo v. U.S. Bureau of Prisons, Civ. No. 95-1860
(E.D.Pa.)

Inmate Michael Bernardo, 15044-054, brought this FTCA action alleging FCI Schuylkill was negligent when his property worth \$405 had been stolen in August 1, 1994. He alleged that there was a series of thefts and that FCI staff did not take proper action to prevent the thefts. In addition he alleges that he advised staff when he discovered the thefts and staff did not undertake a sufficient investigation to try to recover his property. The inmate had requested a broad range of information concerning thefts in all federal institutions and the choice of the type of combination lock sold in commissary. We objected to the scope of the request. On May 22, 1996, Judge Shapiro held a hearing to address the discovery dispute. The inmate participated via telephone. Hank Sadowski assisted the AUSA at the hearing. The court ordered a more limited discovery encompassing the inmate's unit at FCI Schuylkill for the calendar year 1994. The court suggested that the parties try to resolve the case by way of settlement. After discussion with the inmate, case settled for \$200.

9. Housely v. Morton, Civil No. 96-305 (E.D.N.Y.)

Staff member at MCC NY filed complaint challenging attempt to evict him from staff housing administered by MDC Brooklyn. The staff member asserted that we were ready to throw him to the street. At the January 29, 1996 hearing, we advised the court that we would only evict through eviction proceedings in the appropriate court. Attorney Azzmeiah Vazquez assisted the AUSA at the hearing. Judge Amon requested the parties to try to resolve. Attempts to resolve have been unsuccessful. A motion to dismiss is pending before the court. A second hearing was held on the motion to dismiss on July 19, 1996. Attorney Alma Lopez attended the hearing. Judge Amon granted the motion to dismiss from the bench without prejudice to refile. The court encouraged the parties to resolve the dispute.

10. United States v. Mark Hobbs, Crim. 95-2070R-01 (D.N.J.)

Inmate Mark Hobbs, 03645-015, is being prosecuted for possession of drugs at FCI Fairton. Drugs were found in his shoes after a shakedown of his cell in SHU. Hobbs gave a statement to FAI staff admitting the drugs were his. The attorney for Hobbs has subpoenaed documents for the trial. We objected to some of the request. On May 30, 1996, Magistrate Judge Rosen held a hearing addressing our motion to quash the subpoena. FAI attorney Bobbie Truman assisted the AUSA. The court granted most of our motion to quash the subpoena. The court permitted limited discovery of the page from the SHU log

book for the day the drugs were found. The defense attorney argued it was needed for identification of possible witnesses. This is the second hearing related to this prosecution. The earlier hearing resulted in the denial of the defense attorney's motion to suppress statements made by the inmate to FAI staff and denial of a motion to disclose confidential informant.

11. Kagan v. United States, et al., No. 95-5722 (3d Cir.)

Family of deceased inmate, Philip Kagan, 14361-050, filed a Bivens action against Bureau staff at FCI Schuylkill. The inmate had suffered cardiac arrest and died on September 3, 1993. Although the attorney named the United States as defendant, the attorney did not assert jurisdiction under the Federal Tort Claims Act. The district court dismissed the complaint on August 18, 1995 for failure to state a Bivens cause of action. Attorney filed appeal. Third Circuit held oral argument on June 11, 1996. The court of appeals focused on the decision of the court not to order an amendment of the complaint to include the FTCA count. No decision has been rendered at this time.

12. United States v. Margaret Feoli, CR:95-410-1 (E.D.Pa.)

On June 13, 1996, Judge Waldman held a sentencing hearing for defendant Margaret Feoli, a 60 year old woman who embezzled over \$600,000 from a bank. Feoli took the money over a period of time and lost it all gambling at Atlantic City. Feoli suffers from a multitude of medical problems, including, diabetes, hardening of the arteries, hypertension, and undetermined seizure disorder. In addition she had suffered a stroke in 1994. The sentencing guidelines called for a term of between 18-24 months. Defendant asked for a departure downward arguing that her medical problems constituted an "extraordinary physical impairment" under Sentencing Guideline § 5H1.4. The Defendant's doctor testified that imprisonment could cause her death. The doctor also questioned the ability of the Bureau of Prisons to provide medical care for the defendant. Hank Sadowski testified that the Medical Designator reviewed the medical summaries and she would be designated to FMC Carswell if sentenced to BOP. He also testified that the BOP would be able to provide for her care, either by BOP doctors or via outside consultants. The Judge found the medical testimony supported the conclusion that the defendant had an extraordinary physical impairment. The Judge said he felt the Bureau could treat her, but he felt incarceration would bring additional serious medical problems. The defendant was sentenced to 60 days with a 3 year supervised release term.

13. United States v. Elias Cruz, 96-Cr-392 (E.D.N.Y.)

On May 17, 1996, Judge Weinstein issued an order to MDC Brooklyn that pretrial detainee Elias Cruz, 51289-053, be provided a wheelchair and any other necessary treatment for his back injury. The Acting Clinical Director concluded that a wheelchair would be counterproductive to resolving the inmate's back problems. MDC sent a letter to the AUSA requesting that the Court be moved to vacate its order. On June 4, 1996, the judge issued a second order requiring that the detainee "be provided immediately with a wheelchair." MDC, through the AUSA, requested an emergency hearing before the court. On June 7, 1996, the court stayed the order pending a full hearing. On June 11, 1996, the court heard testimony from MDC Brooklyn Acting Clinical Director. The court vacated the order requiring a wheelchair for the detainee. MDC Attorney Azzmeiah Vazquez represented the MDC at the hearing.

14. United States v. Darien Pughe, 94-CR-502 (E.D.N.Y.)

On June 12, 1996, Judge Weinstein entered an order directing the Bureau of Prisons and the United States Marshal to make the necessary arrangements for inmate Darien Pughe, 44206-053, to attend a viewing for his dead grandmother later that day. The inmate was serving a 162 month sentence for carjacking. MDC Attorney Azzmeiah Vazquez contacted the AUSA to oppose the order since the inmate did not fall within the Bureau's policy on escorted trips. An emergency hearing was held at 1:00 pm on June 12, 1996. The court vacated its order.

15. Colon v. Menifee, 4:CV-96-0807 (M.D.Pa. June 28, 1996)

In this habeas case filed by Jimmy Colon, 19968-038, Judge Muir holds that the Bureau is 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 judge relies on the recent decisions from the District Court in Oregon. We moved for reconsideration on July 17, 1996 with an eye towards appeal.

SETTLEMENTS AND AWARDS

1. Auguste v. United States, Civil No. 95-1710 (D.Conn.)

In this FTCA case, Inmate Louissage Auguste, 10587-050, alleged that he was injured on negligently maintained exercise equipment at FCI Danbury in January 1993. Our investigation revealed that a pin which held the weight plates had been

welded at some time prior to the accident. The failure of the weld appeared to have caused the plates to fall on the inmate's hand, crushing one finger. Case settled for \$5000.

2. Bernardo v. U.S. Bureau of Prisons, Civ. No. 95-1860
(E.D.Pa.)

Property loss FTCA case from FCI Schuylkill settled for \$200 after encouragement from the court to settle. See complete discussion in hearings section above.

3. Lee v. United States, Civil No. 94-0391 (M.D.Pa.)

This FTCA case for medical malpractice was filed by former inmate Robert E. Lee, Register No. 04098-088, alleging improper treatment for an eye injury while at the ICC Lewisburg. There was exposure to the United States on the basis of a delay in care. Lee suffered visual impairment in one eye and requires a corneal transplant. Case settled for \$40,000.

Enclosures

LOC	NUM	PP	PI	PPP I	WD	MED	SE T	AMT	PEN	DEN	OD	A/O	A/P
MXR	1	0	1	0	0	0	0	0	0	0	0	0	26
NER	237	199	32	5	0	1	20	5255	281	151	0	0	121
SER	1	1	0	0	0	0	0	0	0	0	0	0	19
NCR	0	0	0	0	0	0	0	0	0	0	0	0	0
SCR	0	0	0	0	0	0	0	0	0	0	0	0	0
WXR	0	0	0	0	0	0	0	0	0	0	0	0	0
C.O	0	0	0	0	0	0	0	0	0	0	0	0	0
SUM	239	200	33	5	0	1	20	5255	281	151	0	*** *	55

TORT CLAIMS THIRD QUARTER - FY96 (APRIL 01, 1996 - JUNE 30, 1996)

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 03-01-96 TO 06-30-96

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	429	172	32	26	1	13	6	14	404	6	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

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 04/01/1996 TO 06/30/1996

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	68	17	14	30	7	58	569	66	13	3	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)

UNITED STATES GOVERNMENT

memorandum

Date: October 21, 1996

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

Subject: Quarterly Report - July 1, 1996 through September 30, 1996

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

Attached are the statistics requested for the quarterly report for the fourth quarter of FY 1996.

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

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. Colon v. Menifee, 4:CV-96-0807 (M.D.Pa. June 28, 1996)

In this habeas case filed by Jimmy Colon, 19968-038, Judge Muir held that the Bureau is 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 judge relied on the recent decisions from the District Court in Oregon. Our motion for reconsideration was denied. A protective notice of appeal has been filed with the Third Circuit.

2. In re Paolo LoDuca, (E.D.N.Y.)

Inmate Paolo LoDuca, 49238-079, is a detainee awaiting at MDC Brooklyn awaiting extradition to Italy. On July 2, 1996, Judge Trager held a hearing of inmate's request to have MDC Brooklyn provide him a permanent dental bridge. MDC Attorney Azzmeiah Vazquez represented the MDC. After hearing testimony on the inmate's dental condition from both sides, the court asked to the parties to work it out. The MDC submitted a plan to the court improve the inmate's dental condition through November 1996 before reevaluating him for a bridge.

3. Moscato v. Federal Bureau of Prisons, Appeal No. 95-7065 (3d Cir.)

Oral argument in this appeal was heard on Friday, July 26, 1996. The inmate, Phillip Moscato, 08126-050, brought a habeas corpus action challenging a DHO decision from 1993. The primary issues below were the sufficiency of the evidence to support the DHO finding and the denial of a requested witness due to unavailability (the witness was at FPC Allenwood and the inmate had his DHO hearing at LSCI Allenwood). In addition the administrative appeals by the inmate were rejected as untimely. The Court of Appeals implied that it wanted to use this case as a vehicle to find that the procedural default doctrine applicable in habeas corpus actions. The inmate was released on parole in January 1996. We also raised mootness as an alternate ground to dismiss the appeal. An attorney was appointed to represent the inmate. Hank Sadowski presented oral argument. Per the Court's request at oral argument, additional letter briefs were filed addressing the mootness question.

4. Housely v. Morton, Civil No. 96-305 (E.D.N.Y.)

A second hearing was held in this case on July 19, 1996. Staff member at MCC NY filed a complaint challenging the attempt to evict him from staff housing administered by MDC Brooklyn. The staff member asserted that we were ready to throw him to the street. At the January 29, 1996 hearing, we advised the court that we would only evict through eviction proceedings in the appropriate court. Attorney Azzmeiah Vazquez assisted the AUSA at the hearing. Judge Amon requested the parties to try to resolve. Attempts to resolve were unsuccessful. A motion to dismiss was filed. Attorney Alma Lopez attended the second hearing. Judge Amon granted the motion to dismiss from the bench without prejudice to refile. The court encouraged the parties to resolve the dispute.

5. Jacob Ben-Ari v. Cobb, INS, Peter Weld, CCM, BOP, Civil Action No. 96-11461 (D.Mass.)

Inmate Jacob Ben-Ari, 20638-038, was designated to the Coolidge House, Boston, MA for service of a 5 month sentence. The sentencing judge requested placement in a CCC to enable the inmate to keep his business open and pay back restitution to the government. After placement in the CCC, INS lodged a detainer on the basis of the Anti-Terrorist Act. The inmate was transferred to FCI Oakdale on July 17, 1996. Later that same day his attorney filed the above action requesting the court to order the inmate's return to the CCC. Judge Harrington held a hearing on July 24, 1996. The judge advised the AUSA that it made little

sense to deport this inmate or to remove him from the CCC. The judge tacitly recognized his jurisdictional problems and requested the INS attorney and the AUSA to try to work this out. On September 17, 1996, the inmate completed his federal sentence and is now at FCI Oakdale solely as an INS detainee.

6. Ames v. Deutch, Civil No. 96-1265 (M.D.Pa.)

Inmate (and convicted spy) Aldrich Ames, 40087-083, filed what purports to be a class action for injunctive relief and a Bivens action against members of the CIA, U.S. Attorney's office, the Bureau of Prisons Central Office, and USP Allenwood. Ames is challenging restrictions placed upon him for national security reasons. He is also challenging the implementation of 28 C.F.R. § 501.2, the new regulation on national security cases. Assigned to Hope Moro. As a national security case, the United States Attorney's Office referred the case to Main Justice for handling. The Federal Programs Branch in Main Justice will be working with us on the case.

7. United States v. Melendez, 94 CR. 395 (S.D.N.Y.)

Inmate Jose Melendez, 14069-074, filed a motion before his criminal trial judge challenging his placement in administrative detention at MCC NY. Judge McKenna held a hearing on the motion on August 15, 1996. Dominique Raia represented the MCC. After argument, the court ruled from the bench that a motion in the criminal trial is not the appropriate manner in which to challenge placement in administrative detention.

8. Holtzman v. Franco, Civil Action No. 96-743 (W.D.Pa.)

Inmate Kenneth Holtzman, 05239-068, through his attorney, filed a petition for writ of habeas corpus challenging a discipline finding that the inmate had used drugs at a CCC. The attorney is challenging the failure to preserve the urine sample for independent testing. United States Magistrate Sensenich held a hearing on the petition for September 24, 1996. The court only heard legal arguments and no testimony. The Magistrate Judge issued a recommendation from the bench that the petition be denied. FCI Loretto Paralegal Dan Ritchie assisted the AUSA at the hearing.

9. Hunter v. Malinov, Civil Action No. 96-1195 (E.D.Pa.)

Inmate Milton Hunter, 18759-016, brought a Bivens action against medical staff at FCI Schuylkill alleging that he had prostate cancer and staff has not properly treated him. Inmate had since been transferred to FCI Cumberland. On September 5, 1996, Judge Shapiro construed the complaint as also requesting injunctive

relief in the nature of proper medical care. The court ordered a hearing for October 2, 1996. The court also ordered that the inmate be examined by a specialist (at court expense). The court also appointed an attorney to represent the inmate.

While at FCI Cumberland, the inmate has been seen by outside specialists and had a cat scan and a biopsy. Although the inmate has growths in his prostate, the tests show they are benign. The court appointed specialist concurred with this diagnosis. The specialist recommend surgical reduction of the prostate.

Dr. Howard from FCI Cumberland attended the October 2, 1996 hearing. Dr. Howard advised the court that she had selected a more conservative course of treatment using medication first to try to reduce the prostate. She placed on record that the procedure recommended by the specialist carries certain risks, including impotence and incontinence. We agreed to have the inmate seen by an urologist in the FCI Cumberland area for the surgery. The court was satisfied with this proposal and denied the injunctive request as moot. Hank Sadowski assisted the AUSA at the hearing.

10. United States v. Pelullo, CR 91-00060 (E.D.Pa.)

On September 26, 1996, Judge Robert F. Kelly held a hearing pertaining to assets seized in the above case. An issue arose concerning monitored telephone conversations between inmate Leonard Pelullo, 44140-066, and a real estate agent. The SIS technician from FCI Fairton had to testify concerning the phone monitoring notices, the manner in which inmates are informed of phone monitoring and proper procedures for legal phone calls. The court admitted the phone recording in evidence. FCI Fairton Attorney Bobbie Truman attended the hearing.

11. United States v. Benz, CR 96-00239-01 (E.D.Pa.)

Released defendant, Edward Benz III, 49943-066, had a sentencing hearing before Judge Shapiro on September 19, 1996. The defendant is arguing that he is a homosexual and will be subjected to sexual assaults in prison. The AUSA has asked for our assistance since the defendant is facing sentencing guidelines of between 47 to 57 months. Tony Prantow, Regional Designator, was available to testify; Hank Sadowski accompanied him. The court ruled from the bench that possible victimization in prison is not a ground to depart from the guidelines. At sidebar, the court asked for the Bureau's input concerning recommendations for designation, psychological care and surrender date. The court followed each of our recommendations.

12. Li v. Canarozzi, 95 Civ 0706 (S.D.N.Y.)

Former pretrial detainee Jian An Li, 44661-053, brought this Bivens complaint alleging excessive use of force by staff at MCC NY. On September 26, 1996, Judge Sand held a hearing on Plaintiff's motion to file an amended complaint, to extend the discovery deadline, and to order defendants to disclose information provided by defendants to Office of Internal Affairs. Judge Sand granted the motion to amend and the motion to extend discovery. Judge Sand denied motion to disclose contacts with OIA.

13. Danso v. United States, et al., 96 Civ. 1040 (S.D.N.Y.)

Attorney filed a combination Bivens/FTCA complaint alleging MCC NY staff used excessive force against former inmate Albert Danso, 27924-054 in February 1994. Danso died of cancer on October 1994. The attorney filed the complaint 16 months after the inmate died and did not know of the death! On September 27, 1996, Judge Sprizzo held a status hearing after learning of the inmate's death. The attorney asked the court for time to contact the family of the inmate before he withdraws the complaint. The court gave the attorney until December 6, 1996 to report back to the court.

14. United States v. Muyet, 95 CR. 941 (S.D.N.Y.)

Defense counsel in the above criminal case moved the court to direct MCC NY to house nine co-defendants in the same housing unit. Judge Leisure held a hearing on September 19, 1996. The court denied the motion and left logistics of co-defendant meetings to the expertise of the Warden. Attorney Dominique Raia represented the MCC.

SETTLEMENTS AND AWARDS

1. Popal, et al. v. United States, Civil No. 94-6178 (S.D.N.Y.)

This FTCA case was filed by 57 inmates who alleged they suffered food poisoning at FCI Otisville in October 1991. The United States faced liability in this case since it was documented that there was a food poisoning outbreak at FCI Otisville and since numerous inmates were treated. We joined the egg supplier as a defendant in this action. Attempts to settle were unsuccessful and the case proceeded to trial on July 8, 1996. Prior to trial, 22 plaintiffs were dismissed. On July 18, 1996, Judge Cote found the United States liable and ordered a total of \$102,900 damages in varying amounts per the remaining 35 plaintiffs: two were awarded \$11,800; one - \$9800; one - \$8500; one - \$7500; one - \$4000; two - \$3500; four - \$2500; four - \$1500; eight - \$2000;

five - \$1200; five - \$900; one - \$0. The United States is liable for 50% of the award; the egg supplier is liable for the other 50%. The award is only slighter higher than we expected and we recommend against appeal.

2. Cabassa v. United States, 95 Civ 8233 (S.D.N.Y.)

In this FTCA case, the guardian for an eight year old child alleges that negligence at MCC NY caused the child to suffer permanent injuries to her arms. The child was entering MCC as a visitor in 1993 when her arms were caught in the conveyor belt apparatus of the x ray machine. We stipulated to liability since our record showed that staff altered the belt to attach a wooden board at the end of the belt. The child caught her arms under this board. She suffered first and second degree burns and there is a scar on her left arm about 14 centimeters long. Attempts to settle were fruitless and the case went to trial on the damages issue on September 12, 1996. After the one day trial, Judge Chin entered a decision on September 16, 1996 awarding damages in the amount of \$35,000. This award was only slightly above the amount we had offered to settle. We recommend against appeal.

3. Medrano v. United States, 94 Civ 8639 (S.D.N.Y.);
Medrano v. Weber, et al., 94 Civ 8285 (S.D.N.Y.)

The two above civil actions arise from the same basic incident involving Inmate Pedro Medrano, 38533-053. The attorney for Medrano filed a FTCA action alleging that staff assaulted Medrano, causing an injury to his eye, which was not properly treated by the Bureau of Prisons. Medrano filed, pro se, the second action, a Bivens complaint against the officers who he alleges assaulted him. As a result of a settlement conference on July 23, 1996, the FTCA case settled for \$200,000. The case was settled because a delay in repair of a detached retina resulted in permanent loss of sight in one eye. This settlement also causes the Bivens action to be dismissed.

4. Capuano v. United States, Civil No. 95-10499 (D.Mass.)

Former Inmate Gaetan Capuano, 18310-038, filed this FTCA action alleging that he slipped and fell on an icy sidewalk at FPC Allenwood in March 1993. Inmate suffered a broken ankle from the fall. Case was scheduled to go to trial in Boston, Massachusetts on July 29, 1996. Case settled for \$8000 for avoid costs of trial (5 staff witnesses from Allenwood).

5. McGuire v. DOJ, 95 Civ 10706 (S.D.N.Y.)

Former inmate Thomas McGuire, 27952-054, alleged that personal clothing worth \$640 was lost after his placement at MCC New York

in November 1992. Our records establish he entered MCC with the property in question, but we had no record of the disposition of the property. Case settled for \$300.

6. Raphael Brown v. United States, Civil No. 3:95CV1234 (D.Conn.)

Former inmate Raphael Brown, 17547-083, alleges that he slipped and fell on ice at FCI Danbury in March 1992, and as a result, he suffered a tear to his rotator cuff in his left shoulder. The AUSA recommended settlement due to exposure on the liability issue and the severity of the Plaintiff's injuries. Our ability to defend the liability issue was hampered by the lack of records concerning snow and ice removal on the day of the fall. Our medical expert confirmed the severity of Plaintiff's injury, assessed approximately a 30% permanent partial impairment to his left shoulder and felt Brown will continue to suffer persistent pain from the injury. We focused on damages primarily for pain and suffering. Plaintiff incurred the injury at age 46 and is facing many years of pain. After a settlement conference, the case settled for \$70,000.

7. Nwanze v. United States, CV-95-304 (W.D.Pa.)

Inmate Austin Nwanze, 32832-083, filed this FTCA case requesting damages of \$165 for property he alleged was lost on his transfer from FCI Ray Brook to FCI McKean. The administrative claim was denied due to insufficient evidence that staff had the property in question. Reinvestigation uncovered additional evidence supporting his claim. Case settled for \$75.

Enclosures

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 07/01/1996 TO 09/30/1996

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	67	33	5	23	6	45	580	56	12	5	2
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 07-01-96 TO 09-30-96

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	477	210	12	32	1	14	4	21	418	34	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 FOURTH QUARTER - FY96
(JULY 01, 1996 - SEPTEMBER 20, 1996)**

LOC	NUM	PP	PI	PPP I	WD	MED	SET	AMT	PEN	DEN	OD	A/O	A/P
MXR	0	0	0	0	0	0	0	0	0	0	0	0	0
NER	196	155	19	0	0	22	26	4123	296	169	0	0	123
SER	0	0	0	0	0	0	0	0	0	0	0	0	0
NCR	1	0	0	0	0	1	1	20	0	0	0	0	71
SCR	0	0	0	0	0	0	0	0	0	0	0	0	0
WXR	0	0	0	0	0	0	0	0	0	0	0	0	42
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
SUM	197	155	19	0	0	23	27	4143	296	169	0	***	79

UNITED STATES GOVERNMENT

memorandum

Date: January 14, 1997

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

subject: Quarterly Report - October 1, 1996 through December 31, 1996

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

Attached are the statistics requested for the quarterly report for the first quarter of FY 1997.

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

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. **Benjamin Mackey v. Bureau of Prisons**, Civil No. 96-5286 (E.D.Pa)

X
Inmate Benjamin Mackey, 09717-054, at FCI Schuylkill, filed a rambling habeas corpus action challenging a DHO finding that he possessed marijuana and the calculation of prior custody credit. Judge Shapiro held a hearing on the petition for Thursday, October 17, 1996. The court stated from the bench that she was only focusing on two issues: whether the Bureau properly calculated the inmate's parole violation term and whether the DHO forfeited more statutory good time than was available at the time of the infraction. The court requested an additional declaration detailing these issues. Hank Sadowski assisted the AUSA at the hearing. The court has not yet ruled.

X
2. **Lloyd v. Levine, et al.**, Civil Action No. 96-1827
(D.N.J.)

Judge Simandle held a hearing on October 21, 1996 in the

X
above case. Counsel for Inmate Michael Lloyd, 44935-066, filed what purports to be a § 1983 action requesting essentially injunctive relief to order the inmate to be placed in a CCC for 180 days. He alleges that his CCC placement was improperly influenced by recommendations from sentencing judge and AUSA. In addition to the Warden and other Fort Dix staff, the sentencing judge and the AUSA are named as defendants. We moved to dismiss the complaint. Attorney Al Munguia represented the Bureau. Plaintiff's attorney

raised new factual allegations concerning alleged improper contact by the FBI. The court requested a declaration addressing these allegations. On November 4, 1996, the court granted our motions and dismissed the action.

3. United States v. Legrano, 93 CR 1231 (E.D.N.Y.)

X
On October 23, 1996, Judge Ross called MCC NY Attorney Dominique Raia to request Dr. Voulo (staff physician) testify in a sentencing hearing ASAP (in 40 minutes) for Joseph Legrano, 13548-053. Dr. Voulo was Legrano's "treating physician" while at MCC NY. Legrano had a variety of medical problems and was regularly seen in various clinics. The issue was whether the BOP could care for Legrano properly if housed at a BOP facility. Dr. Voulo testified as to several specific medical conditions and essentially covered his medical treatment since his incarceration with the BOP and opined that the BOP could adequately care for him. Dominique attended the hearing. Legrano was sentenced to 25 years.

4. United States v. Santiago, et al., 96 Cr 402 (S.D.N.Y.)

X
On October 23, 1996, Judge Leisure held a hearing concerning the scheduling of a co-defendant meeting for the purpose of a plea offer to all defendants. The court instructed the MCC NY to make arrangement for a codefendant meeting for October 28, 1996 at 2:00 pm. Attorney Alma Lopez attended the hearing.

5. Moscato v. Federal Bureau of Prisons, 98 F.3d 757(3d Cir.1996)

In this case, the Third Circuit established the procedural default rule for habeas corpus cases. The inmate, Phillip Moscato, 08126-050, brought a habeas corpus action challenging a DHO decision from 1993. The primary issues below were the sufficiency of the evidence to support the DHO finding and the denial of a requested witness due to unavailability (the witness was at FPC Allenwood and the inmate had his DHO hearing at LSCI Allenwood). The administrative appeals by the inmate were rejected as untimely. Following the ^{Seventh} ~~7th~~ Circuit, the ^{Third Circuit} ~~Court of Appeals~~ held that the doctrine of procedural default applies in habeas corpus actions challenging inmate discipline. When an inmate has not fully exhausted administrative remedies and no longer has such a remedy, a court could not consider the habeas petition unless the inmate established cause for the failure to exhaust and prejudice resulting therefrom. ~~In this case, the inmate could not establish cause, and the court did not need to address whether there was prejudice. Hank Sadowski had presented oral argument before the Court of Appeals in July 1996.~~

There is, in dicta, a troubling footnote on unavailability of witnesses. The court focused on the distance between FPC Allenwood and the LSCI Allenwood and questioned whether the requested inmate witnesses were unavailable. The better justification is institution security since bringing inmate witnesses from one institution into another always causes security risks. We have passed this recommendation to the DHOs at the Complex.

6. United States v. Diekan, Cr 95-10382 (D. Mass.)

X
Inmate John Diekan, 20946-038, was serving a 5 month sentence at a CCC in Boston. The CCM ordered him to submit to a routine blood test as part of his physical required to remain at the CCC. Diekan refused and asserted religious grounds. He told the CCM that sometimes he was a Christian Scientist and sometimes he was a Catholic. The CCM found that Diekan had requested weekend passes to attend evening religious service at a Catholic Church. The CCM denied his request not to submit to the blood test. Diekan (a former attorney) filed an emergency motion to enjoin the Bureau from "retaliating" against him for failure to submit to the blood test. Judge Keeton (the sentencing judge) scheduled a hearing for Monday, October 28, 1996. The court asked CCM Pete Weld to attend the hearing. The CCM told the court that all inmates were so screened to ensure there were no communicable diseases, and, if he continues to refuse, Diekan would be placed in a federal institution so he can be isolated. The court dismissed the motion for lack of jurisdiction. The next day the inmate agreed to the blood test.

7. United States v. Gonzales, No. 95-1605 (S.Ct.)

Oral argument ~~in this criminal appeal~~ was heard before the Supreme Court on December 11, 1996. The issue was whether a federal sentence imposed under 18 U.S.C. § 924(c), which prohibits concurrent service "with any other term of imprisonment," may be ordered to run concurrently with a state sentence, i.e., does "any other term of imprisonment" encompass state sentences as well as federal. The position of the United States was that it encompasses state sentences as well. Miguel Estrada (who argued Reno v. Koray) presented argument on behalf of the United States. The oral argument went well and the Court had a firm grasp that the statute was directed to federal sentences and was not an attempt to control state sentencing discretion. Hank Sadowski assisted Mr. Estrada at the argument.

8. Terrance Jones v. Meko, Civil No. 96-4 (W.D.Pa.)

On November 27, 1996, the United States District Court for the Western District of Pennsylvania granted the petition for writ of habeas corpus in the above case. The court summarily adopted the Report and Recommendation of the Magistrate Judge which found that the Bureau incorrectly concluded Petitioner was ineligible for 18 U.S.C. § 3621(e) early reduction because Petitioner Terrance L. Jones, Register No. 03840-055, had committed a crime of violence. We had construed the order granting the petition as one finding Jones eligible for early reduction. Notwithstanding Jones's otherwise release date of December 12, 1997, the institution was exploring CCC placement for community transition. This had the impact on reducing the maximum possible reduction for Jones to about 6 months. On the basis of a letter written by Jones to the court, Judge McLaughlin held a telephone hearing on December 11, 1996. Dave Essig represented the Bureau. The Judge concluded that his intention was that Jones receive the maximum benefit and ordered Jones released on December 12, 1996.

9. Hunter v. Malinov, Civil Action No. 96-1195 (E.D.Pa.)

Inmate Milton Hunter, 18759-016, brought a Bivens action against medical staff at FCI Schuylkill alleging that he had prostate cancer and staff has not properly treated him. Inmate had since been transferred to FCI Cumberland. On December 12, 1996, Judge Shapiro held a status conference to

X go over discovery issues. The primary problem was a demand by appointed counsel to photograph portions of the medical department at FCI Schuylkill. Hank Sadowski assisted the AUSA. Counsel for Hunter agreed to withdraw his request for photos until he toured the FCI.

10. Harris v. Bureau of Prisons, et al., Civil No. 96-6549 (E.D.Pa.)

X Counsel for former inmate William Harris, 44917-066 filed a combination FTCA and Bivens complaint against the Bureau of Prisons and staff at FCI Schuylkill, alleging negligent medical treatment for a detached retina in early 1995. As a result, he allegedly lost sight in one eye. None of the Bureau defendants have been served. The U.S. Attorney was served on December 3, 1996. Judge Marvin Katz held a pretrial conference on December 18, 1996. Joyce Horikawa assisted the AUSA at the conference.

Plaintiff's attorney reported that Plaintiff recently died of a heart attack, and she was not sure if she would pursue the case. She also indicated that she did not know the jurisdictional basis for her allegations of statutory violations. The court gave her 30 days in which to file an amended complaint, naming the United States as the sole defendant under the FTCA. Plaintiff agreed that she would request no more than \$100,000.00. The judge indicated that once Plaintiff filed an amended complaint, he would place this case on the arbitration docket.

11. United States v. Marsico, Criminal No. 96-261 (E.D.Pa.)

X Defendant, Michael Marsico, Reg. No. 49961-066, had a sentencing hearing on December 19, 1996 before Judge Robreno. The Defendant had pleaded guilty to 2 counts of bank robbery. Defense counsel requested a downward departure from the applicable sentencing guidelines because of defendant's history of drug abuse and psychological problems, including two post-arrest suicide attempts. Counsel was implying that the Bureau of Prisons could not adequately treat the defendant. Joyce Horikawa attended the hearing with Dr. Gerard Bryant, the Regional Psychology

Administrator.

X The AUSA advised the court that Bureau of Prisons staff were available to address the treatment available to inmates. On questioning from the court, defense counsel conceded that the Bureau of Prisons could handle defendant's psychological problems. The court denied defendant's motion for a downward departure, and sentenced Marsico to a sentence of 156 months. Judge Robreno stated, given defendant's inability to correct his drug addiction on his own, the Bureau may be the only place where Marsico could adequately address his drug problem.

12. United States v. Zampardi, 96 Cr 749 (E.D.N.Y.)

X Inmate Michael Zampardi, 00128-748, a pretrial detainee at MDC Brooklyn, filed a motion with the criminal trial judge, Judge Gleeson, to be removed from administrative detention. Zampardi was placed in protective custody after the AUSA advised that the FBI received reliable information that a contract was taken out for his life. The detainee offered to "waive" his safety and alleged that the isolation is adversely effecting his health. Judge Gleeson scheduled a hearing for November 1, 1996. The wrong inmate was brought to the hearing and the hearing was held on November 4, 1996. Attorney Azzmeiah Vazquez assisted the AUSA at the hearing. On November 6, 1996, the court dismissed the motion for failure to exhaust available remedies within the BOP.

13. United States v. Celester, Crim. No. --- (D.N.J.)

X On December 2, 1996, released defendant William Celester had a sentencing hearing before Judge Garrett Brown in Trenton, NJ. Celester was the former Police Director for Newark, NJ. Celester argued, in part, for a downward departure from the sentencing guideline range of 21 to 27 months, because he had a series of medical problems which could not be handled "given the modest state of penal medicine in many facilities." Celester has hypertension, congestive heart failure and malabsorption syndrome secondary to an intestinal bypass. The AUSA submitted a letter from Regional HSA asserting that the medical problems could be handled at any federal institution (also confirmed with Medical Designations). Assistant Regional Counsel Joyce Horikawa attended the hearing. The court himself questioned the defendant's doctor and determined the doctor was unaware of the medical capabilities of the Federal Bureau of Prisons. Not only did the court reject the defendant's request

to go below the sentencing guidelines, the court imposed a sentence of 30 months, above the guidelines because Celester violated the public trust.

14. Fisher v. Goord, et al., 96-CV-0486 (W.D.N.Y.)

New York State inmate Amy Fisher ("Long Island Lolita" of Joey Buttafuoco fame) is alleging that a number of New York state institution staff have had sex with her, some with her consent, some without. She has filed a civil rights action against numerous state officials. As part of her relief, she has moved the court to order her transferred to the Federal BOP. The United States is not a party to the action. We have filed an Amicus brief asserting that the court has no jurisdiction and that there is no authority to order the United States to take a state prisoner. Judge Arcara held a hearing on December 3, 1996. The Judge focused on our argument that revised 18 U.S.C. § 3626 sets the standard for his decision on injunctive relief. ~~Neither Plaintiff nor the New York state defendants addressed this statute in their briefs.~~ The court requested Plaintiff to submit a response to this argument within 14 days. The Plaintiff submitted a response asserting that Section 3626 is unconstitutional and requested the court to certify the issue to the Attorney General under 28 U.S.C. § 2403(a). We are contacting Federal Programs to see if they want to file a response on the constitutionality of § 3626.

15. 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. On November 21 & 25, 1996, Judge Muir held hearings on a motion filed by defense counsel challenging the attorney visiting procedure at USP Allenwood. Defense counsel objected to the number of searches (pat and visual) of Hammer to and from each visit. Defense counsel also objected to non-contact visits. Attorney Hope Moro assisted the AUSA at the hearings. In an 31 page opinion dated December 5, 1996, the court denied the defendant's motion.

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Federal parole violator Marc Johnson, 24552-053, is housed at MDC Brooklyn pending the parole revocation hearing by the U.S. Parole Commission. Johnson is also facing New York state charges for attempted murder. The Parole Commission denied

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On November 13, 1996, a former Physician's Assistant at MCC NY testified in the criminal trial of Pierre Mathurin, 42870-054. As part of his defense to drug charges, the inmate alleged that he had a leg injury which required him to have a narcotic in his possession. The former PA testified that the inmate did not have a leg injury which required him to take a narcotic. Dominique Raia attended the hearing.

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~~Inmate Mario Gonzalez, 12380-075, filed a Federal Tort Claims complaint alleging that his property worth \$1682.50 was lost at FCI Schuylkill after an institution transfer. The return receipt was signed by staff but the box was never located. Inmate rejected our attempt to settle the administrative claim and brought this action.~~ ^{FTCA property} Case settled for \$750.00.

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This FTCA case was brought by former inmate Rother Jones, Reg. No. 36662-066, who suffered a massive brainstem hemorrhage on October 18, 1991, after being transferred from FCI Loretto to FCI McKean, via USP Lewisburg. Jones had been under prescribed medication to control hypertension. Approximately 2-3 hours after arriving at FCI McKean, he suffered a brainstem hemorrhage, which left him paralyzed from the neck down and affected his speech. ~~The complaint alleged that the failure to provide Jones his medication on October 18, 1991 was the cause of his brainstem hemorrhage.~~ ~~The case was scheduled for trial on November 12, 1996.~~ Case was settled for \$65,000 because of lack of records concerning medication and because of serious nature of injury.

do not
delete

Attachments

NORTHEAST REGIONAL OFFICE
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FROM 10/01/1996 TO 12/31/1996

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SER											
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SCR											
WXR											
CO											
TOT											

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DEFINITIONS:

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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)

UNITED STATES GOVERNMENT

memorandum

Date: January 14, 1997

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

Subject: Quarterly Report - October 1, 1996 through December 31, 1996

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

Attached are the statistics requested for the quarterly report for the first quarter of FY 1997.

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

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. **Benjamin Mackey v. Bureau of Prisons**, Civil No. 96-5286 (E.D.Pa.)

Inmate Benjamin Mackey, 09717-054, at FCI Schuylkill, filed a rambling habeas corpus action challenging a DHO finding that he possessed marijuana and the calculation of prior custody credit. Judge Shapiro held a hearing on the petition for Thursday, October 17, 1996. The court stated from the bench that she was only focusing on two issues: whether the Bureau properly calculated the inmate's parole violation term and whether the DHO forfeited more statutory good time than was available at the time of the infraction. The court requested an additional declaration detailing these issues. Hank Sadowski assisted the AUSA at the hearing. The court has not yet ruled.

2. **Lloyd v. Levine, et al.**, Civil Action No. 96-1827 (D.N.J.)

Judge Simandle held a hearing on October 21, 1996 in the above case. Counsel for Inmate Michael Lloyd, 44935-066, filed what purports to be a § 1983 action requesting essentially injunctive relief to order the inmate to be placed in a CCC for 180 days. He alleges that his CCC placement was improperly influenced by recommendations from sentencing judge and AUSA. In addition to the Warden and other Fort Dix staff, the sentencing judge and the

AUSA are named as defendants. We moved to dismiss the complaint. Attorney Al Munguia represented the Bureau. Plaintiff's attorney raised new factual allegations concerning alleged improper contact by the FBI. The court requested a declaration addressing these allegations. On November 4, 1996, the court granted our motions and dismissed the action.

3. United States v. Legrano, 93 CR 1231 (E.D.N.Y.)

On October 23, 1996, Judge Ross called MCC NY Attorney Dominique Raia to request Dr. Voulo (staff physician) testify in a sentencing hearing ASAP (in 40 minutes) for Joseph Legrano, 13548-053. Dr. Voulo was Legrano's "treating physician" while at MCC NY. Legrano had a variety of medical problems and was regularly seen in various clinics. The issue was whether the BOP could care for Legrano properly if housed at a BOP facility. Dr. Voulo testified as to several specific medical conditions and essentially covered his medical treatment since his incarceration with the BOP and opined that the BOP could adequately care for him. Dominique attended the hearing. Legrano was sentenced to 25 years.

4. United States v. Santiago, et al., 96 Cr 402 (S.D.N.Y.)

On October 23, 1996, Judge Leisure held a hearing concerning the scheduling of a co-defendant meeting for the purpose of a plea offer to all defendants. The court instructed the MCC NY to make arrangement for a codefendant meeting for October 28, 1996 at 2:00 pm. Attorney Alma Lopez attended the hearing.

5. Moscato v. Federal Bureau of Prisons, 98 F.3d 757(3d Cir.1996)

In this case, the Third Circuit established the procedural default rule for habeas corpus cases. The inmate, Phillip Moscato, 08126-050, brought a habeas corpus action challenging a DHO decision from 1993. The primary issues below were the sufficiency of the evidence to support the DHO finding and the denial of a requested witness due to unavailability (the witness was at FPC Allenwood and the inmate had his DHO hearing at LSCI Allenwood). The administrative appeals by the inmate were rejected as untimely. Following the 7th Circuit, the Court of Appeals held that the doctrine of procedural default applies in habeas corpus actions challenging inmate discipline. When an inmate has not fully exhausted administrative remedies and no longer has such a remedy, a court could not consider the habeas petition unless the inmate established cause for the failure to exhaust and prejudice resulting therefrom. In this case, the inmate could not establish cause, and the court did not need to address whether there was prejudice. Hank Sadowski had presented oral argument before the Court of Appeals in July 1996.

There is, in dicta, a troubling footnote on unavailability of witnesses. The court focused on the distance between FPC Allenwood and the LSCI Allenwood and questioned whether the requested inmate witnesses were unavailable. The better justification is institution security since bringing inmate witnesses from one institution into another always causes security risks. We have passed this recommendation to the DHOs at the Complex.

6. United States v. Diekan, Cr 95-10382 (D. Mass.)

Inmate John Diekan, 20946-038, was serving a 5 month sentence at a CCC in Boston. The CCM ordered him to submit to a routine blood test as part of his physical required to remain at the CCC. Diekan refused and asserted religious grounds. He told the CCM that sometimes he was a Christian Scientist and sometimes he was a Catholic. The CCM found that Diekan had requested weekend passes to attend evening religious service at a Catholic Church. The CCM denied his request not to submit to the blood test. Diekan (a former attorney) filed an emergency motion to enjoin the Bureau from "retaliating" against him for failure to submit to the blood test. Judge Keeton (the sentencing judge) scheduled a hearing for Monday, October 28, 1996. The court asked CCM Pete Weld to attend the hearing. The CCM told the court that all inmates were so screened to ensure there were no communicable diseases, and, if he continues to refuse, Diekan would be placed in a federal institution so he can be isolated. The court dismissed the motion for lack of jurisdiction. The next day the inmate agreed to the blood test.

7. United States v. Gonzales, No. 95-1605 (S.Ct.)

Oral argument in this criminal appeal was heard before the Supreme Court on December 11, 1996. The issue was whether a federal sentence imposed under 18 U.S.C. § 924(c), which prohibits concurrent service "with any other term of imprisonment," may be ordered to run concurrently with a state sentence, i.e., does "any other term of imprisonment" encompass state sentences as well as federal. The position of the United States was that it encompasses state sentences as well. Miguel Estrada (who argued Reno v. Koray) presented argument on behalf of the United States. The oral argument went well and the Court had a firm grasp that the statute was directed to federal sentences and was not an attempt to control state sentencing discretion. Hank Sadowski assisted Mr. Estrada at the argument.

8. Terrance Jones v. Meko, Civil No. 96-4 (W.D.Pa.)

On November 27, 1996, the United States District Court for the Western District of Pennsylvania granted the petition for writ of habeas corpus in the above case. The court summarily adopted the

Report and Recommendation of the Magistrate Judge which found that the Bureau incorrectly concluded Petitioner was ineligible for 18 U.S.C. § 3621(e) early reduction because Petitioner Terrance L. Jones, Register No. 03840-055, had committed a crime of violence. We had construed the order granting the petition as one finding Jones eligible for early reduction. Notwithstanding Jones's otherwise release date of December 12, 1997, the institution was exploring CCC placement for community transition. This had the impact on reducing the maximum possible reduction for Jones to about 6 months. On the basis of a letter written by Jones to the court, Judge McLaughlin held a telephone hearing on December 11, 1996. Dave Essig represented the Bureau. The Judge concluded that his intention was that Jones receive the maximum benefit and ordered Jones released on December 12, 1996.

9. Hunter v. Malinov, Civil Action No. 96-1195 (E.D.Pa.)

Inmate Milton Hunter, 18759-016, brought a Bivens action against medical staff at FCI Schuylkill alleging that he had prostate cancer and staff has not properly treated him. Inmate had since been transferred to FCI Cumberland. On December 12, 1996, Judge Shapiro held a status conference to go over discovery issues. The primary problem was a demand by appointed counsel to photograph portions of the medical department at FCI Schuylkill. Hank Sadowski assisted the AUSA. Counsel for Hunter agreed to withdraw his request for photos until he toured the FCI.

10. Harris v. Bureau of Prisons, et al., Civil No. 96-6549 (E.D.Pa.)

Counsel for former inmate William Harris, 44917-066 filed a combination FTCA and Bivens complaint against the Bureau of Prisons and staff at FCI Schuylkill, alleging negligent medical treatment for a detached retina in early 1995. As a result, he allegedly lost sight in one eye. None of the Bureau defendants have been served. The U.S. Attorney was served on December 3, 1996. Judge Marvin Katz held a pretrial conference on December 18, 1996. Joyce Horikawa assisted the AUSA at the conference.

Plaintiff's attorney reported that Plaintiff recently died of a heart attack, and she was not sure if she would pursue the case. She also indicated that she did not know the jurisdictional basis for her allegations of statutory violations. The court gave her 30 days in which to file an amended complaint, naming the United States as the sole defendant under the FTCA. Plaintiff agreed that she would request no more than \$100,000.00. The judge indicated that once Plaintiff filed an amended complaint, he would place this case on the arbitration docket.

11. United States v. Marsico, Criminal No. 96-261 (E.D.Pa.)

Defendant, Michael Marsico, Reg. No. 49961-066, had a sentencing hearing on December 19, 1996 before Judge Robreno. The Defendant had pleaded guilty to 2 counts of bank robbery. Defense counsel requested a downward departure from the applicable sentencing guidelines because of defendant's history of drug abuse and psychological problems, including two post-arrest suicide attempts. Counsel was implying that the Bureau of Prisons could not adequately treat the defendant. Joyce Horikawa attended the hearing with Dr. Gerard Bryant, the Regional Psychology Administrator.

The AUSA advised the court that Bureau of Prisons staff were available to address the treatment available to inmates. On questioning from the court, defense counsel conceded that the Bureau of Prisons could handle defendant's psychological problems. The court denied defendant's motion for a downward departure, and sentenced Marsico to a sentence of 156 months. Judge Robreno stated, given defendant's inability to correct his drug addiction on his own, the Bureau may be the only place where Marsico could adequately address his drug problem.

12. United States v. Zampardi, 96 Cr 749 (E.D.N.Y.)

Inmate Michael Zampardi, 00128-748, a pretrial detainee at MDC Brooklyn, filed a motion with the criminal trial judge, Judge Gleeson, to be removed from administrative detention. Zampardi was placed in protective custody after the AUSA advised that the FBI received reliable information that a contract was taken out for his life. The detainee offered to "waive" his safety and alleged that the isolation is adversely effecting his health. Judge Gleeson scheduled a hearing for November 1, 1996. The wrong inmate was brought to the hearing and the hearing was held on November 4, 1996. Attorney Azzmeiah Vazquez assisted the AUSA at the hearing. On November 6, 1996, the court dismissed the motion for failure to exhaust available remedies within the BOP.

13. United States v. Celester, Crim. No. --- (D.N.J.)

On December 2, 1996, released defendant William Celester had a sentencing hearing before Judge Garrett Brown in Trenton, NJ. Celester was the former Police Director for Newark, NJ. Celester argued, in part, for a downward departure from the sentencing guideline range of 21 to 27 months, because he had a series of medical problems which could not be handled "given the modest state of penal medicine in many facilities." Celester has hypertension, congestive heart failure and malabsorption syndrome secondary to an intestinal bypass. The AUSA submitted a letter from Regional HSA asserting that the medical problems could be handled at any federal institution (also confirmed with Medical Designations). Assistant Regional Counsel Joyce Horikawa

attended the hearing. The court himself questioned the defendant's doctor and determined the doctor was unaware of the medical capabilities of the Federal Bureau of Prisons. Not only did the court reject the defendant's request to go below the sentencing guidelines, the court imposed a sentence of 30 months, above the guidelines because Celester violated the public trust.

14. Fisher v. Goord, et al., 96-CV-0486 (W.D.N.Y.)

New York State inmate Amy Fisher ("Long Island Lolita" of Joey Buttafuoco fame) is alleging that a number of New York state institution staff have had sex with her, some with her consent, some without. She has filed a civil rights action against numerous state officials. As part of her relief, she has moved the court to order her transferred to the Federal BOP. The United States is not a party to the action. We have filed an Amicus brief asserting that the court has no jurisdiction and that there is no authority to order the United States to take a state prisoner. Judge Arcara held a hearing on December 3, 1996. The Judge focused on our argument that revised 18 U.S.C. § 3626 sets the standard for his decision on injunctive relief. Neither Plaintiff nor the New York state defendants addressed this statute in their briefs. The court requested Plaintiff to submit a response to this argument within 14 days. The Plaintiff submitted a response asserting that Section 3626 is unconstitutional and requested the court to certify the issue to the Attorney General under 28 U.S.C. § 2403(a). We are contacting Federal Programs to see if they want to file a response on the constitutionality of § 3626.

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TORT CLAIMS FIRST QUARTER - FY97 (OCTOBER 1, 1996 - DECEMBER 31, 1996)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	1	0	1	0	0	0	0	0	0	0	0	0	6
NER	176	123	14	3	0	30	25	3590	238	144	0	0	122
SER	0	0	0	0	0	0	0	0	0	0	0	0	0
Ncr	1	1	0	0	0	0	0	0	0	0	0	0	1
Scr	1	0	0	0	0	1	0	0	0	0	0	0	5
Wxr	0	0	0	0	0	0	0	0	0	0	0	0	0
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	179	124	15	3	0	31	25	3590	238	144	0	****	34

NORTHEAST REGIONAL OFFICE
FOI/PA REQUESTS QUARTERLY REPORTS

FROM 10/01/1996 TO 12/31/1996

LOC	NUM	PROC	PEND	OD	A/OD	A/P	CA
MXR							
NER	124	159	9	34	-	-	2
SER							
NCR							
SCR							
WXR							
CO							
TORT							

NARRATIVE ANALYSIS

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LOC - LOCATION
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 PROC - PROCESSED
 PEND - PENDING
 OD - OVERDUE
 A/OD - AVERAGE NUMBER OF DAYS OVERDUE
 A/P - AVERAGE LENGTH OF TIME TO PROCESS
 CA - CIVIL ACTIONS FILED UNDER FOI/PA ACTS

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 10-01-96 TO 12-31-96

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	413	164	10	16	0	29	3	12	329	64	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