

UNITED STATES GOVERNMENT

memorandum

Date: April 16, 1997

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

Subject: Quarterly Report - January 1, 1997 through March 31, 1997

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 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.)

This is an update of this case discussed in last quarter's report. Inmate Benjamin Mackey, 09717-054, at FCI Schuylkill, filed a 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 focused 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. On February 13, 1997, the court ruled for the Bureau on all issues except one. The court ordered that the inmate receive 6 days of statutory good time. The court noted that the Bureau had forfeited 166 days of statutory good time whereas the DHO summary stated the inmate is to forfeit 160 days of SGT. We complied with the order.

2. United States v. Gonzales, 117 S.Ct. 1032 (1997)

This case was also discussed in last quarter's report. On March 3, 1997, the Supreme Court held that a federal sentence imposed under 18 U.S.C. § 924(c), which prohibits concurrent

service "with any other term of imprisonment," may not be ordered to run concurrently with an existing state sentence. Hank Sadowski assisted the Solicitor General's office at the December 11, 1996 argument. The decision noted, in dicta, that the Bureau of Prisons is responsible for aggregation of sentence under 18 U.S.C. § 3584.

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

This case was also discussed in last quarter's report. New York State inmate Amy Fisher alleged that a number of New York state institution staff have had sex with her, some with her consent, some without. She 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 filed an Amicus brief asserting that the court had no jurisdiction to order the United States to take a state prisoner. We focused the court on 18 U.S.C. § 3626 as the proper standard for assessing the injunctive request. The court requested the parties to respond to our brief. Plaintiff submitted a response asserting that § 3626 is unconstitutional. The court has certified the issue to the Attorney General under 28 U.S.C. § 2403(a). Federal Programs was advised and they requested the AUSA to file a brief upholding the constitutionality. We expect to file a brief by May 1, 1997.

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

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

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

This Federal Tort Claims Act case was filed by Inmate Lovell Palmer, 23307-083, who alleged that he slipped and fell in

January 1994 at USP Lewisburg. His administrative tort claim was for \$1000. In his complaint, he requested damages in excess of \$25,000. We moved to limit the inmate to the \$1000. On pressure from the court (and to save expense of trial), we offered settlement to the inmate in the amount of \$1000 which the inmate refused. We moved for partial summary judgment against the United States in the amount of \$1000. Judge Kosik granted our request for a bifurcated trial limited to the issue of whether the inmate can claim damages above that requested in his administrative claim. This part of the trial was held on January 15, 1997. The court heard testimony from Dr. Keiper (retired) formerly at USP Lewisburg and Dr. Klinkerfuss (now at FMC Springfield). The Springfield doctor testified via video teleconference. Before ruling on our motion, Judge Kosik requested an exam of the inmate by a non-BOP doctor. Attorney Mike Sullivan assisted at the trial. No decision has yet been rendered.

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

Pretrial detainee Jose Medina, 43311-054, has been charged with the attempted extortion of Bill Cosby. On January 24, 1997, the legal office at MCC NY was advised by the AUSA that, at a bail hearing earlier that day, inmate Medina alleged that he had not been allowed to see a Rabbi and that he had not eaten since he arrived at MCC on January 18, 1997. The inmate requested an order directing the Warden to provide him Kosher food and to permit him to meet with a Rabbi. A hearing on these issues was scheduled for 2:30 p.m. that day.

The Warden immediately decided to place the inmate on common fare. The Chaplain later concurred with this decision. Arrangements were made for the inmate to see the Rabbi. Attorney Alma G. Lopez attended the hearing.

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

During the hearing, defense counsel indicated that although his client had received all his meals, he was flushing down the foods that he was prohibited from eating by his religion. Magistrate Judge Peck agreed with the MCC's solution.

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

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

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

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

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

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

Inmate Leonard Falzone, 83361-020, filed a petition for habeas corpus in E.D. Ky. challenging the disallowance of 14 days good conduct time for an infraction committed at Lewisburg Camp. The DHO hearing summary erroneously did not specify the loss of GCT. An amended DHO summary was later prepared. The inmate challenged the authority of the DHO to amend the summary. The MARO and Ashland had responsibility for this litigation and a response was duly filed in E.D. Ky. After the inmate was transferred to FCI Schuylkill, the case was transferred to E.D.Pa. On February 26, 1997, a hearing was held before U.S. Magistrate Judge Rueter on the petition. Our offer of assistance was accepted by MARO. Joyce Horikawa assisted at the hearing. DHO Zimany testified

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

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

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

11. 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. On March 7, 1997, the United States Attorney, seeking the death penalty, had a hearing before the DOJ panel. No decision has been made.

In this same case, Judge Muir held a hearing on March 10, 1997 on defense attorneys's motions pertaining to telephone access and special mail. Inmate Hammer is under phone and correspondence restrictions for disciplinary reasons. Defense attorneys asked the court to order USP Allenwood to permit Hammer to make unmonitored calls to defense experts. They also requested the court to order USP Allenwood to permit Hammer to make monitored calls to any defense witness (including another inmate now in a state system). Defense attorneys are also asserting the Clerk of Court mail should be automatically included in Special Mail. Hope Moro attended the hearing and testified concerning some of these issues. On March 31, 1997, the court denied all the motions except the court held that clerk of court mail should be treated as Special Mail. We are preparing a motion for reconsideration.

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

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

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

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

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

Inmate Daniel Marino, 99111-012, arrived at MCC NY on February 12, 1997 to face prosecution of criminal charges. He was moved from FCI Ashland pursuant to a writ ad prosequendum. On March 27, 1997, the AUSA contacted the MCC NY and advised that Judge Sterling Johnson scheduled a hearing for March 28, 1997 to address allegations by the defendant concerning medical care at MCC NY. The Judge required the Warden to appear at the hearing. Attorney Alma Lopez accompanied the Warden. The defendant alleged that he had blood in his stool and he had not been examined since he was at MCC. BOP records show that he was examined by the Staff Physician on March 17, 1997 and was scheduled for a colonoscopy. The Judge stated he did not want to get involved in the details of the defendant's medical care. He suggested a meeting to resolve the dispute. A meeting was held following the hearing and defense counsel requested that a private doctor examine the inmate. The defense counsel were requested to send their request with supporting documents in writing. The inmate received his scheduled colonoscopy on April 2, 1997. The Warden will decide whether to grant the request after the results of the tests are received.

SETTLEMENTS AND AWARDS1. **Matos v. United States**, CV-94-8977 (S.D.N.Y.)

Civilian filed a Federal Tort Claims Act complaint alleging negligence of MCC NY caused her to slip and fall on stairs in the institution. She had sought \$1 million. There was an injury from the fall; but there was little evidence of negligence. The AUSA settled this case for \$6000.

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

Inmate Carlos Rivera-Torres, 33217-054, brought a Federal Tort Claims Act complaint alleging that he slipped and fell on ice at LSCI Allenwood in March 1994. The case was scheduled for trial on March 27, 1997. The inmate sustained a fracture to his right ankle, which required a cast for several months. His recovery was hampered by his diabetes. No specific records could be located for snow and ice removal for the day in question. Case settled for \$12,500.

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

Inmate Royal Allen, 36863-019, filed a Federal Tort Claims Act complaint alleging that his property was lost when he was taken to the Special Housing Unit at LSCI Allenwood. Our investigation revealed probable liability for the loss of the property. Attempts to settle with the inmate proved fruitless. We filed a motion for summary judgment against the United States for the amount demanded in the administrative tort claim, which we felt was appropriate for the loss. On January 31, 1997, the court granted our motion and entered summary judgment against the United States for \$174.65 and for costs of \$83.22 (the filing fee paid by the inmate).

Attachments

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 01/01/1997 TO 03/31/1997

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	53	21	12	14	5	22	573	50	9	2	1
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)

TORT CLAIMS SECOND QUARTER - FY97 (JANUARY 1, 1997 - MARCH 31, 1997)

Loc	Num	PP	PI	PPPI	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	181	137	24	1	2	17	24	7947	211	114	0	0	105
SER	1	1	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	183	139	24	1	2	17	24	7947	212	114	0	****	105

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 01-01-97 TO 03-31-97

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	373	142	13	24	0	7	3	25	257	87	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



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SETTLEMENTS AND AWARDS

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

Civilian filed a Federal Tort Claims Act complaint alleging negligence of MCC NY caused her to slip and fall on stairs in the institution. She had sought \$1 million. There was an injury from the fall; but there was little evidence of negligence. The AUSA settled this case for \$6000.

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

Inmate Carlos Rivera-Torres, 33217-054, brought a Federal Tort Claims Act complaint alleging that he slipped and fell on ice at LSCI Allenwood in March 1994. The case was scheduled for trial on March 27, 1997. The inmate sustained a fracture to his right ankle, which required a cast for several months. His recovery was hampered by his diabetes. No specific records could be located for snow and ice removal for the day in question. Case settled for \$12,500.

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

Inmate Royal Allen, 36863-019, filed a Federal Tort Claims Act complaint alleging that his property was lost when he was taken to the Special Housing Unit at LSCI Allenwood. Our investigation revealed probable liability for the loss of the property. Attempts to settle with the inmate proved fruitless. We filed a motion for summary judgment against the United States for the amount demanded in the administrative tort claim, which we felt was appropriate for the loss. On January 31, 1997, the court granted our motion and entered summary judgment against the United States for \$174.65 and for costs of \$83.22 (the filing fee paid by the inmate).

Attachments

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 01/01/1997 TO 03/31/1997

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	53	21	12	14	5	22	573	50	9	2	1
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)

TORT CLAIMS SECOND QUARTER - FY97 (JANUARY 1, 1997 - MARCH 31, 1997)

Loc	Num	PP	PI	PPPI	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	181	137	24	1	2	17	24	7947	211	114	0	0	105
SER	1	1	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	183	139	24	1	2	17	24	7947	212	114	0	****	105

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 01-01-97 TO 03-31-97

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	373	142	13	24	0	7	3	25	257	87	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

UNITED STATES GOVERNMENT

memorandum

Date: July 17, 1997

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

Subject: Quarterly Report - April 1, 1997 through June 30, 1997

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 third quarter of FY 1997.

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

A. SETTLEMENTS AND AWARDS

1. **Hammed v. United States**, CV-95-10306 (S.D.N.Y.)- In this Federal Tort Claims Act complaint, former inmate Ali Hammed, 03822-070, alleged that FCI Otisville lost his property on an institution transfer. Inmate requested \$180 in damages. The major issue was the evaluation of the property. Case settled for \$120.

2. **Dennie v. Teague**, Civ. No. 96-CV-634 (N.D.N.Y.) - Inmate Akali Dennie, 11762-014, filed Bivens case alleging failure to protect him from assault by another inmate while at FCI Ray Brook. Our records show placement of Dennie into SHU cell with inmate who assaulted him the night before. Due to possible exposure, we agreed to convert into FTCA case and settle for \$5000.00

3. **Mulligan v. United States**, Civ. No. 96-7796 (E.D.Pa.) - Inmate Francis Mulligan, Reg. No. 31580-066, filed FTCA case alleging that while at FCI Schuylkill, he slipped and fell on three separate occasions due to staff negligence in maintaining a

clear sidewalk. He further alleges that as a result of the falls, one of his pacemaker wire leads was torn from his heart, which required surgical repair. Our medical expert confirmed that the fall may have caused the wire to separate. As a result of a number of factors, it was agreed to settle the case for \$4,000.00.

4. **Curtis v. United States**, 96-4240 (E.D.PA.)- FTCA case regarding delay in medical treatment which occurred as a result of the institution transfer of the inmate Plaintiff, Glenn Curtis, Reg. No. 44293-066. The case settled for \$45,000.00.

B. SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. **Colon v. Menifee**, Appeal No. 96-7588 (3d Cir.) - Oral argument was heard before the Third Circuit on May 9, 1997 in our appeal from the grant of a habeas corpus petition by Judge Muir in 4:CV-96-0807 (M.D.Pa. June 28, 1996). Petitioner Jimmy Colon, 19968-038, challenged the Bureau's decision that his conviction for felon in possession of a firearm under 18 U.S.C. § 922(g) was a crime of violence precluding him from early reduction consideration under 18 U.S.C. § 3621(e). Judge Muir held that the Bureau was not entitled to conclude that the possession of a firearm by a felon is a crime of violence for purposes of 18 U.S.C. § 3621(e) eligibility. The Third Circuit focused on the nature of deference the court should accord the interpretation of the Bureau. Hank Sadowski assisted the AUSA. To date, no decision has been issued.

2. **Roussos v. Menifee**, No. 97-7011 (3d Cir.) - On July 8, 1997, the Third Circuit heard oral argument in another 3621(e) case. Inmate Victor Roussos, Reg. No. 30950-054, filed a petition for writ of habeas corpus challenging his ineligibility for early release under 18 U.S.C. § 3621(e). He was found so because of a two point enhancement for a firearm in connection with a drug offense. On November 27, 1996, Judge McClure denied the petition and upheld the BOP interpretation. (Judge McClure later overruled himself in another petition on the same issue.) The inmate appealed to the Third Circuit. This case was argued by the same AUSA who argued the above Colon case. Hank Sadowski assisted the AUSA. The oral argument was not as focused as the Colon argument. The court asked a number of questions concerning the Downey decision from the 9th Circuit. The court also asked questions about Third Circuit law which found mere possession of a firearm is not a crime of violence. The court reserved ruling.

3. **Pollard v. Secor, et. al**, 95 Civ. 5599 (E.D.Pa.) - Jury trial held on June 23 and 24, 1997 in the above Bivens case. Inmate Rodney Pollard, Reg. No

14640-050, alleged that while he was at FCI Schuylkill he was improperly placed in administrative detention and then transferred as a result of the practice of his religion. Defendants' Motion for Summary Judgement was denied. At beginning of trial, Judge Ludwig granted a renewed motion to dismiss administrative detention claim on basis of Sandin and a recent Third Circuit case. After one hour deliberations, the jury returned a verdict in favor of all defendants. Jay Furtick assisted the AUSA.

4. **Gibbons v. United States**, CV-95-4654 (S.D.N.Y.) - This FTCA case went to trial on April 8, 1997. Inmate Gary Gibbons, 34115-054, alleged that he injured his hand as a result of using defective and dangerous weight lifting equipment at MCC NY. The inmate claimed that he was using a piece of equipment when it disengaged, striking him. After the trial, the court requested additional briefing on the duty of the United States to instruct the inmates on the operation of the equipment. Plaintiff sought \$300,000 in damages. The court recently ruled in favor of the United States.

5. **United States v. Marino**, Crim. No. ---- (S.D.N.Y.) - Inmate Daniel Marino, 99111-012, arrived at MCC NY on February 12, 1997 to face prosecution of federal criminal charges. He was moved from FCI Ashland pursuant to a writ ad prosequendum. On March 27, 1997, the AUSA contacted the MCC NY and advised that Judge Sterling Johnson scheduled a hearing for March 28, 1997 to address allegations by the defendant concerning medical care at MCC NY. The Judge required the Warden to appear at the hearing. Attorney Alma Lopez accompanied the Warden. After review of some information, the Judge stated he did not want to get involved in the details of the defendant's medical care. Based upon the court's suggestion, the parties held a meeting to resolve the dispute.

6. **United States v. Papagni**, 95-CR-31 (E.D.N.Y.) - On April 8, 1997, Judge Frederic Block issued an order to show cause to determine whether the United States Attorney's office must obtain all phone tapes made by a Witsec inmate, who is a scheduled witness in this case. The court entered an order requiring the

Bureau to preserve all phone tapes pending a hearing. On April 17, 1997, a hearing was held in which Hank Sadowski and Craig Trout assisted the AUSA. The AUSA submitted a motion to vacate the preservation order supported by an excellent brief (with exhibits) which focused the court on whether BOP phone tapes can be deemed to be in the possession of the prosecution. The court allowed briefs to be submitted. The court held a second hearing on May 1, 1997.

and modified his preservation order to require the institution to preserve recordings for certain numbers. No conclusive ruling has yet resulted.

7. **United States v. Felipe**, 94 CR 395 (S.D.N.Y.) - On April 16, 1997, Judge Martin held a hearing addressing whether restrictions on confinement he imposed on a sentence for Luis Felipe, 14067-074, were within his authority. The AUSA argued that, under the facts of this case, the court had the authority to impose restrictions under 18 U.S.C. § 3582(d). Felipe is the leader of the Latin Kings and the evidence before the court showed that Felipe had ordered murders while in pretrial detention. Defense counsel stressed the unprecedented nature of the restrictions. On April 29, 1997, the court issued an opinion upholding the restrictions under § 3582(d). In dicta the court also opined that it had the inherent authority to order such restrictions. The order is now on appeal.

8. **United States v. Rosario**, Crim. No. ----- (S.D.N.Y.) - Inmate David Rosario, 39665-054, arrived at MCC NY on January 23, 1997 to face prosecution of federal racketeering charges. Rosario arrived from New York state custody, where he was serving a forty year plus life sentence. He was placed in administrative detention as MCC NY deemed him to be a high security risk and pending classification. The inmate had separatees and MCC had heard (without documentary confirmation) that the inmate had an extensive disciplinary record in the state. Judge Keenan (the criminal trial judge) held a hearing on April 7, 1997 to address complaints from defense counsel concerning this placement. Alma Lopez represented the Bureau. Judge Keenan expressed concern that the inmate had been in AD since January 1997 and the MCC still had not receive documentation from the state concerning his disciplinary problems. The court asked the AUSA to submit a report by April 19, 1997 setting forth whether the MCC will continue to house the inmate in AD. The inmate was removed from AD on April 12, 1997.

9. **United States v. Shapiro**, Crim. No. 96-1019 (E.D.N.Y.) - On April 1, 1997, Judge Block held a hearing addressing complaints made by inmate Robert Shapiro (a.k.a. Robert Weldon), 43063-053, regarding access to a law library. The inmate is serving a federal sentence and was brought back via writ to face federal charges of attempting escape and forging a Judgment & Commitment order. Azzmeiah Vazquez represented the Bureau at the hearing. The inmate demanded more access to law library, access to a fax machine, and access to a copy machine. Azzmeiah was able to show that the inmate requested access to the law library only three times in the last three months. She also went over the inmate's commissary account to show he was able to afford copies. The court advised the inmate of the difficulties of appearing pro se. The court stated that it

was not going to ask the MDC to change policy solely because the inmate refused appointed counsel.

10. **United States v. Coffey**, Cr. 94-282 (D.Nevada) - On April 8, 1997, U.S. District Judge Pro held a hearing via telephone concerning the 18 month federal sentence he imposed on inmate John Alexander Coffey, 30281-048 on July 28, 1995. The issue was whether the federal sentence was to run concurrently with a state term. The inmate had been in the primary custodial jurisdiction of Arizona state authorities. The inmate was taken to federal court via writ and received the 18 month federal sentence prior to the imposition of the state sentence. The Judgement and Commitment Order did not reference the state sentence. The inmate was returned to state custody and was sentenced to a term of about 2½ years. He completed service of this state sentence on or about December 9, 1996. The inmate was designated to FCI Fort Dix. The federal sentence was computed to be consecutive to the state since the Federal Judgement and Commitment Order was silent concerning the federal judge's intention. In the hearing, Judge Pro stated for the record that his intention was that his federal sentence was to be served concurrently. Since the court's intention was now clear, the judge was advised that we would recompute his federal sentence to run concurrently with the state. On the telephone for this hearing, at the Judge's request, were Warden Hurley, FCI Fort Dix, Harlan Penn, WRO, Hank Sadowski, NER, and the inmate.

11. **United States v. M.S.**, Cr. No. --- (E.D.N.Y.) - On April 24, 1997, we learned that the court was presented with a proposed order to direct MDC Brooklyn to accept 17 year old juvenile, M.S. Azzmeiah Vazquez tracked down the AUSA, who advised the court

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that the Bureau of Prisons needed to be heard before the order was signed. At about 6:00 pm, the court had an emergency hearing at which the AUSA advised the court of the statute requiring segregation of juveniles and the practical problems for housing him at the MDC. The court decided not to sign the order placing the juvenile in MDC.

12. **United States v. Simone**, Cr.No.92-35-01 (E.D.Pa.) - On June 9, 1997, a hearing was held concerning the status of inmate Robert F. Simone, Reg No. 33980-066. Inmate Simone, a former attorney from Philadelphia, was moved from a halfway house, as a program failure, to FCI Fairton and was scheduled to be returned to FPC Nellis (later changed to FPC Schuylkill). His attorney filed a motion to preclude his transfer, which motion was granted by Judge Dalzell, the sentencing judge. The inmate, who formerly represented some organized crime members now housed at FCI Fairton, was placed into administrative detention. His attorney alleged retaliation (as well as failure to give medications) At the

hearing, the Judge gave both sides an opportunity to reach an agreement and it was decided that the Plaintiff would be transferred to FPC Schuylkill the next day, via one day furlough. Hank Sadowski represented the Bureau.

13. **United States v. Zachariades**, E.D.N.Y. - On June 17, 1997, a hearing was held before U.S. District Judge Dearie regarding a subpoena issued by defense counsel concerning the production, the next day, of 75 telephone tapes of calls placed by inmate Constantine Zachariades, Reg. No. 45658-053. As the case was currently in trial, and the judge requested an expedited resolution, a schedule agreeable to all parties was reached. MDC Brooklyn attorney Azzemiah Vazquez assisted at the hearing.

14. **United States v. Wells**, Cr. No. ---- (S.D.N.Y.) - On June 4, 1997, a hearing was held before Magistrate Judge Grubin concerning the medical care being provided to inmate Priscilla Wells, Reg. No. 40358-054. After hearing from MCC NY attorney Dominique Raia, the Court stated that the medical treatment the inmate was receiving was adequate.

15. **United States v. Pappas**, CR-95-0368 (S.D.N.Y.) - On June 5, 1997, MCC NY physician Dr. Glover was subpoenaed to testify concerning the current medical status of inmate Dennis Pappas, Reg. No. 45783-053. Dr. Glover stated that the inmate was ill but was capable to stand trial. Dominique Raia assisted.

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16. **U.S. v. Barrios**, 95 CR 524 (S.D.N.Y.) - On May 1, 1997, inmate Joe Barrios, 37320-054, appeared before Judge Stanton for sentencing under the influence of heroin and cocaine. Sentencing was canceled and the Judge requested an explanation as to how this could occur since the defendant was in the custody of BOP. MCC NY Attorney Dominique Raia attended a hearing that day. The warden submitted a letter responding to the Court's concerns. On May 23, 1997, Judge Stanton sent a letter to the Warden thanking him for the thoughtful and thorough letter.

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

18. **People of State of New York v. David Watson**, - On May 13, 1997. Azzemiah Vazquez, Attorney Advisor at MDC Brooklyn, along with an AUSA for

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

19. **Longoria v. BOP, et al.**, 1:CV-97-0332 (M.D.Pa.) - Inmate

Gonzales-Longoria, Reg. No. 59761-079 filed a complaint alleging that his telephone calls were being improperly blocked by USP Lewisburg. A telephone conference was held on June 17, 1997, to discuss case. The magistrate judge, the inmate, the AUSA, and USP Lewisburg attorney Michael Sullivan participated. Magistrate Judge ordered each side to brief issue as to whether the case should proceed as a Bivens case.

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

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

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

21. **Starzeczyzel v. U.S.**, 97 Civ 1349(S.D.N.Y.) - Attorney Stephen Roen filed this complaint challenging the decision by the Warden at FCI Danbury to restrict the attorney's visiting privileges for 30 days. Trying to graft this complaint to a pending 2255 motion, Roen requested a temporary restraining order and bail for the inmate Eileen Strazeczyzel, Reg. No. 34792-054. The attorney alleged this decision interfered with the ability to represent the inmate in the 2255 motion to vacate her sentence. On May 22, 1997, Judge McKenna held a hearing Mike Tafelski assisted the AUSA. The court ruled there was no jurisdiction to hear his complaint concerning FCI Danbury. The Attorney then filed an administrative

appeal with the Regional Director concerning the suspension. Although suspension was upheld, time period was reduced by seven days with the attorney visits limited to the general visiting area to enhance staff supervision. (Attorney was seen by staff massaging the inmate's shoulders, etc.). Attorney has renewed the same complaint in the District of Connecticut. The Magistrate Judge recommended the requests for TRO be denied, request for preliminary injunction be denied, and requested defendants show cause why Plaintiff's request to visit in "chapel room" rather than main visiting room should not be granted. A response is expected to be filed before July 23, 1997.

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C. SIGNIFICANT PENDING CASES

1. **Fisher v. Goord, et al.**, 96-CV-0486 (W.D.N.Y.) - This case was also discussed in last quarter's report. New York State inmate Amy Fisher alleged that a number of New York state institution staff have had sex with her, some with her consent, some without. She filed a civil rights action against 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 filed an Amicus brief asserting that the court had no jurisdiction to order the United States to take a state prisoner. We focused the court on 18 U.S.C. § 3626 as the proper standard for assessing the injunctive request. On July 16, 1997, the court dismissed the complaint in an opinion of over 100 pages.

2. **Palmer v. United States**, CV-95-383 (M.D.Pa.) - This case was discussed in last quarter's report. This Federal Tort Claims Act case was filed by Inmate Lovell Palmer, 23307-083, who alleged that he slipped and fell in January 1994 at USP Lewisburg. His administrative tort claim was for \$1000. In his complaint, he requested damages in excess of \$25,000. We moved to limit the inmate to the \$1000. On pressure from the court (and to save expense of trial), we offered settlement to the inmate in the amount of \$1000 which the inmate refused. We moved for partial summary judgment against the United States in the amount of \$1000. Judge Kosik granted our request for a bifurcated trial limited to the issue of whether the inmate can claim damages above that requested in his administrative claim. This part of the trial was held on January 15, 1997. Mike Sullivan assisted the AUSA. Before ruling on our motion, Judge Kosik requested additional information. No decision has yet been rendered.

3. **United States v. Hammer**, 4:CR-96-239 (M.D.Pa.) - Inmate David Hammer, 24507-077, has been charged with the April 1996 murder of an inmate at USP

Allenwood. The Attorney General approved seeking the death penalty should the inmate be found guilty.

Judge Muir held a hearing on March 10, 1997 on defense attorneys's motions pertaining to telephone access and special mail. Inmate Hammer is under phone and correspondence restrictions for disciplinary reasons. Defense attorneys asked the court to order USP Allenwood to permit Hammer to make unmonitored calls to defense experts. They also requested the

-10-

court to order USP Allenwood to permit Hammer to make monitored calls to any defense witness (including another inmate now in a state system). Defense attorneys are also asserting the Clerk of Court mail should be automatically included in Special Mail. Hope Moro attended the hearing and testified concerning some of these issues. On March 31, 1997, the court denied all motions except the court held that clerk of court mail should be treated as Special Mail. A motion or reconsideration was filed on May 5, 1997 and was denied on June 3, 1997.

4. Ferguson v. U.S. B.O.P., 96 Civ 6163 (S.D.N.Y.) - Inmate Sylbourne Ferguson, 06026-067, alleges he was physically assaulted by a staff member at FCI Otisville. Case is significant because of DOJ's decision NOT to grant representation to one of four BOP defendants. Although that particular defendant's version of facts differed from the other three defendants, we recommended private counsel be approved since, under either version, the use of force still did not rise to level of constitutional violation (bump with chest). Defendant had been disciplined (5 day suspension). Dispositive motions have recently been filed for defendants represented by AUSA.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel
All Associate General Counsel

NORTHEAST REGIONAL OFFICE
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FROM 04/01/1997 TO 06/30/1997

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
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GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE IN NARRATIVE)

NORTHEAST REGIONAL OFFICE
TORT CLAIM QUARTERLY REPORT

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Loc	Num	PP	PI	PPPI	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	176	124	39	8	1	4	9	675	237	98	0	0	114
SER	4	3	0	0	0	0	0	0	0	0	0	0	3
Ncr	2	1	1	0	0	0	0	0	1	0	0	0	28
Scr	1	0	0	0	0	0	0	0	0	0	0	0	13
Wxr	0	0	0	0	0	0	0	0	0	0	0	0	77
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	183	128	40	8	1	4	9	675	205	99	0	****	62

NORTHEAST REGIONAL OFFICE
NORTHEAST REGIONAL OFFICE
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FROM 4/1/97 TO 6/30/97

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	507	182	15	29	2	33	11	29	405	159	0
SER											
NCR											
SCR											
WXR											
TOT											

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UNITED STATES GOVERNMENT

memorandum

Date: July 17, 1997

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

Subject: Quarterly Report - April 1, 1997 through June 30, 1997

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

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2. **Dennie v. Teague**, Civ. No. 96-CV-634 (N.D.N.Y.) - Inmate Akali Dennie, 11762-014, filed Bivens case alleging failure to protect him from assault by another inmate while at FCI Ray Brook. Our records show placement of Dennie into SHU cell with inmate who assaulted him the night before. Due to possible exposure, we agreed to convert into FTCA case and settle for \$5000.00.
3. **Mulligan v. United States**, Civ. No. 96-7796 (E.D.Pa.) - Inmate Francis Mulligan, Reg. No. 31580-066, filed FTCA case alleging that while at FCI Schuylkill, he slipped and fell on three separate occasions due to staff negligence in maintaining a clear sidewalk. He further alleges that as a result of the falls, one of his pacemaker wire leads was torn from his heart, which required surgical repair. Our medical expert confirmed that the fall may have caused the wire to separate. As a result of a number of factors, it was agreed to settle the case for \$4,000.00.

4. Curtis v. United States, 96-4240 (E.D.PA..) - FTCA case regarding delay in medical treatment which occurred as a result of the institution transfer of the inmate Plaintiff, Glenn Curtis, Reg. No. 44293-066. The case settled for \$45,000.00.

B. SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. Colon v. Menifee, Appeal No. 96-7588 (3d Cir.) - Oral argument was heard before the Third Circuit on May 9, 1997 in our appeal from the grant of a habeas corpus petition by Judge Muir in 4:CV-96-0807 (M.D.Pa. June 28, 1996). Petitioner Jimmy Colon, 19968-038, challenged the Bureau's decision that his conviction for felon in possession of a firearm under 18 U.S.C. § 922(g) was a crime of violence precluding him from early reduction consideration under 18 U.S.C. § 3621(e). Judge Muir held that the Bureau was not entitled to conclude that the possession of a firearm by a felon is a crime of violence for purposes of 18 U.S.C. § 3621(e) eligibility. The Third Circuit focused on the nature of deference the court should accord the interpretation of the Bureau. Hank Sadowski assisted the AUSA. To date, no decision has been issued.

2. Roussos v. Menifee, No. 97-7011 (3d Cir.) - On July 8, 1997, the Third Circuit heard oral argument in another 3621(e) case. Inmate Victor Roussos, Reg. No. 30950-054, filed a petition for writ of habeas corpus challenging his ineligibility for early release under 18 U.S.C. § 3621(e). He was found so because of a two point enhancement for a firearm in connection with a drug offense. On November 27, 1996, Judge McClure denied the petition and upheld the BOP interpretation. (Judge McClure later overruled himself in another petition on the same issue.) The inmate appealed to the Third Circuit. This case was argued by the same AUSA who argued the above Colon case. Hank Sadowski assisted the AUSA. The oral argument was not as focused as the Colon argument. The court asked a number of questions concerning the Downey decision from the 9th Circuit. The court also asked questions about Third Circuit law which found mere possession of a firearm is not a crime of violence. The court reserved ruling.

3. Pollard v. Secor, et. al, 95 Civ. 5599 (E.D.Pa.) - Jury trial held on June 23 and 24, 1997 in the above Bivens case. Inmate Rodney Pollard, Reg. No. 14640-050, alleged that while he was at FCI Schuylkill he was improperly placed in administrative detention and then transferred as a result of the practice of his religion. Defendants' Motion for Summary Judgement was denied. At beginning of trial, Judge Ludwig granted a renewed motion to dismiss administrative detention claim on basis of Sandin and a recent Third Circuit case. After one hour deliberations, the

jury returned a verdict in favor of all defendants. Jay Furtick assisted the AUSA.

4. Gibbons v. United States, CV-95-4654 (S.D.N.Y.) - This FTCA case went to trial on April 8, 1997. Inmate Gary Gibbons, 34115-054, alleged that he injured his hand as a result of using defective and dangerous weight lifting equipment at MCC NY. The inmate claimed that he was using a piece of equipment when it disengaged, striking him. After the trial, the court requested additional briefing on the duty of the United States to instruct the inmates on the operation of the equipment. Plaintiff sought \$300,000 in damages. The court recently ruled in favor of the United States.

5. United States v. Marino, Crim. No. ---- (S.D.N.Y.) - Inmate Daniel Marino, 99111-012, arrived at MCC NY on February 12, 1997 to face prosecution of federal criminal charges. He was moved from FCI Ashland pursuant to a writ ad prosequendum. On March 27, 1997, the AUSA contacted the MCC NY and advised that Judge Sterling Johnson scheduled a hearing for March 28, 1997 to address allegations by the defendant concerning medical care at MCC NY. The Judge required the Warden to appear at the hearing. Attorney Alma Lopez accompanied the Warden. After review of some information, the Judge stated he did not want to get involved in the details of the defendant's medical care. Based upon the court's suggestion, the parties held a meeting to resolve the dispute.

6. United States v. Papagni, 95-CR-31 (E.D.N.Y.) - On April 8, 1997, Judge Frederic Block issued an order to show cause to determine whether the United States Attorney's office must obtain all phone tapes made by a Witsec inmate, who is a scheduled witness in this case. The court entered an order requiring the Bureau to preserve all phone tapes pending a hearing. On April 17, 1997, a hearing was held in which Hank Sadowski and Craig Trout assisted the AUSA. The AUSA submitted a motion to vacate the preservation order supported by an excellent brief (with exhibits) which focused the court on whether BOP phone tapes can be deemed to be in the possession of the prosecution. The court allowed briefs to be submitted. The court held a second hearing on May 1, 1997, and modified his preservation order to require the institution to preserve recordings for certain numbers. No conclusive ruling has yet resulted.

7. United States v. Felipe, 94 CR 395 (S.D.N.Y.) - On April 16, 1997, Judge Martin held a hearing addressing whether restrictions on confinement he imposed on a sentence for Luis Felipe, 14067-074, were within his authority. The AUSA argued that, under the facts of this case, the court had the authority to impose restrictions under 18 U.S.C. § 3582(d). Felipe is the leader of the Latin Kings and the evidence before the court showed that Felipe had ordered murders while in pretrial detention. Defense counsel stressed the unprecedented nature of the restrictions. On April 29, 1997, the court issued an opinion upholding the restrictions under § 3582(d). In dicta the court also opined that it had the inherent authority to order such restrictions. The order is now on appeal.

8. United States v. Rosario, Crim. No. ----- (S.D.N.Y.) - Inmate David Rosario, 39665-054, arrived at MCC NY on January 23, 1997 to face prosecution of federal racketeering charges. Rosario arrived from New York state custody, where he was serving a forty year plus life sentence. He was placed in administrative detention as MCC NY deemed him to be a high security risk and pending classification. The inmate had separatees and MCC had heard (without documentary confirmation) that the inmate had an extensive disciplinary record in the state. Judge Keenan (the criminal trial judge) held a hearing on April 7, 1997 to address complaints from defense counsel concerning this placement. Alma Lopez represented the Bureau. Judge Keenan expressed concern that the inmate had been in AD since January 1997 and the MCC still had not receive documentation from the state concerning his disciplinary problems. The court asked the AUSA to submit a report by April 19, 1997 setting forth whether the MCC will continue to house the inmate in AD. The inmate was removed from AD on April 12, 1997.

9. United States v. Shapiro, Crim. No. 96-1019 (E.D.N.Y.) - On April 1, 1997, Judge Block held a hearing addressing complaints made by inmate Robert Shapiro (a.k.a. Robert Weldon), 43063-053, regarding access to a law library. The inmate is serving a federal sentence and was brought back via writ to face federal charges of attempting escape and forging a Judgment & Commitment order. Azzmeiah Vazquez represented the Bureau at the hearing. The inmate demanded more access to law library, access to a fax machine, and access to a copy machine. Azzmeiah was able to show that the inmate requested access to the law library only three times in the last three months. She also went over the inmate's commissary account to show he was able to afford copies. The court advised the inmate of the difficulties of appearing pro se. The court stated that it was not going to ask the MDC to change policy solely because the inmate refused appointed counsel.

10. United States v. Coffey, Cr. 94-282 (D.Nevada) - On April 8, 1997, U.S. District Judge Pro held a hearing via telephone concerning the 18 month federal sentence he imposed on inmate John Alexander Coffey, 30281-048 on July 28, 1995. The issue was whether the federal sentence was to run concurrently with a state term. The inmate had been in the primary custodial jurisdiction of Arizona state authorities. The inmate was taken to federal court via writ and received the 18 month federal sentence prior to the imposition of the state sentence. The Judgement and Commitment Order did not reference the state sentence. The inmate was returned to state custody and was sentenced to a term of about 2½ years. He completed service of this state sentence on or about December 9, 1996. The inmate was designated to FCI Fort Dix. The federal sentence was computed to be consecutive to the state since the Federal Judgement and Commitment Order was silent concerning the federal judge's intention. In the hearing, Judge Pro stated for the record that his intention was that his federal sentence was to be served concurrently. Since the court's intention was now clear, the judge was advised that we would recompute his federal sentence to run concurrently with the state. On the telephone for this hearing, at the Judge's request, were Warden Hurley, FCI Fort Dix, Harlan Penn, WRO, Hank Sadowski, NER, and the inmate.

11. United States v. M.S., Cr. No. --- (E.D.N.Y.) - On April 24, 1997, we learned that the court was presented with a proposed order to direct MDC Brooklyn to accept 17 year old juvenile, M.S. Azzmeiah Vazquez tracked down the AUSA, who advised the court that the Bureau of Prisons needed to be heard before the order was signed. At about 6:00 pm, the court had an emergency hearing at which the AUSA advised the court of the statute requiring segregation of juveniles and the practical problems for housing him at the MDC. The court decided not to sign the order placing the juvenile in MDC.

12. United States v. Simone, Cr.No.92-35-01 (E.D.Pa.) - On June 9, 1997, a hearing was held concerning the status of inmate Robert F. Simone, Reg. No. 33980-066. Inmate Simone, a former attorney from Philadelphia, was moved from a halfway house, as a program failure, to FCI Fairton and was scheduled to be returned to FPC Nellis (later changed to FPC Schuylkill). His attorney filed a motion to preclude his transfer, which motion was granted by Judge Dalzell, the sentencing judge. The inmate, who formerly represented some organized crime members now housed at FCI Fairton, was placed into administrative detention. His attorney alleged retaliation (as well as failure to give medications). At the hearing, the Judge gave both sides an opportunity to reach an

agreement and it was decided that the Plaintiff would be transferred to FPC Schuylkill the next day, via one day furlough. Hank Sadowski represented the Bureau.

13. United States v. Zachariades, E.D.N.Y. - On June 17, 1997, a hearing was held before U.S. District Judge Dearie regarding a subpoena issued by defense counsel concerning the production, the next day, of 75 telephone tapes of calls placed by inmate Constantine Zachariades, Reg. No. 45658-053. As the case was currently in trial, and the judge requested an expedited resolution, a schedule agreeable to all parties was reached. MDC Brooklyn attorney Azzemiah Vazquez assisted at the hearing.

14. United States v. Wells, Cr. No. ---- (S.D.N.Y.) - On June 4, 1997, a hearing was held before Magistrate Judge Grubin concerning the medical care being provided to inmate Priscilla Wells, Reg. No. 40358-054. After hearing from MCC NY attorney Dominique Raia, the Court stated that the medical treatment the inmate was receiving was adequate.

15. United States v. Pappas, CR-95-0368 (S.D.N.Y.) - On June 5, 1997, MCC NY physician Dr. Glover was subpoenaed to testify concerning the current medical status of inmate Dennis Pappas, Reg. No. 45783-053. Dr. Glover stated that the inmate was ill but was capable to stand trial. Dominique Raia assisted.

16. U.S. v. Barrios, 95 CR 524 (S.D.N.Y.) - On May 1, 1997, inmate Joe Barrios, 37320-054, appeared before Judge Stanton for sentencing under the influence of heroin and cocaine. Sentencing was canceled and the Judge requested an explanation as to how this could occur since the defendant was in the custody of BOP. MCC NY Attorney Dominique Raia attended a hearing that day. The warden submitted a letter responding to the Court's concerns. On May 23, 1997, Judge Stanton sent a letter to the Warden thanking him for the thoughtful and thorough letter.

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

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

19. Longoria v. BOP, et al., 1:CV-97-0332 (M.D.Pa.) - Inmate Gonzales-Longoria, Reg. No. 59761-079 filed a complaint alleging that his telephone calls were being improperly blocked by USP Lewisburg. A telephone conference was held on June 17, 1997, to discuss case. The magistrate judge, the inmate, the AUSA, and USP Lewisburg attorney Michael Sullivan participated. Magistrate Judge ordered each side to brief issue as to whether the case should proceed as a Bivens case.

20. Wang v. Department of Justice, Civil No. 97-2462 (E.D.Pa.) - Attorney Helen Wang filed this complaint requesting a temporary restraining order and injunctive relief. On February 27, 1997, Attorney Wang was found in possession of ammunition when trying to see some inmates at USP Lewisburg. The case was referred to the FBI for criminal investigation. Her visits at USP Lewisburg were suspended. Counsel for Attorney Wang argued that her visits to all federal institutions have been suspended because of the investigation. The complaint requested the court to order the Bureau to permit her access to federal institutions. On April 25, 1997, Judge Brody held a status conference in chambers. Attorney Wang was represented by two attorneys; the Deputy Chief of the Civil Division and Hank Sadowski represented the Bureau. The Judge recognized that the investigation must be given sufficient time and denied the TRO. The court scheduled a pretrial conference for September 3, 1997.

21. Starzeczpyzel v. U.S., 97 Civ 1349(S.D.N.Y.) - Attorney Stephen Roen filed this complaint challenging the decision by the Warden at FCI Danbury to restrict the attorney's visiting privileges for 30 days. Trying to graft this complaint to a pending 2255 motion, Roen requested a temporary restraining order and bail for the inmate Eileen Strazeczpyzel, Reg. No. 34792-054. The attorney alleged this decision interfered with the ability to represent the inmate in the 2255 motion to vacate her sentence. On May 22, 1997, Judge McKenna held a hearing. Mike Tafelski

assisted the AUSA. The court ruled there was no jurisdiction to hear his complaint concerning FCI Danbury. The Attorney then filed an administrative appeal with the Regional Director concerning the suspension. Although suspension was upheld, time period was reduced by seven days with the attorney visits limited to the general visiting area to enhance staff supervision. (Attorney was seen by staff massaging the inmate's shoulders, etc.). Attorney has renewed the same complaint in the District of Connecticut. The Magistrate Judge recommended the requests for TRO be denied, request for preliminary injunction be denied, and requested defendants show cause why Plaintiff's request to visit in "chapel room" rather than main visiting room should not be granted. A response is expected to be filed before July 23, 1997.

C. SIGNIFICANT PENDING CASES

1. Fisher v. Goord, et al., 96-CV-0486 (W.D.N.Y.) - This case was also discussed in last quarter's report. New York State inmate Amy Fisher alleged that a number of New York state institution staff have had sex with her, some with her consent, some without. She filed a civil rights action against 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 filed an Amicus brief asserting that the court had no jurisdiction to order the United States to take a state prisoner. We focused the court on 18 U.S.C. § 3626 as the proper standard for assessing the injunctive request. On July 16, 1997, the court dismissed the complaint in an opinion of over 100 pages.
2. Palmer v. United States, CV-95-383 (M.D.Pa.) - This case was discussed in last quarter's report. This Federal Tort Claims Act case was filed by Inmate Lovell Palmer, 23307-083, who alleged that he slipped and fell in January 1994 at USP Lewisburg. His administrative tort claim was for \$1000. In his complaint, he requested damages in excess of \$25,000. We moved to limit the inmate to the \$1000. On pressure from the court (and to save expense of trial), we offered settlement to the inmate in the amount of \$1000 which the inmate refused. We moved for partial summary judgment against the United States in the amount of \$1000. Judge Kosik granted our request for a bifurcated trial limited to the issue of whether the inmate can claim damages above that requested in his administrative claim. This part of the trial was held on January 15, 1997. Mike Sullivan assisted the AUSA. Before ruling on our motion, Judge Kosik requested additional information. No decision has yet been rendered.

3. United States v. Hammer, 4:CR-96-239 (M.D.Pa.) - Inmate David Hammer, 24507-077, has been charged with the April 1996 murder of an inmate at USP Allenwood. The Attorney General approved seeking the death penalty should the inmate be found guilty.

Judge Muir held a hearing on March 10, 1997 on defense attorneys's motions pertaining to telephone access and special mail. Inmate Hammer is under phone and correspondence restrictions for disciplinary reasons. Defense attorneys asked the court to order USP Allenwood to permit Hammer to make unmonitored calls to defense experts. They also requested the court to order USP Allenwood to permit Hammer to make monitored calls to any defense witness (including another inmate now in a state system). Defense attorneys are also asserting the Clerk of Court mail should be automatically included in Special Mail. Hope Moro attended the hearing and testified concerning some of these issues. On March 31, 1997, the court denied all motions except the court held that clerk of court mail should be treated as Special Mail. A motion or reconsideration was filed on May 5, 1997 and was denied on June 3, 1997.

4. Ferguson v. U.S. B.O.P., 96 Civ 6163 (S.D.N.Y.) - Inmate Sylbourn Ferguson, 06026-067, alleges he was physically assaulted by a staff member at FCI Otisville. Case is significant because of DOJ's decision NOT to grant representation to one of four BOP defendants. Although that particular defendant's version of facts differed from the other three defendants, we recommended private counsel be approved since, under either version, the use of force still did not rise to level of constitutional violation (bump with chest). Defendant had been disciplined (5 day suspension). Dispositive motions have recently been filed for defendants represented by AUSA.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel
All Associate General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 04/01/1997 TO 06/30/1997

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	63	22	11	19	10	27	600	36	15	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
TORT CLAIM QUARTERLY REPORT

FROM 04/01/1997 TO 06/30/1997

Loc	Num	PP	PI	PPPI	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	176	124	39	8	1	4	9	675	237	98	0	0	114
SER	4	3	0	0	0	0	0	0	0	0	0	0	3
Ncr	2	1	1	0	0	0	0	0	1	0	0	0	28
Scr	1	0	0	0	0	0	0	0	0	0	0	0	13
Wxr	0	0	0	0	0	0	0	0	0	0	0	0	77
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	183	128	40	8	1	4	9	675	205	99	0	****	62

NORTHEAST REGIONAL OFFICE
NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 4/1/97 TO 6/30/97

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	507	182	15	29	2	33	11	29	405	159	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

UNITED STATES GOVERNMENT

memorandum

Date: October 16, 1997

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

Subject: Quarterly Report - July 1, 1997 through September 30, 1997

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 1997.

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

A. SETTLEMENTS AND AWARDS

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

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

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

B. SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

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

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

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

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

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

On July 21, 1997, the Court of Appeals heard oral argument in this appeal of a habeas corpus denial. Inmate Arthur McCarthy, 49352-080, filed the petition challenging the recalculation of his federal sentence days before his "parole eligibility" date (after it was determined that the sentence had been improperly computed). This calculation changed the inmate's parole eligibility date from February 9, 1996 to September 20, 1998. Petitioner alleged, inter alia, that the BOP was estopped from performing the recalculation since the Petitioner had relied on it. He also alleged the recalculation was in retaliation for the Plaintiff receiving a settlement in an FTCA action he brought alleging negligent medical care. On October 29, 1996, the District Court denied the petition stating that the sentence computation was a proper exercise of BOP's discretion. Mike Tafelski assisted the AUSA at the argument. The Court of Appeals affirmed the District Court's order.

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

On July 21, 1997, the Court of Appeals also heard oral argument concerning the dismissal of a Bivens complaint relating to CCC denial. In July 1996, inmate Michael Lloyd, 44935-066, filed, through counsel, a request for preliminary injunction and a Bivens complaint alleging that the decision of the Warden at FCI Ft. Dix to deny him CCC placement was based upon the improper influence and retaliatory motives of the prosecuting AUSA and sentencing Judge. On November 4, 1996, the district court granted Defendants' Motion for Summary Judgement stating that "decision to deny plaintiff CCC placement is not judicially reviewable absent a constitutional violation" and no reasonable fact finder would find one in this case. The district court also held it did not have personal jurisdiction over AUSA and FBI agent and that AUSA and Judge have absolute immunity. The Court of Appeals focused on the absolute immunity question. The Court of Appeals affirmed the District Court's order.

5) Moore v. Agosto, 93 Civ. 4835 (MGC) (S.D.N.Y.)

On July 21, 1997, a trial commenced in this Bivens case in which the plaintiff, inmate Christopher Moore, 39228-053, alleged excessive use of force was used when removing him from the roof top recreation area at MCC NY. Plaintiff testified that after he refused to put on his orange jumpsuit, he was grabbed and dragged into the grill area and beat up by two staff members. Plaintiff claimed that a third staff member grabbed his head and slammed it against the wall. Plaintiff claimed that when he regained consciousness he was suspended in the air with both feet off the ground. Plaintiff also alleged he heard staff indicate that they were going to throw him down the stairs. Plaintiff contended he has permanent injury to his shoulder. During the trial, numerous depositions were also permitted by the Court. On July 23, 1997, after two hours of deliberations, the jury returned a verdict in favor of each defendant. Dominique Raia and James Vogel assisted.

6) Drino v. Wigen, et. al., Civil No. 96-7308 (E.D.Pa.)

On August 12, 1997, a trial was held in this Bivens case filed by FCI Schuylkill inmate Gary Drino, 02906-015. The Plaintiff alleged that the DHO's finding that he committed a prohibited act ("Assaulting any Person" (Code 224)) was racially motivated. The inmate's administrative remedy appeals were denied. The bench trial lasted one day. The Court ruled in favor of the defendants.

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

Pastor Perafan-Homen, 53476-053, (the last leader of the Cali Cartel to be incarcerated) was placed into administrative detention at MCC NY based upon information received that his life may have been in danger. His attorney filed a motion with the sentencing court to have him released into general population. In August 1997, MCC Attorney Dominique Raia convinced the judge that a motion before the criminal judge was not the proper jurisdiction basis for such a challenge. His attorney then filed a Petition for Writ of Habeas Corpus. A hearing was held on August 15, 1997, before the Honorable Sidney H. Stein. The court denied the writ, since the petitioner failed to demonstrate that the Bureau of Prisons has abused the discretion to place him protective custody.

On that same day, Paraffin-Homen's attorney filed an expedited appeal in the Second Circuit. After appeal papers were prepared for submission, the DEA (who provided original information) requested that the Warden release the inmate from administrative detention based upon a reevaluation of the threat assessment. Eventually, after discussions with all parties, the inmate was released into general population and the appeal was withdrawn.

8) U.S. v. Russo, et al., 96-CR-696 (S-2) (DRH) (S.D.N.Y.)

On August 12, 1997, MCC NY received a copy of a proposed order requiring MCC to continue to house inmate Andrew Russo, 15043-053, until such time as he can make bail or there is a final disposition of the referenced case. The AUSA did not have any objections to the Order. In a letter dated August 12, 1997, the Warden expressed his objections to the order. A status conference was held before the Magistrate Judge on August 13, 1997, but the Magistrate Judge did not rule since the district court had not ordered him to render a decision. On September 23, 1997, Judge Hurley signed an order directing that inmate Russo remain at MCC New York until further order of the Court.

9) U.S. v. Motto, Crim No. --- (E.D.PA)

On August 22, 1997, Judge Shapiro held a hearing concerning the sentence computation of inmate William Motto, 35088-066. The Court had ordered a sentence of 34 days for probation violation. The inmate was released by FCI Fairton on August 20, 1997 since his presentence credit amounted to over 34 days. The court's

intention was that the inmate served an additional 34 days from date of sentence. At the hearing of August 22, 1997, the court vacated the earlier sentence and ordered a 74 days sentence to approximate her intended release date for the inmate. Assisting the AUSA was Bobbie Truman, Attorney Advisor at FCI Fairton.

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

On August 12, 1997, Lieutenant Pitts of MDC Brooklyn testified at the request of the AUSA concerning the institutional adjustment and disciplinary history of the defendant, inmate Paul Rivera, Reg. No. 46704-053. Azzmeiah Vazquez, Attorney Advisor, MDC Brooklyn, assisted at the hearing.

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On September 8, 1997, an evidentiary hearing was held before Judge Robert Kelly. Defendant, Arthur Coleman, 01030-158, was charged with escape for failing to return to his community corrections center after a weekend pass. He maintained that technically he did not escape because at the time he failed to return to the CCC his prior sentence had expired. The inmate constructed an erroneous argument on the basis of old law sentence computation. Tom Peoples, Regional Community Corrections Inmate Systems Specialist appeared as a witness on behalf of the United States. He testified as to the manner in which the defendant's old law sentence was computed and that the computation was correct. The judge ruled from the bench that the defendant was in lawful BOP custody at the time of his escape. Assistant Regional Counsel Joyce Horikawa assisted the AUSA at the hearing.

12) Wang v. Department of Justice, et. al. ---- E.D.PA.

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

13) United States v. Molinari, Criminal No. 95-672 (E.D.PA)

On September 12, 1997, a sentencing hearing was held in which the defendant argued for a downward departure alleging that the BOP could not house, care for and treat this defendant. Defense counsel argued that Mr. Molinari had an extensive documented history of agoraphobia and panic attacks and that incarceration would result in immediate death. Dr. Gerard Bryant, Northeast Regional Psychology Services Administrator, testified at length concerning the BOP's ability to manage this inmate. Dr. Bryant informed the court of numerous agoraphobics that are currently being managed in the system. The Judge agreed the BOP could properly house the defendant and sentenced the defendant to a 71 month term of imprisonment.

14) Stiver v. Meko, 96-3400 (3d Cir)

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

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On September 23, 1997, a sentencing hearing was held for three individuals who were formerly correctional officers at the local county jail. One of the issues was whether the BOP could house these individuals safely. An affidavit was submitted by the Regional Designator and testimony was expected to be provided by the Assistant Correctional Programs Administrator. Joyce Horikawa assisted the AUSA. During the hearing, the Judge did not provide the AUSA the opportunity to present the BOP's position.

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

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C. SIGNIFICANT PENDING CASES

1) United States v. Brian Brennan, 97 Cr. 393 (SDNY)

On September 16, 1997, Raymond Voulo, M.D., MCC New York Health Services Department met with AUSA Andrew J. Frisch regarding the criminal case of United States v. Brian Brennan, 97 Cr. 393 (DGT). Further, Physicians Assistant Ruben Ustarus and AUSA Frisch had a telephone conference on September 23, 1997. Mr. Frisch considers both Dr. Voulo and P.A. Usterus as potential witnesses in the referenced case. Mr. Frisch seeks to have Dr. Voulo and P.A. Ustarus establish at trial that inmate Brennan, 48126-053, was addicted to heroin upon his admission to MCC New York. During inmate Brennan's admission to MCC New York on or about April 2, 1997, he told the Physician's Assistant that he used heroin six days a week and that he had last used the narcotic two hours prior to his medical screening. Inmate Brennan was referred to detox. Staff Attorney Clinton Stroble attended the meeting. Trial is scheduled for October 20 and 21, 1997.

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Attorney Stephen Roen filed a complaint in the S.D.N.Y. challenging the decision by the Warden at FCI Danbury to restrict the attorney's visiting privileges for 30 days. Trying to graft this complaint to a pending 2255 motion, Roen requested a temporary restraining order and bail for the inmate Eileen Starzecpyzel, 34792-054. The attorney alleged this decision interfered with the ability to represent the inmate in the 2255 motion to vacate her sentence. The court ruled there was no jurisdiction to hear his complaint concerning FCI Danbury. The Attorney then filed an administrative appeal with the Regional Director concerning the suspension. Although suspension was upheld, time period was reduced by seven days with the attorney visits limited to the general visiting area to enhance staff supervision. (Attorney was seen by staff massaging the inmate's shoulders, etc.). The Attorney then renewed the same complaint in the District of Connecticut. The Magistrate Judge recommended the requests for TRO be denied, request for preliminary injunction be denied, and requested defendants show cause why Plaintiff's request to visit in "chapel room" rather than main visiting room should not be granted.

On September 27, 1997, another incident occurred involving this attorney when he attempted to use the "special mail" procedures to mail newspaper articles into his client. The mail was opened in front of the inmate and copied before being given to the inmate. The attorney filed in the Southern District of New York (which was dismissed) and then filed again in the District of Connecticut. The AUSA is being assisted by Patty Gotts, Paralegal, FCI Danbury.

3) Ansar el Muhammad a/k/a/ Tracy L. Munnerlyn v. George C. Wigen, et.al. Civil Action No. 95-3668 (E.D.Pa)

This case, which has been construed as a RFRA case, involves allegations that staff at FCI Schuylkill illegally intercepted the Plaintiff's religious mail sent from his wife. In addition, the Plaintiff, former inmate Tracy Munnerlyn, Reg. No. 06006-097, also alleges he was placed in segregation, given an incident report and disciplinary sanctions and transferred in retaliation for his religious beliefs. The case was stayed pending resolution of the Flores case by the Supreme Court. Subsequent to the Flores decision, Main Justice granted authorization for private counsel for each of the named defendants (although private counsel WILL NOT be reimbursed for any direct challenges to the constitutionality of RFRA). The defendants have recently agreed on a private attorney and the case is scheduled to proceed in the near future.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel
All Associate General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 07/01/1997 TO 09/30/1997

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	90	53	08	20	06	33	626	47	16	3	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

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
TORT CLAIM QUARTERLY REPORT

FROM 07/01/1997 TO 09/30/1997

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	4	3	1	0	0	0	0	0	1	0	0	0	2
NER	141	94	33	9	0	5	42	4650	167	99	0	0	105
Ser	0	0	0	0	0	0	0	0	0	0	0	0	0
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	1	1	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	146	98	34	9	0	5	42	4650	168	99	0	****	54

DEFINITIONS:

LOC - LOCATION
NUM - NUMBER FILED IN QUARTER
PP - PERSONAL PROPERTY CLAIMS
PI - PERSONAL INJURY CLAIMS
PPPI - PERSONAL PROPERTY/PERSONAL INJURY CLAIMS
WD - CLAIMS WITHDRAWN
Med - CLAIMS ALLEGING MEDICAL NEGLIGENCE
Set - CLAIMS SETTLED
Amt - AMOUNT PAID
Pen - CLAIMS PENDING
Den - CLAIMS DENIED
OD - CLAIMS OVERDUE
A/O - AVERAGE DAYS OVERDUE
A/P - AVERAGE DAYS TO PROCESS

NORTHEAST REGIONAL OFFICE
NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 7/1/97 TO 9/30/97

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	403	134	22	27	1	13	2	46	222	130	0
SER											
NCR											
SCR											
WXR											
TOT											

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

UNITED STATES GOVERNMENT
memorandum

Date: October 16, 1997

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

Subject: Quarterly Report - July 1, 1997 through September 30,
1997

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 1997.

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

A. SETTLEMENTS AND AWARDS

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

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

3) Tulloch et. al. v. U.S., 92-4866 (SDNY) - FTCA case filed in June 1992 filed by six inmates who alleged that while on the elevator at MCC New York en route to the roof area the elevator suddenly plunged to the basement. On the eve of trial, and facing potential liability as a result of overcrowding on the elevator and evidence of injuries, a settlement was reached. The

District Court denied the petition stating that the sentence computation was a proper exercise of BOP's discretion. Mike Tafelski assisted the AUSA at the argument. The Court of Appeals affirmed the District Court's order.

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

On July 21, 1997, the Court of Appeals also heard oral argument concerning the dismissal of a Bivens complaint relating to CCC denial. In July 1996, inmate Michael Lloyd, 44935-066, filed, through counsel, a request for preliminary injunction and a Bivens complaint alleging that the decision of the Warden at FCI Ft. Dix to deny him CCC placement was based upon the improper influence and retaliatory motives of the prosecuting AUSA and sentencing Judge. On November 4, 1996, the district court granted Defendants' Motion for Summary Judgement stating that "decision to deny plaintiff CCC placement is not judicially reviewable absent a constitutional violation" and no reasonable fact finder would find one in this case. The district court also held it did not have personal jurisdiction over AUSA and FBI agent and that AUSA and Judge have absolute immunity. The Court of Appeals focused on the absolute immunity question. The Court of Appeals affirmed the District Court's order.

5) Moore v. Agosto, 93 Civ. 4835 (MGC) (S.D.N.Y.)

On July 21, 1997, a trial commenced in this Bivens case in which the plaintiff, inmate Christopher Moore, 39228-053, alleged excessive use of force was used when removing him from the roof top recreation area at MCC NY. Plaintiff testified that after he refused to put on his orange jumpsuit, he was grabbed and dragged into the grill area and beat up by two staff members. Plaintiff claimed that a third staff member grabbed his head and slammed it against the wall. Plaintiff claimed that when he regained consciousness he was suspended in the air with both feet off the ground. Plaintiff also alleged he heard staff indicate that they were going to throw him down the stairs. Plaintiff contended he has permanent injury to his shoulder. During the trial, numerous depositions were also permitted by the Court. On July 23, 1997, after two hours of deliberations, the jury returned a verdict in favor of each defendant. Dominique Raia and James Vogel assisted.

6) Drino v. Wigen, et. al., Civil No. 96-7308 (E.D.Pa.)

On August 12, 1997, a trial was held in this Bivens case filed by FCI Schuylkill inmate Gary Drino, 02906-015. The Plaintiff alleged that the DHO's finding that he committed a prohibited act ("Assaulting any Person" (Code 224)) was racially motivated. The inmate's administrative remedy appeals were denied. The bench trial lasted one day. The Court ruled in favor of the defendants.

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

Pastor Perafan-Homen, 53476-053, (the last leader of the Cali Cartel to be incarcerated) was placed into administrative detention at MCC NY based upon information received that his life may have been in danger. His attorney filed a motion with the sentencing court to have him released into general population.

In August 1997, MCC Attorney Dominique Raia convinced the judge that a motion before the criminal judge was not the proper jurisdiction basis for such a challenge. His attorney then filed a Petition for Writ of Habeas Corpus. A hearing was held on August 15, 1997, before the Honorable Sidney H. Stein. The court denied the writ, since the petitioner failed to demonstrate that the Bureau of Prisons has abused the discretion to place him protective custody.

On that same day, Paraffin-Homen's attorney filed an expedited appeal in the Second Circuit. After appeal papers were prepared for submission, the DEA (who provided original information) requested that the Warden release the inmate from administrative detention based upon a reevaluation of the threat assessment. Eventually, after discussions with all parties, the inmate was released into general population and the appeal was withdrawn.

8) U.S. v. Russo, et al., 96-CR-696 (S-2) (DRH) (S.D.N.Y.)

On August 12, 1997, MCC NY received a copy of a proposed order requiring MCC to continue to house inmate Andrew Russo, 15043-053, until such time as he can make bail or there is a final disposition of the referenced case. The AUSA did not have any objections to the Order. In a letter dated August 12, 1997, the Warden expressed his objections to the order. A status conference was held before the Magistrate Judge on August 13,

1997, but the Magistrate Judge did not rule since the district court had not ordered him to render a decision. On September 23, 1997, Judge Hurley signed an order directing that inmate Russo remain at MCC New York until further order of the Court.

9) U.S. v. Motto, Crim No. --- (E.D.PA)

On August 22, 1997, Judge Shapiro held a hearing concerning the sentence computation of inmate William Motto, 35088-066. The Court had ordered a sentence of 34 days for probation violation. The inmate was released by FCI Fairton on August 20, 1997 since his presentence credit amounted to over 34 days. The court's intention was that the inmate served an additional 34 days from date of sentence. At the hearing of August 22, 1997, the court vacated the earlier sentence and ordered a 74 days sentence to approximate her intended release date for the inmate. Assisting the AUSA was Bobbie Truman, Attorney Advisor at FCI Fairton.

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cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel
All Associate General Counsel

NORTHEAST REGIONAL OFFICE
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FROM 07/01/1997 TO 09/30/1997

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AWD - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)

GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE IN NARRATIVE)

NORTHEAST REGIONAL OFFICE
TORT CLAIM QUARTERLY REPORT

FROM 07/01/1997 TO 09/30/1997

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
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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	1	1	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
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Amt - AMOUNT PAID
Pen - CLAIMS PENDING
Den - CLAIMS DENIED
OD - CLAIMS OVERDUE
A/O - AVERAGE DAYS OVERDUE
A/P - AVERAGE DAYS TO PROCESS

NORTHEAST REGIONAL OFFICE
FOI/PA REQUESTS QUARTERLY REPORTS

FROM 7/01/1997 TO 9/30/1997

LOC	NUM	PROC	PEND	OD	A/OD	A/P	CA
MXR							
NER	116	156	35	20	-	-	0
SER							
NCR							
SCR							
WXR							
CO							
TORT							

DEFINITIONS:

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
NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 7/1/97 TO 9/30/97

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	403	134	22	27	1	13	2	46	222	130	0
SER											
NCR											
SCR											
WXR											
TOT											

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

memorandum

Date: January 13, 1998

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

Subject: Quarterly Report - October 1, 1997 through December 31, 1997
FY-98 First Quarter Report

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 1998.

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

A. SETTLEMENTS AND AWARDS

1) Hill v. United States, Civil Action No. 97-4435 (EDPA) - Former inmate Richard Hill, 36850-066, filed this FTCA action alleging false imprisonment due to negligence. In October 1992, upon his discharge from USP Atlanta, the Plaintiff was improperly subjected to a three year Special Parole Term. On June 22, 1993, the Plaintiff was committed for parole violations and remained in custody until July 28, 1993, when it was determined that the SPT was in error. The Plaintiff alleged that the negligence of government officials (U.S. Parole Commission and Bureau of Prisons) resulted in his improperly arrest as a Special Parole Violator entitled him to \$300,000.00 damages. Mike Tafelski assisted the AUSA at a mediation conference on November 7, 1997. Based on desire to resolve matter and potential for governmental liability, the case was settled for \$5,000.

B. SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1) U.S. v. Sims, Cr. No. 97 - WDPA
On October 29, 1997, former FCI McKean staff member Burnis Sims pled guilty to bribery charges. In exchange for smuggling contraband into FCI McKean over a four month period, Mr. Sims accepted four chromium wheels. He was sentenced to 3 months in prison and \$2,000.00 fine. Duran Sheets, Paralegal, FCI McKean, assisted the AUSA.

2) United States v. Fowler and Holiday, 96-CR-268 (MDPA)

On October 29 and 30, 1997, USP Lewisburg Paralegal Jeff Fromm testified, at the criminal trial of Corey Fowler, 08457-017 and Jonell Holiday, 34733-004, concerning the property forms contained in their respective central files. On October 31, 1997, inmate Fowler was found guilty of the March 1992 murder of inmate David Hoover, Reg. No. 28852-054. On November 3, 1997, inmate Holiday was acquitted of all charges.

3) Craveiro v. Reno, et. al. and Nyhuis v. Reno, et. al. -- WDPA

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

4) United States v. Horace Tenny, CR- (EDPA)

Former inmate Horace Tenny, 03030-015, was charged with attempted rape of a staff member (recreation specialist) at FCI Schuylkill in June 1995. In October 1997, the jury returned a verdict of not guilty.

5) U.S. v. Colon, Crim. No.97-11(03) (DNJ)

Inmate Angel Colon, 01590-049 was charged with the assault of two correctional officers at FCI Ft. Dix in February 1997. The trial began on October 24, 1997, was continued until November 14, 1997, and finally concluded on December 3, 1997. The defendant was found guilty of one count of assaulting an officer and received two years probation (he had been released from FCI Fairton on March 19, 1997). James Wills, Attorney Advisor, FCI Ft. Dix assisted the AUSA.

6) Stiver v. Meko, 130 F.3d 574 (3d Cir. 1997).

On November 28, 1997, the U.S. Court of Appeals for the Third Circuit upheld the denial of early release eligibility on the basis of a prior violent conviction. Appellee, Robert C. Stiver, 04540-068, an inmate at FCI McKean, alleged that he was unlawfully denied 3621(e) early release eligibility because of prior convictions for aggravated assault and armed robbery. He argued that the decision to include prior violent offenses when determining early release eligibility for completion of the Drug Abuse Program was inconsistent with § 3621(e). The Court of Appeals affirmed the District Court and held that the BOP's interpretation of the statute, and subsequent issuance of the regulation, to apply to prior offenses as well as current

offenses was a reasonable accommodation of Congress' goals. The Court of Appeals also rejected Appellee's arguments alleging violations of the ex post facto clause and of the double jeopardy clause. Assistant Regional Counsel Joyce Horikawa assisted the AUSA at the oral argument.

7) United States v. Paster, 4:CR-96-221 (MDPA)
Mitchell Paster, 08460-067, was charged with the August 1996 murder of USP Lewisburg Staff psychologist on the reservation. In November 1997, just prior to trial, the defendant pled guilty to second degree murder. Presentence conference is scheduled for February 9, 1998.

8) Zinner v. U.S., Cr. No. 95-48 (EDPA)
FCI Loretto inmate Edward Zinner, 48591-066 filed a Section 2255 motion alleging ineffective assistance of counsel. As part of his case, the Court issued an order requiring FCI Loretto to turn over copies of telephone conversations the inmate had placed to his attorney on monitored phone lines. The institution complied by providing access to, but not copies of, the tapes. A hearing was held on November 12, 1997 concerning, in part, whether access to the tapes was sufficient. Joyce Horikawa assisted the AUSA. The court felt that this access was sufficient.

9) Jolly v. State of New York, et. al.
On November 7, 1997, a telephone hearing was held concerning the placement of New York state inmate Paul Jolly, 42073-054, who was being held at MCC New York on a federal civil writ. In a letter to the judge earlier that day, the Warden had requested the writ be satisfied so that the inmate, who had become very disruptive at MCC NY, could be returned to the state. The Judge agreed and satisfied the writ and the inmate was returned to New York DOC. MCC NY attorney Clinton Stroble prepared the letter and assisted during the hearing.

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

11) U.S. v. Mong Shean Kara Chang, Crim. Number 97-218 (E.D.Pa.).
On December 1, 1997, a sentencing hearing was held in the above-cited case. The defendant, a diminutive, timid female, pled guilty to bank fraud of about \$218,000.00. Defense counsel argued for downward departure (guideline range of 18-24 months) because of the defendant's increased vulnerability to external influences (i.e. sexual assault and predatory activity) in a

prison setting. Defendant's Psychologist's report concluded that she would be expected to experience both internal conflict and external demands from others if sentenced to prison. NER Psychology Services Administrator, Gerard Bryant, Ph.D., testified about the Bureau's screening process and the medical, custodial and psychological services available to inmates. The sentencing court rejected Defendant's request and sentenced her to a 21 month term. The court found that the BOP has recognized the problems associated with victimization of diminutive or vulnerable inmates and is equipped to deal with these problems. Joyce Horikawa assisted the AUSA in this matter.

12) U.S. v. Jackie Johnson Crim. No. (D.N.J.)

On December 9, 1997, inmate Jackie Johnson, 03800-015, was found guilty of smuggling drugs into FCI Fairton through the mail. He was sentenced to a 5 month consecutive term. FCI Fairton Attorney Roberta Truman assisted the AUSA.

13) United States v. Gregory Scarpa, Jr. CR-94-1119 (EDNY)

On December 11, 1997, Judge Raggi held a hearing concerning a request for reconsideration of an order concerning inmate Gregory Scarpa, Jr., 10099-050. On December 10, 1997, Judge Raggi issued an order that Scarpa be released from administrative detention. The Warden advised the court though that AUSA that he could not follow the order and requested a stay of the order and a hearing. The court granted the Warden's request. The hearing lasted eight hours. Warden Hasty testified for approximately three hours. The Warden stated that because of Scarpa's assault on an organized crime member, while at USP Terre Haute, Scarpa was a marked person. Warden Hasty emphasized his concerns about the safety of Scarpa, other inmates, and staff. The Warden emphasized Scarpa will remain in the Special Housing Unit so long as he is detained at MCC New York. Other MCC NY staff testified concerning the protective custody hearing for Scarpa and the medical care Scarpa was receiving. Scarpa testified concerning conditions in the SHU, and that he was not in fear of his life. Judge Raggi ruled that it was not her job to second guess the Warden, but only to determine if the Warden's response was exaggerated. The judge held that, although she might reach a different conclusion, the Warden's response was not exaggerated. The court noted that Scarpa has been at MCC New York for a long time because of delays in trial (some initiated by Scarpa) and that the best way to proceed is to start the trial before March 1998. Clinton Stroble, MCC NY Attorney, assisted the AUSA.

14) U.S. v. Guzman et. al., Crim. No. (SDNY)

On December 18, 1997, a pretrial conference was held regarding the above-referenced case. The case involved 14 codefendants charged with participating in a drug conspiracy who are housed at MCC NY due to separation concerns. Prior to transport to Court, five of the defendants refused to cooperate with MCC NY F&D staff and plastered the walls with bread and toilet paper. MCC

NY ISM Robert Mayer and Assistant Regional Counsel Joyce Hollmann attended the hearing. The Court admonished the defendants. After Joyce and Robert left the hearing, defense counsel raised a concern regarding legal visits at MCC NY. In response, the Court suggested to defense counsel to submit an order for the USMs to house these inmates at MDC Brooklyn the next time the defendants are brought to court. The AUSA submitted a letter to the court opposing such an order.

15) U.S. v. Robert Shapiro, Crim. No. (E.D.N.Y.)

On December 18, 1997, Judge Block held a conference call concerning the medication status of inmate Robert Shapiro, 43063-053. Three days before the call, the inmate had become belligerent in open court (flipping over tables, cursing at the Judge) and then alleged it was due to MDC Brooklyn's failure to provide him the appropriate medication. MDC Brooklyn Attorney Azzmeiah Vazquez and the MDC Brooklyn Clinical Director informed the Judge the inmate received the medication and that failure to take this medication would not result in the alleged side effects. Upon the request of the Court, the testimony was repeated in Court and placed on the record.

16) U.S. v. DeRewal, Crim. No. 88-0098 (E.D.PA)

On December 31, 1997, an emergency hearing was held to determine whether inmate Manfred DeRewal, 40206-066, could be held beyond his mandatory release date of January 1, 1998. The inmate, who has an unpaid committed fine, did not have a committed fine hearing pursuant to 18 U.S.C. § 3569. At the hearing, Emergency Judge Padova issued an order that the committed fine hearing was to be held on January 2, 1998, and the inmate would remain committed at least until that time. On January 2, 1998, a committed fine hearing was held before Magistrate Judge Rapoport in Allentown, PA. Magistrate Judge Rapoport determined that inmate DeRewal was not eligible to take the pauper's oath. Thus, inmate DeRewal remains housed at FCI Schuylkill. Michael Tafelski assisted the AUSA.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel
All Associate General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 10/01/1997 TO 12/31/1997

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	60	31	11	12	04	32	664	36	15	1	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

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
TORT CLAIM QUARTERLY REPORT

FROM 10/01/1997 TO 12/31/1997

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	1	0	0	0
NER	168	131	34	2	0	1	8	300	217	69	0	191	113
Ser	3	2	1	0	0	0	0	0	0	0	0	0	15
Ncr	1	1	0	0	0	0	0	0	0	0	0	0	1
Scr	0	0	0	0	0	0	0	0	0	0	0	0	0
Wxr	3	3	0	0	0	0	0	0	0	0	0	0	10
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	176	137	36	2	0	1	8	300	217	70	0	191	48

DEFINITIONS:

LOC - LOCATION
NUM - NUMBER FILED IN QUARTER
PP - PERSONAL PROPERTY CLAIMS
PI - PERSONAL INJURY CLAIMS
PPPI - PERSONAL PROPERTY/PERSONAL INJURY CLAIMS
WD - CLAIMS WITHDRAWN
Med - CLAIMS ALLEGING MEDICAL NEGLIGENCE
Set - CLAIMS SETTLED
Amt - AMOUNT PAID
Pen - CLAIMS PENDING
Den - CLAIMS DENIED
OD - CLAIMS OVERDUE
A/O - AVERAGE DAYS OVERDUE
A/P - AVERAGE DAYS TO PROCESS

NORTHEAST REGIONAL OFFICE
NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 10/1/97 TO 12/31/97

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	376	144	11	27	0	7	6	31	233	110	0
SER											
NCR											
SCR											
WXR											
TOT											

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