

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

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

April 22, 1999

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

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Quarterly Report January 1, 1999 through March 31, 1999

Attached are the statistics requested for the quarterly report
for the second quarter of FY 1999.

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

A. SETTLEMENTS AND AWARDS

1. Pedro Tejada v. United States, Civ. No. 97-1942 (D.N.J.)
FTCA action, plaintiff sustained wrist injury while playing
basketball in December 1995, and alleges FCI Fort Dix staff
delayed providing specialized treatment which resulted in
permanent disability. Case went to mediation; settled for
\$50,000.

2. Dewey Lee v. United States, Civ. No. 97-529 (M.D.Pa.)
FTCA action, plaintiff alleged personal property was stolen at
USP Allenwood in July 1996, because staff failed to secure
plaintiff's cell within a reasonable time after he was taken to
SHU. Case settled for \$650.

3. Pagan v. Atwood, et al., Civ. No. 3:97CV1798 (D.Conn) Bivens action alleging FCI Danbury staff failed to protect from sexual abuse (by male staff), and failed to provide adequate medical care. Inmate had twins after sex with staff member who was convicted for sexual abuse of a ward. Case was converted into an FTCA action and settled for \$5000.

4. Bottone v. United States, et.al., 97-Civ-1468 (S.D.N.Y.) Plaintiff, Anthony Bottone, 30661-054, filed a FTCA action alleging that while incarcerated at MCC NY he sustained an electrical shock when his hand accidentally came in contact with a defective electrical wall socket. Costs of trial would have exceeded \$5000. Case settled for \$1000.

B. SIGNIFICANT NEW CASES:

1. Kowalczyk v. DOJ, 3-CV-99-0512 (M.D.Pa.) - Inmate Chester Kowalczyk, 28681-004, filed a petition requesting the court to find is federal offense were not crimes of violence. At issue is Lewisburg Camp's preparation to notify local law enforcement officials of the inmate's imminent release. One of the inmate's convictions is for possession of an Uzi in violation of 26 U.S.C. § 5861. Magistrate Judge Smyser has scheduled a hearing for Friday, April 30, 1999.

2. U.S. v. Emery, Crim. 97-90-01-B (D.N.H.) - Inmate Kevin Emery, 01951-049, filed a motion with his sentencing judge, Chief Judge Barbadoro, complaining that FCI Fairton denied a furlough to attend his mother's funeral. The court scheduled a hearing for April 23, 1999 and ordered that the staff member, who denied the furlough, attend the hearing. The Unit Manager advised the inmate he was not eligible for the furlough because he was out custody. Attorney Roberta Truman and the Unit Manager will attend the hearing.

C. TRIALS and HEARINGS:

1. Holder v. Harding, 98-656 (D. Conn); Codianni-Robles v. Harding, 98-1481(D.Conn) - These cases have been discussed in prior monthly reports. Two female inmates are challenging the ability of male staff to conduct routine pat searches. A hearing on the merits of whether a permanent injunction should be issued was held on March 1, 3, 4, 8, 12, 24, 25, and April 13 and 15, 1999. Although testimony has concluded, oral arguments on two

motions to dismiss as well as closing statements are scheduled for May 3, 1999. Mike Tafelski has been assisting the AUSA at the hearings.

2. Carter v. Luther, Civil Action No. 94-72E (W.D.PA.) - Inmate Joseph Carl Carter, 32856-004, alleged deliberate indifference to his medical needs (asthma) by the former Warden at FCI McKean. Specifically, he alleges that he personally advised the Warden during his rounds through the SHU that the conditions (high temperatures and poor air quality worsened his medical condition. The case proceeded to trial on January 11, 1999. Assistant Regional Counsel Toni Brown assisted the AUSA. After a three day trial, the jury returned a verdict in favor of the government defendant.

3. United States v. Ajaj - (S.D.N.Y.) - Inmate Ahmad Ajaj, 40637-053, has been convicted of involvement in the World Trade Center bombing. Inmate Ajaj is at MCC NY for post-trial motions and resentencing. On January 29, 1999, there was a hearing before Judge Duffy in regard to the inmate's hunger strike. Judge Duffy decided that if the inmate continued with his hunger strike (necessitating hospitalization), the judge would cancel the writ, return him to his prior institution, and the legal proceedings will proceed in his absence. The inmate resumed eating.

4. U.S. v. Atkins, Misc. Cr. No. 98-60-A (W.D.N.Y.) - Shawn Atkins, 09302-055, is a state inmate serving a civil contempt citation for up to 18 months for refusing to provide a grand jury with sample fingerprints, saliva and handwritings. The inmate challenged the conditions of confinement in administrative detention at USP Lewisburg. The Federal Public Defender requested that Atkins be housed in general population. The inmate is serving a state sentence for attempted murder and has a long record of discipline problems. On 2/2/99, Assistant Regional Counsel Toni Brown testified before Judge Richard Arcara in Buffalo, NY, concerning inmate Atkins' continued placement in Administrative Detention at USP Lewisburg. Before the Judge issued a ruling on the motion, the inmate pleaded guilty to the underlying criminal charges, thereby purging the contempt.

5. U.S. v. Roy Thomas, 98 Cr. 761 (S.D.N.Y.) - Correctional Officer Roy Thomas was criminally indicted on charges of conspiracy to violate 21 U.S.C. § 841(a) (to possess and distribute 5 kilograms of a controlled substance) and 18 U.S.C. § 201(b)(2) (taking of bribes by a public official). The trial lasted from January 11, 1999 through January 21, 1999. The testimony at trial and the physical evidence revealed that

Thomas purposefully sought out the friendship of inmates with the specific intent to engage in unlawful activities. Thomas was found guilty of all charges. Thomas faces 10 years to life on the drug conspiracy charge and up to 15 years on the bribery charge. Sentencing is scheduled for late April.

6. United States v. Ahmed, Crim. --- (S.D.N.Y.) - On March 11, 1999, a teleconference was conducted with Judge Amon, the AUSA, Warden Hasty and Dominique Raia regarding the status of hunger strike of inmate Nasser Ahmed, 42963-054. No action needed as inmate resumed eating.

7. United States v. Garcia, Crim -- (S.D.N.Y.) - On March 15, 1999, Judge Preska asked our position on proposed Order to move inmate Pedro Jose Garcia, 43860-054, from Hudson County Jail to MCC New York, MDC Brooklyn, or FCI Otisville for several reasons (better access to counsel, more educational programs and easier access to United States Attorney's Office). Dominique Raia advised Judge that latter two stated reasons are not accurate and we shouldn't move inmate for convenience of attorney only, in addition to fact that we need bed space for inmates going to court. On March 18, 1999, Judge Preska advised Dominique Raia that she would not grant the proposed Order.

8. United States v. Leggett, Crim No. --- (M.D.Pa.) Inmate Michael K. Leggett, 83644-011, pled guilty to assaulting his defense attorney in March 1996. On March 23, 1999, he was sentenced to 34 months.

D. COURT ORDERS:

1. In re Enrique Romero, Reg No. 08595-063, (M.D.Pa.) On February 24, 1999, Judge Malcolm Muir issued an order authorizing USP Lewisburg staff to forcibly medicate inmate Romero whose mental and physical condition had deteriorated causing him to refuse medication. On February 25, 1999, the inmate transferred to USMCFP Springfield.

2. Treglia v. Beeler, Civil Action No. 98-2693 (D.N.J.) On March 23, 1999, Judge Simandle issued an Opinion and Order remanding the case to the Bureau of Prisons for consideration of whether Petitioner, Robert Treglia, 10868-014, should be granted a reduction in sentence under 18 U.S.C. § 3621(e)(2)(B). The Court found that the Bureau impermissibly considered factors outside Petitioner's current conviction to exclude him from early

release eligibility under 3621(e). Since case was decided under the revised regulations, we have moved the Court to reconsider its decision.

3. Santos v. Beeler, Warden, CV-98-1347 (D.N.J.). On March 9, 1999, Judge Orlofsky ordered the petition for writ of habeas corpus of Petitioner be granted. The Warden was ordered to consider Petitioner Edwin Santos, 18472-050, for possible early reduction pursuant to 18 U.S.C. § 3621(e). The court felt the inmate was entitled to relief because the inmate had almost completed the RDAP before being advised he was not eligible. At the time of the decision, the inmate was on home confinement and only two weeks away from his release date. Based on the facts of the case, no appeal was recommended and the inmate was released.

E. RELIGIOUS CASES:

1. Melvin Cooper v. Tippy, et al., Civil No. 94-758 (N.D.N.Y.) - A Report issued January 19, 1999, recommending denial of defendants' renewed motion to dismiss or for summary judgment. Plaintiff filed this Bivens action in June 1994 alleging that staff at FCI Ray Brook failed to accommodate his religious dietary needs. Plaintiff, an Orthodox Jew, asserted various instances where foods were either prepared inconsistent with Jewish laws or contaminated, thus losing their Kosher status. Although defendants claimed corrective measures were implemented to prevent such occurrences, the court found a question of fact existed as to whether the defendants acted intentionally in allowing the deficiencies to occur.

2. Thomas Ash-Bey v. Lt. Harold Fauntleroy, et al., 98-CV-1447 (D.N.J.). This is a Bivens action filed against six FCI Ft. Dix employees. The plaintiff alleges he was denied the right to wear religious headgear (a fez) on the compound. He states when he attempted to file an administrative remedy about this matter, his counselor tore up his BP-8 and dismissed him. The plaintiff also alleges he was given an incident report and transferred to another institution in retaliation for his religious beliefs. Plaintiff seeks one million dollars from each defendant as compensation. He also seeks one million dollars from each defendant in punitive damages.

F. ENSIGN AMENDMENT CASES: - Wolf, et al. v. Reno, Civil No. 978-408 (W.D.Pa.) - Three inmates at FCI McKean have requested injunctive type relief challenging the application of the Ensign

Amendment and the part of the Zimmer Amendment which prohibits the showing of R, X, and NC-17 films. On March 25, 1999, the court denied a motion to dismiss, holding that the complaint stated a valid first amendment claim. The court did not address the Ensign Amendment issue since the Ensign Amendment was not being applied to these inmates.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 01/01/1999 TO 03/31/1999

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	50	20	11	14	3	11	636	39	7	4	
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 01/01/1999 TO 03/31/1999

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	1
NER	179	117	6	2	0	53	17	3937	191	77	0	0	108
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	2
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	180	118	6	2	0	53	17	3937	191	77	0	0	55

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
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 01/01/99 TO 03/31/99

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	539	228	17	34	0	26	7	29	410	100	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

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July 28, 1999

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

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Quarterly Report April 1, 1999 through June 30, 1999

Attached are the statistics requested for the quarterly report
for the third quarter of FY 1999.

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

A. SETTLEMENTS AND AWARDS

1) Beasley v. Alexander, 3:CV-96-1464 (M.D.PA)

The case, converted from a Bivens action to a FTCA case, was
settled for \$1,750.00. Former inmate James Beasley, 08299-039,
alleged staff misconduct during the October 1995 disturbances at
USP Lewisburg.

2) Powell v. United States, 3:CV-95-0564 (MDPA)

On June 21, 1999, Judge Kosik awarded \$10,500 to inmate Joseph
Powell, 14322-056, in this FTCA case, in which the inmate stated
he fell from his upper bunk while housed at USP Allenwood in
1994. Powell, a diabetic who had been issued a lower bunk slip
and not provided a lower bunk, claimed he became hypoglycemic and
sustained injuries when he fell from his upper bunk. After a
trial on damages, the inmate was awarded money for pain and
suffering and an irregular laceration over one eye which caused a
permanent scar. The award was only slightly more than what we had
offered to settle the case.

B. TRIALS and HEARINGS:

1. Holder v. Harding, 98-CV-656 (D.Conn.)
Codianni-Robles v. Harding, 98-CV-1481 (D.Conn) .

As discussed in prior monthly reports, FCI Danbury inmates Tinia Holder, 09474-424, and Beatrice Codianni-Robles, 11866-014, filed separate, similar motions requesting a permanent injunction against the practice of cross-gender pat searches at FCI Danbury. The trial on the injunction request concluded on May 3, 1999. Decision is pending.

2. U.S. v. Emery, Crim. 97-90-01-B (D.N.H.) - Inmate Kevin Emery, 01951-049, filed a motion with his sentencing judge, Chief Judge Barbadoro, complaining that FCI Fairton denied a furlough to attend his mother's funeral. The court scheduled a hearing for April 23, 1999 and ordered that FCI Fairton staff who denied the furlough attend the hearing. The Unit Manager advised the inmate he was not eligible for the furlough because he was not community custody. During the three hour hearing, the Bureau's policy regarding furloughs and classification scoring were clarified for the Court. The Judge declined to rule on whether FCI Fairton followed policy since the court found the furlough decision did not impact on the underlying sentence in the pending 2255 petition. Attorney Roberta Truman and Unit Manager Rothbaum attended the hearing.

3. U.S. v. Maisonet, 97 Cr. 817 (S.D.N.Y.)

On April 21, 1999, Judge Chin held a hearing on a request by the defendant in this criminal case to be transferred to FCI Otisville in order to have co-defendants meetings. Some of the defendants are separatees based on SIS information that the Maisonet organization split into two factions because some members found out that Francisco Maisonet, 18290-054, was a government informant and believe their incarceration is connected to his cooperation. As a result, inmate Maisonet was slashed by another member. The AUSA recommended co-defendant meetings take place in a room in the court building under Marshal's scrutiny. The Wardens at both FCI Otisville and MCC New York expressed security concerns in having a co-defendants meetings. Defendant's counsel also raised an issue at the hearing regarding problems with legal visits at MCC New York. They claimed they weren't permitted any documents in SHU and they weren't permitted to pass documents to their clients or bring in video or cassette tapes. Clinton Stroble, Attorney Advisor, MCC New York, advised the Court he was not aware of any such prohibitions, although MCC does require 24 hours advanced written notice to bring video tapes into the institution. He indicated that if problems arise, the attorneys should speak to MCC NY Legal staff.

7. Harris v. United States Civ. No. 98-6745 (E.D.PA.)

On June 9, 1999, a mediation hearing was held in this FTCA action filed by former inmate George Harris who alleged that he slipped and fell on the West Compound at FCI Fort Dix on January 8, 1996. He alleges that he severely injured his leg, was denied adequate medical care, and as a result, is now disabled and needs continued medical care. Our investigation indicated that he injured his leg on January 8, 1996, when he jumped from a third floor window of his housing unit during a blizzard over a bet. The available medical records indicate that he was provided appropriate medical care while housed at FCI Ft. Dix. On February 6, 1998, Plaintiff was released from Bureau of Prisons custody. There is no record that Plaintiff experienced any complications associated with his injured leg prior to his release from FCI Fort Dix. Mediation was unsuccessful. Trial is expected on October 15, 1999. Joyce Horikawa assisted the AUSA.

8. United States v. Karl Pringle, 98-CR-1087 (E.D.N.Y.)

On June 4, 1999, a hearing was held regarding a habeas corpus action brought by inmate Karl Pringle, 54094-053. Judge Johnson had ordered that Pringle serve his sentence on condition that he waived deportation. There was no confirmation from INS that Pringle had waived deportation so MDC Brooklyn kept the inmate in custody. Prior to the habeas hearing, the government had appealed Pringle's sentence. At the hearing, Pringle alleged that his sentence had expired and he no longer belonged in BOP custody. It was agreed by the parties that Judge Johnson lacked jurisdiction to amend the sentence since the case was now before the court of appeals. Nevertheless, Judge Johnson stated that he believed the sentence was illegal. Judge Johnson decided that he would order Pringle turned over to INS, with the added proviso that he not be deported until resolution of the government's appeal. Pringle was subsequently transferred to INS custody. Attorney Advisor Les Owen assisted the AUSA at the hearing.

9. Lasorsa v. Menifee, No. 98-2548 (2d Cir.)

On June 9, 1999, oral arguments were heard in the United States Court of Appeals for the Second Circuit. Former inmate Nicholas Lasorsa, 81070-054, appealed the district court decision denying his petition for a writ of habeas corpus. The petition alleged that the BOP unlawfully denied Lasorsa's request for an early release (under 18 U.S.C. 3621(e)(2)(B)) by classifying his conviction for possession w/I/d heroin as a crime of violence, based on P.S. 5162.02 and 28 C.F.R. 550.58 (1997), because Lasorsa received a two-level sentence enhancement for possession of a weapon.

The district court found the BOP properly exercised its discretion, noted the BOP correctly disavowed any reliance on the conclusion that Lasorsa's drug offense constituted a crime of

violence, and acknowledged that the asserted reasons for Lasorsa's denial were adequate.

On June 22, 1999, the Court issued a summary order affirming the District Court's judgment "substantially for the reasons stated by the district court in its opinions and orders." Assistant Regional Counsel Toni Brown assisted the AUSA with the case.

C. COURT ORDERS:

1) Smith v. Harding, 3:98-Civ-1763(D.Conn)

On May 27, 1999, the United States District Court for the District of Connecticut ruled in favor of Petitioner, Tanya Marie Smith, 95827-024, and ordered her released from BOP custody. The issue was whether the federal sentencing court in California intended its sentence to run concurrent or consecutive to a new law federal sentence from West Virginia (that had been imposed, but not yet started, because she was serving other old law federal sentences). The Court held that the evidence "overwhelmingly indicates that Judge Lew specifically addressed the issue of a concurrent West Virginia sentence in his application of § 5G1.3 of the sentencing guidelines. The California sentence, therefore, runs concurrently with the West Virginia sentence." We are reviewing grounds for an appeal.

D. RELIGIOUS CASES:

1. Melvin Cooper v. J.W. Tippy, et al., Civil No. 94-758 (N.D.N.Y.) - A Report issued January 19, 1999, recommending denial of defendants' renewed motion to dismiss or for summary judgment. Plaintiff filed this Bivens action in June 1994 alleging that staff at FCI Ray Brook failed to accommodate his religious dietary needs. Plaintiff, an Orthodox Jew, asserted various instances where foods were either prepared inconsistent with Jewish laws or contaminated, thus losing their Kosher status. Although defendants claimed corrective measures were implemented to prevent such occurrences, the court found a question of fact existed as to whether the defendants acted intentionally in allowing the deficiencies to occur.

2. Thomas Ash-Bey v. Lt. Harold Fauntleroy, et al., 98-CV-1447 (DNJ). This is a Bivens action filed against six FCI Ft. Dix employees. The plaintiff alleges he was denied the right to wear religious headgear (a fez) on the compound. He states when he attempted to file an administrative remedy about this matter, his counselor tore up his BP-8 and dismissed him. The plaintiff also alleges he was given an incident report and transferred to another institution in retaliation for his religious beliefs. Plaintiff seeks one million dollars from each defendant as

compensation. He also seeks one million dollars from each defendant in punitive damages.

E. ENSIGN AMENDMENT CASES: - Wolf, et al. v. Reno, Civil No. 978-408 (W.D.Pa.) - Three inmates at FCI McKean have requested injunctive type relief challenging the application of the Ensign Amendment and the part of the Zimmer Amendment which prohibits the showing of R, X, and NC-17 films. On March 25, 1999, the court denied a motion to dismiss, holding that the complaint stated a valid first amendment claim. The court did not address the Ensign Amendment issue since the Ensign Amendment was not being applied to these inmates.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 04/01/1999 TO 06/30/1999

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	54	29	10	10	4	41	486	198	12	2	
SER											
NCR											
SCR											
WXR											
CO											
TOT											

DEFINITIONS:

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SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)
AWD - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)
GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE IN NARRATIVE)

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 04/01/99 TO 06/30/99

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	481	215	11	34	0	12	3	29	338	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

NORTHEAST REGIONAL OFFICE
TORT CLAIM QUARTERLY REPORT

FROM 04/01/1999 TO 06/30/1999

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	1	0	1	0	0	0	0	0	0	0	0	0	0
NER	187	121	43	2	2	18	21	3555	198	126	0	0	115
Ser	1	1	0	0	0	0	0	0	0	0	0	0	1
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	2
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	189	122	44	2	2	18	21	3555	198	126	0	**	58

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

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

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Philadelphia, PA. 19106

October 25, 1999

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

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Fourth Quarterly Report July 1 - September 30, 1999

Attached are the statistics requested for the quarterly report for the fourth quarter of FY 1999.

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

A. SETTLEMENTS/AWARDS and FAVORABLE or ADVERSE OPINIONS

1. Crooker v. United States, Civ. No. 97-402E (WDPA) - Inmate Michael Crooker, 03631-158, currently at USP Lompoc, filed this FTCA case alleging that staff at FCI McKean negligently restrained him in four point restraints for an extended period of time (specifically, in restraints for 89 hours (70 of which were in four points)) in April 1997. His administrative tort claim requesting \$500,000 was denied. Case settled for \$1000.00 because of poor documentation.

2. Treglia v. Art Beeler, Civ. No. 99 CV 2633(DNJ) - Habeas petition in which inmate Robert Treglia, 10868-014, challenged the denial of a reduction in sentence under 18 U.S.C. § 3621 (e)(2)(B), based on the use of a two-level enhancement under the United States Sentencing Guidelines for use or possession of a firearm during a drug trafficking offense. The petition was granted on March 28, 1999. A motion for reconsideration and stay of judgment pending appeal were filed. On July 22, 1999, Judge Simandle denied both the motion for reconsideration and motion for stay of judgment. The Court indicated that although it had no objection to the use of the two level enhancement, it did

object to the categorical disqualification of otherwise eligible inmates from sentence reductions. The Court remanded the matter back to the BOP to do an "individualized determination" as to whether inmate Treglia should be granted early release. A decision was made that he would not be granted early release.

3. Tajeddini v. Gluch, et.al., Civ. No. 5:92-CV-546 (D. Conn) Plaintiff, former inmate Hojatollah Tajeddini, 17065-038, filed this pro se Bivens complaint in September 1992, alleging that while housed at FCI Danbury, he was the victim of retaliatory treatment. He alleges that after he filed a complaint against a staff member, other staff members subjected him to a pattern of harassment and retaliation which led to the filing of a false incident report, placement in segregation, and denial of appropriate footwear. Motions for summary judgment were denied and a lengthy trial loomed. After a settlement conference with a Magistrate Judge, the Plaintiff, now represented by counsel, and the government agreed to convert case into an FTCA action and settle for \$15,000.

4. Seidler v. Beeler, Civil Action No. 98-3592 (DNJ) - Habeas case in which inmate Steven Seidler, 26725-053, challenged denial of early release eligibility under 3621(e), based on a two point enhancement for possession of a weapon during a drug trafficking offense. Judge Irenas denied the petition, and held that the denial was a valid exercise of discretion afforded to the Director under the statute.

5. Shepard v. Holland, et.al., Civ. No. 3:CV-97-0610 (MDPA) On July 19, 1999, Judge Kane denied a Motion for Summary Judgement in a "failure to protect" Bivens action. The Court finds material facts remain. The government contended that material facts were not in dispute. Plaintiff, inmate David Shepard, 99058-012, was assaulted by a separatee who was housed in SHU on the same range as the Plaintiff. When staff were putting the assailant's cellmate back into the cell, the assailant slipped his cuffed hand from back to front, exited his SHU cell and assaulted the Plaintiff who was being returned from outside recreation. All indications are that staff appropriately followed all policies and procedures. The AUSA, with approval of DOJ and OGC, has filed a protective notice of appeal and plans to file an appeal on the qualified immunity argument. The appeal is awaiting approval by the Solicitor General.

6. Trudeau v. Bureau of Prisons, 95-2266 (D. Conn.) Three inmates, formerly at FCI Danbury, contend that, in 1992 and 1993, the defendants failed to follow the Bureau of Prisons

common fare menu and served them meals which were not nutritionally balanced. They claim that staff at FCI Danbury retaliated against them after they made complaints about the common fare meals and the preparation of such meals. Discovery in this case concluded in 1996 and it resurfaced during the week of July 19, 1999. Trial was scheduled for seven days beginning October 26, 1999. On October 7, 1999, at the urging of the magistrate judge conducting the settlement conference, a tentative settlement agreement was reached: the case would be converted to an FTCA matter and settled for a total of \$20,000 (including attorney fees) to avoid costs of trial.

B. TRIALS and HEARINGS:

1. U.S. v. Javier and Ramon Jiminez, 98 Cr. 00131 (SDNY)
On July 27, 1999, sentencing was held for identical twins Ramon and Javier Jiminez (42077-054 and 40204-054, respectively). Judge Patterson was considering a downward departure or no imprisonment (guideline range was 33-41 months) due to his concerns that (1) the Bureau may not be able to meet the educational and vocational needs of the inmates; (2) the Bureau may not be able to protect these inmates due to their cooperation; and (3) the possibility that the inmates may remain at MCC NY for an extended period awaiting designation (they already spent approximately 24 months at MCC NY).

In a written response, the Judge was advised that the Bureau would afford them ample opportunities for educational and vocational training, that the inmates would not be designated to a facility where they had a separate, and that the designation process would be expedited upon timely receipt of the J & C. Attorney Dominique Raia represented the Bureau at the hearing. The inmates were sentenced to 33 months (Ramon) and 36 months (Javier) with a three year term of supervised release.

2. In re Ali, M11-189 (SDNY) - On July 27, 1999, there was a continuation hearing relating to this civil contemnor, inmate Ihab Ali, 46353-054. Judge Patterson heard evidence relating to Ali's religious convictions. The inmate stated fears for his safety and that of his family in Egypt as reasons why he refused to testify before two grand juries on matters related to an investigation of the Embassy bombings. At a previous hearing, counsel for Ali raised concerns about the conditions of the inmate's placement in administrative detention. The MCC NY responded by letter to the court. Attorney Dominique Raia represented the Bureau at the hearing. No further information

concerning the Bureau was requested by the Court at the hearing. The court decided to maintain inmate Ali in civil contempt.

3. On August 31, 1999, a correctional officer at MCC NY testified in an arbitration matter involving the termination of an RPS delivery person. MCC NY had filed a complaint with the delivery company regarding this person who, after having been warned in the past, left a package outside MCC NY which required the canine bomb squad to be summoned. Dominique Raia assisted the staff member.

4. United States v. Walker, 4:CR:97-0012(MDPA)- Inmate Lawyer Lee Walker, 26727-083, was convicted of the assault of a cook supervisor at USP Lewisburg in July 1996. A resentencing hearing was required by United States v. Walker, 149 F.3d 238 (3d Cir., 1998), in which the Court of Appeals implied that, for sentencing guidelines purposes, all Bureau staff may not meet the definition of law enforcement officer. On December 29, 1998, the district court held that the evidence supported a finding that the cook supervisor was a law enforcement or correctional officer for purposes of the sentencing guidelines. A second appeal was filed and oral arguments were held before the Third Circuit on September 23, 1999. No opinion has been issued to date.

5. United States v. Kones, Cr. No. (EDPA) - During the week of September 20, 1999, former inmate Richard Kones, 05192-079, was tried for willful failure to pay imposed fines. While serving his sentence at FCI Bastrop, the review of the inmate's mail/telephone calls indicated that although he had a \$4 million fine, he was attempting to hide his financial assets. The information was referred to the FBI which led to the pending criminal matter. Assistant Regional Counsel Toni Brown assisted the AUSA with preparation and testimony of BOP witnesses from NERO, FCI Bastrop and FMC Rochester. All of the BOP witnesses testified well and the defendant was convicted.

6. U.S. v. Trevor Wright, Crim No. (MDPA) - On September 3, 1999, a committed fine hearing was held regarding FCI Allenwood inmate Trevor White, 16648-004. Paralegal Assistant Jeff Fromm assisted the AUSA.

NOTE: No decision has been issued to date in the Holder v. Harding, 98-CV-656 (D.Conn.) and Codianni-Robles v. Harding, 98-CV-1481 (D.Conn.) cases concerning cross-gender pat searches.

UPCOMING HEARINGS/TRIALS:

1. Bracciodieta v. U.S., 97-445(MDPA) - Inmate Charles Bracciodieta, 14674-018, alleges that he was beaten by staff while handcuffed in the Special Housing Unit at USP Allenwood. The court found a factual dispute and scheduled jury selection and trial for the first week in November. Attorney Nellie Torres will assist the AUSA at the trial.

2. Rios v. Wiley, No. 99-3297 (3d Cir.) [1:CV-98-1507 (MDPA)] Oral argument is scheduled for November 1, 1999, in this habeas corpus case in which the court ordered that FPC Allenwood grant inmate Francisco Rios, 31077-054, additional prior custody credit for about 22 months already credited towards his state sentence. This credit would be directly contrary to 18 U.S.C. § 3585(b). Mike Tafelski will present oral argument.

C. COURT ORDERS:

1. United States v. Vincent Mann, 1:99-CR-09-01-B (DNH) On September 10, 1999, Chief Judge Barbadoro ordered a hearing "to determine whether any officials of the Bureau of Prisons should be held in contempt" for providing misleading information to the court for use at a sentencing. The defendant, Vincent Mann, 49594-019, was sentenced to a 70 month term with a recommendation that "once the defendant is eligible, he be transferred to the ICC". At issue was whether Bureau staff advised a U.S. Probation Office that an inmate could be eligible for ICC placement even if a sentence of 70 months were imposed. After sentencing, the court was advised that ICC placement would not occur because the Bureau regulations prohibits ICC placement for inmates serving sentences in excess of 60 months. Case was resolved prior to the contempt hearing.

D. RELIGIOUS CASES:

1. Melvin Cooper v. Tippy, et al., Civil No. 94-758 (NDNY) - A Report issued January 19, 1999, recommending denial of defendants' renewed motion to dismiss or for summary judgment. Plaintiff filed this Bivens action in June 1994 alleging that staff at FCI Ray Brook failed to accommodate his religious dietary needs. Plaintiff, an Orthodox Jew, asserted various instances where foods were either prepared inconsistent with Jewish laws or contaminated, thus losing their Kosher status. Although defendants claimed corrective measures were implemented to prevent such occurrences, the court found a question of fact existed as to whether the defendants acted intentionally in allowing the deficiencies to occur.

2. Thomas Ash-Bey v. Lt. Harold Fauntleroy, et al., 98-CV-1447 (DNJ). This is a Bivens action filed against six FCI Ft. Dix employees. The plaintiff alleges he was denied the right to wear religious headgear (a fez) on the compound. He states when he attempted to file an administrative remedy about this matter, his counselor tore up his BP-8 and dismissed him. The plaintiff also alleges he was given an incident report and transferred to another institution in retaliation for his religious beliefs. Plaintiff seeks one million dollars from each defendant as compensation. He also seeks one million dollars from each defendant in punitive damages.

3. Trudeau v. Bureau of Prisons, 95-2266 (D. Conn.) - Common fare case from FCI Danbury. Included in settlement section above.

E. ENSIGN AMENDMENT CASES: - None

F. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:

JULY REFERRALS:

1. On July 25, 1999, while conducting a routine shakedown, the MDC Brooklyn unit officer located five balloons (containing a brown substance which later tested positive as heroin) wrapped in paper and cellophane. The case has been referred to the U.S. Attorneys Office and accepted for prosecution. The two inmates are Young Choi, 57446-053 and Jorge Zuluaga, 54115-053.

2. On July 12, 1999, correctional officers supervising the visiting room at FCI McKean saw the visitor of inmate Roderick Thornhill, 04651-068, pass what was later identified as ten balloons of marijuana (net weight 3.1 grams). The contraband was recovered after the inmate was placed in a dry cell. The case has been referred and accepted for prosecution.

JULY TRIALS/SENTENCING:

1. United States v. Dameon Daley, 4:CR-99-0030 (MDPA)
On July 28, 1999, after a three day trial, the jury acquitted inmate Daley, 03358-017 of charges that he assaulted correctional staff at USP Allenwood. The AUSA stated that staff at USP Allenwood did an outstanding job supporting the prosecution. The perception is that the verdict resulted from one juror's belief that all correctional officers were liars.

AUGUST REFERRALS:

1. On August 23, 1999, pre-trial inmate Pena-Urena, 17979-069, made a three-way telephone call to an unknown individual in the community instructing people to flee the country because "the feds were coming to get them." The prosecuting AUSA was contacted and has subpoenaed the tape. The case was also referred to the FBI.

AUGUST TRIALS/SENTENCING:

1. United States v. Wade Smith Cr. No. (SDNY)

On September 13, 1999, former MCC NY Lieutenant Wade Smith pled guilty to a number of charges, including introduction of contraband (cosmetics, jewelry, and clothing). Sentencing (maximum term of imprisonment is 6 months) is scheduled for October.

2. U.S. v. Doris Johnson, Cr. No. (SDNY)

On September 14, 1999, former MCC NY correctional officer Doris Johnson pled guilty to charges of sexual contact with an inmate (Class B misdemeanor - maximum term of imprisonment is 6 months). Sentencing scheduled for January 26, 2000.

SEPTEMBER REFERRALS:

1. On September 29, 1999, USP Allenwood inmate John Kenney, 05238-041, struck a Unit Manager in the face with his fist causing the Unit Manager to fall, scrape his hand and damage his pants and eyeglasses. The case has been accepted by the FBI for prosecution. Five other criminal referrals from USP Allenwood were submitted and are pending a decision.

2. On September 24, 1999, FCI Otisville pre-sentence inmates Angel Galan, 56752-053, and Kerry Clark, 40762-054, were found in possession of cocaine and marijuana. Case has been referred for prosecution.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 07/01/1999 TO 09/30/1999

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	36	16	5	13	2	26	304	216	8	3	
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 07/01/1999 TO 09/30/1999

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	2	2	0	0	0	0	0	0	0	0	0	0	14
NER	216	158	47	4	1	5	8	568	277	92	0	0	102
Ser	1	1	0	0	0	0	0	0	0	0	0	0	0
Ncr	2	2	0	0	0	0	0	0	0	0	0	0	11
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	2
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	221	163	47	4	1	5	8	568	277	92	0	2	42

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
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 07/01/99 TO 09/30/99

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	601	304	20	49	1	33	6	31	446	216	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