



U.S. Department of Justice

Federal Bureau of Prisons

H. Penn

Nothing to be done  
3/23/98

Office of the Regional Director

Dublin, California 94568

March 23, 1998

**MEMORANDUM TO WALLACE H. CHENEY, GENERAL COUNSEL**

**FROM:** Harlan W. Penn, Regional Counsel

**SUBJECT:** Quarterly Report for Period July to September, 1997

Attached are the FOI/PA and litigation forms reporting information for the July to September, 1997 quarter. As explained in the following paragraph, I am not including the Tort or Administrative Remedy forms this quarter.

Unless specifically requested, we will not include Tort, FOI or Administrative Remedy statistical forms in future quarterly reports. In each case the forms used require data already available in Central Office to be electronically or manually compiled here and then typed onto a blank form that is then faxed or mailed to Central Office and then, if used in further reports, copied from the faxed or mailed copy. The possibilities of clerical error are significant. The Tort information is compiled from the Tort Data Base which we transmit monthly to the DOJ Branch. The FOI reporting requirements have changed significantly in recent months. We provide the requested information to Renee Barley at the beginning of each month and also include information in the monthly report which is distributed by E-mail. The Central Office data base also has some of the information although it may not include all that is required by new DOJ Guidelines. Administrative Remedy information provided in previous reports was entirely transcribed from Sentry and then typed onto a form as described above. Eliminating the regional transcription and transmission of these statistics will save staff time and should improve the accuracy of national reports.

There were no settlements or awards requiring narrative analysis during the July to September period. The trials or hearings noted are described below:

U.S. v. Zubick, CV 97-3555-JGD (CDCA). [LOS] Three hearings held in Los Angeles re sentence computation/credit issues. Writ granted and inmate release ordered July 30, 1997. Case was unusually complicated by repeated efforts of District Court to revise sentence to take into account Ninth Circuit orders regarding two prosecutions involving similar conduct under old and new law.

Naidenoff v. Stratman, CV 96-2008 BTM(CGA) (CDCA). [SDC/PHX] Court-ordered immediate release of inmate following hearing regarding imposition of Special Parole Term Violation sentence and resulting computation based upon Parole Commission Notice of Action.

Low v. Clarke-Cain, CV 95-0888 RMT(SHx) (CDCA). [BRN] Religious Freedom Restoration Act case in which inmate seeks injunctive relief for practice of Satmar sect of Hasidic Judaism. Trial held September 29-30, 1997 in Los Angeles, but recessed for settlement discussions. Previously the Court ordered Low placed in a halfway house for High Holidays.

LITIGATION - 1997      4th QUARTER REPORT

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	AWD	SET	AWD/SET
MXR	42	23	8	7	4	48	331	50	2	0	1	\$ 183
NCR	62	30	4	11	170	19	549	46	10	0	0	0
NER	90	53	8	20	6	33	626	47	16	0	3	0
SCR	67	45	6	12	4	39	135	36	6	0	5	0
SER	46	29	5	8	4	43	726	39	0	0	1	\$2,500
WXR	61	---	---	---	---	---	323	--	--	---	---	0
CO	28	6	0	4	2	15	172	11	8	0	0	9
TOT	396	186	31	62	190	197	2,862	229	42	0	11	\$2,692

DEFINITIONS

LOC - Location  
 NUM - Total Number of Lawsuits Filed in Quarter  
 HC - Number of Habeas Corpus Actions Filed in Quarter  
 FTC - Number of FTCA Actions Filed in Quarter  
 BIV - Number of Bivens Actions Filed in Quarter  
 OTH - Other Actions Filed in Quarter  
 ANS - Number of Litigation Reports Completed  
 PEN - Number of Actions Pending  
 CLD - Number of Actions Closed  
 H/T - Number of Hearings or Trials (Narrative Analysis to be Submitted with Report)  
 AWD - Number of Awards (Narrative Analysis Follows)  
 SET - Number of Settlements (Narrative Analysis Follows)  
 AWD/SET - Amount of Settlements and Awards

LITIGATION ANALYSIS

The total number of lawsuits filed increased by 19 from last quarter.

## 1997 QUARTERLY LITIGATION REPORT

### FOURTH QUARTER

#### I. TRIALS AND HEARINGS

##### MID-ATLANTIC REGION

Mildred Thompson v. Hemingway, - FPC Alderson - On July 22, 1997, hearing was held to determine why the Bureau of Prisons had not yet published a new policy to replace the "Crimes of Violence" Program Statement which was declared void in Wiggins v. Wise. At the conclusion of the hearing, the Magistrate called both sides into her chambers and suggested that the Bureau should seriously consider "settling these cases," as she indicated the current Bureau position is causing a "public relations problem" for the Bureau with the Court.

##### NORTHEAST REGION

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, his calculation changed the inmate's parole eligibility date. The Court of Appeals affirmed the District Court's order that denied the petition stating that the sentence computation was a proper exercise of BOP's discretion.

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

On July 21, 1997, the Court of Appeals heard oral argument concerning the dismissal of a Bivens complaint relating to the denial of CCC placement. The district court granted Defendants' Motion for Summary Judgment stating that the "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.

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. After two hours of deliberations, the jury returned a verdict in favor of each defendant.

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

bench trial lasted one day. The Court ruled in favor of the defendants.

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, 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. 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).

## II. SETTLEMENTS AND AWARDS

### MID-ATLANTIC REGION

Funderburk v. USA, - LSCI Butner - FTCA property settlement for \$183.35.

### SOUTH CENTRAL REGION

Daas v. Herman, W.D. La. - FDC Oakdale - Case was settled for \$2,500 and converted from a Bivens to an FTCA case. The case involved allegations of improper placement of the inmate in Administrative Detention when inmate threatened to file lawsuits and sent threatening correspondence to the Warden.

Caldwell v. United States, W.D. Okl. - FCI El Reno - Inmate alleged that BOP personnel failed to provide him with adequate winter clothing which resulted in his suffering a minor illness. This 1989 FTCA case was settled for \$1,000.00.

Wright v. Miller, W.D. Tex. - FCI BASTROP - The case involved alleged excessive use of restraints during a bus trip. The plaintiff agreed to convert this Bivens action into an FTCA action and settled for \$2500.

### NORTH CENTRAL REGION

Suarez v. Scott, et al., D. Kansas CV-95-3407-KHV - USP Leavenworth - A Bivens/FTCA case. Inmate alleged he was denied food, water, and opportunity to use a lavatory when he was placed in four point restraints. The complaint was amended to add a claim under the FTCA. An agreement has been reached to settle the same for \$250.00.

#### NORTHEAST REGION

Oriahki v. U.S., (M.D.Pa.) - FTCA property settlement for \$176.50.

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 for former inmate William Harris. The death of the inmate was unrelated to the issues in the case. Settlement for \$1,500.00.

Tulloch et. al. v. U.S., 92-4866 (SDNY) - MCC New York - FTCA case filed in June 1992 by six inmates who alleged that while on the elevator at MCC New York the elevator suddenly plunged to the basement. A settlement was reached. The amounts varied by inmate with a total of approximately \$90,000.00.

### III. PENDING CASES OF INTEREST

#### NORTH CENTRAL REGION

Tighe v. Booker, 97-1046, (10<sup>th</sup> Cir. D.Ct.) - FCI FLORENCE - The Tenth Circuit affirmed a district court decision awarding credit for time spent in federal custody on writ. The inmate was in state custody when he was writted into federal custody for federal prosecution. Tighe's state sentence continued to run during entire period (31 months) in federal custody on writ. The federal sentence was ordered to run concurrently with state term and was started on date of sentencing. He sought credit toward his federal term for 31 months on writ, which was already credited toward state term. The district court ordered BOP to give that credit, citing Brown decision from the Tenth Circuit, finding that the length of time on federal writ exceeded the 19 months in Brown, thus, the custody "transmuted" to federal custody and the inmate should get the credit toward the federal sentence. The Tenth Circuit upheld the district court, holding that due to the length of time in federal custody on writ, the inmate was "in custody in connection with" the federal charges, and thus was entitled to credit, relying on the previous decision in Brown, despite the fact that the inmate already received credit for that time toward his state sentence.

Saleem v. Helman, 7th Cir. Case No. 96-2502, (FCI PEK). The offender challenged the denial of conjugal visits as a violation of First Amendment and RFRA. After the district court dismissed the claim, inmate appealed. In an unreported opinion, the court held RFRA had been declared unconstitutional, citing City of Beorne v. Flores, 117 S.Ct. 2157 (1997) and no longer was enforceable. The court followed long line of cases holding an inmate has no constitutional right to contact visitation or conjugal visits.

#### NORTHEAST REGION

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

M.B. v. Reish, No. 96-2347 (2d Cir. July 30, 1997). The Court of Appeals affirmed the decision of the district court in favor of the Bivens defendant. WITSEC inmate M.B. appealed the grant of summary judgement to nine MCC NY staff members in a Bivens action in which he alleges that adjudication of disciplinary charges violated his constitutional rights.

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, the Department of 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.

#### NORTH CENTRAL REGION

Rahman v. Keohane and Kane, 97-3270-CV-S-RGC, (W.D. MO.)

- USMC SPRINGFIELD - Inmate alleges various conditions of confinement violate his constitutional rights and RFRA. Plaintiff is represented by former U.S. Attorney General Ramsey Clark.

**Tighe v. Booker, 10th Cir. Case No. 97-1046, (D.Ct. # 95-D-0638) (FCI FLF)**

The Tenth Circuit affirmed a district court decision awarding credit for time spent in federal custody on writ. The inmate was in state custody when he was written into federal custody for federal prosecution. Tighe's state sentence continued to run during entire period (31 months) in federal custody on writ. The federal sentence was ordered to run concurrently with state term and was started on date of sentencing. Tighe was returned to Louisiana, completed his state term and was taken into federal custody. He sought credit toward federal term for 31 months on writ, which was already credited toward state term. The district court ordered BOP to give that credit, citing Brown decision from the Tenth Circuit, finding that the length of time on federal writ exceeded the 19 months in Brown, thus, the custody "transmuted" to federal custody and the inmate should get the credit toward the federal sentence.

On appeal, the Tenth Circuit upheld the District Court, holding that "in light of the length of" time in federal custody on writ, the inmate was "in custody in connection with" the federal charges, and thus was entitled to credit, relying on the previous decision in Brown. The fact that the inmate already received credit for that time toward his state sentence was "of no moment" to the Tenth Circuit.

**SETTLEMENTS OR JUDGMENTS**

**Suarez v. Scott, et al, D. Kansas Case No. 95-3407-KHV , USP Leavenworth**

Inmate alleges he was denied food, water, and opportunity to use a lavatory when he placed in four point restraints. The district court denied a motion to dismiss and/or for summary judgment and appointed counsel to represent the inmate. The deposition of the inmate and several staff were taken and additional depositions were scheduled outside of the Leavenworth area. The complaint was amended to add a claim under the FTCA. An agreement has been reached to settle the same for \$250.00 which is nuisance value.

**DECISIONS OF INTEREST**

None to report.

**PENDING CASES OF INTEREST**

**Rahman v. Keohane and Kane, W.D. MO. Case No. 97-3270-CV-S-RGC, MCFP Springfield**

Inmate alleges various conditions of confinement violate his constitutional rights and RFRA Plaintiff is represented by former U.S. Attorney General Ramsey Clark. The DOJ has approved outside counsel for the defendants. Outside counsel, David Baker, filed a responsive pleading on on or about September 24, 1997 on behalf of Warden Keohane. Outside Counsel noted that former Regional Director Patrick Kane had not been served and suggested, pursuant to

F.R.Civ.P. 25 (a)(1) that Mr. Kane was deceased. .

**Buford ex rel. Leger v. USA**, D. Kansas Case No. 97-2263-JWL, USP Leavenworth

Relatives of deceased inmate have brought on FTCA action alleging BOP negligence led to death of decedent. Inmate Leger was murdered by inmate Storey in August, 1995. Storey recently pleaded guilty to murder.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

**Saleem v. Helman**, 7th Cir. Case No. 96-2502, (FCI PEK)

Offender challenged denial of conjugal visits as a violation of First Amendment and RFRA. After district court dismissed claim, inmate appealed. In an unreported opinion, the court held RFRA had been declared unconstitutional, citing City of Beome v. Flores, 117 S.Ct. 2157 (1997) and no longer was enforceable. Court followed long line of cases holding an inmate has no constitutional right to contact visitation or conjugal visits. See 1997 WL 527769.

### **ENSIGN AMENDMENT LITIGATION**

No new cases filed.

### **CRIMINAL MATTERS**

**United States v. Ricketts**, S.D. Ill, FCI Greenville

Inmate Ricketts was sentenced to a consecutive 12 year sentence for mutiny and rioting. The case arose out of the October, 1995 disturbance at FCI Greenville.

**United States v. Johnson**, N.D. Ill, MCC Chicago

MCC is housing several defendants who are facing the death penalty in the Northern District of Illinois. Defense counsel requested that their expert be permitted to interview several BOP staff who have interacted with the defendant in order to develop an opinion whether the defendant could safely function in a correctional facility like ADX Florence without posing a risk to staff or other inmates. MCC Attorney Ken Hyle has been in contact with our office and Doug Curless in the OGC concerning this recurring and sensitive issue.

**United States v. Ralph E. Brandon**, Sixth Circuit Case No. 97-3812, FMC Rochester

Brandon is a 18 USC 4241(d) commitment. Staff determined that psychotropic medication was in the patient's best medical interest and necessary to restore him to competency. Defense counsel sought an evidentiary hearing for the purpose of obtaining a judicial determination of the need for medication. The district court declined and the defendant appealed. The court of appeals is reviewing two issues: (1) whether a pre-trial detainee has a right to a judicial

proceeding prior to the involuntary administration of psychotropic medication deemed necessary to restore to competency; and (2) appellate jurisdiction.

### **ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

None this month.

### **TRIALS OR HEARINGS**

**Pederson v. Reno**, Case No. 5-95-30, FPC Duluth/UNICOR, D. Minn.

This Title VII/Equal Pay Act trial was held September 16-18th in St. Paul, Minnesota. The plaintiff testified that she was not paid as much as similarly-situated male Systems Factory Managers in the BOP. The plaintiff admitted documents showing that the systems operation was under the Unicor Metals Division and the BOP's Grade Guidelines for Managers graded the Duluth Metals Factory Manager as a GS-12. Next the plaintiff's expert deposition was admitted. The plaintiff's expert stated that the plaintiff's position was incorrectly evaluated with the Woods Factory Manager criteria and instead should have been evaluated with the Metals Factory Manager criteria. Finally, she provided evidence that the Systems Factory Manager position at FCI Schuylkill was paid a GS-12.

The defense countered with testimony that the systems operation has moved to several divisions in Unicor, that the panels-systems operation did not involve the fabrication of metal parts from raw materials, that no specific criteria existed for evaluating Systems Factory Managers in the BOP's Grade Guidelines for Managers, and when evaluated with the OPM's classification standards; the plaintiff's position correctly graded as a GS-11, not a GS-12. Several defense witnesses also testified that managing a Unicor operation at higher-security institution was more dangerous, involved greater tool control, called for a greater supervision of inmates, and was more responsibility than managing a Unicor operation at a Federal Prison Camp. After closing arguments, Judge Alsop took the case under advisement.

Of the remaining nine trials and hearings held, six mental health hearings were held at the MCFP Springfield, and one mental health hearing was held at FMC Rochester. USP Florence was the site of a criminal arraignment in a inmate on inmate homicide case (U.S. v. Morris). USP Marion staff participated in a pre-trial hearing in the case Huskey v. USA.

### **UPCOMING HEARINGS OR TRIALS**

**Love v. Tippy**, 8th Cir. Case No. 96-4224-MN, FCI Waseca, DAP credit

Oral argument scheduled for Monday, October 20, 1997 in St. Paul Minnesota. Inmate Love's underlying conviction is carrying a firearm during the commission of a drug offense or a crime of violence, 18 USC 924(c)(1). This is the exact same offense that the plaintiff in Sesler v. Pitzer

was convicted of and denied DAP credit under.

**PERSONNEL ISSUES**

None

**STAFF TRAVEL AND LEAVE**

John	October 7-8 October 20 -24	Master Agreement Training OGC/New Attorney Training
Daryl	October 3 October 7-8	CLE Medical Malpractice Master Agreement Training
Dan	October 7-8	Master Agreement Training
Vincent	Sept. 29 - Oct. 10 October 20 - 24	Institution Familiarization New Attorney Training
Gwen	October 17	Annual Leave
Janet	October 14 - 17	Annual Leave
Gary	October 9,10	Annual Leave
LeeAnn	None	

Claims database WAN to Mary Rose Hagan on September 30, 1997.

U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons  
North Central Region  
Office of Regional Counsel

Kansas City, KS 66101

October 10, 1997

MEMORANDUM FOR WALLACE H. CHENEY, ASSISTANT DIRECTOR  
GENERAL COUNSEL & REVIEW

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (September, 1997)

**LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS**

**LITIGATION:**

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
	62	30	4	11	170	19	549	46	10	0	0

NUM - Number of total lawsuits filed in the month (1)  
HC - Number of habeas corpus actions filed in the reporting period  
FTC - Number of FTCA actions filed  
BIV - Number of Bivens actions filed  
OTH - Number of other actions filed, e.g., mental health, mandamus  
ANS - Number of litigation reports completed  
PEN - Number of cases pending  
CLD - Number of cases closed  
H/T - Number of hearings or trials (include in narrative)  
SET - Number of settlements (include in narrative)  
AWD - Number of Awards (include in narrative)

**Total new cases for calendar year 244**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95	66	95	*	151	69	62			

**Total for Calendar Year 706**  
**Pending 560**

## ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	210	196	226	140	164	163	154			

**Total for Calendar Year 1,609**

## FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	0	50
ACTUAL RECEIVED	0	78
ACTUAL PROCESSED	0	45
ACTUAL BACKLOG	0	16

## ADVERSE DECISIONS

### Clay v. Knowles D. Colorado Case No. 97-Z-0590 (USP FLP)

Judge Weinsheink ordered the government to grant credit toward an inmate's consecutive federal sentence time spent in a federal facility, which was already credited toward his state term. Inmate escaped from Colorado DOC and arrested later by FBI on federal drug charges. He was held at FCI Englewood pending federal trial. His federal sentence was ordered to run CONSECUTIVELY to any outstanding sentence. On date of federal sentencing, Colorado DOC restarted the state term. USMS requested designation and BOP designated to Englewood, where he remained until surrendered to the state, upon discovery of the designation error. The inmate received credit toward his state term for the period in custody from the date of federal sentencing on. Upon completion of the state obligation, the inmate was returned to federal custody. He received jail credit for the time spent in custody prior to federal sentencing, and his sentence was commenced on the date received into BOP custody from the state. The Court's order directs the BOP to begin the inmate's sentence on the date of federal sentencing, to stop it on the date he was returned to the state authorities, and to begin the sentence again on the date he was returned to federal custody. The order precludes the BOP from giving effect to the sentencing court's order for consecutive service of the federal term. The Institution and NCRO have recommended appeal. The U.S. Attorney's Office has recommended against appeal only because of the perceived unfavorable judicial climate in the Tenth Circuit concerning sentence computation and jail credit cases. See Tighe, below.

**October 15, 1997      Quarterly Report - SCRO  
7/1/97 - 9/30/97**

**SOUTH CENTRAL REGIONAL OFFICE  
NARRATIVES  
JULY 1, 1997 - SEPTEMBER 30, 1997**

**SIGNIFICANT CASES**

Fowler v. USA, 97-2006 (ED/LA). Coleatha Fowler and Adrian Perry brought a Federal Tort Claims action in the Eastern District of Louisiana. Fowler and Perry are the administrators of the estates of Ricardo E. Lopez' two minor children. Lopez was murdered by Albert Young while Young was participating in the home confinement program. Plaintiffs allege that the Bureau failed to properly monitor Young's home confinement. The assigned AUSA filed an answer and is currently drafting a Motion to Dismiss.

McAlpine v. Thompson, 94-1406-L (WD/OK). This case has reached the 10th Circuit Court of Appeals. The case involved our denying the inmate his use of peyote during religious ceremonies. However, because the inmate was released from BOP custody in November 1996, the AUSA will argue that the petitioner's request for relief is moot.

Anez S. Robinson v. United States of America, C.A. No. 97-051, (SD/TX). Plaintiff alleges that he broke two metal rods in his back when he fell from an exercise bicycle. A broken seat on the bicycle caused the fall. Plaintiff alleged BOP employees were the proximate cause of his injury by not insuring the seat on the exercise bicycle was tight before allowing inmates to use it. Plaintiff alleges nothing has been done to repair the broken rods and he is totally disabled and unable to work. Plaintiff claims undue physical/emotional pain and suffering and is seeking \$3,000,000.00, and any other relief deemed appropriate by the court.

Rocha v. Reno, A-97-CA-549-SS (WD/TX). This case was filed pursuant to Title VII of the Civil Rights Act of 1964. Plaintiff alleges discrimination based upon national origin and age when another person was offered the position the plaintiff sought at FCI Bastrop.

Spanjol v. USA, 4:94-CV-237 (ED/TX). Wrongful death case involving treatment at several institutions. The Court ruled in our favor, stating that although there may have been some negligence, it was not the proximate cause of his injury.

FCI La Tuna reports receipt of Jacquez v. United States, et al., EP-97-CA-311-H. This is one of three cases involving the same issue - that inmates were allowed to take and successfully complete certain college classes, but were never issued transcripts for the completion of those classes. SCRO will handle these cases.

### CASES WITH SETTLEMENT OR AWARD

#### a. Adverse judgments

In Martinez v. Fleming, A-97-CA-010-SS (WD/TX), an FCI Bastrop habeas petition, Judge Sparks ruled that an inmate convicted of 21 U.S.C. Section 841(a)(1) with a two-point enhancement for possession of a weapon in connection with a drug offense is not a violent offender for the purposes of early release under 18 U.S.C. Section 3621(e). Notice to Appeal has been withdrawn.

In Donald Pettigrew v. Fleming, A-97-CA-088-SS (WD/TX), another FCI Bastrop habeas petition, Judge Sparks ruled that an inmate convicted of 21 U.S.C. Section 846 with a two-point enhancement for possession of a firearm during the course of the conspiracy is not a violent offender for the purposes of early release under 18 U.S.C. Section 3621(e).

The Daas v. Henman case from FDC Oakdale was settled for \$2,500 and converted from a Bivens to an FTCA case. The case involved allegations of improper placement of the inmate in Administrative Detention when inmate threatened to file lawsuits and sent threatening correspondence to the Warden.

Caldwell v. United States (WD/OK). This 1989 FTCA case from FCI El Reno was settled for \$1,000.00.

Sinks v. Slade, EP-97-CA-116-F. The FCI La Tuna petitioner challenged the BOP's determination that he was ineligible for early release because his crime was considered a crime of violence. The District Court ruled that the inmate's two point enhancement cannot make him ineligible for early release because it is not a conviction.

Bobby James Cammock v. Bureau of Prisons et al., C.A.C-96-196, SD/TX. Court dismissed habeas petition.

Court concluded that possession of a firearm by an illegal alien (922g) is not a "crime of violence" pursuant to 18 U.S.C. § 3621(e)(B). The Court further stated "this legal conclusion does not mean that petitioner is entitled to a one-year reduction in his sentence. Section 3621 makes clear that the one-year reduction is discretionary with the BOP." A reconsideration motion has been filed.

b. Tort Claim settlements

Vernon Robertson had filed a tort claim alleging FTC Oklahoma City staff failed to protect him from a violent state inmate who assaulted inmate Robertson causing him limited permanent injury of his hand. Inmate Robertson was offered a settlement of \$1500, which he accepted. Attempts are being made to contact the prosecuting AUSA to have the money applied toward restitution instead of to claimant's inmate account.

c. Other settlements

Wright v. Miller. The final settlement of \$2,500.00 was accepted by the plaintiff, with no admission of liability. The case involved alleged excessive use of restraints during a bus trip. The plaintiff agreed to convert this Bivens action into an FTCA action.

**CASES WITH HEARING OR TRIAL**

Robert Horey v. Warden Woods, et al., C.A. No. C-97-292 (SD/TX). The inmate's cell became flooded with sewage. He seeks damages for prolong exposure to harmful waste and improper sanitization. A Spears hearing was conducted on July 14, 1997. The Magistrate Judge is to submit her recommendation. Three defendants have been dismissed.

Banks v. USA, A-95-CA-292 (WD/TX), was tried in Austin on August 11. Phase I only addressed the issue of whether the United States was liable for the plaintiff's alleged slip and fall in an FCI Bastrop housing unit in 1994. The Magistrate Judge, citing a need to research the issue of the admissibility of some of the evidence, has not yet ruled on the question of liability.

Four Mental Health Commitment Hearings, under provisions of 18 U.S.C. 4245 were held at FMC Carwell.

**MEDICAL MALPRACTICE**

**LITIGATION**

Cancio v. John Stone, A-97-CA-544-SS (WD/TX). Bivens action against HSA at FCI Bastrop alleging deliberate indifference in treatment provided for an injured finger.

Martinez v. U.S.A.. Significant medical malpractice case, alleging negligence by Bureau staff at FCI Bastrop, first by the medical staff in failing to treat his ankylosing spondylosis appropriately, and second by unit officers in failing to secure medical attention while he suffered paralysis and excruciating pain for several days.

Tommy Tompkins v. John Doe, et al., H-97-1894 (SD/TX). This Bivens-type lawsuit involves the medical care he received at several SCRO and NCRO institutions relating to cancer in his mouth. Much of the treatment was provided by consultants. He seeks a minimum of \$75,000 for physical pain and mental anguish from delays in providing care and surgery. This case will be reported in our October monthly report.

#### TORTS

Brian Fuller has filed a tort claim requesting damages in the amount of \$3,241,000.00. This claim replaces a lawsuit the inmate voluntarily dismissed. Inmate filed his lawsuit pro se, but has now hired an attorney for his tort claim. Allegations in the tort claim originated at FCI Seagoville, but also involve FCI Three Rivers and FCI Bastrop. Inmate is requesting compensation for delay in surgeries (two) retaliation; allergic reaction to medication; loss of future earning capacity; disfigurement; future medical expenses; and future pain and suffering. Throughout the proceedings for the lawsuit, the AUSA and Clinical Director were confident there was no BOP negligence. (T-SCR-97-240)

Horace Jackson, T-SCR-97-381, \$1,500,000. FMC Fort Worth alleging negligent infliction of mental anguish and emotional distress for failure of BOP to surgically remove a G.K. nail from his hip, causing pain and difficulty in walking.

GUERRIERI, Mario - Mr. Guerrieri, an inmate housed at FMC Fort Worth, alleges that he contracted a staph infection after he underwent surgery at the contract hospital (Texas Osteopathic Hospital) in Fort Worth, Texas. He contends that after the surgery he was returned to the institution and on the third day he was told that he had a staph infection from either the "doctor's tools or from the operating room." Mr. Guerrieri also contends that medical staff at FMC Fort Worth have failed to treat him for a nerve condition which resulted after he had two strokes in a county jail. Mr. Guerrieri seeks \$750,000.00 for past and future pain and suffering. (T-SCR-97-276)

JAMIESON, Alisa - Ms. Jamieson alleges that while she was housed

at FTC Oklahoma City, BOP medical staff administered a sulfa drug. Further, she states that the PA acknowledged that the drug she had been prescribed was sulfa, immediately confiscated the medication, and ordered new medication. Ms. Jamieson states that she did not receive any of the medications and as a result of her high fever she became dehydrated and was taken to a local hospital for treatment. She seeks \$50,000.00 in damages (T-SCR-97-189)

RODRIQUEZ, Jesus - Mr. Rodriguez, an inmate housed at FMC Fort Worth, alleges that he fell while he was housed at the El Paso County Jail, prior to being sentenced, and sustained a hernia. The sentencing judge recommended that he be housed at a medical facility in order to have the hernia surgically repaired. Mr. Rodriguez contends that medical staff at FMC Fort Worth have refused to provide the surgical repair because his sentence is too short. Mr. Rodriguez seeks \$1,500,000.00 for past and future pain and suffering. (T-SCR-97-298)

PETERSEN, Justin - Claimant asserts FCI Bastrop staff failed to provide a proper prosthesis and prosthetic socks for the amputated stump of his left leg. He also states that due to the negligence in the maintenance of a hazardous situation in the shower and in his cell, claimant suffered a fall in each of those places. (T-NCR-97-150).

CARTER, Norma - A memorandum of law was sent to DOJ via the Central Office. It is anticipated that a settlement offer of \$150,000 will be made. A denial letter was sent to Claimant's counsel, but was primarily intended to motivate him to provide additional documents as to her current medical status and seek reconsideration in order that settlement negotiations could begin. (T-SCR-97-28).

MAY, Charles - Mr. May is currently housed at FCI Oakdale; however, he alleges that he fell from a top bunk at FCI Bastrop on August 5, 1996. Mr. May contends that he has not received proper medical attention for the injuries to his back since the fall. Mr. May further states that the Bureau of Prisons medical staff failed to provide proper medical treatment for a knee problem, which resulted in his falling from the top bunk at FCI Bastrop. Mr. May seeks \$500,000.00 for past and future pain and suffering. (T-SCR-97-239).

JOHNSON, Timothy - Timothy Johnson filed a claim seeking \$50,000.00 for a knee injury he sustained at FCI Oakdale. Mr. Johnson alleges that he fell while playing basketball on December 29, 1996, and that he received physical therapy, which was indicated as necessary by an Orthopedic Surgeon. He contends the therapy was stopped on May 9, 1997, by the therapist because he was not responding. He further states that the physical therapist indicated that further medical evaluation was needed.

Mr. Johnson states that he suffers from numbness, swelling, popping, and burning sensations due to the instability of his left knee. He also states he was slapped by a staff member. The matter has been brought to the attention of Internal Affairs. (T-SCR-97-238).

### SIGNIFICANT TORT CLAIMS

Wholesale Petroleum, a convenience store, has filed a claim for damages received when a BOP semi truck, driven by FCI El Reno staff, struck a canopy covering the fuel pumps. Claimants are seeking approximately \$20,000.00 in damages. (T-SCR-97-281). The region forwarded its recommendation to Central Office, with the determination to be made by DOJ.

Christopher Martinez, (T-SCR-97-338) and Bruno Diaz, (T-SCR-97-357) were victims of an assault which occurred at FCI Three Rivers during June 1997. Martinez is requesting compensation of \$60,000.00 for his injuries. Diaz is requesting compensation of \$30,000.00 for his injuries. An initial review of the SIS reports does not indicate the institution was aware these inmates were in any type of danger.

FPC Bryan reports that a tort claim has been filed for wrongful death regarding inmate Hortencia Flores-Cabrera. The inmate suffered liver failure and died as the result of INH-induced Hepatitis. Health Services staff were disciplined regarding the medical treatment afforded this inmate. There are concerns regarding government liability. FPC Bryan is preparing a memorandum of law to aid DOJ staff when considering whether to offer a settlement in this case and how much the offer will be.

### RELIGIOUS FREEDOM RESTORATION ACT

#### LITIGATION

#### ADMINISTRATIVE REMEDY

Inmate Sheri Cohen at FMC Carswell alleges religious discrimination by staff. Response is pending. The case number is 139831-R3.

FCI Texarkana reports that in Administrative Remedy 140091-F1, the inmate is requesting to have his religion recognized as satanism. FCI Texarkana is initially denying the request.

### ENSIGN AMENDMENT:

#### LITIGATION

Received favorable Report and Recommendation from the



**NARRATIVE ANALYSIS (NARRATIVE ATTACHED ON SEPARATE PAPER)**

**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)**
- AND - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)**
- GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE INFO IN NARRATIVE)**

**FOIA/PA REQUESTS**

<b>LOC</b>	<b>NUM</b>	<b>PROC</b>	<b>PEND</b>	<b>OD</b>	<b>A/OD</b>	<b>A/P</b>	<b>CA</b>
<b>MXR</b>							
<b>NER</b>							
<b>SER</b>							
<b>NCR</b>							
<b>SCR</b>	<b>129</b>	<b>130</b>	<b>48</b>	<b>7</b>	<b>26 DAYS</b>	<b>25 DAYS</b>	<b>3</b>
<b>WXR</b>							
<b>CO</b>							
<b>TOT</b>							

**NARRATIVE ANALYSIS**

**DEFINITIONS**

**LOC - LOCATION**  
**NUM - NUMBER FILED IN QUARTER**  
**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**

Tort Claims Third Quarter - FY 97 (April 01, 1997 - June 30, 1997)										loc	num	pp	pi
pppi	wd	med	set	amt	pen	den	od	a/o	a/p				
scr	141	111	18	1	0	11	53	10616	187	68	0	1	
116													

Num - Number of claims filed  
 PP - Personal Property claims  
 PI - Personal Injury claims  
 PPPI - Both PP & PI claims  
 WD - Wrongful death claims  
 Med - Medical claims  
 Set - Settled/Approved claims  
 Amt - Amount paid  
 Pen - Pending/open claims  
 Den - Number of claims Denied  
 OD - Number of claims Overdue  
 A/O - Avg number of days Overdue  
 A/P - Avg number of days to Process

(Med = PIM + WDM + PPPIM + PPWDM)  
 (WD = WD + PPWD)

DATE: Mid-Atlantic Regional Office, Annapolis Junction, MD 20

REPL Bill Burlington, Regional Counsel  
ATTN Mid-Atlantic Region

SUBQUARTERLY REPORT - July 1, 1997 thru September 30, 1997

TONancy Redding, Executive Assistant  
Office of General Counsel

#### TORTS

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
210	123	65	15	0	7	21	5019	220	141	1*	58	99

#### LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
42	23	8	7	4	48	331	50	2	1	\$183.55

#### ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
499	157	11	45	2	25	2	47	468	58	0

#### FOI/PRIVACY

NUM	ANS	PEN	OD
176	197	39	15 (over 30 days) 29 (over 10 days)

\*We are in the process of obtaining settlement approval from the Central Office for this claim.

#### TRIALS AND HEARINGS:

FPC Alderson - Mildred Thompson v. Hemingway - On July 22, 1997, Magistrate Mary Fienberg held a hearing to determine why the Bureau of Prisons had not yet published a new policy to replace the "Crimes of Violence" Program Statement which was declared void in Wiggins v. Wise. At the conclusion of the hearing, the Magistrate called both sides into her chambers and suggested that the Bureau should seriously consider "settling these cases," as she indicated the current Bureau position is causing a "public relations problem" for the

Bureau with the Court.

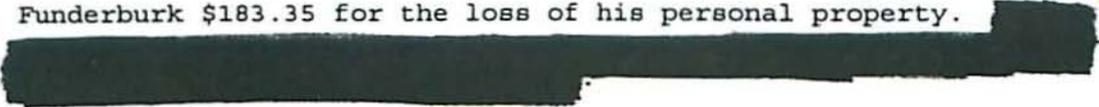
It is clear from the hearing that BOP stands very little chance of prevailing with Magistrate Fienberg, if we take the position that we can consider conduct that was not the subject

of a formal conviction when we make early release determinations. I tried to stress to Magistrate Fienberg that the Bureau feels strongly that Congress certainly didn't intend BOP to release early from prison, inmates whose crimes involved in any form, weapons. She did not seem to be persuaded. Ms. Thompson and all the other inmates at Alderson who prevailed on these suits against the Bureau have now been reclassified by staff as "eligible" for early release.

FCI Memphis - Coval Baker v. USA - This is an alleged failure to protect FTCA case arising out of the unprovoked attack by inmate Paulino on inmate Baker. Trial was to begin Friday morning but had to be delayed until 1:00 p.m. because the Judge failed to writ out the inmate. USMS and R&D staff worked quickly to get the inmate to court by 1:00 p.m. The pro se inmate was permitted to call one inmate and one staff member as witnesses. At the conclusion of the plaintiff's case, AUSA Quarles moved for a judgment as a matter of law as the plaintiff had failed to establish a prima facie case of negligence. After a few moments of consideration, the Judge granted the motion and ruled in favor of the government. It is interesting to note that plaintiff did not present any new evidence that had not already been rebutted in prior pleadings. Nothing new was revealed that made the trial any more detailed than the pleadings already before the court.

**SETTLEMENTS:**

LSCI Butner - Funderburk v. USA - Parties filed a stipulation of dismissal in this action. The Bureau agreed to pay inmate Funderburk \$183.35 for the loss of his personal property.

b2

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.

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.

11) United States v. Coleman, Crim. No. ---- E.D.PA

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.

15) United States v. Kelp, et. al., Criminal No. 97-14 (E.D.PA)

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.

16) United States v. Clements, Criminal No. 97- (E.D.PA)

On September 30, 1997, a conference call was held concerning the available psychological treatment for defendant, inmate Donald Patrick Clements, 12847-056. While housed at FCI Schuylkill serving a federal sentence, inmate Clemens assaulted a correctional officer. After he was convicted, and prior to sentencing, the court ordered a mental examination be performed at FCI Butner. The study concluded that the inmate has an Axis 2 personality disorder. Defense counsel, in an effort to get a downward departure for post-conviction rehabilitation, requested an order to have the BOP house the defendant at FCI Butner so he could receive "intensive therapy". During the conference call with Judge Van Antwerpen, Michael Tafelski explained that, according to the BOP's psychologists, the services available at

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the inmate's designated institution (USP Atlanta) were appropriate and the same as any other facility for treating this individual. The Judge, in denying defense counsel's motion, stated that he was deferring to the expertise and opinion of the BOP.

### 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. Ustarus 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.

2) Starzecpyzel v. U.S.,

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**  
**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  
NUM - NUMBER FILED IN QUARTER  
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

UNITED STATES GOVERNMENT  
**memorandum**

DATE: October 21, 1997

REPLY TO

ATTN OF: Sherree L. Sturgis, Regional Counsel  
Bureau of Prisons, Southeast Region  
523 McDonough Blvd., S.E.  
Atlanta, GA 30315

SUBJECT: Fourth Quarter Report FY 97

TO: Wallace Cheney, General Counsel  
Bureau of Prisons, Central Office  
320 First Street, N.W.  
Washington, D.C. 20534

**ATTN: Nancy P. Redding, Executive Assistant**

The following information is provided for the fourth quarter (JUL, AUG, SEP) 1997.

**Litigation**

NUMBER OF ACTIONS FILED	46
HABEAS CORPUS ACTIONS	29
FTCA ACTIONS	5
BIVENS ACTIONS	8
OTHER (Mandamus, etc)	4
NUMBER OF LITIGATION REPORTS	43
NUMBER PENDING	726
NUMBER CLOSED	39
NUMBER OF HEARINGS/TRIALS	0
NUMBER OF SETTLEMENTS	1
AMOUNT OF AWARD	\$ 2,500.00
NUMBER OF CRIMINAL REFERRALS	24

SER	NUM	PROP	PI	APPR	AMT	DEN	PEND	OD	A/O	A/P
1ST QTR	159	32	22	44	3287	91	169	20	35	79
2ND QTR	115	97	15	28	3363	119	98	7	104	43
3RD QTR	127	99	26	22	3081	82	87	0	----	20
4TH QTR	122	102	20	13	2855	49	108	2	----	23

### LITIGATION

SER	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
1ST QTR	36	11	5	10	10	36	699	37			
2ND QTR	67	31	7	16	12	60	722	44			
3RD QTR	43	23	4	10	6	30	726	39			
4TH QTR	46	29	5	8	4	43			0	1	2,501.00

### FOI/PA

SER	NUM	PROC	PEND	OD	A/OD	A/P	CA
1ST QTR	86	123	01	01	02	30	?
2ND QTR	87	71	17	17	02	30	?
3RD QTR	61	69	02	02	02	30	1
4TH QTR	87	83	06	04	02	30	?

### Other Activities

#### Miscellaneous Activities

##### Travel:

Sherree Sturgis -August 2 - 3; Tallahassee, Florida to discuss MIA bus accident case with AUSA and plaintiffs' attorney. Cost \$494.12.

Van Vandivier - August 2 - 3; Tallahassee, Florida to discuss MIA bus accident case with AUSA and plaintiffs' attorney. Cost \$558.00.

Van Vandivier - August 6; Denver, Colorado; Resource staff for DHO Training.

Cost \$1066.80.

Earl Cotton - September 12 - 27; Alexandria, Virginia to attend Leadership Forum Training course. Cost \$1526.33.

Personnel Moves

Djuana Ashford - selected as the secretary for Correctional Services in the SERO. Starting date: September 12, 1997.

Patricia DeJuneas - Honors Attorney starting date 8/3/97.

Jennifer Merkel - Honors Attorney starting date 8/31/97.

cc: Regional Director