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UNITED STATES GOVERNMENT
memorandum

Date: January 14, 1997

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

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

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

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

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

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

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

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

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

X

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Administrator.

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

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

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

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

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

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

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

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

15. United States v. Hammer, 4:CR-96-239 (M.D.Pa.)

Inmate David Hammer, 24507-077, has been charged with the April 1996 murder of an inmate at USP Allenwood. The United States Attorney has requested authorization from DOJ to seek the death penalty. On November 21 & 25, 1996, Judge Muir held hearings on a motion filed by defense counsel challenging the attorney visiting procedure at USP Allenwood. Defense counsel objected to the number of searches (pat and visual) of Hammer to and from each visit. Defense counsel also objected to non-contact visits. Attorney Hope Moro assisted the AUSA at the hearings. In an 31 page opinion dated December 5, 1996, the court denied the defendant's motion.

16. State of New York v. Marc Johnson, Crim. No. 13048/95 (Supreme Ct. N.Y.)

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

the District

X
Attorney's request for production because the Commission was to conduct their revocation hearing first. New York State Justice Lott held a hearing on November 21, 1996 to determine if the State had violated speedy trial rights. The ISM from the MDC testified at the hearing concerning the efforts made by the prosecutors to secure the defendant and concerning the position of the Parole Commission. Azzmeiah Vazquez assisted the state prosecutor at the hearing. The state court reserved ruling.

17. United States v. Solomon, -- CR -- (S.D.N.Y.)

X
On November 4, 1996, Judge Preska held a hearing on allegations by Pretrial detainee Amir Solomon, 36098-054, that he had wanted to attend the trial but was physically unable to do so. In a prior proceeding, the detainee had tried to throw a chair at the Judge. To no one's surprise, the Judge then found that the accused waived his right to attend the trial, with re-entry only with the court's permission. Solomon was trying to argue that all the proceedings held in his absence were improper because he was medically unable to apply for reentry. At the hearing, MCC NY staff testified concerning Solomon's ability to attend the court proceedings. Dominique Raia attended the hearing. The court found that Solomon attempt to allege a medical excuse was not credible and determine that he voluntarily did not attend the proceedings.

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

X
On November 13, 1996, Judge Leisure held a contempt hearing on why one of his prior orders was not complied with by MCC NY. The court had ordered that legal materials be dropped off and delivered to the defendants on a Saturday. Instead the inmates did not receive the materials until the following Monday. Despite written instructions to staff, the materials were inadvertently placed in the mail room instead of being immediately delivered. The Warden personally appeared at the hearing and apologized to the court for the error. (Dominique Raia was at the Mathurin hearing below). The court accepted the apology.

On November 20, 1996, the law clerk for the judge asked the Warden to agree for a one time visit between detainee John Muyet, 38027-054, and a non-family visitor. Arrangements

were attempted for the visit, but the inmate could not contact his visitor and demanded instead that she be added to his permanent visiting list. The inmate threatened that if his request as denied, the Judge would make the Warden appear in court again. The Warden sent a letter to the court advising him of this situation and has not had to reappear in court.

19. United States v. Mathurin, CR (S.D.N.Y.)

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

20. United States v. Leggett, 4:CR-94-0097 (M.D.Pa.)

X
Defendant Michael K. Leggett, Reg. No. 83644-011 was charged and found guilty (on November 13, 1995) of assaulting a Unit Manager at USP Allenwood in April 1994. On March 25, 1996, during the sentencing hearing, inmate Leggett assaulted his counsel. On October 17, 1996, after the inmate/defendant was evaluated by at least two mental health experts and new counsel appointed, a hearing was held specifically to decide if Leggett was competent to be sentenced. After the mental health expert testified, USP Lewisburg Attorney Mike Tafelski testified (Leggett was held as a holdover at Lewisburg) that according to a previous P.S.I. from a 1992 sentencing, he acted as his own "attorney" and that during a conversation Mike had with him he appeared to understand the significance of the issues discussed. Judge Muir found the inmate to be competent and sentenced him, on November 4, 1996, to 36 months (and one year supervised release) to run consecutive to his present sentence.

SETTLEMENTS AND AWARDS

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

Three day trial in EEO case concluded on February 29, 1996 with a jury verdict adverse to the BOP. The staff member was reassigned to his prior correctional

officer position after serving as a case manager trainee for 13 months. The staff member alleged that this reassignment was based on race discrimination. In addition the staff member asserted that the reassignment was retaliatory since it occurred two months after he made a complaint about racial remarks made by his supervisor. The jury found for the staff member on both counts. The case finally settled. We agreed to afford Plaintiff a Case Manager position at USP Lewisburg, attorney fees of \$37,500, and damages of \$15,000.

2. McCarthy v. United States, 4:CV-95-0723 (M.D.Pa.)

Inmate Arthur McCarthy, 49352-080, filed an FTCA complaint alleging medical malpractice caused him to lose sight in his right eye. ~~Our medical expert concluded that a two week delay in providing the inmate care for a detached retina was outside the appropriate standard of care. With the necessary concurrences,~~ this case was settled for \$110,000.

3. Wagner v. United States, Civil No. 4:CV-96-0289 (M.D.Pa. October 18, 1996)

Judge McClure entered summary judgment against the United States and in favor of Inmate Michael Wagner, 03718-010, in the amount of \$172.90 plus costs. The inmate had been taken to Special Housing at USP Allenwood and his property was left unsecured for over three and a half hours. ~~We had argued that the complaint should be dismissed because an institution emergency kept staff from securing the property. The court found that the discretionary function exemption would not apply in this case because the institution was back to normal operations prior to the placement of the inmate in SHU. We are recommending against appeal.~~

4. Gonzalez v. United States, 95-CV-7448 (E.D.Pa.)

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

5. Jones v. United States, 94-CV-5086 (E.D.Pa.)

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

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Attachments

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

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

| LOC | NUM | HC | FTC | BIV | OTH | ANS | PEN | CLD | H/T | SET | AWD |
|------------|------------|-----------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| MXR | | | | | | | | | | | |
| NER | 44 | 16 | 5 | 17 | 6 | 33 | 570 | 54 | 19 | 4 | 1 |
| SER | | | | | | | | | | | |
| NCR | | | | | | | | | | | |
| SCR | | | | | | | | | | | |
| WXR | | | | | | | | | | | |
| CO | | | | | | | | | | | |
| TOT | | | | | | | | | | | |

NARRATIVE ANALYSIS

DEFINITIONS:

LOC - LOCATION

NUM - NUMBER OF TOTAL LAWSUITS FILED IN QUARTER

HC - NUMBER OF HABEAS CORPUS ACTIONS FILED

FTC - NUMBER OF FTCA ACTIONS FILED

BIV - NUMBER OF BIVENS ACTIONS FILED

OTH - OTHER ACTIONS FILED

ANS - NUMBER OF LITIGATION REPORTS COMPLETED

PEN - PENDING

CLD - NUMBER OF ACTIONS CLOSED

H/T - NUMBER OF HEARINGS OR TRIALS (INCLUDE INFO IN NARRATIVE)

SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)

AWD - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)

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

LITIGATION - 1997

2ND QUARTER REPORT

| LOC | NUM | HC | FTC | BIV | OTH | ANS | PEN | CLD | H/T | AWD | SET | AWD/SET |
|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|--------------|
| MXR | 61 | 34 | 6 | 17 | 4 | 57 | 353 | 33 | 1 | 0 | 7 | \$97,767.00 |
| NCR | 70 | 38 | 4 | 14 | 14 | UNK | 342 | 71 | 2 | 0 | 1 | |
| NER | 53 | 21 | 12 | 14 | 5 | 22 | 573 | 50 | 9 | 1 | 2 | \$18,757.87 |
| SCR | 99 | 73 | 5 | 18 | 3 | 75 | 211 | 22 | 6 | 0 | 1 | \$6,000.00 |
| SER | 67 | 31 | 7 | 16 | 12 | 60 | 722 | 44 | 0 | 0 | 0 | |
| WXR | 56 | 31 | 7 | 14 | 4 | 29 | 335 | 65 | 4 | 0 | 2 | \$222,000.00 |
| CO | 17 | 0 | 1 | 9 | 7 | 16 | 52 | 7 | 1 | 0 | 0 | |
| TOT | 423 | 228 | 42 | 102 | 49 | 259 | 2588 | 292 | 23 | 1 | 13 | \$344,524.87 |

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 Follows)
 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 77 from last quarter, as did the total in all categories except Bivens, with 423 filed in this quarter and 346 filed in the first quarter.

1997 QUARTERLY LITIGATION REPORT

SECOND QUARTER

I. SETTLEMENTS AND AWARDS

MID ATLANTIC REGION

Fitzpatrick & Oliver v. USA, FPC Millington. Two cases brought under the Federal Tort Claims Act (FTCA) were settled for \$16,987 and \$12,773 respectively. An inmate driver who while speeding, rear-ended another vehicle and injured the passengers. The inmate was cited by the police for following too closely.

Leacock v. Reno, FPC Alderson. An African American physician discharged from Alderson claimed race was the motive. The case settled for \$65,000. This case was tried by a jury in November, with the jury awarding the physician \$30,000. The plaintiff then filed a motion for attorneys fees and costs totaling \$97,000. At the hearing on the government's motion for a new trial, the judge urged settlement at a figure one half the amount we would have been forced to pay, considering attorney's fees and costs. The settlement agreement included a provision that there was no admission of discrimination in this settlement.

Mitchell v. USA, USP Terre Haute. Bivens/FTCA case, property settlement for \$7.00.

Barrios v. U.S., Elder v. U.S., Wilson v. U.S., FPC Alderson. Three FTCA cases alleged negligence based on an outbreak of salmonella poisoning. A settlement was reached with each plaintiff in the amount of \$1,000.

SOUTH CENTRAL REGION

Maria Ramos v. U.S.A., FPC La Tuna. An FTCA action brought by the mother and daughter of a former inmate at FPC La Tuna. The daughter has cerebral palsy and uses a wheelchair. In October 1993, when the family went to visit inmate Juan Ramos, there was no handicapped ramp to access the visiting area and the daughter had to use a rear entrance that was not meant for handicap access. Ramos' wheelchair hit a concrete bump, which dislodged her from the wheelchair. She sustained almost no physical injuries. The court awarded \$30.00 in actual damages, and \$5,970.00 in pain and suffering.

NORTHEAST REGION

Matos v. United States, MCC NY. A civilian filed a complaint alleging negligence that caused her to slip and fall on stairs in the institution. There was an injury from the fall; but there was little evidence of negligence. The AUSA settled this case for \$6000.

Rivera-Torres v. United States, LSCI Allenwood. Inmate filed a FTCA complaint alleging that he slipped and fell on ice at LSCI

Allenwood in March 1994. The inmate sustained a fracture to his right ankle, which required a cast for several months. His recovery was hampered by his diabetes. No specific records could be located for snow and ice removal for the day in question. Case settled for \$12,500.

Allen v. United States, LSCI Allenwood. Inmate Allen, filed a FTCA complaint alleging that his property was lost when he was taken to the Special Housing Unit at LSCI Allenwood. On January 31, 1997, the court granted our motion for judgment against the U.S. for the FTCA \$174.65 and for costs of \$83.22 (the filing fee paid by the inmate).

NORTH CENTRAL REGION

Baramdyka v. BOP, FCI Florence. Foreign jail credit case in which the BOP provided an inmate 28 months jail credit, immediate release, and \$1000.00 in settlement. The inmate was released on March 4, 1997 and signed a stipulation holding BOP and all staff harmless thus waiving his right to sue in the future.

WESTERN REGION

Jimmy Joe Fields v. BOP, FCI Stafford. Estate of deceased inmate agreed to settle for \$40,000. Inmate, released from FCI Stafford, alleged inadequate medical diagnosis and care for throat cancer.

Gainey v. Reno, FCI Tuscon. EEO case filed by staff member at FCI Tuscon alleging that he had suffered discrimination on the basis of status as a Native American and was victim of retaliation for filing EEO complaints. Mediation hearing on March 7 resulted in settlement in the amount of \$182,000 including attorneys fees. Central office staff represented BOP at mediation.

II. SIGNIFICANT CASES

NORTHEAST REGION

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

On March 3, 1997, the Supreme Court held that a federal sentence imposed under 18 U.S.C. § 924(c), which prohibits concurrent service "with any other term of imprisonment," may not be ordered to run concurrently with an existing state sentence. The court noted, in dicta, that the Bureau of Prisons is responsible for aggregation of the sentence under 18 U.S.C. § 3584.

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

New York State inmate Amy Fisher alleged that a number of New York state institution staff have had sex with her, some with her consent, some without. She filed a civil rights action against numerous state officials. As part of her relief, she has moved the court to order her transferred to the BOP. The United States is not a party to the action. The U.S. filed an Amicus brief asserting that the court had no jurisdiction to order the United States to take a state prisoner. The court has certified the issue to the Attorney General under 28 U.S.C. § 2403(a). Federal

Programs was advised and they requested the AUSA to file a brief upholding the constitutionality. We expect to file a brief by May 1, 1997.

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

This is a Bivens complaint brought by former pretrial detainee Jian An Li, 44661-053, who alleged that six officers at MCC NY assaulted him on an elevator on November 10, 1994. The case went to trial February 3 through February 14, 1997. The jury returned a verdict in favor of all defendants and found that the injuries sustained by the Plaintiff occurred during the disturbance on the unit, not in the elevator.

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

Former inmate Michael Linn, brought a Bivens action against staff at FCI Schuylkill, Regional Counsel, and Central Office Appeals Administrator Ed Crosley alleging primarily that (1) he was denied CCC placement because he was Jewish, and (2) he was denied surgery for a shoulder injury and was given work assignment contrary to his medical problem. A non-jury trial was held on March 13, 1997. At the close of evidence, the Judge ruled from the bench and entered a judgment for all defendants.

III. SIGNIFICANT HEARINGS AND TRIALS

NORTHEAST REGION

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

This is a FTCA case filed by an inmate who alleged that he slipped and fell. His administrative tort claim was for \$1000, and in his complaint, requested damages in excess of \$25,000. The judge granted our request for a bifurcated trial limited to the issue of whether the inmate can claim damages above that requested in his administrative claim. This part of the trial was held on January 15, 1997. No decision has yet been rendered.

SOUTH CENTRAL REGION

L. J. and Maylene Carter v. U.S., LR-C-95-407 (ED/AR)

FTCA action for reimbursement for subsistence fees charged while they were housed in a halfway house because the Judgment and Commitment Order, contained the form language that "the fine includes any costs of incarceration and/or supervision." On January 21, 1997, the court ruled that we acted within our authority in collecting the subsistence fees, and that our actions were not in violation of the J & C. The court also noted that plaintiffs did have a choice in the matter - if they did not want to pay subsistence, they could have been housed in a correctional institution, where no subsistence or costs of incarceration would have been assessed.

Spanjol v. USA

Family of deceased inmate claims BOP's negligence led to the inmates wrongful death. A trial was held in Sherman, Texas on March 12-13, 1997. The judge ordered both parties to submit their closing briefs within 10 days. The Deputy Civil Chief, feels very optimistic of our chances of prevailing.