

UNITED STATES GOVERNMENT

memorandum

Date: July 17, 1997

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

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

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

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

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

**A. SETTLEMENTS AND AWARDS**

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

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

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

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

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

## **B. SIGNIFICANT DECISIONS, HEARINGS OR TRIALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

-6-

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

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

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

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

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

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

-7-

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

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

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

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

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

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

-8-

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

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

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

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

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

- 9 -

### **C. SIGNIFICANT PENDING CASES**

1. **Fisher v. Goord, et al.**, 96-CV-0486 (W.D.N.Y.) - This case was also discussed in last quarter's report. New York State inmate Amy Fisher alleged that a number of New York state institution staff have had sex with her, some with her consent, some without. She filed a civil rights action against state officials. As part of her relief, she has moved the court to order her transferred to the Federal BOP. The United States is not a party to the action. We filed an Amicus brief asserting that the court had no jurisdiction to order the United States to take a state prisoner. We focused the court on 18 U.S.C. § 3626 as the proper standard for assessing the injunctive request. On July 16, 1997, the court dismissed the complaint in an opinion of over 100 pages.

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

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

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

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

-10-

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

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

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

**NORTHEAST REGIONAL OFFICE**  
**LITIGATION QUARTERLY REPORT**

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

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	63	22	11	19	10	27	600	36	15	4	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

**NARRATIVE ANALYSIS**

**DEFINITIONS:**

**LOC - LOCATION**

**NUM - NUMBER OF TOTAL LAWSUITS FILED IN QUARTER**

**HC - NUMBER OF HABEAS CORPUS ACTIONS FILED**

**FTC - NUMBER OF FTCA ACTIONS FILED**

**BIV - NUMBER OF BIVENS ACTIONS FILED**

**OTH - OTHER ACTIONS FILED**

**ANS - NUMBER OF LITIGATION REPORTS COMPLETED**

**PEN - PENDING**

**CLD - NUMBER OF ACTIONS CLOSED**

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

**SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)**

**AWD - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)**

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

**NORTHEAST REGIONAL OFFICE**  
**TORT CLAIM QUARTERLY REPORT**

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

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	0	0	0	0	0	0	0	0	0	0	0	0	0
NER	176	124	39	8	1	4	9	675	237	98	0	0	114
SER	4	3	0	0	0	0	0	0	0	0	0	0	3
Ncr	2	1	1	0	0	0	0	0	1	0	0	0	28
Scr	1	0	0	0	0	0	0	0	0	0	0	0	13
Wxr	0	0	0	0	0	0	0	0	0	0	0	0	77
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	183	128	40	8	1	4	9	675	205	99	0	****	62

**NORTHEAST REGIONAL OFFICE**  
**NORTHEAST REGIONAL OFFICE**  
**ADMINISTRATIVE REMEDIES QUARTERLY REPORT**

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

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

**NARRATIVE ANALYSIS**

**DEFINITIONS**

**LOC - LOCATION**

**NUM - NUMBER OF TOTAL AD REMEDIES FILED**

**DHO - NUMBER OF DHO REMEDIES FILED**

**SPH - NUMBER OF SPECIAL HOUSING UNIT REMEDIES FILED**

**MED - NUMBER OF MEDICAL REMEDIES FILED**

**MH - NUMBER OF MENTAL HEALTH REMEDIES FILED**

**LEG - NUMBER OF LEGAL REMEDIES FILED**

**FD - NUMBER OF FOOD REMEDIES FILED**

**GRT - TOTAL OF NUMBER OF REMEDIES GRANTED**

**DEN - TOTAL NUMBER OF REMEDIES DENIED**

**PEN - TOTAL NUMBER OF REMEDIES PENDING**

**OD - TOTAL NUMBER OF REMEDIES OVERDUE**

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

---

Kansas City, KS 66101

July 3, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (June, 1997)

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

**LITIGATION:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
38	22	23	39	28	27						

**Total new cases for calendar year 177**

**ADMINISTRATIVE CLAIMS:**

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

**Total for Calendar Year 428**

**\* June Claims unavailable due to tort data base failure**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	184	196	226	124						

**Total for Calendar Year 1,112**

**ADVERSE DECISIONS**

None reported

**SETTLEMENTS OR JUDGMENTS**

court granted summary judgment to five BOP employees: Ed Crosley, Denise Hilliard-Winston, Marvin Lutts, Dave Helman and Steven J. Robinson. The court concluded that in 1992 the law was, and still is, not clearly established. The court also concluded that BOP staff applied BOP policy in denying the credit. As for the FTCA action, the court concluded that the 2680(h) exception to the exception for false imprisonment committed by investigative or law enforcement officers was not applicable because in calculating sentences, BOP officials are not acting as investigative or law enforcement officers.

### **PENDING CASES OF INTEREST**

**Garrett v. Hawk**, Case No. 96-1429, 10th Cir. Court of Appeals, FCC Florence

The district court dismissed sua sponte a Bivens action for failure to exhaust administrative remedies. On appeal, the Court of Appeals requested a brief from the government as to whether the exhaustion requirement of the PLRA (42 USC 1997e(a)) applies to Bivens actions. Jenifer Grundy and Dan Eckhart are working with AUSA Marilyn Eskeson. Barbara Herwig in DOJ has been contacted for input.

**FCI Greenville Disturbance Cases.** The following eleven similar Bivens cases contain allegations against staff at FCI Greenville alleging excessive use of force in the aftermath of the October, 1995 disturbance.

<b><u>Okai v. Verefurth, et al.</u></b>	S.D. Ill Case No. 96-47-JPG
<b><u>Tyler v. Verefurth, et al.</u></b>	S.D. Ill Case No.96-46-JPG
<b><u>Smith v. King, et al.</u></b>	S.D. Ill Case No. 96-507-JPG
<b><u>Freiberger v. Seiter, et al.</u></b>	S.D. Ill Case No. 96-028-JPG
<b><u>Johnson v. Seiter, et al.</u></b>	S.D. Ill Case No.96-396-JPG
<b><u>Huffman v. Hawk, et al.</u></b>	S.D. Ill Case No. 96-629-JPG
<b><u>McCoy v. Nelson, et al.</u></b>	S.D. Ill Case No.96-790-JPG
<b><u>Williams v. Pitts, et al.</u></b>	S.D. Ill Case No. 96-597-JPG
<b><u>Dunn v. Seiter, et al.</u></b>	S.D. Ill Case No. 95-928-JPG
<b><u>Larkin v. Galloway, et. al.</u></b>	S.D. Ill Case No. 96-607-JPG
<b><u>Stewart v. Seiter, et. al.</u></b>	S.D. Ill Case No 96-983-JPG

The Department of Justice has been closely examining these actions on a case by case basis to determine whether granting representation to individual BOP employees is in the best interests of the United States. In all of these matters, extensive time is being dedicated to document review including OIA Reports and Institution records by both the DOJ - Constitutional Torts Branch and the NCRO. The matter is complicated because the agency took administrative disciplinary action against some of the defendants for conduct which in most cases did not involve the respective plaintiffs. We have been working closely with DOJ staff regarding representation issues and will continue to do so.

Representation issues have been resolved as to **Okai v. Verefurth, et al.**, **Tyler v. Verefurth, et al.**, **Smith v. King, et al.**, and **Freiberger v. Seiter, et al.**

In **Okai v. Verfurth, et al.**, four defendants were approved for representation. The four defendants are being represented by Jesselyn Brown, Constitutional Torts Branch, Civil Division. Rick Hess and Neil Perryman are providing representation to the two defendants denied representation. Discovery is complete and this case is currently in the pre-trial stage. The court has appointed counsel for the plaintiff.

In **Tyler v. Verfurth, et al.**, four of the defendants are being represented by Jesselyn Brown, Constitutional Torts Branch, Civil Division; one employee was approved outside counsel by DOJ and is represented by Michael Nester; and three employees were denied representation. This case is currently in the discovery stage.

In **Smith v. King, et al.**, one defendant has been granted representation and is being represented by the U.S. Attorney's Office for the Southern District of Illinois. Four defendants were denied representation. A motion has been filed for summary judgment as to the one employee granted representation. Additionally, the plaintiff has retained counsel and amended his complaint naming additional staff who currently are requesting representation.

In **Freiberger v. Seiter, et al.**, the one named defendant was denied representation. As to the remainder of the cases, requests for DOJ representation and the issuance of NCRO recommendations are ongoing processes.

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

**DeNoyer v. Reno, et al.**, D. Colorado, ADX Florence  
Native American inmate alleges discrimination in provision of religious activities at the ADX.

### **ENSIGN AMENDMENT LITIGATION**

**Amatel, Moore and Levitan v. Reno**, DDC Case, FCC Florence Case

### **CRIMINAL MATTERS**

**United States v. Ricketts and Jones**, FCI Greenville, S.D. Illinois

Ricketts and Jones are charged with rioting, mutiny and assault as a result of conduct from the October, 1995 disturbance. Trial began in East St. Louis on June 9, 1997 and lasted seven days. Both were convicted of riot and mutiny. Jones was also convicted of two counts of assault. Both were acquitted of two other assault charges. Sentencing is scheduled for September 19, 1997.

**United States v. Tim McVeigh**, FCI Englewood, D. Colorado

Following the jury verdict and recommendation of death, Mr. McVeigh was returned to FCI Englewood pending sentencing. Staff are working with the prosecution team and U.S. Attorney's Office on issues of surveillance, outgoing social mail, and psychological intervention.

**ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

Davis, Gary L., T-NCR-96-856, USP Leavenworth

Claimant alleges BOP staff failed to protect him from another inmate. Staff were aware that the claimant and the assailant had quarreled in the SHU. After the two were released, claimant attempted to resolve the issue. Claimant was stabbed by the assailant several times with a prison made weapon. Claimant seeks \$500,000 in damages.

Mitchell, William, NCR 96-754,

Inmate seeks \$50,000 under FTCA for violations of RFRA. Claimant alleges BOP failed to follow policy concerning cleaning of common fare utensils and that condiments are not Kosher. Trays are washed separately from regular trays and condiments are Kosher.

**UPCOMING HEARINGS OR TRIALS**

**None**

**PERSONNEL ISSUES**

Tom Mueller moves to Pennsylvania to assume his duties at Allenwood. He will be missed. Walter Pirnot has began his duties as a legal intern. Mr. Pirnot recently completed his second year of law school at the University of Missouri, Kansas City School of Law.

**STAFF TRAVEL AND LEAVE**

John	Annual Leave	July 3
Daryl	Annual Leave	July 3, 7 8 & 11
Sick Leave	July 9 & 10	
Dan	None Scheduled	
Tom	Sick Leave	July 7
	Administrative Leave	July 17, 18
Gwen	None Scheduled	
Janet	None Scheduled	
Gary	None Scheduled	
LeeAnn	Annual leave	June 30 - July 3

Claims database NOT WAN'D to Mary Rose Hagan due to failure of our tort data base