

UNITED STATES GOVERNMENT

memorandum

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

DATE: November 4, 1994
 REPLY TO: *Wm. H. Cheney*
 Bill Burlington, Regional Counsel
 ATTN OF: Mid-Atlantic Region
 SUBJECT: October 1994 Monthly Report
 TO: Wallace H. Cheney, General Counsel
 ATTN: Nancy Redding, Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	104	92	122	94	110	157	93	112	84	63		
Answered	111	93	93	111	120	131	124	102	110	63		

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	231	224	182	215	206	187	204	221	183	180		
# Received	71	60	85	62	74	67	61	63	61	59		
# Answered	78	92	61	70	93	53	50	96	63	99		
# Pending	224	182	215	206	187	204	221	183	180	155		
# Over Six Month	0	0	0	5	0	3	0	1	1	0		

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN*	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	140	159	117*	91	42	120	74	94	82		
# Received	58	122	66	32	48	115	52	95	78	45		
# Answered	112	103	72	58	81	57	98	74	94	69		
# Pending	140	159	153	91	42	120	74	94	82	59		
# Over 30 Days	79	79	72	62	25	30	43	13	24	31		

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	177	186	201	197	199	218	224	224	263	267		
New Cases Received	19*	26	22	19	23	24	17*	29*	12	9		
Habeas Corpus	6	8	8	6	7	10	9	7	2	4		
Bivens	11	14	5	8	8	13	6	16	7	2		
FTCA	1	2	3	2	4	1	1	4	1	1		
Other	1	2	6	3	4	0	1	2	2	2		
Cases Closed	8	11	21	19	6	18	11	7	6	12		
Cases Pending	186	201	197	199	218	224	237	263	267	283		
Lit Reports Completed	11	12	25	16	23	21	28	19	19	22		
Cases/Hearing or Trials	0	0	1	1	2	3	0	0	0	0		
Settlements/Awards	0	0	1	1	1	0	1	1	0	0		
Settlements/Awards	\$0	\$0	\$0.1	\$10	\$155	0	\$.05	\$.07	0	0		

(\$ in Thousands)

*Corrected figure.

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ITEMS OF INTEREST, PERSONAL LEAVE, BUSINESS TRIPS, MOVES, ETC.

Bill Burlington, Regional Counsel will be in Lexington for the ITS hearing November 2-3 and November 14-17 will attend the New Attorney Training/Regional Counsel Meeting in Denver.

Wanda Hunt, Deputy Regional Counsel, will be on annual leave November 9 and 18.

Marian Callahan, Assistant Regional Counsel, will attend a FOIA training session in D.C. November 8-9, and be on annual leave November 23 and 25.

Kathy Harris, Paralegal Specialist, will be on annual leave November 21-25.

Randy Smith, Paralegal Specialist, FCI Ashland, will be on annual leave October 31-November 4.

Teresa Leneave, Paralegal Specialist, USP Terre Haute, will be the staff duty officer November 1-8, and on annual leave November 14-18.

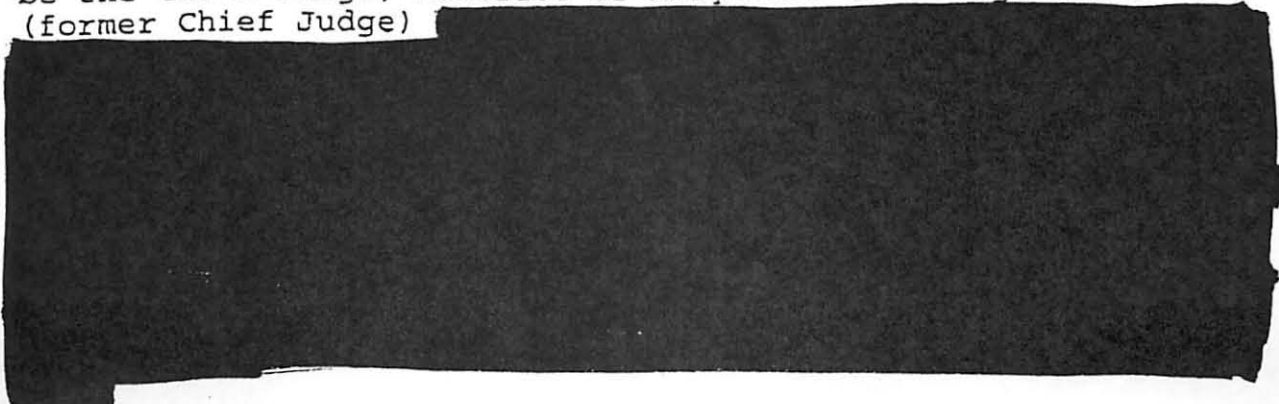
Randy Everett, Legal Tech, USP Terre Haute, will be on annual leave November 7-11.

Joseph Tang, Attorney, FMC Lexington, will be on annual leave November 25 and 28.

Congratulations to our Honors Attorney, Cheryl Behymer, who was sworn in to the Virginia State Bar on Tuesday, November 1, after passing the bar exam.

SITUATION OF INTEREST, CONTACT WITH FEDERAL BENCH, HAZARDOUS WASTE SITES, ETC.:

Meeting with Federal Judges - On October 20, 1994, Warden Dennis Bidwell, Wanda Hunt and I met with Judge Motz (soon to be the Chief Judge, District of Maryland) and Judge Black (former Chief Judge)



FCI Cumberland - Wanda Hunt and I also toured FCI Cumberland with Magistrate Rosenberg, who ³²⁰⁰ appears to be very liberal and outspoken in his views regarding prison management. [I sense

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we may encounter a very activist Court who has had difficulty with the Maryland Department of Corrections.

USP Terre Haute - Indiana University Legal Assistant Clinic students will tour the institution on November 10th.

Staff Familiarization Visit - We want to extend our thanks to Warden Thompson and his staff, particular Bob Babineau, for providing Cheryl Behymer with a tour of the institution and inviting her to the Department Heads Meeting on October 18-19. We also want to thank Warden Wise and his staff, particularly Faye Pollard, for the tour and warm reception Cheryl received during her visit there on October 19-20.

FCI Memphis - Tom Read, Attorney at Memphis, is working with the FBI and U.S. Attorney's Office to get indictments in four different criminal drug cases. The U.S. Attorney's Office has been very cooperative in prosecuting any criminal case, we take to them from Memphis. These drug cases will all fall under the enhancement for this activity under the Crime Bill.

The Sixth Circuit has requested a transcript of a case that's on appeal, Henthorn v. Hester, Appeal No. 94-5090. The AUSA and Tom Read are concerned that the Sixth Circuit might remand for trial. This was a Bivens action against a correctional officer alleged to have committed a homosexual assault on the plaintiff during a routine shakedown.

SUBSTANTIVE PLEADINGS (COMPLAINT, MOTION FOR SUMMARY JUDGMENT, ETC.): None

SETTLEMENTS: None

ADVERSE DECISIONS OR SIGNIFICANT DECISIONS:

Woods v. Bogan, 93-CV-72383-DT, E.D.Mich., FCI Milan

The portion of the case dealing with Bivens defendants has been dismissed. The only remaining issue involves injunctive relief regarding BOP's handling of legal mail. Judge Woods suggest he may strike our policy if, pursuant to that policy, we open a letter outside the inmate's presence, where the letter is from a law firm (but not necessarily from an identifiable attorney) and there is a claim for special handling which is not real close to our suggested wording "Legal Mail -- Open Only in the Presence of the Inmate." However, inmate Woods has been redesignated for transfer to Petersburg which will moot the issue, at least in the Eastern District of Michigan.

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UPDATE ON CASES, TRIALS OR HEARINGS, ETC. NOTED IN PRIOR REPORTS:

FCI Ashland - Four staff members at FCI Ashland received subpoenas in the matter of U.S. v. Charles William O'Brien. Inmate O'Brien, Reg. No. 51875-060, is currently a criminal defendant who is scheduled to have his criminal trial on November 28, 1994. Inmate O'Brien had filed a motion with the criminal court judge alleging that he had been denied access to the law library, and denied special time allowances in order to prepare for his criminal trial (O'Brien is proceeding pro se with stand by counsel). The hearing was held on October 27, 1994, in U.S. District Court for the Southern District of Ohio. Though Bureau staff worked to get the subpoena quashed, efforts were unsuccessful due to the short timeframe involved and the AUSA assigned to the case being unavailable. During the hearing the AUSA objected to the issuance of the subpoenas and asserted that the defendant failed to follow procedures as outlined in 28 C.F.R. § 16.22 et. seq. The judge agreed, and staff returned without having to testify.

FMC Lexington - A hearing was held October 19, 1994, pursuant to 18 U.S.C. § 4245 before a District Court Magistrate Judge regarding Marie Zemek, Reg. No. 19104-086. At the hearing Inmate Zemek was committed to the custody of the Attorney General under § 4245 and placed in the Mental Health Unit at FMC Lexington. An administrative hearing was held at the institution on November 1, 1994, to determine if Inmate Zemek's condition warranted forced medication. It was determined that forced medication was warranted in this case at this time.

Shelton v. U.S., 1:94-0233, S.D.W.Va., FPC Alderson

FTCA case out of FPC Alderson arises from salmonella food poisoning in April/ May 1993. Plaintiff, represented by counsel, seeks \$250,000. Cheryl Behymer attended a deposition of plaintiff by Stephen Horn, AUSA, at plaintiff's residence in Ferrum, Virginia, on October 21, 1994. Trial date is set for January 10, 1995, in Bluefield, West Virginia.

Goqqin v. USA, 91-2735-TU/A, W.D.Tenn., FCI Memphis

It has now been eleven months since the conclusion of the trial in this medical malpractice case and the Judge has not entered a judgment. The plaintiff is seeking \$1 million. The BOP admitted liability at trial based on altered medical records. However, our expert witness testified that the outcome would have been the same regardless of the altered records. At best, we anticipate that damages will be based on the plaintiff's pain and suffering for two days.

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U.S. v. Casteanneda and Perez, 94-20178-M1, FCI Memphis

This criminal murder case is expected to go to trial in January 1995. Tom Read, Attorney at Memphis, has been working with the U.S. Attorney's Office and the FBI preparing for trial.

REPRESENTATION NOT RECOMMENDED FOR STAFF: None

SIGNIFICANT FTCA CLAIMS: None

SIGNIFICANT ADMINISTRATIVE REMEDIES: None

MEDICAL MALPRACTICE CASES:

Dusenbery v. Beeler, 94-371, E.D.Ky., FCI Lexington

In this petition for Writ of Habeas Corpus filed September 22, 1994, inmate Dusenbery requests compassionate release, proper medical care and cites the General Accounting Office Report as evidence that the Bureau is not providing appropriate medical care.