

memorandum

DATE: August 3, 1993

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel
 ATTN OF: Mid-Atlantic Region

* a disk was not enclosed.

SUBJECT: QUARTERLY REPORT - April thru June 1993

TO: Nancy Redding, Executive Assistant
 Office of General Counsel

The following is our quarterly report for the third quarter of fiscal year 1993.

TORTS

NUM	PROP	PI	PPPI	WD	MED	SET	AMT	PEND	DEN	OD	A/O	A/P
212	135	56	9	0	4	14	1980	243	73	8	64	111

LITIGATION

NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
32	8	5	17	2	16	153	21	4	1 ¹	1

ADMINISTRATIVE REMEDIES

NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
303 ²	91	4	22	0	17	0	60	270	234	0

FOI/PRIVACY³

NUM	ANS	PEN	OD
277	148	191	49

¹Alaouieh case was included for your information even though the offer of judgment did not occur until July 9, 1993.

²It should be noted that the Region received 433 remedies during the quarter with 303 accepted and 130 rejected.

³There has been a marked improvement in the timeliness of FOI/PA requests being forwarded by the Central Office to the Regional Office. We appreciate this as it helps us to respond in a timely fashion.

TRIALS AND HEARINGS

Bryant v. Muth, 91-6672 (4th Circuit) Bivens, FCI, Butner

On May 24, 1993 the 4th Circuit, in a published opinion, reversed and remanded this Bivens action to the District Court (ED/NC) with instructions to dismiss based upon qualified immunity. The magistrate had ruled that Butner staff may have violated Bryant's right of access to the court when they refused to return legal research which inmate Bryant had placed on contraband computer diskettes in violation of BOP regulations. The District Court accepted the MRR and the appeal on qualified immunity followed. It was strongly argued on appeal that staff should be entitled to qualified immunity as they were following BOP regulations which had not been found to be unconstitutional. The Fourth Circuit, however, took the position that Bryant had no right to any materials placed without authority and in violation of BOP regulations on contraband computer disks. To hold otherwise would allow him to benefit from the fruits of his unauthorized activity. There is some good dicta in the decision concerning the need to control inmates' access to computers.

Thomas v. Whalen, 92-6988, (4th Circuit) FCI, Petersburg

This case is a complex sentence computation case involving an aggregation of U.S. Code and District of Columbia sentences. The District Court dismissed the petition in August 1992 without prejudice to the petitioner's right to pursue administrative remedies. Petitioner appealed. Oral arguments were held on May 6, 1993 in Richmond, Virginia and Milt Williams, Paralegal attended. The Judges from the bench questioned petitioner's attorney on why they had not pursued an administrative review by the BOP as the district court had suggested. Because of the complexity of the computation, it was suggested by the Court that as a remedy, the Circuit may remand the case to the District Court with instructions to have the BOP, at the highest administrative level, review and brief the District Court on the petitioner's computation in an expedited manner. In anticipation of the remand, this office has retrieved Thomas' complete file and the RISA is re-computing his sentences from day one. He has seven separate periods of incarceration. Thomas is currently in the D.C. Department of Corrections.

Wood v. Bogan et al., CA No. 93-CV-72076, E.D. MI, FCI, Milan

Bivens action by inmate who seeks damages for being placed on general telephone restriction following issuance of incident report for placing prohibited third party calls. At a hearing held June 24, 1993, plaintiff's Motion for Temporary Restraining Order to reinstate telephone privileges was

denied.

U.S. v. Fowler, Criminal, ED/KY, FCI Ashland

A criminal indictment was returned against inmate Larry Fowler, Reg. No. 01481-056 for possession of escape paraphernalia and contraband and attempted escape. Prior to trial Fowler plea bargained and pled guilty to possession of a knife. Sentencing is set for September 7 with an anticipated sentence of 27-33 months.

SETTLEMENTS

Gatti v. Tryon, IP92-1183-C, SD/IN, FTCA, USP, TERRE HAUTE

This case involves an automobile collision on 9-20-89 between civilian Gatti and a government vehicle operated by Correctional Security Officer Tyron from USP Terre Haute. Mr. Tyron stopped at a stop sign and although he looked all directions his view was obstructed and as he crossed the intersection his government vehicle was struck by plaintiff, who had the right of way. The government vehicle was totaled; plaintiff alleges her vehicle was also totaled. Plaintiff's administrative claim requested a sum certain of \$100,000 for personal injury including medical expenses, lost wages, and pain and suffering. Additionally, plaintiff claimed property damage for the vehicle in the amount of \$700.00, for a total claim of \$100,700. An offer of settlement for \$500 was refused and this suit ensued. Since it appeared as though there was government liability, after seeking approval through the appropriate channels, an offer of settlement was made and accepted in the amount of \$10,000. The check has been requested from the Government Accounting Office.

Taylor v. U.S., FTCA, ND/TX, USP, Terre Haute

After a one day trial on the issue of damages, a judgment in favor of the plaintiff in the amount of \$313.51 was entered on June 14, 1993. This case involves the alleged destruction of 10,000 pages of legal material and other personal property due to rodent damage and a pipe bursting at USP Terre Haute in the property storage area. Plaintiff sought \$10,800 administratively, but in the law suit was seeking \$155,000. An administrative offer of \$376.01 was made to settle tort claim, but plaintiff refused. After the suit was filed, two offers of judgment were made under Rule 68, the first for \$750 and the last for \$1300. Plaintiff refused both. (Although the case is reported as adverse, we are pleased with the results as the court awarded less damages than offered administratively.) We anticipate that the plaintiff will appeal.

Alaouieh v. U.S., E.D. MI. CA No. 91-CV-73952-Dt, FCI, Milan

The case involves the alleged misdiagnosis of herpetic infection of a cornea while inmate Alaouieh was at FCI Milan and alleged continuing substandard treatment at MCC Chicago and FCI Sandstone. This is a straight FTCA case, with a sum certain of \$1 million. At present trial is scheduled for August, 1993. We have received expert evaluation of the case from a number of ophthalmologists who all confirm there was a delay in providing treatment. There is some indication of cornea scarring. However, objective vision impairment is much less than self reported by plaintiff. The AUSA made an offer of judgment under Rule 68 in the amount of \$5,000 which we recently learned was refused. Trial has been set for October 4, 1993.