

U.S. Department of Justice
Federal Bureau of Prisons
North Central Region

Kansas City, KS 66101-2492

January 10, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY/QUARTERLY REPORT (December 1996)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
37	31	40	37	35	25	26	25	30	27	17	15

Total for Calendar Year 345

Pending 342

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
118	119	115	106	74	45	65	55	89	71	61	67

Total for Calendar Year 985

Pending 351

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
262	219	188	252	232	228	187	198	228	193	171	206

Total for Calendar Year 2,562

One relating to retaliation. The court of appeals reversed dismissal of counts ONE (A.D. placement only), SIX, SEVEN, TEN, ELEVEN, TWELVE AND THIRTEEN (use of force only).

SETTLEMENTS OR JUDGMENTS

Coy Phelps v. Carlson, et al, D. Minn. Case No. 4-95-735, FMC Rochester

This case was initiated against several BOP employees, two Mayo Clinic affiliated hospitals and several John Doe Defendants. In November, 1992, the district court granted summary judgment to some of the defendants and dismissed the complaint for failure to state a claim as to all others. The plaintiff appealed, and the Eighth Circuit affirmed in part, reversed in part and remanded. See Phelps v. U.S. Government, 15 F.3d 735 (8th Cir. 1994). The three issues remanded back to the district court were (1) allegations of violations of the 5th Amendment right against self-incrimination; (2) violation of the 1st Amendment religious exercise (Mr. Phelps professed to be a white supremacist); and (3) violation of 5th Amendment due process. Following the remand, the government resubmitted a motion for summary judgment. The government received an adverse report and recommendation. After discussion with institution staff, it was agreed that this claim would be settled for \$350.00 under the FTCA. Mr. Phelps had filed an FTCA claim alleging loss or mishandling of his mail.

DECISIONS OF INTEREST

United States v. S.A., D. Minn, Civil No. 4-96-184, FMC Rochester

S.A. was adjudicated delinquent and committed to the custody of the Attorney General. As he approached his 21st birthday, he was referred to FMC Rochester for evaluation as to whether his release would create a substantial risk of bodily injury to another or serious damage to the property of another. Following the evaluation, BOP staff initiated a petition for commitment under 18 USC 4246. The Federal Public Defender's Office argued that the district court lacked jurisdiction, because S.A. had never been charged with or convicted of a crime. Instead S.A. had been adjudicated delinquent, a civil procedure. A U.S. Magistrate Judge took testimony on the issue of S.A.'s mental condition and need for treatment. The Magistrate recommended that the court lacked jurisdiction because 18 U.S.C. 4246 did not apply to juvenile offenders, but if it did apply, S.A. was mentally ill, and his release would create a substantial risk of bodily injury to others and/or serious damage to the property of another.

The government submitted timely objections. Judge Doty sustained the government's objections and concluded 18 U.S.C. 4246 was applicable to juvenile offenders. S.A. has been conditionally released. The Federal Public Defender is contemplating appeal.

PENDING CASES OF INTEREST

Tyler v. Vereforth, et al, S.D. Ill Case No. 96-046-JPG & Okai v. Vereforth, et al, S.D. Ill. Case No. 96-047-JPG, FCI Greenville

These two similar cases contain allegations against staff alleging excessive use of force in the aftermath of the October, 1995 disturbance. We have spent an extensive amount of time reviewing OIA reports and other documents to ascertain the involvement of the defendants. The matter is complicated because the agency took administrative disciplinary action against some of the defendants for conduct involving other inmates. We have been working closely with DOJ staff regarding representation issues.

In Okai v. Verfurth, et al., three defendants were approved for representation while three were not. Former U.S. Attorney Frederick Hess is representing one of the employees denied representation. Two new defendants were recently interlineated as John Does. Representation for these individuals is pending with DOJ.

In Tyler v. Verfurth, et al., four of the defendants are being represented 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 by DOJ and have been represented to date by Frederick Hess although conflicts may arise

Terrence Smith v. Marvin King, et. al., Case No. 96-507-JPG. This case follows on the heels of Okai v. Verfurth, et al. and Tyler v. Verfurth, et al. alleging similar claims of excessive force in the aftermath of the October 1995 disturbance. As in those cases, we have spent extensive time reviewing OIA reports and other documents to ascertain the involvement of the defendants. Also as in those cases, the agency took administrative disciplinary action against some of the defendants for conduct arising out of the time period referenced in the complaint. In the present case, however, at least one of the defendant's disciplinary actions resulted from violations involving the plaintiff. We continue to work closely with DOJ staff regarding representation issues.

RELIGIOUS FREEDOM RESTORATION ACT CASES

No new RFRA cases.

CRIMINAL MATTERS

Trial preparations continue in the USP Leavenworth case of United States v. Storey (District of Kansas). Inmate Storey is charged with capital murder for killing another inmate in a SHU exercise cage. Trial is scheduled to begin in April, 1996.

Four Florence inmates are scheduled to be sentenced in January for their part in the October, 1995 disturbance at FCI Florence. All four pleaded guilty or were found guilty of riot.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

To implement the provisions of the new quality assurance program statement, FTCA administrative claims alleging inadequate medical care are routed through the regional health service administrator to facilitate identification and review of potentially difficult cases.

STAFF TRAVEL AND LEAVE

John	Glynco & Atlanta	January 6,7,8
Daryl	Glynco & Atlanta Madison, Wisconsin	January 6,7,8 January 20-23
	Farmer v. Brennan trial	
Dan	None Scheduled	
Tom	None Scheduled	
Gwen	None Scheduled	
Janet	Annual Leave	January 2,3
Gary	None Scheduled	

Claims database WAN to Mary Rose Hagan on January 2, 1997.