

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

Kansas City, KS 66101-2492

April 5, 1996

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: *2/21* QUARTERLY/MONTHLY REPORT (March 1996) *1/1/96 - 3/31/96*

LITIGATION AND RELATED ISSUES

STATISTICS: Line 1 = New Cases Filed Line 2 = Total New Cases in Year

LITIGATION:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
37	31	40									
	68	108									

Pending 883

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
118	119	115									
	237	352									

Pending 462

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
242	220	167									
	462	629									

ADVERSE DECISIONS

United States v. Woodrow Price, Jr., (E.D. Mo.), Case No. 1:93CR00031SNL, FPC Marion

Inmate Price, through Assistant Federal Public Defender Jeffrey Rosanswank, filed a motion in the U.S. District Court for the Eastern District of Missouri seeking that the court declare that the offense of Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1), is not a "crime of violence" within the meaning of 28 C.F.R. § 550.58 (consideration for early release upon completion of the residential drug abuse treatment program) and 18 U.S.C. 924(c)(3). The motion was filed on December 19, 1995 and pertained to Mr. Price's December 23, 1993 plea of guilty to the aforementioned offense.

The AUSA failed to consult the Bureau of Prisons regarding our position on the matter and on February 26, 1996, Stephen N. Limbaugh ordered that Mr. Prices offense of conviction was not a "crime of violence" within the meaning of 28 C.F.R. § 550.58 and 18 U.S.C. § 924(c)(3). Inmate Price, who had successfully completed the residential drug abuse treatment program at FPC Marion, presented the order to his case manager and demanded an additional one year reduction in his sentence. After consultation with the North Central Regional Office, the AUSA has submitted a Motion for Reconsideration and memorandum of law in support. Additionally, the AUSA has submitted a motion to stay the February 26, 1996 order pending resolution of the motion for reconsideration. The AUSA is confident that Judge Limbaugh will reconsider the matter and hopefully take the BOP's position.

SETTLEMENTS OR JUDGMENTS

None to report.

DECISIONS OF INTEREST

Ridley v. Reno, Civ. No. 95-C-1440, (N.D. Ill.), CCM, Title VII

Plaintiff, a former federal inmate, applied for a Correctional Counselor position at a Salvation Army halfway house after working at the center as a volunteer. Pursuant to the contract between the Salvation Army and the BOP, persons with previous criminal convictions may not come into contact with federal prisoners at the halfway house without the BOP's approval. Plaintiff subsequently filed a Title VII alleging race discrimination.

Judge Leinenweber granted defendants' motion to dismiss for lack of subject matter jurisdiction, or in the alternative for summary judgment for several reasons: 1) plaintiff could not demonstrate an employment relationship between himself and the BOP because the Salvation Army was an independent contractor; 2) plaintiff could not demonstrate a prima facie of race discrimination because he did not show he was qualified for the position; 3) plaintiff's disparate impact claim (African Americans arrested and convicted more often than whites and thus less likely to

receive BOP approval) failed because no causal link between BOP policy and alleged statistical disparities demonstrated; and 4) even if disparate impact was demonstrated, the BOP had a justifiable job-related business practice to prevent contact between employees with criminal backgrounds and federal prisoners.

In Re Joseph Diego Ramirez, Civ. No. 5:95MG04, (D. Minn.), FPC Yankton, Indigency Hearing

Plaintiff, a current inmate at FPC Yankton, applied for a declaration of indigency pursuant to Title 18 U.S.C. § 3569 so that he could be relieved from paying his committed fine of nearly \$50,000. After a hearing on the matter, the magistrate determined that since Mr. Ramirez had not proven that he had less than \$20.00 in assets, he was not indigent for purposes of section 3569. The magistrate relied on Mr. Ramirez' latest credit report which showed active credit card accounts and a recent car loan. The magistrate also noted that Mr. Ramirez led a lavish lifestyle prior to being imprisoned and was unable to explain the whereabouts of any of his former assets.

Pursuant to BOP Program Statement 5882.02, NCRO Regional Director Patrick R. Kane reviewed the magistrate's order. Mr. Kane found that Mr. Ramirez possessed property that was not necessary to support his family and had the ability to pay his committed fine. As a result of this finding, Mr. Ramirez will not be released from federal custody until his fine is paid.

PENDING CASES OF INTEREST

Clifton v. Miller, Civil No. 89-3075, S.D. Illinois, USP Marion, Bivens

Inmate Clifton alleges he was beaten and tortured by staff while confined at USP Marion on May 13, 1988. Clifton seeks compensatory as well as punitive damages from each of the named defendants. The jury trial, which was scheduled to begin on March 26, has been postponed until April 9, 1996 because the judge is ill. The trial will be held in East St. Louis, Illinois before Judge Stiehl. Paul Pepper will be assisting during the trial.

RELIGIOUS FREEDOM RESTORATION ACT CASES

None to report.

CRIMINAL MATTERS

Illinois v. Calvin Stinson, Case No. 96-CF-7, Illinois state court, 3rd circuit, Bond county, FCI Greenville.

Calvin Stinson, ISM employee at FCI Greenville currently on home duty status, is charged with theft of a postal money order addressed to inmate Luis Garcia-Moreno. The money order was valued at \$325.00. Mr. Stinson is proceeding pro se and has plead not guilty to the charges. His trial before a jury is scheduled to commence on May 6, 1996.

United States v. Garner, Overstreet and Warren, Case No. 95-CR97-S, W.D. Wis., FCI Oxford.

Three inmates at FCI Oxford are charged with instigating and assisting a mutiny in violation of 18 U.S.C. § 1792, and destroying government property in excess of \$100 in violation of 18 U.S.C. § 111. All three defendants have pled guilty to the charges and face up to ten years in prison for each charge. Sentencing is scheduled for June 7, 1996.

United States v. Bunch, Case No. 95-CR90-C, W.D. Wis., FCI Oxford

Inmate Bunch was charged with possessing a weapon within a correctional institution in violation of 18 U.S.C. § 1791. Specifically, inmate Bunch possessed an institution belt strung through two Master combination locks wired together. A jury trial was held in Madison, Wisconsin on Monday, March 18. Inmate Bunch was found guilty. Sentencing is scheduled for May 10, 1996.

United States v. Searcy, Case No. 95-40062, D. South Dakota, FPC Yankton

Inmate Searcy was accused of raping a mentally retarded woman on the grounds of FPC Yankton. Inmate Searcy pled guilty to the charges. On April 1, 1996, inmate Searcy appeared in federal court to attempt to remove his previous guilty plea. The judge denied his request. Inmate Searcy will be sentenced on May 20, 1996. Two accomplices, inmate Edward Thomas and inmate Robert Meitz are scheduled for sentencing on Monday, April 8, 1996, pursuant to their guilty pleas of February 6, 1996.

ADMINISTRATIVE CLAIMS OF INTEREST

Robert Chung v. Federal Bureau of Prisons, OCAHO Case No. 95B00134, FCI Greenville

The plaintiff in this case is claiming that UNICOR staff at FCI Greenville are discriminating against him because he is a British citizen. Mr. Chung filed an administrative complaint with the Executive Office for Immigration Review and the NCRO responded with a letter detailing the reasons why the administrative judge was without jurisdiction to hear the matter. Specifically, the NCRO pointed out that the United States has not waived sovereign immunity under 8 U.S.C. § 1324 and inmates have been found not to be "employees" for purposes of Title VII and OSHA claims. The administrative judge responded by ordering the Bureau of Prisons to prove it employees more than four (4) but less than fourteen (14) employees by April 30, 1996. Apparently the administrative judge's jurisdiction is limited in this manner.

STAFF TRAVEL AND LEAVE

John	None Scheduled	
Daryl	AUSA Minnesota	April 3-5
Dan	None Scheduled	
Gwen	None Scheduled	
James	None Scheduled	
Janice	Annual Leave	April 4,5,8,9,12
Gary	Annual Leave	April 22-26
Janet	None Scheduled	
Rick	Annual Leave	April 5

FTCA backup disk mailed to Mary Rose Hagan on April 1, 1996.

Jan - Mar. 96

LITIGATION

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR	20	5		14		20	20				
SCR											
WXR											
CO											
TOT	20	5		14		20	20				

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)

NCR

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