

**U.S. Department of Justice  
Federal Bureau of Prisons  
North Central Regional Office**

*Tower II, 8th Floor  
400 State Street  
Kansas City, KS 66101-2421*

June 12, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE  
ASSISTANT DIRECTOR/GENERAL COUNSEL  
GENERAL COUNSEL AND REVIEW DIVISION**

**FROM: DARYL KOSIAK, Regional Counsel**

**SUBJECT: Monthly Report (May 2000)**

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

**LITIGATION:**

INST	NUM	HC	FT C	BIV	OTH	AN S	PEN	CLD	H/T	SET	AWD
NCR	14	4	4	6	0	23	450	20	10	0	

**Total cases for Calendar Year - 124**

- NUM - Number of total lawsuits filed in the month**
- HC - Number of habeas corpus actions filed in the reporting period**
- FTC - Number of FTCA actions filed**
- BIV - Number of Bivens actions filed**
- OTH - Number of other actions filed, e.g., mental health, mandamus**
- ANS - Number of litigation reports completed**
- PEN - Number of cases pending**
- CLD - Number of cases closed**
- H/T - Number of hearings or trials (include in narrative)**
- SET - Number of settlements (include in narrative)**
- AWD - Number of Awards (include in narrative)**

Appeals	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	4	1		3			57	1			

Mental Health cases	Petitions filed	Hearings
18 USC § 4245	2	5
18 USC § 4246	2	2

### ADMINISTRATIVE CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending				254	207							
#Received	55	65	55	47	48							
#Answered				45	55							
#Over 6 month				4	7							
#Pending				207	238							

**Total for Calendar Year - 270**

### ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Received	175	164	192	171	249							
#Answered	168	178	178	186	164							

**Total for Calendar Year - 951**

### FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

FOI/PA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	47	33	48	68	71							
#Received	68	94	92	69	77							
#Processed	39	74	106	41	97							
#Backlog	16	4	1	1	3*							

**Total for Calendar Year - 400**

\* 2 Requests awaiting the retrieval of records from the archives.

### ADVERSE DECISIONS

None.

### **SETTLEMENTS OR JUDGMENTS**

None.

### **DECISIONS OF INTEREST**

#### **Tuite v. Page True, et al., Case No. 93-CV-3248, MCC Chicago**

Local attorney sued for violation of civil rights, alleging Attorney-Client rooms were being audiotaped by MCC officials. At discovery stage, OIG indicated their report of the allegations would not be releasable, despite several attempts by plaintiff to subpoena the records. After exhausting several appeals concerning the matter, the plaintiff agreed to have the case dismissed with prejudice.

#### **Evans v. J. W. Booker, Case No. 00-3024-RDR, USP Leavenworth**

On May 10, 2000, the court denied this petition for writ of habeas corpus wherein the petitioner sought relief from allegedly unlawful detainers lodged against him by the states of New Jersey and Florida. The determination was made that petitioner may not seek relief in federal court on the Florida warrant, where that warrant has not been lodged as a detainer against him. Furthermore, since the New Jersey warrant is in effect, the petitioner must challenge the validity of the detainer pursuant to 28 U.S.C. § 2254 after first exhausting state court remedies. Finally, the court determined that petitioner is required to exhaust his administrative remedies with the BOP prior to seeking relief under § 2241.

#### **Price v. United States of America, Case No. 98-3358-GTV, USP Leavenworth**

On May 26, 2000, the court granted the government's motion to dismiss where the plaintiff alleged negligence on the part of staff when personal property was lost after he was placed in the Special Housing Unit. The court determined this matter was time-barred because this matter was commenced more than six months after the rejection of his request for reconsideration by a letter dated February 9, 1998.

#### **Bustillos v. Henman, et al., Civil No. 90-CV-3040, USP Marion**

Plaintiff alleged that he was subjected to an elaborate campaign and conspiracy of harassment, intimidation and retaliation against him for his actions as a "jailhouse" lawyer. Only an excessive use of force claim against one defendant remained in the case after pre-trial motions. After jury trial conducted on August 31, 1999, judgment was entered for defendant. A Motion for new trial was denied on March 17, 2000.

#### **Duarte v. M. Cooksey, et al, Case No. 95-69-JPG, USP Marion**

Plaintiff named twenty-five defendants whom he alleged retaliated against him for his legal activities by preparing false incident reports. He requested \$100,000 in compensatory damages and \$50,000 in punitive damages against each defendant. All

causes of action were dismissed except for a retaliation claim against Counselor Ellet and former Warden Cooksey. After jury trial conducted on May 9-10, 2000, judgment was entered for defendants.

### **PENDING CASES OF INTEREST**

#### **Gil v. Medical Director of MCC, et al., Case No. 95-CV-5217, MCC Chicago**

Inmate alleges deliberate indifference to gastric obstruction, and conditions caused by surgery. Final settlement papers sent to counsel for plaintiff. Awaiting final resolution from plaintiff. Anticipated final settlement in early June 2000.

#### **Palay v. Warden Gilkey, et. al. Case No. 99-CV-8169, MCC Chicago**

Inmate sues individuals in official capacity and under FTCA, alleging failure to protect from injuries allegedly sustained during institutional disturbance. A Motion to set date for answer has been filed, as improper service under FTCA. We requested time from date of motion to substitute United States as party.

#### **Laury v. Greenfield, et al., Case No. 98-3024-JWL, USP Leavenworth**

In this case, summary judgment was granted on claims regarding excessive force involving two of the defendants; taking an address book; verbal abuse by two defendants, and failure to bring a hot meal by one defendant. The court however denied judgment on claims regarding excessive force by three defendants, failure to protect plaintiff from excessive force by four defendants, and failure to adequately supervise by a Lieutenant. A private attorney has been appointed to represent the plaintiff who is currently confined at USP Allenwood. The private staff attorneys have requested that Laury be moved to CCA in Leavenworth for purposes of taking his deposition. They have been advised that the BOP would comply with a writ issued by the Judge. In addition, the private attorney has made an attempt to subpoena records from the BOP pursuant to 28 C.F.R. § 16. 22, however he has failed to obtain a subpoena. This request is for numerous privileged documents which includes requests for grand jury records in connection with the recent indictment of three Leavenworth staff members. As a result of a conflict of interest with the U.S. Attorney's office in the District of Kansas, the request for "subpoenaed" documents has been referred to the Civil Supervisor for W/D Missouri. A trial date was initially set for September 18, 2000. This date has now been changed to November 27, 2000.

#### **White v. Helman, et al, Case No. 00-1037, FCI Pekin**

Combined Bivens and FTCA action alleging inappropriate use of force by the institution SORT team. Complaint includes allegations against three "John Does".

#### **Cuoco v. Hurley, Hershberger, Roal, Hawk, Case No. 98-D-2438, ADX Florence**

On April 4, 2000, the Magistrate Judge entered a report recommending dismissal of all

of plaintiff's claims with the exception of his claim for injunctive relief based on his allegation that the ADX regulation which prohibits him from receiving newspapers more than 14 days old and magazines more than 60 days old, is a violation of his First Amendment rights. ADX staff determined that date restriction was unnecessary, so long as number restriction was in place and submitted a Change Notice to modify the institutional supplement accordingly. On May 5, 2000, AUSA filed objections with staff declaration pertaining to modification of institution supplement.

### RELIGIOUS FREEDOM RESTORATION ACT

#### Tolley, et al., v. Pugh, et al., Case No. 97-N-0793, FCI Florence

This RFRA case challenged denial of separate outdoor worship area for inmates. On April 27, 2000, the Scheduling Conference in this case was held via conference. Nineteen inmates from FCI were present in the ADX courtroom. One inmate at FCI Sandstone and one at FDC Seatac, appeared in the courtroom. The nineteen FCI inmates notified the Court that they intended to allow four of them to represent the entire group, however, they failed to designate the four representatives. Plaintiff Tolley is represented by [redacted] who intend to file an amended complaint to specifically state an RFRA claim. RFRA

### UPCOMING HEARINGS AND TRIALS

#### United States v. McAllister, 18 USC § 4246, District of Minnesota, FMC Rochester

This §4246 case was appealed to the Eighth Circuit Court of Appeals and set for oral argument on June 12, 2000. The issue before the Court is whether a district court must conduct a hearing when the clinicians submit a conditional release plan and before granting conditional release. Another issue at hand is whether a conditionally released person, who is placed on outpatient status by local authorities, must have a hearing before returning the person to in-patient status.

### CRIMINAL MATTERS

#### United States v. Francis and Haney, 98-CR-224-D, USP Florence

Two inmates charged with possession of prohibited objects (escape paraphernalia) and attempted escape from USP. The trial began on April 17, 2000. The case went to the jury on the afternoon of April 27<sup>th</sup>. A split verdict (guilty on possession of objects, not guilty on attempt) was returned at 5:30 p.m. on Friday, April 28<sup>th</sup>. FCC Florence legal

staff are assisting the U.S. Attorney's Office to prepare a motion to seal portions of the evidence and transcripts that dealt with specific security measures at the USP to prevent publication of this information throughout the prison population. On May 31, 2000, a lengthy article concerning this trial appeared in Westword.

**United States v. Walsh, FCI Florence**

On April 30, 2000, the Grand Jury returned a two-count superceding indictment in this case, charging a former cook supervisor with bribery and conspiracy. Specifically, this individual was implicated in a scheme to introduce drugs into the FCI for profit. Trial continued from May 30, 2000, as defendant filed 14 separate motions.

**United States v. William Sablan and Rudy Sablan, USP Florence**

William Sablan and Rudy Sablan were housed in a SHU Cell with Joey Estrella on October 10, 1999 at the USP Florence. Staff found Estrella laying on the cell floor with a gaping wound to his abdomen and with two cuts to his neck. It was later determined that inmate Estrella died from massive blood loss from the neck wounds. William Sablan admitted to the FBI that he killed inmate Estrella, however, there is evidence that Rudy Sablan was also involved in the killing. On May 25, 2000, Florence legal staff assisted AUSA's Al LaCabe and Brenda Taylor in preparation for death penalty consideration and initial trial preparation in this case. Florence legal staff facilitated and participated in interviews with various witnesses, toured the crime scene and answered questions.

**United States v. Johnson and Schofler, USP Leavenworth**

A new trial date has been set for July 11, 2000, in the prosecution of inmates Johnson and Schofler for the murder of inmate Smothers. This trial is expected to take 2 weeks and will take place in Kansas City, Kansas. Rick Winter has been assigned oversight responsibility for this case. The AUSA and FBI Special Agent are in the process of interviewing staff witnesses in order to prepare for this trial.

**United States v. Rodney Allen Dent, No. 99-40046-JPG; United States v. Mitchell E. Kolb, No. 99-40047-JPG; United States v. Scott Lee Martin, 99-40048-JPG; United States v. David Michael Sahakian, No. 99-40044-JPG; United States v. Joseph L. Tokash, No. 99-40045-JPG; United States v. John Derel Usher, No. 99-40049-JPG, USP Marion**

The above named inmates are charged with possession of a prohibited object in violation of 18 U.S.C. § 1791(a)(2). After asserting that they were operating under a mental disease or defect when the crime was committed, all defendants underwent evaluations pursuant to 18 U.S.C. §§ 4141 & 4142. A competency hearing was conducted on May 18, 2000, and defendants' (except Tokash) request to represent themselves was granted. Trials are now set for August 14<sup>th</sup> for inmates Kolb, Martin and Tokash and September 18<sup>th</sup> for inmates Sahakian, Dent and Usher.