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

Kansas City, KS 66101-2492

February 3, 1995

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (January 1995)

DECISIONS/SETTLEMENTS/CASES OF INTEREST

Silverstein and Fountain v. U.S., Civil Number 84-4055-WDS, S.D. of Illinois, USP Marion.

After over ten years of litigation (or perhaps more accurately inaction), this lawsuit alleging unconstitutional harassment by some 30 BOP employees at USP Marion against the infamous pair of Thomas Silverstein and Clayton Fountain appears to be drawing to a close. As you know, we settled with the plaintiffs in May of 1994. The only remaining question related to when the criminal restitution orders against both plaintiffs became effective, and thus important as to whether the plaintiffs could enjoy the fruits of the settlement while still incarcerated. Due to some ambiguities in the original restitution orders imposed by Judge Foreman in 1984, it was argued the restitutions were not due until five years after release, which of course in the cases of Silverstein and Fountain would mean five years after death. It was agreed by both parties we would submit this sole issue to the District Court.

On January 23, 1995 Judge Stiehl issued an order agreeing with the United States that unless otherwise ordered by the court, 18 U.S.C. Section 3579(f)(3) provides restitution is due immediately. Thus, unless plaintiffs appeal this decision, the settlement reached stands wherein each plaintiff received \$500.00 credited to their commissary accounts, and the remainder of the settlement monies will be paid to the plaintiffs' victims or the victims' families as part of the restitution orders.

Drummond v. U.S. Attorney General, Civil Number 94-1009, 8th Circuit.

The inmate was injured on his prison work assignment and subsequently sought compensation under the Inmate Accident Compensation procedure. The inmate requested \$178.64 for 232 lost days. Prison staff determined his proper pay should be \$1.54 for six days. Plaintiff appealed this decision and was denied. Subsequently, the Plaintiff filed the instant Bivens action to recover \$178.64.

The Court dismissed this action because the Inmate Accident Compensation is the exclusive remedy for the compensation of lost wages due to on the job injuries.

The District Court dismissal was affirmed by the Eighth Circuit.

Luis Enrique Grant v. Michael Cooksey, et al., Civil No. 94-298-JPG, Southern District of Illinois, USP Marion.

The plaintiff in this action alleges the Common Fare Diet was implemented as the "authorized religious diet" program, in violation of First, Eighth and Fourteenth Amendment rights. Specifically, plaintiff asserts the Common Fare Diet does not provide Rastafarians a vegetarian diet, constituting cruel and unusual punishment. Plaintiff seeks compensation in the amount of \$12,000.00. RFRRA?

Rodney C. Hamrick v. Michael Cooksey, et al., Civil No. 94-567-JPG, Southern District of Illinois, USP Marion.

The plaintiff in this action alleges he was placed in four-point restraints for a total of 20 hours; that staff ignored his requests to be released from the four-point restraints when he informed them that the restraints were causing him pain; that he was placed in a cell that had inadequate light; that staff arbitrarily denied him a Bible; and that he was placed on suicide watch when there was no justification to placed on that status. He seeks compensation in the amount of \$50,000.00, and to be provided adequate psychological treatment at an appropriate medical facility. The events Hamrick complains of occurred after he mailed through Special Mail procedures an explosive devise from USP Marion to an ATF attorney in Cincinnati, Ohio.

Faustino Calderon v. The United States of America, Civil No. 95-C-0357, Northern District of Illinois, FCI Oxford.

The plaintiff files this action pursuant to FTCA, alleging BOP failed to protect. He had provided information to government officials regarding criminal activity by another inmate's relative. Plaintiff was attacked while preparing to take a

shower; it required 100 stitches to replace his ear. He seeks compensatory damages as shall be proven at trial.

Prows & Kalka v. United States of America, Case No. 91-Z-753, District of Colorado, FCI Englewood

The U.S. District Court recently adopted and accepted Magistrate Judge Borchert's report and recommendation which dismissed this claim as to plaintiff Prows but allowed plaintiff Kalka to continue the case. In an action solely for equitable relief, the court dismissed former inmate Prows by virtue of his release from custody. The court denied the government's second and third motions to dismiss inmate Kalka's claims on mootness grounds, even though he has not been confined at FCI Englewood since 1991. The remaining claims relate to conditions at FCI Englewood including: heating and ventilation, lighting, plumbing, and legal mail. The court has appointed counsel for plaintiff. Court appointed plaintiff has secured an order from the court for the government to pay for expert witnesses for plaintiff's case. The U.S. Attorney has filed a request with DOJ, Civil Division, to seek interlocutory appeal on the basis of the court's lack of jurisdiction due to mootness.

Warden, et al v. Perrill, et al, Case No. 95-S-13, District of Colorado, FCI Englewood

This case which includes 11 current and former inmates at FCI Englewood as plaintiffs names 9 current and former employees of FCI Englewood in a personal liability action seeking damages for exposure to asbestos. The exposure is alleged to have occurred in August, 1993 on a prison remodeling project. Varying degrees of exposure to some of the inmates has been documented in a response to a Congressional and in an OIA investigation. The plaintiffs are represented by counsel.

Randy Lee Wright, et al v. Hawk, Kane, Edwards & Perril, Case No. 94-C-800, FCI Englewood

Like Warden, et al v. Perrill, et al, this case involves bivens type allegations of constitutional deprivations caused by adverse environmental exposure at FCI Englewood. A total of sixteen similar pro se law suits have been filed, eleven of which have been so far consolidated in 94-C-800. Unlike Warden, there is no evidence indicating that any of these plaintiffs were exposed to negative environmental substances at FCI Englewood.

STAFF TRAVEL AND LEAVE

John	None Planned	
Daryl	None Planned	
Matt	January 30 - February 17	Glynco
Dan	February 3	Annual Leave
Gwen	February 9-10	Annual Leave
Helen	None Planned	
Gary	None Planned	
Cindy	February 8, 17	Annual Leave
Note:	FTCA backup disk mailed to Mary Rose Hagan on February 1, 1995.	



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

Kansas City, KS 66101-2492

January 31, 1995

MEMORANDUM FOR LEGAL STAFF

FROM: ARM  
GARY ROBERTS, Paralegal Specialist

SUBJECT: Monthly Report

Please review this draft monthly report, make the appropriate additions, updating, corrections, and deleting you find necessary and forward it on to the next person on the list.

Helen HE

Gwen GR

Matt \_\_\_\_\_

Dan DW

Daryl DK

John JR

Gary \_\_\_\_\_

*change in matt's schedule -*

*FORMAT on 1st page - no space between & FOR memorandum*



MAR 13 95

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

Joyce  
File

Kansas City, KS 66101-2492

March 1, 1995

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (February 1995)

**LITIGATION AND RELATED ISSUES**

**ADVERSE DECISIONS:**

None during this reporting period.

**SETTLEMENTS OR JUDGEMENTS:**

None during this reporting period.

**DECISIONS OF INTEREST:**

**Carter v. Quinlan et al.**, Civil Number 91-3332-RDR, District of Kansas, USP Leavenworth (UNICOR matter).

Plaintiff's Bivens action alleged constitutional violations in his removal from his job in UNICOR. Inmate Carter alleged staff were prejudiced against him because of his race and improperly disciplined and removed his from his job assignment. Plaintiff requested injunctive, declaratory relief, as well as money damages in the amount of \$320,000.00.

The Court reviewed the record and found that plaintiff was ordered to perform work on one occasion and refused to do so because "he and the other inmate on the line did not get along." Inmate Carter was counseled regarding his refusal and returned to work. In a subsequent event inmate Carter was ordered to relieve another inmate and

he refused to do so. An incident report was written and the inmate ultimately disciplined by the UDC with 8 hours extra duty. Additionally, the UNICOR foreman prepared a job action form recommending removal of plaintiff from UNICOR. This recommendation was approved and plaintiff was removed from his UNICOR assignment and placed in other institutional work.

The Court reviewed the record in this matter and concluded the disciplinary action was in compliance with applicable regulations and statutes. Further, that plaintiff's removal from UNICOR without a hearing was appropriate as there was no constitutional implications in the assignment or removal from a prison job assignment. Summary judgment was granted for the defendants on February 15, 1995.

**Vashty St. Claire, et al. v. U.S.A.**, CIV-94-1769-PHX-SMM, District of Arizona.

Plaintiff is the widow of former federal inmate Robert St. Claire. She alleged that her husband had been incarcerated in several federal prisons, hospitals and other facilities from November 18, 1989 until the time of his death on January 23, 1992. In this hybrid Bivens/FTCA suit, Plaintiff alleged that the United States and its employees violated the decedent's constitutional rights by subjecting him to cruel and unusual punishment and were subsequently negligent in their medical care of him. Plaintiff sought compensation for incurred medical expenses, loss of present and future earnings, attorney's fees, and loss of society and asked for damages in the amount of four billion dollars (\$4,000,000,000).

On February 24, 1995, the United States District Court for the District of Arizona dismissed the action for Plaintiff's failure to properly serve the United States and for Plaintiff's failure to appear at the Order to Show Cause Hearing.

**PENDING CASES OF INTEREST:**

**Prows & Kalka v. United States of America**, Case No. 91-Z-753, District of Colorado, FCI Englewood.

The U.S. District Court recently adopted and accepted Magistrate Judge Borchers's report and recommendation which dismissed this claim as to plaintiff Prows but allowed plaintiff Kalka to continue the case. In an action solely for equitable relief, the court dismissed former inmate Prows by virtue of his release from custody. The court denied the government's second and third motions to dismiss inmate Kalka's claims on mootness grounds, even though he has not been confined at FCI Englewood since 1991. The remaining claims relate to conditions at FCI Englewood including: heating and ventilation, lighting, plumbing, and legal mail. The court has appointed counsel for plaintiff. Court appointed plaintiff has secured an order from the court for the government to pay for expert witnesses for plaintiff's case. The U.S. Attorney has filed a request with DOJ, Civil Division, to seek interlocutory appeal on the basis of the court's lack of jurisdiction due to mootness.

**Warden, et al v. Perrill, et al.**, Case No. 95-S-13, District of Colorado, FCI Englewood.

This case, which includes 11 current and former inmates at FCI Englewood as plaintiffs, names 9 current and former employees of FCI Englewood in a personal liability action seeking damages for exposure to asbestos. The exposure is alleged to have occurred in August, 1993 on a prison remodeling project. Varying degrees of exposure to some of the inmates has been documented in a response to a Congressional and in an OIA investigation. The plaintiffs are represented by counsel.

**Randy Lee Wright, et al. v. Hawk, Kane, Edwards & Perrill**, Case No. 94-C-800, District of Colorado, FCI Englewood.

Like Warden, et al v. Perrill, et al, this case involves Bivens type allegations of constitutional deprivations caused by adverse environmental exposure at FCI Englewood. A total of sixteen similar pro se law suits have been filed, eleven of which have been so far consolidated in 94-C-800. Unlike Warden, there is no evidence indicating that any of these plaintiffs were exposed to negative environmental substances at FCI Englewood.

**Calderon v. U.S.A.**, Case No. 95-C-0357, W.D. Wisconsin, FCI Oxford.

Plaintiff filed this action pursuant to FTCA. Alleges staff failed to prevent an attack on his person by another inmate, in which he suffered a physical injury, disfigurement, mental and emotional distress, and medical expenses. Plaintiff's ear was cut off and reattached with 100 stitches. He seeks compensation in the amount of one million dollars in his tort claim.

**Farmer v. Brennan, et al.**, Case No. 91-C-716-S, W.D. Wisconsin, FCI Oxford.

As you know, on remand from the Supreme Court, the District Court granted the defendants' motion for summary judgement. Plaintiff has appealed to the 7th Circuit, although Judge Shabbaz denied Farmer's in forma pauperis request. The Circuit has now appointed counsel for Mr. Farmer.

**Dixon v. USA, et al.**, Case No. 94-3309-RDR, District of Kansas, USP Leavenworth.

We continue to prepare this problematic FTCA/Bivens case which alleges physical abuse of inmates during a forced cell move. Upon the approval of the Director and you, we have now forwarded our recommendations regarding representation to the Department. Because we anticipate a delay in the representation decision, the United States Attorney has filed for another extension of time, which we anticipate will be granted.



CRIMINAL MATTERS

United States v. Paul, Case No. 94-CR-393-S, District of Colorado, FCI Florence.

As I recently reported to you in a memorandum, FCI Florence inmate Preston Paul was acquitted in the assault of an employee in the Food Service area. The employee suffered a broken jaw. Unfortunately, the defense persuaded the jury that the inmate was taunted into his actions by racist staff. We firmly believe that this jury decision was clearly erroneous, and that the prosecution of the case was vigorous and appropriate.

On a more positive note, a jury conviction was obtained in October of 1994 in the case of United States v. Bailey, arising out of an assault of two staff by an inmate at the USP Florence. Even though this case also raised the defense of racism, the inmate was convicted and received a 37 month consecutive sentence.

STAFF TRAVEL AND LEAVE

John	March 17	CLE
Daryl	March 17	CLE
Matt	None Planned	
Dan	March 6-8, 10, 17	CLE
Gwen	None Planned	
Helen	March 13-17	Admin. Leave
Gary	None Planned	
Cindy	March 24, 27	Annual Leave
Janet	March 20	Annual Leave

Note: FTCA backup disk mailed to Mary Rose Hagan on March 1, 1995.