

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

Kansas City, KS 66101-2492

November 8, 1996

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (October 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		

Total for Calendar Year 318

Pending 870

ADMINISTRATIVE CLAIMS:

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

Total for Calendar Year 857

Pending 352

ADMINISTRATIVE REMEDIES:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
242	220	167	237	180	155	148	185	160	192		

Total for Calendar Year 1895**ADVERSE DECISIONS**

Moore v. U.S. Bureau of Prisons, D. Kansas Case No. 89-3121-RDR, FCI Milan

After remand from the 10th Circuit Court of Appeals in 1994, a one day trial was finally held on October 17th, in this FTCA lost property case arising out of Milan. The case was filed in the District of Kansas due to plaintiff's "residence" (incarceration) in the Kansas state system. Judge Rogers found in favor of the plaintiff, for the sum of \$500.00. Plaintiff had sought \$24,479.00 for the property, primarily legal papers. No appeal will be recommended.

SETTLEMENTS OR JUDGMENTS

Dixon v. United States, et al., D. Kansas Case No. 94-3309-RDR, USP Leavenworth

This is the assault FTCA\Bivens case previously reported. The United States has offered to settle this matter for \$3,000. The plaintiff countered with a demand for \$10,000. An offer for \$3,500 was communicated to the plaintiff's attorney the first week of November.

Moen v. United States, D. Minnesota Case No. 5-95-226, FPC Duluth

Opposing counsel dramatically decreased her demands in this slip and fall case involving a visiting child at FPC Duluth. What started out as a demand for one half a million dollars has decreased to a \$10,000 claim. The AUSA wants to try the case but has been given authority to settle for \$3,000 to avoid costs of litigation. Trial is scheduled for the second week of December 1996.

DECISIONS OF INTEREST

None to report.

PENDING CASES OF INTEREST

Johnson v. USA, N.D. Illinois Case no 96-C-5708, MCC Chicago

Administrator of a deceased inmate's estate has sued the United States for negligence allegedly leading to the inmates death. The inmate committed suicide while housed in a community corrections center in June 1993.

Kalka v. United States, D.Colorado Case No. 91-D-753, FCI Englewood

The evidentiary hearing scheduled for October 28, 1996 was continued. After Mr. Kalka refused to sign a document that declared he was without funds, appointed counsel concluded that Mr. Kalka was not entitled to their assistance and motioned requesting to be removed from the case. The hearing has been re-scheduled for March 1996.

Lozano v. Reno, D. Colorado Case No. 95-C-2661, FCI Florence

NCRO coordinated responses by the BOP's Security and Background Investigation Division and FCI Englewood to plaintiff's discovery requests. The Office of Personnel Management, a co-defendant, has not provided the BOP authorization to release copies of background investigations in its possession. The AUSA defending the action is seeking relief from OPM on this issue.

Pedersen v. Reno, D. Minnesota Case No. 595-304, FPC Duluth

Depositions of former FPC Duluth staff members were taken during the second week of October. The plaintiff and Unicor executives are expected to be deposed in November and December. Additional discovery was forwarded to Unicor and PPM for action.

RELIGIOUS FREEDOM RESTORATION ACT CASES

None to report.

CRIMINAL MATTERS

United States v. Thomas Whitlow, D. Kansas Case No. 2:95-CR-20039-001.

Inmate Whitlow was sentenced to 71 months for Mail and Wire Fraud on July 2, 1996. With our assistance as to language, Judge Vratil included in her sentencing of Mr. Whitlow that he not be allowed any use of a telephone during his term of incarceration. Inmate Whitlow was designated to FCI Florence.

Unfortunately, in October of 1996, staff became aware that Mr. Whitlow had instituted a telephone fraud plan identical to the one that led to his conviction. The scheme

involved defrauding elderly people by pretending to be a favorite grandson and then requesting money be sent to him due to an emergency. This plan was apparently carried out in spite of the institution prohibiting inmate Whitlow from having a Personal Identification Number or an authorized phone list. He utilized another inmate-accomplice's phone card and PIN.

We have recently written to Judge Vratil advising her of the situation. The case has been referred to the FBI for possible prosecution.

United States v. McGruder and Ford, FCI Florence

Inmates charged with violations of 18 USC 111(a) and (b) as well as one count of rioting. These are the two inmates who threw officer Rodenbeck off of the second floor of the Otero Unit on October 26, 1995. Arraignment 11/4/96

United States v. Chitwood, FCI Florence

Inmate charged with two violations of 18 USC 111(a) and (b) as well as one count of rioting. He assaulted one staff member on the compound and then assaulted another inside Otero unit. Arraignment 11/4/96.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

None to report.

STAFF TRAVEL AND LEAVE

John	None Scheduled	November 27, 29
Daryl	Annual Leave	November 27, 29
Dan	None Schedule	
Tom	Annual Leave	November 27, 29
Gwen	None Scheduled	
James	Annual Leave House Hunting	November 1 November 12-15
Janice	None Scheduled	

Janet	Annual Leave	November 27, 29
Gary	Annual Leave	November 6, 18-22

Claims database WAN to Mary Rose Hagan on November 4, 1996.

**U.S. Department of Justice
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October 4, 1996

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: QUARTERLY/MONTHLY REPORT (September 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			

Total for Calendar Year 291

Pending 873

ADMINISTRATIVE CLAIMS:

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

Total for Calendar Year 786

Pending 381

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
242	220	167	237	180	155	148	185	160			

Total for Calendar Year 1703

ADVERSE DECISIONS

Foster Sellers v. United States, 7th Cir. Case No. 96-104, USP Marion

For the third time, the Seventh Circuit has remanded this case to the district court. Sellers alleges that USP Marion staff lost or misplaced \$1,700 worth of law books in 1983. Following a bench trial to a magistrate through which Sellers received damages for the loss of some property, the court dismissed his claim as to the legal books. The Court of Appeals reversed and remanded in a published opinion, Sellers v. United States, 902 F.2d 598 (7th Cir. 1990). Following the remand, the magistrate again made findings and dismissed the case as to the law books. The Seventh Circuit remanded in an unpublished opinion, Sellers v. United States, 7th Cir. Case No. 93-1780. On remand, the district court determined BOP staff had not lost any law books. The Seventh Circuit again has remanded. Institution legal staff are considering options with the U.S. Attorney's Office.

United States v. S.A., D. Minnesota Case No. 4-96-184, FMC Rochester

S.A. is a 21 year old offender sentenced to the custody of the Attorney General under the JDA. As he neared his 21st birthday, staff attempted to locate state placement for S.A. When none was available, commitment pursuant to 18 USC 4246 was initiated. Counsel for the offender objected on jurisdictional grounds to the extent that a juvenile is never charged with or convicted of a crime, but rather is adjudicated a delinquent. The Magistrate Judge agreed and recommend dismissing the petition on jurisdictional grounds. After consultation with DOJ staff and BOP staff, objections have been filed and are pending.

SETTLEMENTS OR JUDGMENTS

None.

DECISIONS OF INTEREST

None.

PENDING CASES OF INTEREST

Del Raine v. Carlson, et al, S.D. Ill. Case No. 79-2340, USP Marion

This case was recently remanded back to the district court for third time from the Court of Appeals. The case arose as a result of the plaintiff's transfer to USP Marion and placement in the Control Unit in 1972. While a 1973 hearing and findings by the district court determined that the plaintiff had not been provided with due process, the court left unresolved any issue of damages. Counsel has been retained and the court has left to resolve the issues of personal involvement by the named defendants and the issue of damages, if any to the extent named parties caused a due process violation.

Kalka v. United States, D.Colorado Case No. 91-D-753, FCI Englewood

The case is scheduled for an evidentiary hearing in October, 1996. The complaint was initially filed with four plaintiffs alleging over 100 conditions of confinement at FCI Englewood resulted in unconstitutional conditions of confinement. The issues have been narrowed to four, and the major remaining issue is whether the absence of some mechanical method of introducing fresh or treated air violates the Eighth Amendment. The BOP has taken the position that each cell at the FCI has one or more windows which can be controlled by the occupants, allowing introduction of fresh air as desired.

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 are working closely with DOJ staff in an attempt to obtain government representation for the staff involved. No decision has been made by DOJ.

Perse v. United States, et al, D.Colorado Case No. 96-WY-1739, FCI Englewood

Marc Perse was an officer with the Colorado Department of Corrections. While involved in a joint training session with FCI Englewood staff at the U.S. Air Force Academy, Mr. Perse was killed in a tragic rappelling accident. His surviving spouse has filed a multi million dollar law suit against the United States under the FTCA alleging his death was caused by the negligence of BOP employees.

Maurice Moore v. United States, D. Kansas Case No. , USP Leavenworth

Maurice Moore, now a Kansas state prisoner, alleged BOP staff lost personal property in 1988. The action was dismissed twice by the district court, once on statute of limitations grounds and once on the merits. The 10th Circuit Court of Appeals reversed and remanded both times. The matter is set for trial in Topeka, Kansas on October 17, 1996. BOP employees Brad Semark and Larry Campbell are witnesses.

RELIGIOUS FREEDOM RESTORATION ACT CASESFountain (Scott A.) v. Reno, et al., D.D.C. Case No. 96-1386, ADX Florence

ADX Florence inmate claims religious need for no flesh and no egg food tray. Claims common fare does not meet his needs. Argues PS 5360.06 and Common Fare plan violate RFRA. Filed in District of Columbia against Hawk and Reno seeking injunctive, declaratory and monetary relief.

Keith v. Booker, D. Col., Case No. 94-N-2844, FCI Florence

A Stipulated Motion to Dismiss was signed by the plaintiff in this RFRA case. The plaintiff, a FCI Florence inmate claimed to be a follower of Christian Identity, alleged he was precluded from holding group services with other inmates. Initially, the plaintiff maintained that the Identity services would not be open to non-white inmates. Last week, after meeting with the AUSA and FCC Supervisory Attorney Jenifer Grundy, the plaintiff agreed that the Identity services would be open to all inmates. With this, the Stipulated Motion to Dismiss was signed.

CRIMINAL MATTERS

FCI Florence: USA v. Robert Carter. Inmate Carter convicted on three counts of assault on staff (18 USC 111(b)) for acts arising out of the October 1995 disturbance.

ADX Florence: Inmates Romero, Jackson, and Yandell indicted for assault on inmate Saipaia at the ADX.

USP Florence: Inmate Flanagan was indicted for the December 1994 murder of inmate Brown.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**Deadly Force Training**

NCRO legal staff provided wardens and FBI special agents in charge from the NCRO with instruction on the BOP's new Firearms and Badges program statement. The fourth amendment and Resolution 14 were also discussed. NCRO legal staff also provided instruction to a class of WITSEC lieutenants at the MSTC concerning this same subject matter.

Gaither v. Reno, Fifth Circuit, Case No. 95-11076, FCI Oxford/FCI Big Spring

This case has been scheduled for oral argument before the Fifth Circuit Court of Appeals on November 5, 1996. The plaintiff lost at trial and was forced to cost to the United States.

STAFF TRAVEL AND LEAVE

John	None Scheduled	
Daryl	Kalka Trial	October 16
Dan	Annual Leave	October 11
	Kalka Pre-Trial	October 15-16
	Kalka Evidentiary Hearing	October 28-30
Tom	Inst. Familiarization	October 1-11
	FLETC	October 21-November 6

Gwen	None Scheduled	
James	Moore v. USA trial	October 16-17
Janice	Moore v. USA trial Annual Leave	October 16-17 October 31, 1996
Janet	None Scheduled	
Gary	NCRO Duty Officer	October 7-14

Claims database mailed to Mary Rose Hagan on October 1, 1996.