

**Prisons**

**U.S. Department of Justice  
Federal Bureau of**

**North Central Region**

---

*Kansas City, KS 66101-2492*

**February 7, 1997**

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

**FROM: JOHN R. SHAW, Regional Counsel**

**SUBJECT: MONTHLY REPORT (January 1997)**

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

**LITIGATION:**

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV  
DEC

38

**Total for Calendar Year**

**Pending 342**

**ADMINISTRATIVE CLAIMS:**

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV  
DEC

70

**Total for Calendar Year 70**

**Pending 344**

**ADMINISTRATIVE REMEDIES**

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV  
DEC

167

**Total for Calendar Year 167**

**ADVERSE DECISIONS**

**Sterling v. United States, S.D. Ill., Civ. No. 93-148-WDS, USP Marion**

Magistrate Judge Frazier denied the United States' motion for change or venue or summary judgment. Judge Frazier ruled that the government waived any attack to venue because it failed to raise the issue in its motion to dismiss. Judge Frazier then ruled that the "law enforcement exception" to the FTCA found at 28 U.S.C. (c) only applied in those circumstances in which BOP employees were engaged in a search, seizure or arrest. The judge ruled that the mere storage of an inmate's property following his transfer to administrative detention was not the type of seizure covered under the law enforcement exception.

**Tighe v. Booker, D.Col., Civ. No. 95-D-638, FCC Florence**

On November 12, 1996, Judge Daniels ordered the BOP to give an inmate credit against a federal prison term for time spent of federal writ when the offender was serving a state sentence. After the government motioned Judge Daniels to alter or amend his judgment, the judge denied the motion on December 10, 1996. The BOP lost a motion to reconsider a similar "old law" case approximately two years ago. See Brown v. Perrill, 21 F.3d 1008 (10th Cir. 1994) and Brown v.

Perrill, 28 F.3d 1073 (10th Cir. 1994). In the Brown case the Solicitor General did not authorize an appeal. In the Tighe decision, Judge Daniels almost exclusively relied on the Brown opinions and we are recommending an appeal.

**Sellers v. United States, S.D. Ill., Civ. No. 84-CV-4357, USP Marion**

This case dates to an institution-wide pickup and security search of inmates' property conducted following the murders of two staff members at USP Marion in 1983. The only remaining issue is the loss of some books placed in storage in December of 1983. In a recent Memorandum and Order, the court determined that the United States is liable for the loss of 33 books, and the parties must reach an agreement on damages by 3/7/97.

**SETTLEMENTS OR JUDGMENTS**

**Jimenez v. Rutledge, et al., S.D. Ill, Civ. No. 92-CV-909-WLB, USP Marion**

The plaintiff alleged he was injured when the defendants slammed his finger in a cell door in 1991. After being injured, the plaintiff further alleged he was denied medical care. In a bench trial before Magistrate Judge Cohn on December 17, 1996, judgment was entered on behalf of the defendants.

**Farmer v. Brennan, et. al, W.D. Wis., Civ. No. 91-C-716, FCI Oxford**

During a trial held on January 22, 1991, a jury found that none of the named defendants were deliberately indifferent to plaintiff's safety and that they did not proximately cause any damages to the plaintiff. Subsequent to the jury's findings, judgment was awarded for the defendants..

**PENDING CASES OF INTEREST**

**Sesler v. Pitzer, Eighth Cir., Appeal No. , D. Minn . , FPC Duluth**

The plaintiff, a former federal inmate, is appealing the district court's determination that he was not eligible for a year off under 3621(e). Oral argument is set for February 14, 1997 in Minneapolis.

**Clark v. Lvallie, et al., D.Col., Civ. No.96-S-0823, FCC Florence**

The plaintiff seeks 2.5 million from each defendant as well as declaratory and injunctive relief. The plaintiff claims he was assaulted by staff on 10/27/95 and subsequently denied medical attention.

**Hudson v. Helman, C.D.Ill., Civ. No. 96-1588, FCI Pekin**

The petitioner claims his right to due process was violated when he was removed from his prison

"employment." The plaintiff has sought habeas relief on the matter.

**Garris, et al. v. U.S.A., et al., W.D.Mo., Civ. No. 97-3035-CV-S-RGC, USMCFP Springfield**  
The plaintiffs claim the recent federal law prohibiting inmates from receiving literature that depicts nudity is unconstitutional.

**Alejo v. Heller, S.D. Ill., Civ. No. 94-682-JPG, USP Marion**

The plaintiff complains that he has suffered harassment by staff as a result of his Cuban heritage and has been retaliated against because of complaints he has made regarding prison conditions. He also claims that he was unfairly disciplined as a result of not having a Spanish interpreter during the DHO process. The plaintiff seeks damages in excess of \$600,000.

**Compton v. Hedrick, S.D. Ill., Civ. No. 96-794-JPG, USP Marion**

The plaintiff challenges the DHO's finding that he conspired to kill another person and conspired to escape because, according to plaintiff, "the whole thing was "faked." Plaintiff seeks the restoration of 54 days good conduct time taken by the DHO.

**Roberson v. Judge Porter, et al., Eighth Circuit, Appeal No. , D. Minn., 4-96-816, FMC Rochester/FCI Sandstone**

After the district court dismissed plaintiff's Bivens action, it ordered FMC Rochester to withdraw funds from the plaintiff's commissary account to pay the balance of the court's filing fee. The plaintiff appealed to the 8th Circuit. The 8th Circuit then assessed a filing fee from the plaintiff for the appeal. The inmate is now incarcerated at FCI Sandstone.

**Tyler v. Vereforth, et al, S.D. Ill, Civil 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 Okia v. Vereforth, et al., three defendant 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. Vereforth, 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., S.D. Ill., Civ. No. 96-507-JPG, FCI Greenville.**

This case follows on the heels of Okai v. Vereforth, et al. and Tyler v. Vereforth, 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.

**Johnson v. Seiter, et al, S.D. Ill., Civ. No. 96-396-JPG, FCI Greenville**

**Huffman v. Hawk, et al, S.D. Ill., Civ. No. 96-629-JPG, FCI Greenville**

**Dunn v. Seiter, et al, S.D. Ill., Civ. No. 96-396-JPG, FCI Greenville**

These three Bivens cases have been filed in the Southern District of Illinois also alleging that staff used excessive force in the aftermath of the October 1995 disturbance at FCI Greenville. While requests for representation have yet to be received, we are informed that a few of the defendants have recently been served, and we expect to begin investigating recommendations shortly.

**Brown v. Pharmchem, et al., D. Minn., Civ. No. 3-95-103, FCI Sandstone**

This case involves an inmate who tested positive for illegal narcotics, was issued a discipline report, found guilty by the DHO and sanctioned with the loss of good time, loss of privileges, and time in disciplinary segregation. Years later, the independent laboratory who conducted the drug test, Pharmchem, admitted to the BOP that it had erroneously concluded that the plaintiff tested positive for drugs in 1991. Prior to his release the plaintiff was given credit for the good time taken from him and the incident report was expunged. Nevertheless, the plaintiff brought a claim against the United States under the FTCA for negligence.

Judge Kyle recently issued a Memorandum and Order dismissing the United States motion to dismiss or for summary judgment. In its motion, the United States argued that the plaintiff's claim accrued years earlier and the lawsuit was untimely. Additionally, the United States argued it owed no duty to the plaintiff and was absolved of liability because its employees followed federal regulations when processing the plaintiff's urine sample. Judge Kyle found the United States' statute of limitations arguments to be without merit because the plaintiff did not learn of his injury until Pharmchem notified the BOP of its mistake. Next the judge decided that the BOP was under a duty to further investigate the plaintiff's claims of innocence and make inquiries to Pharmchem. The NCRO has encouraged the U.S. Attorney's Office to argue both the independent contractor and discretionary function defenses to the FTCA. The NCRO has been notified that Pharmchem has entered into settlement negotiations with the plaintiff.

### **RELIGIOUS FREEDOM RESTORATION ACT**

No new RFRA cases.

### **CRIMINAL MATTERS**

**United States v. Ahrens, W.D.Wis., Crim. Case No. , FCI Oxford**

On January 7, 1997, Paul Ahrens was sentenced to 88 months for violation of 18 U.S.C. 2 and 18 U.S.C. 1791(a)(1), Causing a Prohibited Object, Methamphetamine, to be Provided to a Federal Prison.

**United States v. Jones, W.D.Mo., Crim. Case No.96-03080-01-CR-S-E, USMCFP  
Springfield**

The defendant pled guilty on January 3, 1997, to willfully assaulting another inmate.

**United States v. Melgar, C.D.Ill., Crim. Case No. 97-10006, FCI Pekin**

The defendant was indicted in January for Assault on a Federal Officer.

**United States v. Prior, D. Col., Crim. Case No. , FCC Florence**

Sentenced to 30 month for participation in riot and assaulting a staff member.

**United States v. Craddock, D. Col., Crim. Case No. , FCC Florence**

Sentenced to 33 month for assault on staff member during riot.

**United States v. Jabari, D. Col., Crim. Case No. , FCC Florence**

Sentenced to 12 month for assault on staff during riot.

**United States v. Washington, D. Col., Crim. Case No. , FCC Florence**

Sentenced to 12 months for assault on staff during riot.

**ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

**Dennis Allen Brewer**, Register Number 17619-083, USP Marion

FTCA Administrative Claim (FCC Florence), Personal Injury \$200,000.00.

Inmate **Brewer** alleged that during an institution disturbance staff responded with the use of firearms. Claimant asserted that the gunfire resulted in the loss of his right little finger.

Institution Investigations confirmed claimant lost his finger. However, medical staff indicated the damage to the finger was consistent with a high impact, crushing type blow, not gunfire.

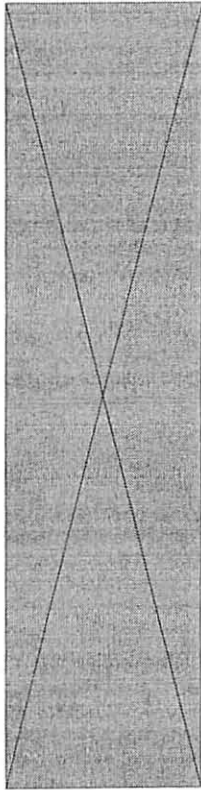
Inasmuch as a large number of inmates were involved in the disturbance and were assaulting one another with clubs and knives, it is speculated that claimant lost his finger while fighting other inmates. Further, even if the inmate's statements regarding the event are taken as true, there is no basis for the claim. Staff were acting within the scope of their employment and appropriately utilized firearms to prevent serious injury, loss of life, or damage to property.

Inmate **Brewer's** claim was denied on January 28, 1997.

**STAFF TRAVEL AND LEAVE**

John	Sesler Argument	February 13, 14
Daryl	Annual Leave	February 2, 7
	PKN, GRN, MAR MOU Issue	February 12
	Sesler Argument	February 13, 14
	DHO Training	February 18-21
Dan	Annual Leave	February 3, 4, 18, 19, 21
Tom	Annual Leave	February 14
Gwen	None Scheduled	
Janet	None Scheduled	
Gary	None Scheduled	

Claims database WAN to Mary Rose Hagan on February 3, 1997.



**Prisons**

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

---

*Kansas City, KS 66101-2492*

March 7, 1997

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

**FROM: JOHN R. SHAW, Regional Counsel**

**SUBJECT: MONTHLY REPORT (February 1997)**

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

**LITIGATION:**



JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC										
38	22									

**Total for Calendar Year 60**

**Pending 342**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC										
70	114									

**Total for Calendar Year 184**

**Pending 372**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC										
176	180									

**Total for Calendar Year 356**

**ADVERSE DECISIONS**

**SETTLEMENTS OR JUDGMENTS**

**DECISIONS OF INTEREST**

Rosenberg v. Creswell, Case No. CIV 93-4131, D.S.D., FPC Yankton

This plaintiff in this Bivens action is the executor of a deceased inmate's estate. The inmate died of cancer after he received treatment from medical staff at FPC Yankton and FMC Rochester.

The plaintiff's suit was initially dismissed by the District Court for failure to state a claim. The Eighth Circuit reversed and the plaintiff named additional defendants under F.R.Civ. P. 15(c). A summary judgment motion was filed challenging the addition of new defendants and asserting qualified immunity for all of the defendants. After evaluating the relevant medical records and the expert opinion of Dr. Teresa Jensen from FMC Rochester, Judge John Jones held the

defendants were entitled to qualified immunity. The judge assessed that the defendants did not know that the inmate was inflicted with cancer at the time they provided him routine treatment for his sore throat.

### PENDING CASES OF INTEREST

Brown v. Pharmchem, Case No. 3-95-103, D.Minn., FCI Sandstone

This case has been brought against the BOP and Pharmchem because Pharmchem mistakenly reported that the plaintiff tested positive for narcotics use. After the BOP learned of Pharmchem's mistake, the plaintiff's good time was restored and the incident report was expunged. Apparently Pharmchem is close to settling with the plaintiff for an undisclosed amount of money. Discovery has been completed and we have communicated to the AUSA defending the matter that the BOP is not willing to settle the matter and will proceed to trial.

Dunlap v. Reno, Case No. 95-D-2877, D. Col., Florence Complex

The plaintiff in this case, an African-American employee, sued the Attorney General for race discrimination and retaliation related to his discipline for misconduct. After the United States filed its motion for summary judgment, counsel for the plaintiff indicated that his client may be willing to voluntarily dismiss the matter because Mr. Dunlap is a member of the Enzor class-action settlement.

Perse v. United States, Case No. 96-WY-1739-W, D. Col., FBI Englewood

The plaintiff in this case is the wife of a deceased Colorado Department of Corrections staff member who died in a rappelling accident. BOP staff members were present and the plaintiff has alleged that their negligence was the cause of her husband's death. The NCRO has researched various issues related to the "borrowed servant defense," impleader, and designation of non-parties for purposes of assessing liability. The case is currently in discovery and depositions have been set up for the BOP staff members.

Gatther v. Reno, Case No. 95-11076, Fifth Circuit Court of Appeals, FBI Oxford

After losing at both the district court and court of appeals, Mr. Gaither has applied to the U.S. Supreme Court for a Writ of Certiorari to the U.S. Supreme Court. Mr. Gaither alleged he was discriminated against and retaliated against by numerous BOP staff members. It appears the same attorneys who represented him in the lower courts are handling this matter as well.

Love v. Tippy, Case No. , Eighth Circuit Court of Appeals, FBI Waseca

The appellant in this case is a federal inmate who was denied a reduction in his sentence under 18 U.S.C. 3621(e). The district court upheld the BOP's determination that the offense of Carrying a Firearm During a Drug Trafficking Offense in violation of 18 U.S.C. 924(c)(1) was a crime of violence under 3621 (e).

Sesler v. Pitzer, Case No. 96-2185, Eighth Circuit Court of Appeals, FPC Duluth

Oral argument was heard by the panel on this case involving a former federal inmate who was

denied early release under 18 U.S.C. 3621(e). Unfortunately, while there has been no official opinion, it appeared that the panel regarded the matter as moot since the plaintiff is no longer in the Attorney General's custody.

Johnson v. United States, Case No. 96-C-5708, N.D. Ill., MCC Chicago

Administrator of a deceased inmate's estate is suing the BOP for wrongful death. The inmate was seen by MCC prior to the time he committed suicide by hanging. Subsequent to the suicide a "psychological autopsy" was conducted and the psychologist recommended that exposed pipes be removed from certain cells in the MCC. Depositions are scheduled for March 19, 1997.

Parmelee v. True, et al., Case No. 93-C-7362, N.D. Ill., M.C. Chicago

This case involves claims of excessive force brought by an inmate against employees of the U.S. Marshal's Service and the BOP. Apparently there was a struggle between Parmelee and USMS staff in the MCC. When it appeared that the marshals were in danger, the BOP staff member intervened. The BOP staff member was subsequently disciplined by the former MCC Warden even though the USMS staff members felt that his intervention was necessary. DOJ Torts Branch allowed the BOP employee to receive DOJ representation in spite of the discipline. Depositions are scheduled for this month.

Moore v. Reno, et al., Case No. , D.Col., USP Florence

USP Florence inmate filed a TRO challenging the Ensign Amendment. OGC has accepted the primary responsibility for defending this action. A declaration was prepared by Florence legal staff stating that Mr. Moore's central file contained no publication rejection notices or cop-outs relating to the Ensign Amendment.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

Hawpetoss v. Helman, Case No. 96-1328, C.D.Ill., FBI Greenville

Plaintiff alleges that because of the BOP's policy prohibiting smoking tobacco while housed in a segregation unit, he has been deprived of the right to practice his religion as a Native American.

Meyer v. Bureau of Prisons, Case No. 96-3241-CV-S-RGC, W.D. Mo., USMCFP Springfield  
Plaintiff complains that his rights under RFRA are being violated because he is being forced to work on one of his religion's "work proscription days."

### **CRIMINAL MATTERS**

United States v. Carter, Case No. , D. Col., Florence Complex

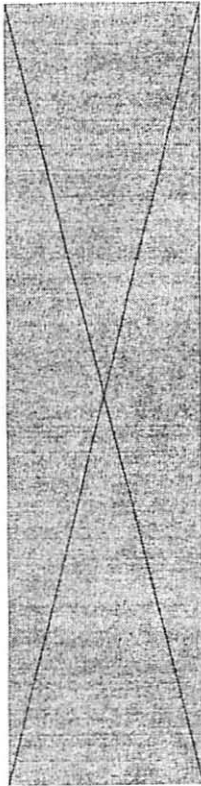
Inmate Carter was found guilty of three counts of assault on staff. Federal District Court Judge Danile sentenced Mr. Carter to 92 months for each count to be run consecutive with his current sentence.

**ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

**STAFF TRAVEL AND LEAVE**

John	OGC Meeting	March 10-14
Daryl	FMC Rochester Annual Leave	March 13-14 March 31
Dan	Annual Leave (1/2 days, will be in the office in the afternoons)	March 3-7 & 10-14
Tom	DHO Training	March 3-7
Gwen	None Scheduled	
Janet	None Scheduled	
Gary	None Scheduled	

Claims database WAN to Mary Rose Hagan on March 3, 1997.  
Meyer v. Bureau



**Prisons**

**U.S. Department of Justice  
Federal Bureau of**

**North Central Region**

---

*Kansas City, KS 66101-2492*

*April 7, 1997*

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

**FROM: JOHN R. SHAW, Regional Counsel**

**SUBJECT: QUARTERLY/MONTHLY REPORT (March 1997)**

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

**LITIGATION:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
38	22	23									

**Total new cases for calendar year 83**

**Pending 342**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95									

**Total for Calendar Year 263**

**Pending 415**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	184									

**Total for Calendar Year 540**

**ADVERSE DECISIONS**

**Dykstra v. United States**, Case No. 95-3193-CV-S-RGC, (W.D.Mo.), USMCFP

The judge in this case previously dismissed the inmate's allegations that the United States and its employees had failed to protect him from being raped by another inmate. The FTCA portion of the claim was dismissed after the United States raised the discretionary function exception. With only a medical malpractice claim surviving, the United States again motioned for dismissal for failure to exhaust administrative remedies. The District Court concluded that only "notice" was required under 28 U.S.C. 2675(a) and the inmate's SF-95 satisfied this requirement when it included only a single sentence regarding denial of medical treatment. Trial is set for May 28, 1997 with USMCFP Attorney Dennis Bitz providing the U.S. Attorney's Office assistance.

**SETTLEMENTS OR JUDGMENTS**

**Baramdyka v. BOP**, Case No. 94-N-1777, (D.Col.), Florence

Foreign jail credit case in which the BOP provided an inmate 28 months jail credit, immediate release, and \$1000.00 in settlement. The inmate was released on March 4, 1997 and signed a stipulation holding BOP and all staff harmless thus waiving his right to sue in the future

**DECISIONS OF INTEREST**

**Martin v. Gerlinski**, Case No. CIV96-4266, (D.S.D.), FPC Yankton

The court determined that it was with the BOP's discretion and expertise to determine what crimes were violent under 3621(e). The court cited the recent Northern District of West Virginia opinion in Pelissero v. Thompson and held that in those instances where there is a "remedial post-sentencing early release statute" the BOP must make its decision with a cautious eye toward the public safety and welfare. Additionally, the court pointed out that another subchapter of VCCLEA providing remedial opportunities for nonviolent offenders with substance abuse problems defines a "violent offender" as an offender who possessed a firearm or other dangerous weapon, see 42 U.S.C. § 3796ii-2(1), so it is reasonable for the BOP to use a similar classification when construing another section of VCCLEA. Two other favorable 3621 cases were decided by Judge Piersol in the District of South Dakota; Miller v. Gerlinski and Thorp v. Gerlinski.

**Clifton v. Miller, et al.**, Case No. 89-CV-3075, (S.D.Ill.), USP Marion

In April 1996 the plaintiff prevailed on both his claims under the Constitution and the FTCA. On March 27, 1997 the court conceded that the plaintiff's FTCA judgment was exclusive and thus barred any recovery against individual defendants under Bivens.

### **PENDING CASES OF INTEREST**

**Love v. Tippy**, Appeal No. 96-4224, (Eighth Circuit), FCI Waseca

This appeal involves the BOP's determination that a 18 U.S.C. 924(c) (1) conviction for carrying a firearm during a drug trafficking offense was a crime of violence for purposes of 18 U.S.C. 43621(c). Hopefully the Eighth Circuit will rule favorably on the Sessler v. Pitzer appeal which involved an almost identical set of facts.

**Norton v. United States**, Case No. 94-C-1430, N.D. Illinois, FCI Oxford . . .

This medical malpractice claims alleges a failure to timely diagnose cancer which eventually resulted in the death of an offender. Trial is scheduled to begin in Chicago on April 21, 1997. The government has obtained the services of an expert witness whose opinion is that there was no deviation from the standards of community care.

**Howard v. United States**, Case No. 92-1515-N, District of Colorado, FCI Englewood

Judge Nottingham issued an order vacating as moot his preliminary injunction directing FCI Englewood staff to permit offender Robert Howard to perform certain satanic rituals at FCI Englewood. The petitioner had received a disciplinary transfer in April, 1995 to USP Leavenworth. Judge Nottingham also denied the government's motion for reconsideration as moot. The judge ordered the parties to brief four issues: proper venue; the existence or non-existence of a national BOP policy concerning the performance of satanic rituals within federal prisons; the government's compelling interests in prohibiting the performance of satanic rituals; and the least restrictive alternatives for protecting those interests. Regional legal staff

submitted a detailed memorandum of law on the issue of venue, and the absence of a policy prohibiting satanic practices inside federal prisons. The assistance additionally noted the petitioner's failure to request an opportunity to engage in religious activities at USP Leavenworth. The court was advised that in the absence of specific requests concerning time, space, and accouterments needed, the government could not articulate interests related to security and good order.

**Lang v. United States, et. al.**, Case No. 4-96-54, District of Minnesota, FMC Rochester  
This hybrid Bivens/FTCA case alleges that FMC Rochester staff were negligent in housing the plaintiff with another inmate who assaulted the plaintiff. The Bivens portion of the complaint alleges retaliatory action. The deposition of several past and current BOP employees were conducted in March in Iowa, South Dakota and California. The deposition of one witness in New York was rescheduled when a snow storm closed the Minneapolis airport. Following the deposition of the former warden at FMC Rochester, the only named Bivens defendant, the plaintiff has submitted a stipulation to dismiss the Bivens claim without prejudice.

**United States v. Wendell Woods**, Case No. 4-87-553, District of Minnesota, F.C. Rochester  
This case deals with issues related to revocation of a 18 USC 4246 conditional release. The respondent was on his fourth conditional release when he left his place of residence without permission in August, 1994. Two years later, the state of Washington released him to a U.S. Marshals Service detainer. The respondent had been in several state facilities for treatment and pre-trial confinement related to a state bank robbery charge. The state charges were dismissed due to the defendant's lack of competency.

The revocation case has already resulted in one published opinion dealing with conditional release revocation, *United States v. Woods*, 944 F.Supp. 778 (D. Minn. 1996). A magistrate judge has issued a report and recommendation (January 7, 1997) recommending revocation and recommitment. The R & R sets the burden of proof on the government to establish by a preponderance of the evidence that the petitioner has violated his conditional release and that his continued conditional release poses a substantial risk of bodily injury to another or serious damage to the property of another. The Federal Public Defender's Office has filed objections to the R & R. A reported case on these issues may have an impact on operations not only at Rochester, but also Springfield and Butner.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

**Brown v. Feldkamp**, Case No. 94-570-JPG, S.D. Illinois, USP Marion  
The plaintiff in this RFRA case alleges that defendant Feldkamp, USP Marion Administrator, failed to provide an appropriate and varied Kosher diet for Kosher and non-Kosher eating utensils; stored non-Kosher food with Kosher utensils; made defamatory remarks about Jewish inmates; wrongfully removed inmates from the Marion facility and served "rotten" vegetables. The plaintiff seeks relief in the amount of \$100,000. The Marion legal staff is attempting to replace Mr. Feldkamp with the United States Attorney. Congress did not intend a separate cause of action for monetary damage

es: mixed  
le  
er diet:  
USP  
ing that  
duals.



## **ENSIGN AMENDMENT LITIGATION**

**Ohm v. Helman**, Case No. 96-1531, C.D. Illinois, FCI Pekin

District court has given petitioner until April 30, 1997 to make partial filing fee payment. No service has been made in this case.

## **CRIMINAL MATTERS**

**United States v. Jones**, Case No. , (D.Col.), Florence

Inmate Jones assaulted another inmate with a lock in a sock. He pled guilty to simple assault and possession of contraband on March 13, 1997 to a consecutive 12 month sentence.

**United States v. Bates**, Case No. , (D.Col.), Florence

Inmate Bates assaulted another inmate with a piece of metal from the USP weight pile. Bates pled guilty to simple assault and possession of contraband on March 13, 1997 to a consecutive 12 month sentence.

**United States v. Holland**, Case No. , (D. Col.), Florence

Holland assaulted a staff member and Judge Borchers upheld a proposed 22 month plea agreement pending further analysis of the inmate's mental condition.

**United States v. Rhodes**, Case No. , (D. Col.), Florence

Inmate assaulted a dentist at the USP and pled guilty to an assault with a 22 month sentence.

**United States v. Chitwood**, Case No. , (D.Col), Florence

Inmate pled guilty to the simple assault of two correctional officer. The inmate was sentenced to 24 months, consecutive.

**United States v. Ford**, Case No. , (D.Col.), Florence

Inmate threw a staff member off the second tier of a unit. The inmate pled guilty to assault and is set to be sentenced in April.

## **ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

### **PERSONNEL ISSUES:**

Jeff Toenges returned to FMC Rochester as institution attorney advisor.

LeeAnn Tufte reported to the regional office in her capacity as paralegal trainee.

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

---

Kansas City, KS 66101-2492

April 7, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: QUARTERLY/MONTHLY REPORT (March 1997)

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

**LITIGATION:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
38	22	23									

Total new cases for calendar year 83

Pending 342

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95									

Total for Calendar Year 263

Pending 415

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	184									

Total for Calendar Year 540

**ADVERSE DECISIONS**

**Dykstra v. United States**, Case No. 95-3193-CV-S-RGC, (W.D.Mo.), USMCFP  
The judge in this case previously dismissed the inmate's allegations that the United States and its

employees had failed to protect him from being raped by another inmate. The FTCA portion of the claim was dismissed after the United States raised the discretionary function exception. With only a medical malpractice claim surviving, the United States again motioned for dismissal for failure to exhaust administrative remedies. The District Court concluded that only "notice" was required under 28 U.S.C. 2675(a) and the inmate's SF-95 satisfied this requirement when it included only a single sentence regarding denial of medical treatment. Trial is set for May 28, 1997 with USMCFP Attorney Dennis Bitz providing the U.S. Attorney's Office assistance.

### **SETTLEMENTS OR JUDGMENTS**

**Baramdyka v. BOP**, Case No. 94-N-1777, (D.Col.), Florence  
Foreign jail credit case in which the BOP provided an inmate 28 months jail credit, immediate release, and \$1000.00 in settlement. The inmate was released on March 4, 1997 and signed a stipulation holding BOP and all staff harmless thus waiving his right to sue in the future.

### **DECISIONS OF INTEREST**

**Martin v. Gerlinski**, Case No. CIV96-4266, (D.S.D.), FPC Yankton  
The court determined that it was with the BOP's discretion and expertise to determine what crimes were violent under 3621(e). The court cited the recent Northern District of West Virginia opinion in Pelissero v. Thompson and held that in those instances where there is a "remedial post-sentencing early release statute" the BOP must make its decision with a cautious eye toward the public safety and welfare. Additionally, the court pointed out that another subchapter of VCCLEA providing remedial opportunities for nonviolent offenders with substance abuse problems defines a "violent offender" as an offender who possessed a firearm or other dangerous weapon, see 42 U.S.C. § 3796ii-2(1), so it is reasonable for the BOP to use a similar classification when construing another section of VCCLEA. Two other favorable 3621 cases were decided by Judge Piersol in the District of South Dakota; Miller v. Gerlinski and Thorp v. Gerlinski.

**Clifton v. Miller, et al.**, Case No. 89-CV-3075, (S.D.Ill.), USP Marion  
In April 1996 the plaintiff prevailed on both his claims under the Constitution and the FTCA. On March 27, 1997 the court conceded that the plaintiff's FTCA judgment was exclusive and thus barred any recovery against individual defendants under Bivens.

### **PENDING CASES OF INTEREST**

**Love v. Tippy**, Appeal No. 96-4224, (Eighth Circuit), FCI Waseca  
This appeal involves the BOP's determination that a 18 U.S.C. 924(c) (1) conviction for carrying a firearm during a drug trafficking offense was a crime of violence for purposes of 18 U.S.C. 43621(c). Hopefully the Eighth Circuit will rule favorably on the Sessler v. Pitzer appeal which involved an almost identical set of facts.

**Norton v. United States**, Case No. 94-C-1430, N.D. Illinois, FCI Oxford .

This medical malpractice claims alleges a failure to timely diagnose cancer which eventually resulted in the death of an offender. Trial is scheduled to begin in Chicago on April 21, 1997. The government has obtained the services of an expert witness whose opinion is that there was no deviation from the standards of community care.

**Howard v. United States**, Case No. 92-1515-N, District of Colorado, FCI Englewood Judge Nottingham issued an order vacating as moot his preliminary injunction directing FCI Englewood staff to permit offender Robert Howard to perform certain satanic rituals at FCI Englewood. The petitioner had received a disciplinary transfer in April, 1995 to USP Leavenworth. Judge Nottingham also denied the government's motion for reconsideration as moot. The judge ordered the parties to brief four issues: proper venue; the existence or non-existence of a national BOP policy concerning the performance of satanic rituals within federal prisons; the government's compelling interests in prohibiting the performance of satanic rituals; and the least restrictive alternatives for protecting those interests. Regional legal staff submitted a detailed memorandum of law on the issue of venue, and the absence of a policy prohibiting satanic practices inside federal prisons. The assistance additionally noted the petitioner's failure to request an opportunity to engage in religious activities at USP Leavenworth. The court was advised that in the absence of specific requests concerning time, space, and accouterments needed, the government could not articulate interests related to security and good order.

**Lang v. United States, et. al.**, Case No. 4-96-54, District of Minnesota, FMC Rochester This hybrid Bivens/FTCA case alleges that FMC Rochester staff were negligent in housing the plaintiff with another inmate who assaulted the plaintiff. The Bivens portion of the complaint alleges retaliatory action. The deposition of several past and current BOP employees were conducted in March in Iowa, South Dakota and California. The deposition of one witness in New York was rescheduled when a snow storm closed the Minneapolis airport. Following the deposition of the former warden at FMC Rochester, the only named Bivens defendant, the plaintiff has submitted a stipulation to dismiss the Bivens claim without prejudice.

**United States v. Wendell Woods**, Case No. 4-87-553, District of Minnesota, F.C. Rochester This case deals with issues related to revocation of a 18 USC 4246 conditional release. The respondent was on his fourth conditional release when he left his place of residence without permission in August, 1994. Two years later, the state of Washington released him to a U.S. Marshals Service detainer. The respondent had been in several state facilities for treatment and pre-trial confinement related to a state bank robbery charge. The state charges were dismissed due to the defendant's lack of competency.

The revocation case has already resulted in one published opinion dealing with conditional release revocation, United States v. Woods, 944 F.Supp. 778 (D. Minn. 1996). A magistrate judge has issued a report and recommendation (January 7, 1997) recommending revocation and recommitment. The R & R sets the burden of proof on the government to establish by a preponderance of the evidence that the petitioner has violated his conditional release and that his continued conditional release poses a substantial risk of bodily injury to another or serious damage to the property of another. The Federal Public Defender's Office has filed objections to the R & R. A reported case on these issues may have an impact on operations not only at Rochester, but also Springfield and Butner.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

**Brown v. Feldkamp**, Case No. 94-570-JPG, S.D.Illinois, USP Marion

The plaintiff in this RFRA case alleges that defendant Feldkamp, USP Marion Food Administrator, failed to provide an appropriate and varied Kosher diet for Jewish inmates; mixed Kosher and non-Kosher eating utensils; stored non-Kosher food with Kosher food; made defamatory remarks about Jewish inmates; wrongfully removed inmates from the Kosher diet; and served "rotten" vegetables. The plaintiff seeks relief in the amount of \$1,000,000. USP Marion legal staff is attempting to replace Mr. Feldkamp with the United States by arguing that Congress did not intend a separate cause of action for monetary damages against individuals.

### **ENSIGN AMENDMENT LITIGATION**

**Ohm v. Helman**, Case No. 96-1531, C.D. Illinois, FCI Pekin  
District court has given petitioner until April 30, 1997 to make partial filing fee payment. No service has been made in this case.

### **CRIMINAL MATTERS**

**United States v. Jones**, Case No. , (D.Col.), Florence  
Inmate Jones assaulted another inmate with a lock in a sock. He pled guilty to simple assault and possession of contraband on March 13, 1997 to a consecutive 12 month sentence.

**United States v. Bates**, Case No. , (D.Col.), Florence  
Inmate Bates assaulted another inmate with a piece of metal from the USP weight pile. Bates pled guilty to simple assault and possession of contraband on March 13, 1997 to a consecutive 12 month sentence.

**United States v. Holland**, Case No. , (D. Col.), Florence  
Holland assaulted a staff member and Judge Borchers upheld a proposed 22 month plea agreement pending further analysis of the inmate's mental condition.

**United States v. Rhodes**, Case No. , (D. Col.), Florence  
Inmate assaulted a dentist at the USP and pled guilty to an assault with a 22 month sentence.

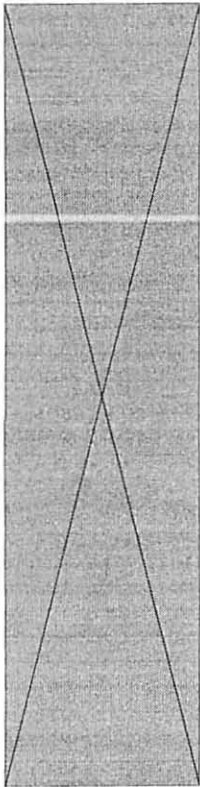
**United States v. Chitwood**, Case No. , (D.Col), Florence  
Inmate pled guilty to the simple assault of two correctional officer. The inmate was sentenced to 24 months, consecutive.

**United States v. Ford**, Case No. , (D.Col.), Florence  
Inmate threw a staff member off the second tier of a unit. The inmate pled guilty to assault and is set to be sentenced in April.

### **ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

#### **PERSONNEL ISSUES:**

Jeff Toenges returned to FMC Rochester as institution attorney advisor.



**Prisons**

**U.S. Department of Justice  
Federal Bureau of**

**North Central Region**

---

*Kansas City, KS 66101-2492*

**May 9, 1997**

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

**FROM: JOHN R. SHAW, Regional Counsel**

**SUBJECT: MONTHLY REPORT (April 1997)**

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

**LITIGATION:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
38	22	23	39								

**Total new cases for calendar year 122**

#### **ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95	66								

**Total for Calendar Year 329**

**Pending 430**

#### **ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	184	196								

**Total for Calendar Year 736**

#### **ADVERSE DECISIONS**

Norton v. United States, Case No. 94-C-1430, (N.D. Ill.), FCI Oxford

On April 28, 1997, after a four-day bench trial, the district court found in favor of the widow of a former BOP inmate in the amount of \$678,477.67. This total included medical and funeral expenses, loss of life expectancy, pain and suffering, and wrongful death. The court found that the inmate, James Norton, had incurable cancer at the time he entered BOP custody, but given the responsiveness Mr. Norton had to cancer treatment, a more timely diagnosis would have extended the period of his life.

At trial the experts for the United States testified that BOP medical staff did not deviate from the standard of care and that Mr. Norton's gall stones masked what was probably the real cause of his pain, invasion of his lung cancer into his bones. These experts also stated that Mr. Norton's cancer had begun to metastasize by the time he came into BOP custody. The AUSA has taken the position that no appeal should be made since the judge based his findings of facts on the opinion of the plaintiff's experts to which the appeals court will be extremely deferential. We are currently preparing a recommendation as to appeal.

#### **SETTLEMENTS OR JUDGMENTS**

Sesler v. Pitzer, 110 F.3d 569 (8th Cir. 1997), FMC Rochester

The Court of Appeals affirmed the district court's denial of an offender's habeas corpus petition

Dunn v. Seiter, et al., S.D. Ill Case No. 95-928-JPG  
Johnson v. Seiter, et al., S.D. Ill Case No.96-396-JPG  
Huffman v. Hawk , et al.,S.D. Ill Case No. 96-629-JPG  
McCoy v. Nelson, et al., S.D. Ill Case No.96-790-JPG  
Freiberger v. Seiter, et al., S.D. Ill Case No. 96-028-JPG  
Williams v. Pitts, et al., S.D. Ill Case No 96-597-JPG

These similar cases contain allegations against staff at FCI Greenville alleging excessive use of force in the aftermath of the October, 1995 disturbance. Representation issues have been resolved as to Okai v. Verfurth, et al. and Tyler v. Verfurth, et al..

In Okai v. Verfurth, et al., four defendants were approved for representation. The four defendants are being represented by Jesselyn Brown, Constitutional Torts Branch, Civil Division. Rick Hess and Neil Perryman are providing representation to the two defendants denied representation. In Tyler v. Verfurth, et al., four of the defendants are being represented by 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. NCRO recommendations have been submitted in Smith v. King, et al. and a decision is currently pending.

As to the remainder of the cases, requests for DOJ representation and the issuance of NCRO recommendations are ongoing processes. In all of these matters, extensive time is being dedicated to document review including OIA Reports and Institution records. The matter is complicated because the agency took administrative disciplinary action against some of the defendants for conduct which in most cases did not involve the respective plaintiffs. We have been working closely with DOJ staff regarding representation issues and will continue to do so.

Gil v. Medical Director, et al., Case No. 95-CV-5217, (N. D.Ill.), MCC Chicago Inmate alleges that MCC medical staff ignored his ulcer for several months in 1993. This indifference resulted in two emergency medical trips to community for surgery. The court has appointed counsel in this case.

#### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

None.

#### **ENSIGN AMENDMENT LITIGATION**

None.

#### **CRIMINAL MATTERS**



## OCTOBER DISTURBANCE CASES:

As of May 1, 1997, U.S. Attorney's Offices in three districts (Southern District of Illinois, Western District of Wisconsin and Colorado) have filed charges against nineteen offenders in the aftermath of the October, 1995 disturbances. Sixteen offenders pleaded guilty or were found guilty. Two offenders are awaiting trial, and one offender's charges were dismissed by the government.

### United States v. Holland, Case No. , (D. Col.), Florence Complex

An inmate assaulted a staff member and agreed to a 22 month sentence but the judge wants more information about the inmate's mental status before he will agree to plea. Sentencing now scheduled for May 1997

### United States v. Cooke, Case No. ,(D. Col.), Florence Complex

Inmate was found guilty of possessing 1.8 pounds of marijuana and pled guilty to felony possession. No sentencing data as of this writing.

### United States v. Melgar, Case No. 97-10006, (C.D.Ill.), FCI Pekin

Inmate pled guilty to assault on a staff member and is expected to be sentenced in July 1997. AW Rick Stiff will testify as to the severity of such conduct in a prison environment.

Illinois v. Kenneth Jones, Case No. \_\_\_\_\_, Circuit Court of Bond County, Illinois, FCI Greenville. FCI Greenville inmate Jones and his female visitor were observed passing contraband in the FCI visiting room. When narcotics were found, the case was referred to the FBI. The U.S. Attorney's Office declined prosecution. Because of the concurrent jurisdiction at FCI Greenville, Jones and the visitor have been charged in state court.

## ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

Regional legal staff participated in a Joint Legal Training with Mid-Atlantic Regional legal staff in Durham, North Carolina. A diverse number of significant legal issues were addressed.

## UPCOMING HEARINGS OR TRIALS

Two significant trials will begin in the North Central Region. USA v. Storey is a capital case involving an inmate on inmate homicide. Trial is scheduled to begin in Topeka, Kansas on May 19, 1997. It is projected that NCRO legal staff will attend each day of the trial. Dykstra v. United States is an FTCA action alleging a failure by BOP medical staff to treat Post Traumatic Stress Disorder following an inmate on inmate assault. Trial is scheduled to begin May 28, 1997 in Springfield, Missouri.

## PERSONNEL ISSUES:

Tom Mueller, NCRO Honor Program Attorney, was recently selected to fill an attorney vacancy

at USP Allenwood. Tom has a reporting date of July 22, 1997.

STAFF TRAVEL AND LEAVE

John	None	
Daryl	None	
Dan	None	
Tom	House Hunting Allenwood area	May 27 - 30
Gwen	None	
Janet	None	
Gary	None	
LeeAnn	Paralegal Studies Denver, Colorado	April 28 -May 9

Claims database WAN to Mary Rose Hagan on May 6, 1997.

U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons  
North Central Region  
Office of Regional Counsel

---

Kansas City, KS 66101

June 6, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (May, 1997)

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

**LITIGATION:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
38	22	23	39	28							

**Total new cases for calendar year 150**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95	66	95							

**Total for Calendar Year 428**

**Pending 424**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	184	196	207							

**Total for Calendar Year 943**

**ADVERSE DECISIONS**

None this period

### SETTLEMENTS OR JUDGMENTS

See Dunlap v. Reno in Employment Law Section

### DECISIONS OF INTEREST

None this period.

### PENDING CASES OF INTEREST

Hudson v. Helman, Case No. 97-1154 (7th Cir), FCI Pekin

Inmate Hudson filed an appeal of a habeas denial with the Court of Appeals. The court requested financial information, and when Hudson failed to produce the information, dismissed the appeal but ordered the institution to withdraw \$105.00 from Hudson's commissary account. Hudson refused to execute the necessary paperwork to authorize the withdrawal of funds. The district court (C.D. Illinois) was vested with the task of collecting the filing fee. The court issued an order to show cause why the Warden at FCI Pekin did not withdraw the money. A response is due on or before June 17, 1997. Staff in the Correctional Issues Branch have been consulted about this issue.

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

The plaintiff in this case is the wife of a deceased Colorado Department of Corrections (CDOC) staff member who died in a rappelling accident. BOP staff members were present to assist the CDOC in conducting its training program and the plaintiff has alleged that their negligence was the cause of her husband's death. Discovery is complete, depositions having been taken of various BOP staff members. Experts in the area of rappelling and economics have submitted opinions on behalf of both parties outlining liability and damages respectively. Plaintiff's rappelling expert has provided a very strong opinion pointing toward BOP staff negligence in the accident. The "borrowed servant defense" will be asserted at trial in an attempt to assign liability to the CDOC. Additionally, in the event of a finding of United States liability, indemnification by the CDOC may be available pursuant to a licensing agreement between the CDOC and the USAF, the premises upon which the incident occurred.

Bivens actions arising from the October 1995 Disturbance at FCI Greenville:

Okaj v. Verefurth, et al., S.D. Ill Case No. 96-47-JPG  
Tyler v. Verefurth, et al., S.D. Ill Case No.96-46-JPG  
Smith v. King, et al., S.D. Ill Case No. 96-507-JPG  
Dunn v. Seiter, et al., S.D. Ill Case No. 95-928-JPG  
Johnson v. Seiter, et al., S.D. Ill Case No.96-396-JPG

Huffman v. Hawk, et al., S.D. Ill Case No. 96-629-JPG  
McCoy v. Nelson, et al., S.D. Ill Case No.96-790-JPG  
Freiberger v. Seiter, et al., S.D. Ill Case No. 96-028-JPG  
Williams v. Pitts, et al., S.D. Ill Case No. 96-597-JPG  
Larkin v. Galloway, et. al., S.D. Ill Case No. 96-607-JPG

These ten similar cases contain allegations against staff at FCI Greenville alleging excessive use of force in the aftermath of the October, 1995 disturbance. Representation issues have been resolved as to Okai v. Verefurth, et al. and Tyler v. Verefurth, et al.

In Okai v. Verefurth, et al., four defendants were approved for representation. The four defendants are being represented by Jesselyn Brown, Constitutional Torts Branch, Civil Division. Rick Hess and Neil Perryman are providing representation to the two defendants denied representation.

In Tyler v. Verfurth, et al., four of the defendants are being represented by 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.

In Smith v. King, et al., one defendant has been granted representation and is being represented by the U.S. Attorney's Office for the Southern District of Illinois. Four defendants were denied representation.

As to the remainder of the cases, requests for DOJ representation and the issuance of NCRO recommendations are ongoing processes. In all of these matters, extensive time is being dedicated to document review including OIA Reports and Institution records. The matter is complicated because the agency took administrative disciplinary action against some of the defendants for conduct which in most cases did not involve the respective plaintiffs. We have been working closely with DOJ staff regarding representation issues and will continue to do so.

#### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

None this period.

#### **ENSIGN AMENDMENT LITIGATION**

Amatel, Moore and Levitan v. Reno, Case No. 96-02774, 96-02790, 97-00475, D.D.C., Florence Complex

Several inmates that the Ensign Amendment is facially unconstitutional. The case is being defended by Central Office OGC.

## EMPLOYMENT LAW LITIGATION

Thomas v. Reno, Case No. 97-D-708, MSTC, D.Colorado

Mr. Thomas, a rehired annuitant, and former Associate Warden, now alleges he was removed by the Bureau because of age discrimination. This office recently received summary judgment on another case Mr. Thomas filed in the U.S. District of Colorado (Thomas v. Reno, 95-S-1180). Mr. Thomas, who is litigating the matter on his own, is seeking backpay and reinstatement.

Lozano v. Reno, Case No. 95-5-2661, FCI Englewood, D. Colorado

This case is set for a four-day trial on February 9, 1998. The plaintiff in this case was a probationary correctional officer who was removed from his position for false statements in connection with his pre-employment interview and SF-171. After being removed from his position Mr. Lozano developed a serious medical condition that has shortened his life expectancy. Mr. Lozano now claims that but-for his removal he would have carried health insurance and thus not incurred the extraordinary medical costs he now has to pay personally.

Pedersen v. Reno, Case No. 5-95-304, FPC Duluth/Unicor, D. Minn.

Unless there is a settlement, this case will be tried in late September or early October. The plaintiff in this case is a current DHO who alleges that the BOP discriminated and retaliated against her through the use of its own Grade Guidelines for Managers. She has brought suit under the EPA and Title VII. At last count she was seeking approximately \$40,000 in back-pay and interest and \$50,000 in attorney's fees.

Dunlap v. Reno, Case No. 95-D-2877, Florence Complex, D. Colorado

This case was recently dismissed by the plaintiff. The plaintiff had alleged that he was retaliated against and discriminated against by the BOP and sought and undisclosed sum of compensatory damages. The plaintiff had successfully argued against his removal before the MSPB and sought damages for the manner in which BOP OIA conducted its background investigation and his placement on home duty. The United States filed a motion for summary judgment and argued that he was obligated to bring his claim before the MSPB and was barred from seeking damages in federal court. The plaintiff opposed the motion, but before receiving a ruling from the court notified the U.S. Attorney's Office that his damages were encompassed in the settlement agreement made in the Enzor v. Reno case. After receiving the motion, the district court judge approved the voluntary dismissal.

### CRIMINAL MATTERS

United States v. Storey, D. Kansas, USP Leavenworth

Storey had been indicted for the First Degree Murder of another inmate in a recreation pen at USP Leavenworth. The Attorney General had authorized seeking the death penalty. After all preparation had been done for trial, defense counsel proposed a plea of Second Degree Murder. The proposal was conveyed to the BOP and the AUSA was advised the agency had no objections. A plea was entered. Sentencing is set for August, 1997. Storey is currently 34 years of age. His current release date from his two bank robbery and escape convictions is 2015. A high range sentence of 27 years will be the equivalent of a life sentence.

United States v. Ricketts and Jones, FCI Greenville, S.D. Illinois

Ricketts and Jones are charged with rioting and Jones with assault as a result of conduct from the October, 1995 disturbance. Trial begins in East St. Louis on June 9, 1997.

### ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

-John Shaw led a team that conducted the OGC's latest Legal Services Management Review. The review was conducted at the MCC New York and went very well.

-Dan Eckhart provided presentations on the Department's deadly use of force policy at Camp Ripley during annual Sort Training.

-Daryl Kosiak accompanied two trial attorneys from the DOJ Torts Branch to FCI Greenville and FCI Oxford to interview witnesses and defendants and depose the plaintiff in the case of Okai v. Verefurth.

-Tom Mueller went to the Allenwood, Pennsylvania area for his house hunting trip.

### UPCOMING HEARINGS OR TRIALS

#### PERSONNEL ISSUES:

Walter Pirnot is scheduled to begin duties as a legal intern. Mr. Pirnot recently completed his second year of law school at the University of Missouri, Kansas City School of Law.

NCR Region and institution legal staff participated in the joint MARO/NCRO legal training in Durham, North Carolina. Feedback from participants indicated the training was an excellent learning experience.

STAFF TRAVEL AND LEAVE

John	MCFP Springfield	June 23 - 25
Daryl	Annual Leave	June 19,20 & 23
Dan	Sentence Computation MSTC	June 2 - 5
	Annual Leave	June 20
Tom		
Gwen		
Janet		
Gary	Annual	June 16-20
LeeAnn		

Claims database WAN to Mary Rose Hagan on June 6, 1997.



U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons  
North Central Region  
Office of Regional Counsel

---

Kansas City, KS 66101

July 3, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (June, 1997)

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

**LITIGATION:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
38	22	23	39	28	27						

**Total new cases for calendar year 177**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95	66	95	*						

**Total for Calendar Year 428**

**\* June Claims unavailable due to tort data base failure**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	184	196	226	124						

**Total for Calendar Year 1,112**



**ADVERSE DECISIONS**

**Puccini v. USA, et al**, N.D. Ill. Case No. 96 C 2602, FCI Pekin

Plaintiff filed a hybrid Bivens/FTCA action alleging staff failed to release her in a timely fashion. The court had previously granted a habeas petition directing the BOP to grant the plaintiff an additional 147 days of jail credit. The additional jail credit resulted in a late release. The BOP argued, and continues to believe her sentence was computed correctly. The district court granted summary judgment to five BOP employees: Ed Crosley, Denise Hilliard-Winston, Marvin Lutts, Dave Helman and Steven J. Robinson. The court concluded that in 1992 the law was, and still is, not clearly established. The court also concluded that BOP staff applied BOP policy in denying the credit. As for the FTCA action, the court concluded that the 2680(h) exception to the exception for false imprisonment committed by investigative or law enforcement officers was not applicable because in calculating sentences, BOP officials are not acting as investigative or law enforcement officers.

#### **PENDING CASES OF INTEREST**

**Garrett v. Hawk**, Case No. 96-1429, 10th Cir. Court of Appeals, FCC Florence

The district court dismissed sua sponte a Bivens action for failure to exhaust administrative remedies. On appeal, the Court of Appeals requested a brief from the government as to whether the exhaustion requirement of the PLRA (42 USC 1997e(a)) applies to Bivens actions. Jenifer Grundy and Dan Eckhart are working with AUSA Marilyn Eskeson. Barbara Herwig in DOJ has been contacted for input.

**FCI Greenville Disturbance Cases.** The following eleven similar Bivens cases contain allegations against staff at FCI Greenville alleging excessive use of force in the aftermath of the October, 1995 disturbance.

<b><u>Okai v. Verefurth, et al.</u></b>	S.D. Ill Case No. 96-47-JPG
<b><u>Tyler v. Verefurth, et al.</u></b>	S.D. Ill Case No.96-46-JPG
<b><u>Smith v. King, et al.</u></b>	S.D. Ill Case No. 96-507-JPG
<b><u>Freiberger v. Seiter, et al.</u></b>	S.D. Ill Case No. 96-028-JPG
<b><u>Johnson v. Seiter, et al.</u></b>	S.D. Ill Case No.96-396-JPG
<b><u>Huffman v. Hawk, et al.</u></b>	S.D. Ill Case No. 96-629-JPG
<b><u>McCoy v. Nelson, et al.</u></b>	S.D. Ill Case No.96-790-JPG
<b><u>Williams v. Pitts, et al.</u></b>	S.D. Ill Case No. 96-597-JPG
<b><u>Dunn v. Seiter, et al.</u></b>	S.D. Ill Case No. 95-928-JPG
<b><u>Larkin v. Galloway, et al.</u></b>	S.D. Ill Case No. 96-607-JPG
<b><u>Stewart v. Seiter, et al.</u></b>	S.D. Ill Case No 96-983-JPG

The Department of Justice has been closely examining these actions on a case by case basis to

determine whether granting representation to individual BOP employees is in the best interests of the United States. In all of these matters, extensive time is being dedicated to document review including OIA Reports and Institution records by both the DOJ - Constitutional Torts Branch and the NCRO. The matter is complicated because the agency took administrative disciplinary action against some of the defendants for conduct which in most cases did not involve the respective plaintiffs. We have been working closely with DOJ staff regarding representation issues and will continue to do so.

Representation issues have been resolved as to Okai v. Verefurth, et al., Tyler v. Verefurth, et al., Smith v. King, et al., and Freiberger v. Seiter, et al.

In Okai v. Verefurth, et al., four defendants were approved for representation. The four defendants are being represented by Jesselyn Brown, Constitutional Torts Branch, Civil Division. Rick Hess and Neil Perryman are providing representation to the two defendants denied representation. Discovery is complete and this case is currently in the pre-trial stage. The court has appointed counsel for the plaintiff.

In Tyler v. Verfurth, et al., four of the defendants are being represented by 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. This case is currently in the discovery stage.

In Smith v. King, et al., one defendant has been granted representation and is being represented by the U.S. Attorney's Office for the Southern District of Illinois. Four defendants were denied representation. A motion has been filed for summary judgment as to the one employee granted representation. Additionally, the plaintiff has retained counsel and amended his complaint naming additional staff who currently are requesting representation.

In Freiberger v. Seiter, et al., the one named defendant was denied representation. As to the remainder of the cases, requests for DOJ representation and the issuance of NCRO recommendations are ongoing processes.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

DeNoyer v. Reno, et al., D. Colorado, ADX Florence  
Native American inmate alleges discrimination in provision of religious activities at the ADX.

### **ENSIGN AMENDMENT LITIGATION**

Amatel, Moore and Levitan v. Reno, DDC Case, FCC Florence Case

### **CRIMINAL MATTERS**

**United States v. Ricketts and Jones**, FCI Greenville, S.D. Illinois

Ricketts and Jones are charged with rioting, mutiny and assault as a result of conduct from the October, 1995 disturbance. Trial began in East St. Louis on June 9, 1997 and lasted seven days. Both were convicted of riot and mutiny. Jones was also convicted of two counts of assault. Both were acquitted of two other assault charges. Sentencing is scheduled for September 19, 1997.

**United States v. Tim McVeigh**, FCI Englewood, D. Colorado

Following the jury verdict and recommendation of death, Mr. McVeigh was returned to FCI Englewood pending sentencing. Staff are working with the prosecution team and U.S. Attorney's Office on issues of surveillance, outgoing social mail, and psychological intervention.

**ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

Davis, Gary L., T-NCR-96-856, USP Leavenworth

Claimant alleges BOP staff failed to protect him from another inmate. Staff were aware that the claimant and the assailant had quarreled in the SHU. After the two were released, claimant attempted to resolve the issue. Claimant was stabbed by the assailant several times with a prison made weapon. Claimant seeks \$500,000 in damages.

Mitchell, William, NCR 96-754,

Inmate seeks \$50,000 under FTCA for violations of RFRA. Claimant alleges BOP failed to follow policy concerning cleaning of common fare utensils and that condiments are not Kosher. Trays are washed separately from regular trays and condiments are Kosher.

**UPCOMING HEARINGS OR TRIALS**

**None**

**PERSONNEL ISSUES**

Tom Mueller moves to Pennsylvania to assume his duties at Allenwood. He will be missed. Walter Pirnot has began his duties as a legal intern. Mr. Pirnot recently completed his second year of law school at the University of Missouri, Kansas City School of Law.

**STAFF TRAVEL AND LEAVE**

John

Annual Leave

July 3

Daryl	Annual Leave	July 3, 7 8 & 11
Sick Leave	July 9 & 10	
Dan	None Scheduled	
Tom	Sick Leave	July 7
	Administrative Leave	July 17, 18
Gwen	None Scheduled	
Janet	None Scheduled	
Gary	None Scheduled	
LeeAnn	Annual leave	June 30 - July 3

Claims database NOT WAN'D to Mary Rose Hagan due to failure of our tort data base

U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons  
North Central Region  
Office of Regional Counsel

---

Kansas City, KS 66101

August 8, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (July, 1997)

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

**LITIGATION:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
38	22	23	39	28	27	25					

**Total new cases for calendar year 202**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95	66	95	*	151					

**Total for Calendar Year 575**

**Pending 430**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	184	196	226	124	164					

**Total for Calendar Year 1,250**

**ADVERSE DECISIONS**

**USA v. McAllister**, D. Minn. Case No. 4-93-836, FMC Rochester

McAllister is a 18 USC 4246 committee at FMC Rochester. In 1991 he killed a police officer and wounded two other persons while at the Walter Reed Military Hospital. He petitioned for discharge and challenged a staff decision to involuntary medicate him. The Magistrate Judge made two separate rulings on the case. In the first, Magistrate Judge Mason concluded, and Judge Doty affirmed, that a person committed under 18 USC § 4246 bears the burden of showing, by a preponderance of the evidence, that he has recovered from his mental disease or defect to the extent that he can be conditionally or outright released. USA v. McAllister, 963 F.Supp. 829 (D. Minn. 1997). The court denied the petitioner's release from commitment.

In a Report and Recommendation dated several days later, the Magistrate Judge concluded the BOP's policy on involuntary medication which permits medication of those determined to be "gravely disabled" violates the Due Process Clause unless "gravely disabled" is interpreted to include danger to self or others. The District Court affirmed over the government's objections, and remanded the matter back to the agency. Because there is no final order under 28 USC § 1291, there is no order to appeal from. An adverse opinion memorandum was forwarded to the Litigation Branch. (DJK)

**SETTLEMENTS OR JUDGMENTS**

**DECISIONS OF INTEREST**

**Hawpetoss v. Helman**, C.D. Ill. Case No. 96-1328, FCI Pekin

Inmate Hawpetoss filed a Bivens action against FCI Warden Dave Helman alleging institution policy prohibiting smoking of a ceremonial Naive American pipe violated the offender's rights under the First Amendment, RFRA and the American Indian Religious Freedom Act. The court granted summary judgment to the defendant on the basis of: (1) no exhaustion of administrative remedies as required by the PLRA; (2) insufficient allegations of personal involvement; and (3) on the merits because prohibiting smoking in the SHU at Pekin furthered a legitimate governmental purpose and because smoking the pipe was typically a group activity and not an individual one. It should be noted that the plaintiff failed to respond in any manner to the government's motion for summary judgment. (Djk)

**Newlin v. Helman**, Case No. 96-4229, 7th Circuit, FCI Pekin

The Seventh Circuit Court of Appeals consolidated this case with two filed by offenders in state custody. The issue in all three cases was the filing fee provisions of the PLRA. The limited holding of Newlin's case is that a habeas corpus petition under 28 USC 2241 is a civil action and covered by PLRA. In a companion case from the Illinois Department of Corrections, the court

held that the prisoner's authorization is not necessary to withdraw money from a trust account to pay a the filing fee under PLRA.

We believe that this portion of the opinion may not apply to the Bureau of Prisons in light of the conflict between the PLRA and the terms of the Congressionally created trust for federal offenders. (DJK)

### PENDING CASES OF INTEREST

Suarez v. Scott, et al, D. Kansas Case No. 95-3407-KHV, USP Leavenworth

Suarez is a Mariel Cuban detainee who alleges staff left him in four point restraints for over 24 hours without food, water and opportunities to relieve himself. The court has appointed counsel and denied a motion for summary judgment for 10 of the 21 defendants. Discovery has begun in this case. (DJK)

### FCI Greenville Cases

The following eleven similar Bivens cases contain allegations against staff at FCI Greenville alleging excessive use of force in the aftermath of the October, 1995 disturbance.

<u>Okai v. Verefurth, et al.</u>	S.D. Ill Case No. 96-47-JPG
<u>Tyler v. Verefurth, et al.</u>	S.D. Ill Case No.96-46-JPG
<u>Smith v. King, et al.</u>	S.D. Ill Case No. 96-507-JPG
<u>Freiberger v. Seiter, et al.</u>	S.D. Ill Case No. 96-028-JPG
<u>Johnson v. Seiter, et al.</u>	S.D. Ill Case No.96-396-JPG
<u>Huffman v. Hawk , et al.</u>	S.D. Ill Case No. 96-629-JPG
<u>McCoy v. Nelson, et al.</u>	S.D. Ill Case No.96-790-JPG
<u>Williams v. Pitts, et al.</u>	S.D. Ill Case No. 96-597-JPG
<u>Dunn v. Seiter, et al.</u>	S.D. Ill Case No. 95-928-JPG
<u>Larkin v. Galloway, et. al.</u>	S.D. Ill Case No. 96-607-JPG
<u>Stewart v. Seiter, et. al.</u>	S.D. Ill Case No 96-983-JPG

The Department of Justice has been closely examining these actions on a case by case basis to determine whether granting representation to individual BOP employees is in the best interests of the United States. In all of these matters, extensive time is being dedicated to document review including OIA Reports and Institution records by both the DOJ - Constitutional Torts Branch and the NCRO. The matter is complicated because the agency took administrative disciplinary action against some of the defendants for conduct which in most cases did not involve the respective plaintiffs. We have been working closely with DOJ staff regarding representation issues and will continue to do so.

Representation issues have been resolved as to Okai v. Verefurth, et al., Tyler v. Verefurth, et al., Smith v. King, et al., and Freiberger v. Seiter, et al.



In **Okai v. Verfurth, et al.**, four defendants were approved for representation. The four defendants are being represented by Jesselyn Brown, Constitutional Torts Branch, Civil Division. Rick Hess and Neil Perryman are providing representation to the two defendants denied representation. Discovery is complete and this case is currently in the pre-trial stage. The court has appointed counsel for the plaintiff.

In **Tyler v. Verfurth, et al.**, four of the defendants are being represented by 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. This case is currently in the discovery stage.

In **Smith v. King, et al.**, one defendant has been granted representation and is being represented by the U.S. Attorney's Office for the Southern District of Illinois. Four defendants were denied representation. A motion has been filed for summary judgment as to the one employee granted representation. Additionally, the plaintiff has retained counsel and amended his complaint naming additional staff who currently are requesting representation.

In **Freiberger v. Seiter, et al.**, the one named defendant was denied representation.

As to the remainder of the cases, requests for DOJ representation and the issuance of NCRO recommendations are ongoing processes.

OGC attorney Mary Benning will spend some time in the regional office familiarizing herself with the issues and facts in these cases. A meeting is scheduled with DOJ staff for August 26, 1997.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

No new cases.

### **ENSIGN AMENDMENT LITIGATION**

No new cases.

### **CRIMINAL MATTERS**

**United States v. Zambrana**, FCI Oxford, W.D. Wisconsin

Tina Zambrana, the spouse of FCI Oxford inmate John Zambrana, delivered at least eight balloons containing an unknown quantity of illegal drugs in the visiting room at FCI Oxford on

March 1, 1997. Using the telephone to pass coded messages, Mrs. Zambrana brought in another nine balloons of narcotics, including 3.0 grams of heroin and 9.4 grams of marijuana.

John Zambrana pleaded guilty to one count of conspiracy to provide prohibited objects within a federal correctional facility. It is expected he will receive a sentence between 8 - 9 years. Tina Zambrana had pleaded guilty to conspiracy and was cooperating with officials in their case against her husband. Mrs. Zambrana is facing a 2 - 3 year prison sentence. Sentencing is scheduled for September 25, 1997.

**United States v. Terry Nichols, D.Colorado, FCI Englewood**

The defense team has asked Judge Mastch for an order allowing them to bring video cameras into FCI Englewood to film the loving relationship between Nichols and his family. Institution staff have worked this out with the defense team. Both Nichols and McVeigh have filed motions seeking to prevent the BOP from copying their social mail and asking they be permitted to send social mail out sealed.

**ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

None this month.

**UPCOMING HEARINGS OR TRIALS**

None this month.

**PERSONNEL ISSUES**

Angie Buege (FCI Sandstone) and Janice Bonneville (FCI Pekin) are or will soon be on maternity leave.

**STAFF TRAVEL AND LEAVE**

John	August 25-26	Washington Greenville Cases
Daryl	None	
Dan	August 6-7	Duluth Peterson settlement conf.
	August 11-12	Tulsa Peterson deposition
	August 27,29	Annual Leave
Gwen	July 28-August 8	DHO Training



Janet

None

Gary



August 28, 29

Annual Leave

LeeAnn

None

Claims database WAN to Mary Rose Hagan on July 31, 1997.



U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons  
North Central Region  
Office of Regional Counsel

Kansas City, KS 66101

September 12, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (August, 1997)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
38	22	23	39	28	27	25	42	

Total new cases for calendar year

ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
70	98	95	66	95	*	151	69	

Total for Calendar Year 644

Pending 669

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
176	180	210	196	226	140	164	163	

Total for Calendar Year 1,455

## FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

We have now revised our FOIA/PA system to start tracking monthly statistics in addition loading into the national data base system. We will have a full month of statistics for September ready for the October report. For this month our figures show we have current reporting with 11 late.

### ADVERSE DECISIONS

Williams v. Hedrick, S.D. Illinois, Case No. 96-862-JPG, USP Marion

2241 petition alleging BOP wrongfully denied him 3621(e) credit for his conviction of possession of a firearm (922(g)). The Magistrate recommended requiring the BOP to assess the petitioner's action "possessed an element of the use, attempted use or threatened use." The recommendation calls into question the per se denial of 3621(e) credit to any person convicted of possession of a weapon by a felon.

### SETTLEMENTS OR JUDGMENTS

David Sterling v. United States, S.D. Illinois Case No. 93-148-WAS, USP Lewisberg/USP Marion

Following a remand from the Seventh Circuit which reversed a dismissal of the case, the defendant negotiated a settlement of \$270.00. Plaintiff alleges BOP staff lost or misplaced property during a transfer.

Gallegos v. United States, D. Colorado Case No.

Inmate alleged staff lost or misplaced property. Records on some property were inadequately secured for \$500.00 on recommendation of U.S. Attorney's office.

Cornwell v. USA, D. Colorado Case No. 96-D-2293, FCI Florence

Inmate alleged staff lost or misplaced art materials. There were some problems with the matter was settled for \$250.00 on recommendation of U.S. Attorney's office.

### DECISIONS OF INTEREST

None other than those reported above.

PENDING CASES OF INTEREST

Rahman v. Keohane and Kane, W.D. MO. Case No. 97-3270-CV-S-RGC, MCFP Springfield

Inmate alleges various conditions of confinement violate his constitutional rights and RF  
Plaintiff is represented by former U.S. Attorney General Ramsey Clark. The DOJ has appointed  
outside counsel for the defendants. An extension has been granted and a responsive plea  
due on or about September 24, 1997.

Buford ex rel. Leger v. USA, D. Kansas Case No. 97-2263-JWL, USP Leavenworth

Relatives of deceased inmate have brought on FTCA action alleging BOP negligence led to  
of decedent. Inmate Leger was murdered by inmate Storey in August, 1995. Storey recently  
pleaded guilty to murder.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Jolly v. Booker and Pederson, D. Colorado Case No. 97-N-0793 FCI Florence

Plaintiff seeks injunctive relief compelling the BOP to provide an exclusive outside worship  
Plaintiff alleges sweat lodge area is insufficient.

ENSIGN AMENDMENT LITIGATION

No new cases filed.

CRIMINAL MATTERS

United States v. Terry Nichols, D. Colorado, FCI Englewood

The defense team has asked Judge Mastch for an order allowing them to bring video camera  
FCI Englewood to film the loving relationship between Nichols and his family. Institution  
have worked this out with the defense team. Both Nichols and McVeigh have filed motion  
seeking to prevent the BOP from copying their social mail and asking they be permitted  
social mail out sealed.

State of Illinois v. Kenneth B. Jones, Illinois State Circuit Court, FCI Greenville

Inmate pleaded guilty to state narcotics charge. The U.S. Attorney had declined prosecution  
Inmate received two year consecutive sentence.

United States v. Ralph E. Brandon, Sixth Circuit Case No. 97-3812, FMC Rochester

Brandon is a 18 USC 4241(d) commitment. Staff determined that psychotropic medication

the patient's best medical interest and necessary to restore him to competency. Defens sought an evidentiary hearing for the purpose of obtaining a judicial determination of medication. The district court declined and the defendant appealed. The court of appe reviewing two issues: (1) whether a pre-trial detainee has a right to a judicial procee the involuntary administration of psychotropic medication deemed necessary to restore t competency; and (2) appellate jurisdiction.

ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

None this month.

UPCOMING HEARINGS OR TRIALS

Pederson v. Reno, Case No. 5-95-30, FPC Duluth/UNICOR, D. Minn.

Trial is set for Tuesday, September 16th. As we have reported previously, this case in current DHO who alleges the BOP discriminated and retaliated against her when she was a UNIOR Factory Manager. Plaintiff asserts UNICOR's refusal to classify her position at Duluth as a GS-12 was based on her sex. The suit is based on the Equal Pay Act and Tit Settlement was unsuccessful. The BOP is calling some 15 witnesses, many of whom are no other institutions.

PERSONNEL ISSUES

Angie Buege (FCI Sandstone) and Janice Bonneville (FCI Pekin) delivered baby girls.  
Vincent Shaw, Law Clerk/Honor Program Attorney joins our staff effective September 2, 1  
The North Central Region welcomes Vincent Shaw as our new Law Clerk/Honor's Attorney.  
Vincent started on August 31, 1997.

STAFF TRAVEL AND LEAVE

John	Sept. 8 Sept. 17 - 19	MN, Honors Recruiting Annual Leave
Daryl	Sept. 5 -11	Annual Leave
Dan	Sept. 15 - 19	Pederson Trial

Janet	Sept. 5 - 11	Annual Leave
Gary	None	
	Sept. 18, 19, 20	Annual Leave
	None	

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



U.S. DEPARTMENT OF JUSTICE  
 Federal Bureau of Prisons  
 North Central Region  
 Office of Regional Counsel

Kansas City, KS 66101

October 10, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (September, 1997)

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

**LITIGATION:**

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
	62	30	4	11	170	19	549	46	10	0	0

- NUM - Number of total lawsuits filed in the month (1)
- 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)

**Total new cases for calendar year 244**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95	66	95	*	151	69	62			

**Total for Calendar Year 706**  
**Pending 560**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	210	196	226	140	164	163	154			

**Total for Calendar Year 1,609**

**FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS**

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	0	50
ACTUAL RECEIVED	0	78
ACTUAL PROCESSED	0	45
ACTUAL BACKLOG	0	16

**ADVERSE DECISIONS**

**Clay v. Knowles D. Colorado Case No. 97-Z-0590 (USP FLP)**

Judge Weinsheink ordered the government to grant credit toward an inmate's consecutive federal sentence time spent in a federal facility, which was already credited toward his state term. Inmate escaped from Colorado DOC and arrested later by FBI on federal drug charges. He was held at FCI Englewood pending federal trial. His federal sentence was ordered to run CONSECUTIVELY to any outstanding sentence. On date of federal sentencing, Colorado DOC restarted the state term. USMS requested designation and BOP designated to Englewood. where he remained until surrendered to the state, upon discovery of the designation error. The inmate received credit toward his state term for the period in custody from the date of federal sentence on. Upon completion of the state obligation, the inmate was returned to federal custody. He received jail credit for the time spent in custody prior to federal sentencing, and his sentence was commenced on the date received into BOP custody from the state. The Court's order directs the BOP to begin the inmate's sentence on the date of federal sentencing, to stop it on the date he was returned to the state authorities, and to begin the sentence again on the date he was returned to federal custody. The order precludes the BOP from giving effect to the sentencing court's order for consecutive service of the federal term. The Institution and NCRO have recommended appeal. The U.S. Attorney's Office has recommended against appeal only because of the perceived unfavorable judicial climate in the Tenth Circuit concerning sentence computation and jail credit cases. See Tighe, below.

**Tighe v. Booker, 10th Cir. Case No. 97-1046, (D.Ct. # 95-D-0638) (FCI FLF)**

The Tenth Circuit affirmed a district court decision awarding credit for time spent in federal custody on writ. The inmate was in state custody when he was writted into federal custody for federal prosecution.. Tighe's state sentence continued to run during entire period (31 months) in federal custody on writ. The federal sentence was ordered to run concurrently with state term and was started on date of sentencing. Tighe was returned to Louisiana, completed his state term and was taken into federal custody. He sought credit toward federal term for 31 months on writ, which was already credited toward state term. The district court ordered BOP to give that credit, citing Brown decision from the Tenth Circuit, finding that the length of time on federal writ exceeded the 19 months in Brown, thus, the custody "transmuted" to federal custody and the inmate should get the credit toward the federal sentence.

On appeal, the Tenth Circuit upheld the District Court, holding that "in light of the length of' time in federal custody on writ, the inmate was "in custody in connection with" the federal charges, and thus was entitled to credit, relying on the previous decision in Brown. The fact that the inmate already received credit for that time toward his state sentence was "of no moment" to the Tenth Circuit.

**SETTLEMENTS OR JUDGMENTS**

**Suarez v. Scott, et al, D. Kansas Case No. 95-3407-KHV , USP Leavenworth**

Inmate alleges he was denied food, water, and opportunity to use a lavatory when he placed in four point restraints. The district court denied a motion to dismiss and/or for summary judgment and appointed counsel to represent the inmate. The deposition of the inmate and several staff were taken and additional depositions were scheduled outside of the Leavenworth area. The complaint was amended to add a claim under the FTCA. An agreement has been reached to settle the same for \$250.00 which is nuisance value.

**DECISIONS OF INTEREST**

None to report.

**PENDING CASES OF INTEREST**

**Rahman v. Keohane and Kane, W.D. MO. Case No. 97-3270-CV-S-RGC, MCFP Springfield**

Inmate alleges various conditions of confinement violate his constitutional rights and RFRA. Plaintiff is represented by former U.S. Attorney General Ramsey Clark. The DOJ has approved outside counsel for the defendants. Outside counsel, David Baker, filed a responsive pleading on on or about September 24, 1997 on behalf of Warden Keohane. Outside Counsel noted that former Regional Director Patrick Kane had not been served and suggested, pursuant to F.R.Civ.P. 25 (a)(1) that Mr. Kane was deceased. .

**Buford ex rel. Leger v. USA**, D. Kansas Case No. 97-2263-JWL, USP Leavenworth

Relatives of deceased inmate have brought on FTCA action alleging BOP negligence led to death of decedent. Inmate Leger was murdered by inmate Storey in August, 1995. Storey recently pleaded guilty to murder.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

**Saleem v. Helman**, 7th Cir. Case No. 96-2502, (FCI PEK)

Offender challenged denial of conjugal visits as a violation of First Amendment and RFRA. After district court dismissed claim, inmate appealed. In an unreported opinion, the court held RFRA had been declared unconstitutional, citing City of Beorne v. Flores, 117 S.Ct. 2157 (1997) and no longer was enforceable. Court followed long line of cases holding an inmate has no constitutional right to contact visitation or conjugal visits. See 1997 WL 527769.

### **ENSIGN AMENDMENT LITIGATION**

No new cases filed.

### **CRIMINAL MATTERS**

**United States v. Ricketts**, S.D. Ill, FCI Greenville

Inmate Ricketts was sentenced to a consecutive 12 year sentence for mutiny and rioting. The case arose out of the October, 1995 disturbance at FCI Greenville.

**United States v. Johnson**, N.D. Ill, MCC Chicago

MCC is housing several defendants who are facing the death penalty in the Northern District of Illinois. Defense counsel requested that their expert be permitted to interview several BOP staff who have interacted with the defendant in order to develop an opinion whether the defendant could safely function in a correctional facility like ADX Florence without posing a risk to staff or other inmates. MCC Attorney Ken Hyle has been in contact with our office and Doug Curless in the OGC concerning this recurring and sensitive issue.

**United States v. Ralph E. Brandon**, Sixth Circuit Case No. 97-3812, FMC Rochester

Brandon is a 18 USC 4241(d) commitment. Staff determined that psychotropic medication was in the patient's best medical interest and necessary to restore him to competency. Defense counsel sought an evidentiary hearing for the purpose of obtaining a judicial determination of the need for medication. The district court declined and the defendant appealed. The court of appeals is reviewing two issues: (1) whether a pre-trial detainee has a right to a judicial proceeding prior to the involuntary administration of psychotropic medication deemed necessary to restore to competency; and (2) appellate jurisdiction.

## ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST

None this month.

### TRIALS OR HEARINGS

**Pederson v. Reno**, Case No. 5-95-30, FPC Duluth/UNICOR, D. Minn.

This Title VII/Equal Pay Act trial was held September 16-18th in St. Paul, Minnesota. The plaintiff testified that she was not paid as much as similarly-situated male Systems Factory Managers in the BOP. The plaintiff admitted documents showing that the systems operation was under the Unicor Metals Division and the BOP's Grade Guidelines for Managers graded the Duluth Metals Factory Manager as a GS-12. Next the plaintiff's expert deposition was admitted. The plaintiff's expert stated that the plaintiff's position was incorrectly evaluated with the Woods Factory Manager criteria and instead should have been evaluated with the Metals Factory Manager criteria. Finally, she provided evidence that the Systems Factory Manager position at FCI Schuylkill was paid a GS-12.

The defense countered with testimony that the systems operation has moved to several divisions in Unicor, that the panels-systems operation did not involve the fabrication of metal parts from raw materials, that no specific criteria existed for evaluating Systems Factory Managers in the BOP's Grade Guidelines for Managers, and when evaluated with the OPM's classification standards; the plaintiff's position correctly graded as a GS-11, not a GS-12. Several defense witnesses also testified that managing a Unicor operation at higher-security institution was more dangerous, involved greater tool control, called for a greater supervision of inmates, and was more responsibility than managing a Unicor operation at a Federal Prison Camp. After closing arguments, Judge Alsop took the case under advisement.

Of the remaining nine trials and hearings held, six mental health hearings were held at the MCFP Springfield, and one mental health hearing was held at FMC Rochester. USP Florence was the site of a criminal arraignment in a inmate on inmate homicide case (U.S. v. Morris). USP Marion staff participated in a pre-trial hearing in the case Huskey v. USA.

### UPCOMING HEARINGS OR TRIALS

**Love v. Tippy**, 8th Cir. Case No. 96-4224-MN, FCI Waseca, DAP credit

Oral argument scheduled for Monday, October 20, 1997 in St. Paul Minnesota. Inmate Love's underlying conviction is carrying a firearm during the commission of a drug offense or a crime of violence, 18 USC 924(c)(1). This is the exact same offense that the plaintiff in Sesler v. Pitzer was convicted of and denied DAP credit under.

U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons  
North Central Region  
Office of Regional Counsel

Kansas City, KS 66101

October 10, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (September, 1997)

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

**LITIGATION:**

inst	num	hc	ftc	biv	oth	ans	pen	clد	h/t	set	awd
	62	30	4	11	170	19	549	46	10	0	0

NUM - Number of total lawsuits filed in the month (1)  
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)

**Total new cases for calendar year 244**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95	66	95	*	151	69	62			

**Total for Calendar Year 706**  
**Pending 560**

## ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	210	196	226	140	164	163	154			

**Total for Calendar Year 1,609**

## FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	0	50
ACTUAL RECEIVED	0	78
ACTUAL PROCESSED	0	45
ACTUAL BACKLOG	0	16

## ADVERSE DECISIONS

### Clay v. Knowles D. Colorado Case No. 97-Z-0590 (USP FLP)

Judge Weinsheink ordered the government to grant credit toward an inmate's consecutive federal sentence time spent in a federal facility, which was already credited toward his state term. Inmate escaped from Colorado DOC and arrested later by FBI on federal drug charges. He was held at FCI Englewood pending federal trial. His federal sentence was ordered to run CONSECUTIVELY to any outstanding sentence. On date of federal sentencing, Colorado DOC restarted the state term. USMS requested designation and BOP designated to Englewood, where he remained until surrendered to the state, upon discovery of the designation error. The inmate received credit toward his state term for the period in custody from the date of federal sentence on. Upon completion of the state obligation, the inmate was returned to federal custody. He received jail credit for the time spent in custody prior to federal sentencing, and his sentence was commenced on the date received into BOP custody from the state. The Court's order directs the BOP to begin the inmate's sentence on the date of federal sentencing, to stop it on the date he was returned to the state authorities, and to begin the sentence again on the date he was returned to federal custody. The order precludes the BOP from giving effect to the sentencing court's order for consecutive service of the federal term. The Institution and NCRO have recommended appeal. The U.S. Attorney's Office has recommended against appeal only because of the perceived unfavorable judicial climate in the Tenth Circuit concerning sentence computation and jail credit cases. See Tighe, below.

U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons  
North Central Region  
Office of Regional Counsel

Kansas City, KS 66101

October 10, 1997

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

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (September, 1997)

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

**LITIGATION:**

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
	62	30	4	11	170	19	549	46	10	0	0

NUM - Number of total lawsuits filed in the month (1)  
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)

**Total new cases for calendar year 244**

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	98	95	66	95	*	151	69	62			

**Total for Calendar Year 706**  
**Pending 560**



## ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
176	180	210	196	226	140	164	163	154			

**Total for Calendar Year      1,609**

## FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	0	50
ACTUAL RECEIVED	0	78
ACTUAL PROCESSED	0	45
ACTUAL BACKLOG	0	16

## ADVERSE DECISIONS

### Clay v. Knowles D. Colorado Case No. 97-Z-0590 (USP FLP)

Judge Weinsheink ordered the government to grant credit toward an inmate's consecutive federal sentence time spent in a federal facility, which was already credited toward his state term. Inmate escaped from Colorado DOC and arrested later by FBI on federal drug charges. He was held at FCI Englewood pending federal trial. His federal sentence was ordered to run CONSECUTIVELY to any outstanding sentence. On date of federal sentencing, Colorado DOC restarted the state term. USMS requested designation and BOP designated to Englewood. where he remained until surrendered to the state, upon discovery of the designation error. The inmate received credit toward his state term for the period in custody from the date of federal sentence on. Upon completion of the state obligation, the inmate was returned to federal custody. He received jail credit for the time spent in custody prior to federal sentencing, and his sentence was commenced on the date received into BOP custody from the state. The Court's order directs the BOP to begin the inmate's sentence on the date of federal sentencing, to stop it on the date he was returned to the state authorities, and to begin the sentence again on the date he was returned to federal custody. The order precludes the BOP from giving effect to the sentencing court's order for consecutive service of the federal term. The Institution and NCRO have recommended appeal. The U.S. Attorney's Office has recommended against appeal only because of the perceived unfavorable judicial climate in the Tenth Circuit concerning sentence computation and jail credit cases. See Tighe, below.

**Tighe v. Booker, 10th Cir. Case No. 97-1046, (D.Ct. # 95-D-0638) (FCI FLF)**

The Tenth Circuit affirmed a district court decision awarding credit for time spent in federal custody on writ. The inmate was in state custody when he was written into federal custody for federal prosecution. Tighe's state sentence continued to run during entire period (31 months) in federal custody on writ. The federal sentence was ordered to run concurrently with state term and was started on date of sentencing. Tighe was returned to Louisiana, completed his state term and was taken into federal custody. He sought credit toward federal term for 31 months on writ, which was already credited toward state term. The district court ordered BOP to give that credit, citing Brown decision from the Tenth Circuit, finding that the length of time on federal writ exceeded the 19 months in Brown, thus, the custody "transmuted" to federal custody and the inmate should get the credit toward the federal sentence.

On appeal, the Tenth Circuit upheld the District Court, holding that "in light of the length of" time in federal custody on writ, the inmate was "in custody in connection with" the federal charges, and thus was entitled to credit, relying on the previous decision in Brown. The fact that the inmate already received credit for that time toward his state sentence was "of no moment" to the Tenth Circuit.

**SETTLEMENTS OR JUDGMENTS**

**Suarez v. Scott, et al, D. Kansas Case No. 95-3407-KHV , USP Leavenworth**

Inmate alleges he was denied food, water, and opportunity to use a lavatory when he placed in four point restraints. The district court denied a motion to dismiss and/or for summary judgment and appointed counsel to represent the inmate. The deposition of the inmate and several staff were taken and additional depositions were scheduled outside of the Leavenworth area. The complaint was amended to add a claim under the FTCA. An agreement has been reached to settle the same for \$250.00 which is nuisance value.

**DECISIONS OF INTEREST**

None to report.

**PENDING CASES OF INTEREST**

**Rahman v. Keohane and Kane, W.D. MO. Case No. 97-3270-CV-S-RGC, MCFP Springfield**

Inmate alleges various conditions of confinement violate his constitutional rights and RFRA. Plaintiff is represented by former U.S. Attorney General Ramsey Clark. The DOJ has approved outside counsel for the defendants. Outside counsel, David Baker, filed a responsive pleading on on or about September 24, 1997 on behalf of Warden Keohane. Outside Counsel noted that former Regional Director Patrick Kane had not been served and suggested, pursuant to

F.R.Civ.P. 25 (a)(1) that Mr. Kane was deceased. .

**Buford ex rel. Leger v. USA**, D. Kansas Case No. 97-2263-JWL, USP Leavenworth

Relatives of deceased inmate have brought on FTCA action alleging BOP negligence led to death of decedent. Inmate Leger was murdered by inmate Storey in August, 1995. Storey recently pleaded guilty to murder.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

**Saleem v. Helman**, 7th Cir. Case No. 96-2502, (FCI PEK)

Offender challenged denial of conjugal visits as a violation of First Amendment and RFRA. After district court dismissed claim, inmate appealed. In an unreported opinion, the court held RFRA had been declared unconstitutional, citing City of Beorne v. Flores, 117 S.Ct. 2157 (1997) and no longer was enforceable. Court followed long line of cases holding an inmate has no constitutional right to contact visitation or conjugal visits. See 1997 WL 527769.

### **ENSIGN AMENDMENT LITIGATION**

No new cases filed.

### **CRIMINAL MATTERS**

**United States v. Ricketts**, S.D. Ill, FCI Greenville

Inmate Ricketts was sentenced to a consecutive 12 year sentence for mutiny and rioting. The case arose out of the October, 1995 disturbance at FCI Greenville.

**United States v. Johnson**, N.D. Ill, MCC Chicago

MCC is housing several defendants who are facing the death penalty in the Northern District of Illinois. Defense counsel requested that their expert be permitted to interview several BOP staff who have interacted with the defendant in order to develop an opinion whether the defendant could safely function in a correctional facility like ADX Florence without posing a risk to staff or other inmates. MCC Attorney Ken Hyle has been in contact with our office and Doug Curless in the OGC concerning this recurring and sensitive issue.

**United States v. Ralph E. Brandon**, Sixth Circuit Case No. 97-3812, FMC Rochester

Brandon is a 18 USC 4241(d) commitment. Staff determined that psychotropic medication was in the patient's best medical interest and necessary to restore him to competency. Defense counsel sought an evidentiary hearing for the purpose of obtaining a judicial determination of the need for medication. The district court declined and the defendant appealed. The court of appeals is reviewing two issues: (1) whether a pre-trial detainee has a right to a judicial

proceeding prior to the involuntary administration of psychotropic medication deemed necessary to restore to competency; and (2) appellate jurisdiction.

### **ADMINISTRATIVE CLAIMS AND OTHER MATTERS OF INTEREST**

None this month.

### **TRIALS OR HEARINGS**

**Pederson v. Reno**, Case No. 5-95-30, FPC Duluth/UNICOR, D. Minn.

This Title VII/Equal Pay Act trial was held September 16-18th in St. Paul, Minnesota. The plaintiff testified that she was not paid as much as similarly-situated male Systems Factory Managers in the BOP. The plaintiff admitted documents showing that the systems operation was under the Unicolor Metals Division and the BOP's Grade Guidelines for Managers graded the Duluth Metals Factory Manager as a GS-12. Next the plaintiff's expert deposition was admitted. The plaintiff's expert stated that the plaintiff's position was incorrectly evaluated with the Woods Factory Manager criteria and instead should have been evaluated with the Metals Factory Manager criteria. Finally, she provided evidence that the Systems Factory Manager position at FCI Schuylkill was paid a GS-12.

The defense countered with testimony that the systems operation has moved to several divisions in Unicolor, that the panels-systems operation did not involve the fabrication of metal parts from raw materials, that no specific criteria existed for evaluating Systems Factory Managers in the BOP's Grade Guidelines for Managers, and when evaluated with the OPM's classification standards; the plaintiff's position correctly graded as a GS-11, not a GS-12. Several defense witnesses also testified that managing a Unicolor operation at higher-security institution was more dangerous, involved greater tool control, called for a greater supervision of inmates, and was more responsibility than managing a Unicolor operation at a Federal Prison Camp. After closing arguments, Judge Alsop took the case under advisement.

Of the remaining nine trials and hearings held, six mental health hearings were held at the MCFP Springfield, and one mental health hearing was held at FMC Rochester. USP Florence was the site of a criminal arraignment in a inmate on inmate homicide case (U.S. v. Morris). USP Marion staff participated in a pre-trial hearing in the case Huskey v. USA.

### **UPCOMING HEARINGS OR TRIALS**

**Love v. Tippy**, 8th Cir. Case No. 96-4224-MN, FCI Waseca, DAP credit

Oral argument scheduled for Monday, October 20, 1997 in St. Paul Minnesota. Inmate Love's underlying conviction is carrying a firearm during the commission of a drug offense or a crime of violence, 18 USC 924(c)(1). This is the exact same offense that the plaintiff in Sesler v. Pitzer

was convicted of and denied DAP credit under.

**PERSONNEL ISSUES**

None

**STAFF TRAVEL AND LEAVE**

John	October 7-8 October 20 -24	Master Agreement Training OGC/New Attorney Training
Daryl	October 3 October 7-8	CLE Medical Malpractice Master Agreement Training
Dan	October 7-8	Master Agreement Training
Vincent	Sept. 29 - Oct. 10 October 20 - 24	Institution Familiarization New Attorney Training
Gwen	October 17	Annual Leave
Janet	October 14 - 17	Annual Leave
Gary	October 9,10	Annual Leave
LeeAnn	None	

Claims database WAN to Mary Rose Hagan on September 30, 1997.