



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

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

February 18, 2000

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

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

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

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

**LITIGATION:**

INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	36	24	1	6	5	31	438	22	5	0	0.00

**Total cases for Calendar Year - 36**

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

**ADMINISTRATIVE CLAIMS**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
55											

**Total for Calendar Year - 55**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
175											

**Total for Calendar Year - 175**

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

	PA/FOIA	FOIA
ACTUAL ON-HAND	42	5
ACTUAL RECEIVED	64	4
ACTUAL PROCESSED	35	4
ACTUAL BACKLOG	10*	6*

**Total for Calendar Year - 68**

\* 3 Requests awaiting the retrieval of records from the archives.

\* 13 Requests received 10-14 days after date received in Central Office.

### **ADVERSE DECISIONS**

#### **Ward v. Booker, Case No. 2000 WL 37983 (10<sup>th</sup> Cir), USP Leavenworth**

The Tenth Circuit ruled that the BOP Director could not exercise her discretion and use sentencing enhancements for firearms to deny inmates early release eligibility under 18 U.S.C. § 3621(e)(2)(B). As a result of the ruling, OGC is creating an operations memorandum for the Tenth Circuit.

### **SETTLEMENTS OR JUDGMENTS**

None.

### **DECISIONS OF INTEREST**

#### **Zacher v. Tippy, Case No. 98-4065, (8<sup>th</sup> Circuit), FCI Waseca**

The Eighth Circuit held that the BOP Director has the discretion to deny early release to inmates with prior misdemeanor convictions for aggravated assault. In coming to this conclusion, the Court embraced the BOP's use of the FBI's Uniform Crime Reporting definition of aggravated assault as a rational way to further the mandates of 18 U.S.C. § 3621(e)(2)(B).

#### **McCoy v. Nelson, Case No. 96-790, FCI Greenville**

This case involved allegations of excessive force during the 1995 disturbances. The district court dismissed the case for failure to exhaust administrative remedies on January 12, 2000.

#### **Wilson v. Seiter & Moore, Case No. 97-591-JPG, FCI Greenville**

The District Court conducted an evidentiary hearing on the plaintiff's claim that staff used excessive force on a BOP bus following the 1995 October disturbance. The court ruled in favor of the two defendants. FCI Greenville Attorney Tracy Knutson assisted the AUSA.

#### **Wayne Cooper v. Page True, et al., Case No. 96-3097-GTV, USP Leavenworth**

This FCI Greenville bus case was dismissed for lack of prosecution because plaintiff's failure to report his change of address resulted in all of the Court's mail being returned to sender. With the dismissal of this case, USP LVN now only has 2 open cases involving the transportation of inmates from FCI Greenville after the 1995 disturbances.

#### **Darren Jay Dennison v. United States, Case No. 98-3243, USP Leavenworth**

On January 19, 2000, the government's motion to dismiss pursuant to Rule 12 (b) (1) for lack of subject matter jurisdiction was granted. The plaintiff alleged that prison officials negligently caused the loss of his personal property. In granting this motion, the Court determined the plaintiff's property was detained by law enforcement officers pursuant to 28 U.S.C. § 2680(c) and that plaintiff failed to show that the government had waived its sovereign immunity with respect to his FTCA claim.

**Gerald M. Kelly v. Scott, et al. Case No. 99-3132 (10<sup>th</sup> Cir.), USP Leavenworth**

Inmate Kelly alleged excessive force, failure to keep him safe, and inadequate medical care in violation of the Eighth Amendment. The 10th Circuit Court of Appeals affirmed the decision of the District Court and concluded that no genuine issue exists as to whether or not the defendants had a culpable state of mind, i.e. were deliberately indifferent with respect to Kelly's medical needs. Likewise the Court found inmate Kelly failed to establish a triable issue with respect to deliberate indifference to his safety.

**PENDING CASES OF INTEREST**

**Okai v. BOP, Case No. 97-CV-549-DHR, FCI Greenville**

Inmate Okia filed a FOIA request for documents pertaining to the 1995 disturbance at FCI Greenville. In its Vaughn Index, the United States asserted various "law enforcement" exemptions under (b)(7)(A)-(F). The district court ruled that the BOP had not proved that the records were compiled for a law enforcement purpose, ordered a trial, and appointed Okai counsel. At a pretrial/settlement conference held in January, the district court ordered the United States to turn over the documents to Okai's counsel with instructions not to disclose them to inmate Okai. Plaintiff's counsel also requested a court appointed expert witness to testify about the exemptions asserted by the BOP in this case. No trial date has been set, but it is anticipated to be tried before June.

**Davis v. Mills, et al., Case No. 99-WM-2473, USP Florence**

Service packets in this Bivens action were received for several staff who are no longer employed by the BOP. Inmate alleges staff used excessive force and subjected him to cruel and unusual punishment when removing him from his cell on 2/15/96. One of the named defendants is a former staff member who was prosecuted and convicted for violation of 18 U.S.C. § 242.

**Benefield v. McDowall, Case No. 98-S-0739, USP Florence**

In December 1999, Magistrate Judge Pringle recommended the dismissal of all official capacity claims, and individual capacity claims related to alleged retaliatory incident reports. See Heck and Balisok. Magistrate denied qualified immunity on plaintiff's claim that staff labeled him a "snitch" against other inmates. On 1/24/00, a draft pleading objecting to R&R concerning the denial of qualified immunity and a response to plaintiff's motion to compel discovery was sent to the U.S. Attorney's Office.

**Garrett v. Klinger and Stratman, Case No. 97-Z-1217, FCI Florence**

Case involves medical treatment for an injury that allegedly suffered during a use of force. Inmate received shoulder injury and was seen by several medical staff, including an orthopedic specialist. Once specialist recommended surgery, specialist forwarded a transfer request for the inmate. Medical designator approved, but directed the institution not to be moved until further notice. Unfortunately, the inmate was not approved for transfer until ten months later. On 12/16/99, Senior Judge Weinshienk adopted R&R recommending dismissal of defendant Klinger and denying qualified immunity for defendant Stratman. On 1/18/00, a notice of appeal was filed.

**HEARINGS AND TRIALS**

**Keith Segien v. James Hanson Case No. 95-3185-RDR, USP Leavenworth**

This civil Bivens-styled action is scheduled for a one week trial in front of Judge Rogers in Topeka on April 17, 2000. Lt. Hanson is represented by private counsel who are being paid by DOJ. Several Leavenworth staff members will be called as witnesses.

**CRIMINAL MATTERS**

**U.S. v. Belwood, Case No. 99-30182, FCI Greenville**

The sentencing hearing for this former employee who pled guilty to various narcotics violations has been continued until February 8, 2000.

**PERSONNEL ISSUES**

**STAFF TRAVEL AND LEAVE**

b6

[REDACTED]

San Diego Legal Conference  
2/7-2/11

[REDACTED]

San Diego Legal Conference  
2/7-2/11  
Litigation Coordinator Training  
2/25/00

[REDACTED]

Annual Leave  
3/17/00

[REDACTED]

None scheduled

[REDACTED]

None scheduled

[REDACTED]

San Diego Legal Conference  
2/7-2/11  
Litigation Coordinator Training  
2/25/00

[REDACTED]

None scheduled

[REDACTED]

None scheduled



U.S. Department of Justice  
Federal Bureau of Prisons  
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Tower II, 8th Floor  
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Kansas City, KS 66101-2421

March 15, 2000

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

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RCA

FROM: JOHN R. SHAW, Regional Counsel  
SUBJECT: Monthly Report (February 2000)

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

**LITIGATION:**

INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	15	12	2	1	0	19	425	28	1	1	0.00

**Total cases for Calendar Year - 51**

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

**ADMINISTRATIVE CLAIMS**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
55	65										

**Total for Calendar Year - 120**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
175	164										

**Total for Calendar Year - 339**

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

	PA/FOIA	FOIA
ACTUAL ON-HAND	26	7
ACTUAL RECEIVED	84	10
ACTUAL PROCESSED	71	3
ACTUAL BACKLOG	4*	0

**Total for Calendar Year - 162**

\* 1 Requests awaiting the retrieval of records from the archives.

### ADVERSE DECISIONS

**McFadden v. J.W. Booker, Jr.; Robbins v. J. W. Booker, Jr., D. Kan. Case No. 993393-RDR; Grant v. J. W. Booker, Jr., D. Kan. Case No. 99-3392-RDR; Prchal v. J. W. Booker, Jr., D. Kan. Case No. 99-3399-RDR, USP Leavenworth**

On February 17, 2000, District Judge Richard D. Rogers ruled against the agency in the above-referenced habeas actions. The petitioners sought a one-year sentence reduction pursuant to 18 U.S.C. § 3621(e) pending successful completion of the RDAP program. In connection with the instant offenses, they possessed dangerous weapons. Included in the total offense levels were two-level enhancements for possession of a weapon.

**Benefield v. McDowall, Case No. 98-S-0739, USP Florence**

On February 9, 2000, the District Court Judge adopted the Magistrate's R&R which recommended denial of qualified immunity and a response to plaintiff's motion to compel discovery. On February 14, 2000, the Magistrate ordered that plaintiff's Motion to Compel Production of Documents be granted in part and denied in part.

### SETTLEMENTS OR JUDGMENTS

**Richards v. USA, Case No. , FCI Greenville**

Plaintiff filed this FTCA action wherein he alleged that staff lost his hobby craft items, legal papers and other various property items. A settlement of \$800.00 was reached in this matter.

### DECISIONS OF INTEREST

**Marlow v. United States, Case No. 98-1512, FCI Pekin**

FTCA action alleging that the United States knew or should have known of an officer's propensity for violence. The officer allegedly struck the inmate in the face while he was in the hospital recovering from hernia surgery. A trial was held in St. Louis December 8, 1999 and December 9, 1999. A decision was rendered in favor of the Defendant on February 11, 2000. Janice Bonneville provided vital assistance in the case.

**Massey v. Wheeler, et al, Case No. 99-2663, FCI Pekin**

Appeal of District Court decision in 98-1348. Inmate alleges that the defendant's violated his constitutional rights by opening and reading his legal mail and by denying him an unmonitored legal call. The case was dismissed at the District Court level due to the inmate's failure to exhaust. The matter was argued before the 7<sup>th</sup> Circuit on Wednesday, February 23, 2000.

**Canty v. J. W. Booker, Jr., Case No. 97-3435-RDR, USP Leavenworth**

In this petition for writ of habeas corpus, Canty alleged that disciplinary action taken against him while he was confined at USP Atlanta violated due process. Canty had received an incident report for Engaging in or Encouraging a Group demonstration because he posted a newspaper article in the desk area of the officer's station in the unit. The article discussed recommended changes in the disparity between crack and powder cocaine sentencing. Canty claimed that he did not engage in the behavior specified in the cited offense codes and that no offense code specifies that posting a newspaper article is prohibited conduct. The court determined that Canty was afforded a disciplinary hearing with all the due process required by Wolff and also it was "no stretch to find his act in posting this particular article to be conduct which disrupts or tends to encourage group demonstration." The court in liberally construing the petition determined that if he was raising a First Amendment claim, it would be rejected because an inmate's limited First Amendment rights do not include any purported right to disobey orders or incite a disturbance. Canty filed a Notice of Appeal on February 3, 2000 and the District Court has allowed Canty to proceed IFP on appeal.

**Rodriguez v. United States, Case No.98-3352-RDR, USP Leavenworth**

The court recently granted the government's motion for summary judgement in this FTCA where the plaintiff alleged mishandling of his property and subsequent failure to return his platinum false teeth. The dentures had been seized because plaintiff had purposefully broke his (max) partial in half and had attempted to make a crude pair of knives or shanks.

**Cupples v. Pugh, 10<sup>th</sup> Cir. No. 99-1456 (D.Colo.#99-Z-1913), ADX Florence**

Tenth Circuit dismissed this habeas appeal which alleged transfer from Iowa Department of Corrections (DOC) to ADX was illegal, and that Iowa waived jurisdiction of remaining state sentence because of the alleged unlawful transfer. The Court agreed with the District Court that petitioner failed to present any facts or legal argument to show the transfer was illegal. The Court noted that the Constitution does not prohibit transfer of an inmate from one state to another.

**Wilson v. Moore., Case No. 97-591, FCI Greenville**

After a bench trial, judgment was granted in favor of the defendant, Lt. Moore (now retired). The plaintiff alleged excessive use of force when Lt. Moore used "pepper spray" on an MCI bus that was transporting inmates from FCI Greenville to USP Leavenworth in the aftermath of the 1995 disturbance. The Magistrate Judge found that the use of the pepper spray was reasonable and the least harmful method to quiet the situation that had developed on the bus. Further, the judge noted that the plaintiff's lack of injuries was further indication that the use of force was not malicious or sadistic.

**PENDING CASES OF INTEREST**

**Barnett v. Knowles, et al., Case No. 98-B-0916, USP Florence**

Magistrate Judge issued an R&R recommending that portions of the complaint should be dismissed while one claim continues. Plaintiff alleged he was assaulted by four correctional officers after he

filed a complaint against another officer, that he was improperly placed in SHU, that an officer cursed at him, that staff filed false incident reports charging him with misconduct, and that he should be housed at a different federal prison. The Magistrate recommends dismissal of all claims except the retaliation and assault claims against specific defendants. The Magistrate believes the assault claim turns on a material fact that cannot be resolved by summary judgment.

**Phillips v. Harris and Retzlaff, Case No. 99-WM-2022, USP Florence**

Bivens action involving plaintiff's claims of failure to protect. Plaintiff alleges the defendants caused plaintiff to be assaulted by investigating a protective custody claim and interviewing an inmate about the need for protective custody.

**Turner v. USA, Case No. 97-S-1340, ADX Florence**

FTCA action wherein plaintiff claims correctional officers failed to protect him from harm and that the actions of the officers resulted in him being assaulted by another inmate, causing personal injury and severe pain. Plaintiff also claims the correctional officers maliciously assaulted him using excessive force and that he was denied medical care. On November 2, 1999, the Magistrate Judge entered an order staying this matter pending the outcome of a criminal investigation by the U.S. DOJ Civil Rights Division. On February 11, 2000, plaintiff filed a motion for a temporary restraining order, claiming that the FCC's Dental staff deliberately injected him with a contaminated needle, causing him to contract Hepatitis C. Plaintiff asserted that there was no other conceivable way he could have contracted the viral infection. Plaintiff claimed that the staff's alleged actions were part of the ongoing criminal conspiracy by the Federal Bureau of Prisons to seriously harm or kill him for his assistance in the on-going criminal civil rights investigation at the USP.

**Muhammad v. U.S. Federal Hospital for Prisoners, Case No. 1:00CV00120, USMCFP Springfield**

Plaintiff alleges that employees at the Medical Center fabricated medical reports in order to conduct an illegal mental health competency evaluation authorized by a federal court. Plaintiff also alleges that illegal acts or omissions involving the improper administration of medication occurred while the plaintiff was confined at the Medical Center.

**Frazier v. J. W. Booker, Case No. 00-3025-RDR, USP Leavenworth**

Petitioner asserts jurisdiction pursuant to the Indian Civil Rights Act, 25 U.S.C. 1303 and 28 U.S.C. 2241. He alleges he is scheduled to be released in March 2000, and that the Winnebago Tribal Court has illegally lodged a detainer against him.

**HEARINGS AND TRIALS**

**Karen Jutzi Johnson v. United States, Case No. 96-CV-5708, MCC Chicago**

Family seeks damages in suicide death of inmate. The trial began February 22, 2000, with various BOP staff testifying. The government's expert testified that the information allegedly available to staff would not have indicated imminent suicide, and inmate had other available means of

hanging/suicide other than the sprinkler pipes. Expert testimony presented by plaintiff that various failures by staff to follow policy and exposed pipes increased suicide potential. Closing arguments finished on March 8, 2000. A written ruling is anticipated.

### CRIMINAL MATTERS

#### U.S. v. Jones, USP Florence

On February 7, 2000, inmate was sentenced to three years consecutive for assault on correctional officer at the USP. The defense sought downward departure at sentencing based on fact that inmate was intoxicated and claimed to feel "threatened". However, the Judge did not give a departure and sentenced Jones to the entire three years allowable.

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

The above named inmates are charged with possession of a prohibited object in violation of 18 U.S.C. § 1791(a)(2). After asserting that they were operating under a mental disease or defect when the crime was committed, all defendants underwent evaluations pursuant to 18 U.S.C. §§ 4141 & 4142. Trial is set for March 20, 2000, but no decisions have been made regarding defendants' request to proceed pro se.

#### US v. Belwood, Criminal Case 99-30182, FCI Greenville

A sentencing hearing for this former employee who pled guilty to violations of 21 U.S.C. § 841(a)(10) & (1), and §846 was held. Belwood was given ten months on each count, to be served concurrently, two years of supervised release, and a \$2200 fine. The court allowed for a §3B1.3 enhancement for abuse of a position of trust.

#### U.S. v. McElhiney, USP Leavenworth

Inmate was sentenced on February 18, 2000 in the District of Kansas for Conspiracy to Possess with intent to distribute heroin to 30 years, 8 years supervised release and he was ordered to pay a \$100.00 special assessment. He has filed a 2nd motion for a new trial. Judge Rogers gave the defendant 2 weeks to file a response to the government's reply to his motion.

#### USP Leavenworth

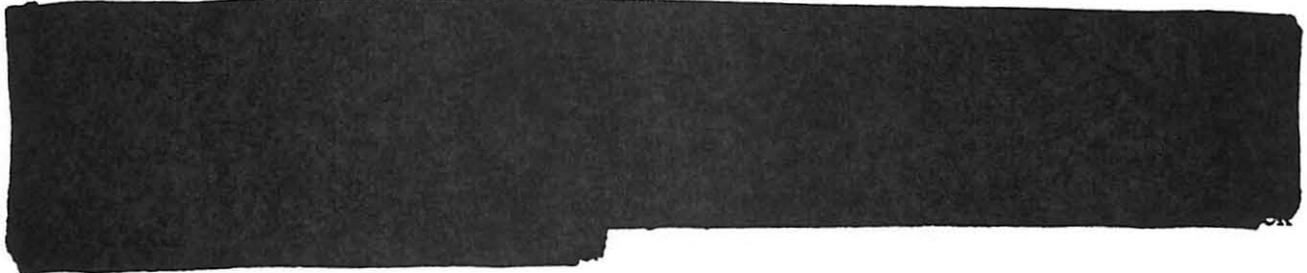
Three Leavenworth staff were indicted on March 1, 2000 for aiding and abetting one another, while acting under color of law to willfully strike and assault an inmate resulting in bodily injury in violation of 18 U.S.C. § 242 and Title 18 U.S.C. § 2. Two of the same staff were also indicted for aiding and abetting one another, while acting under color of law to willfully strike and assault an inmate resulting in bodily injury in violation of 18 U.S.C. § 242 and Title 18 U.S.C. § 2.

**USP Leavenworth**

On March 1, the following inmates were indicted for conspiracy to smuggle heroin into USP Leavenworth in violation of 18 U.S.C. § 1791 (a) and 1791(a)(2): Sammy Villalba, Reg. No. 00116-748; Ramon Duron, Reg. No. 89694-012; Louie Ayala, Reg. No. 80221-011; Fidel Enriquez Ruelas, Reg. No. 24897-037; Kenny Taylor, Reg. No. 12596-064. A woman, Gladys Hill, Reg. No. 24897-037 was also charged. The indictment alleges that the Leavenworth inmates participated in a conspiracy to smuggle heroin filled balloons into Leavenworth by having Gladys Hill hide the balloons on her person then give them to her boyfriend, Kenneth Taylor, during a visit.

PERSONNEL ISSUES

b5



STAFF TRAVEL AND LEAVE



Washington, D.C.  
3/20 - 3/24

b6



Chicago  
3/16 - 3/17  
Washington, D.C.  
3/20 - 3/24



Annual Leave  
3/17



None scheduled



None scheduled



Veterans Job Fair, Ft. Riley KS  
3/24



None scheduled



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

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Kansas City, KS 66101-2421*

April 11, 2000

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

**FROM: DARYL KOSIAK, Regional Counsel**

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

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

**LITIGATION:**

INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	27	14	4	6	3	32	420	35	0	1	1,800,000.00

**Total cases for Calendar Year - 78**

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

**ADMINISTRATIVE CLAIMS**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
55	65	55									

**Total for Calendar Year - 175**  
**Pending - 254**

**ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
175	164	192									

**Total for Calendar Year - 531**

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

	PA/FOIA	FOIA
ACTUAL ON-HAND	30	18
ACTUAL RECEIVED	60	32
ACTUAL PROCESSED	68	38
ACTUAL BACKLOG	0	1*

**Total for Calendar Year - 254**

\* 1 Requests awaiting the retrieval of records from the archives.

### ADVERSE DECISIONS

#### Karen Jutzi Johnson v. United States, Case No. 96-CV-5708, MCC Chicago

Family sought damages in suicide death of inmate. Adverse decision entered by Judge Kocoras on March 29, 2000, awarding \$1,800,000 in damages to plaintiff. Decision indicated staff knew or should have known of signs of inmate's psychological disorder due to inmate complaints about hygiene and picking at scabs, sick call sheet indicating need to see psychologist/psychiatrist, and one inmate indicating an unnamed inmate was suicidal. Appeal request to Solicitor General due on April 14, 2000.

### SETTLEMENTS OR JUDGMENTS

#### Richards v. USA, Case No. 99-024, FCI Greenville

Plaintiff accepted a settlement offer of \$650 in this FTCA action. Plaintiff had two claims. First, he alleged that when he was sent to the Special Housing Unit, his property was not secured in a timely manner which resulted in several items being stolen by other inmates. Records indicated that there was an hour delay in securing his property and that some items which the inmate previously had in his possession, were no longer accounted for. Second, the plaintiff claimed that when he was transferred to FCI Pekin, a box of hobbycraft materials never arrived. After interviewing staff at both FCI Greenville and FCI Pekin, it was decided that a settlement offer should be extended. The original offer was for \$200, which was rejected. Further settlement negotiations resulted in an acceptance of \$650.

### DECISIONS OF INTEREST

#### Moore v. Cooksey, et al., Case No. 98-WM-2321, ADX Florence

On March 3, 2000, the Court adopted the R&R which granted the government's motion to dismiss, denied plaintiff's requests for injunctive relief and dismissed the matter with prejudice. Court relied upon Magistrate's finding that under the Rehabilitation Act (RA), supervisors are not subject to personal liability for violations of the RA, and that any relief could only come from the BOP and/or its Director in an official capacity and that sovereign immunity shields federal agencies against damage claims under the RA. Magistrate further noted that inmates do not have a liberty interest in prison classification arising from the Due Process clause and noted that plaintiff did not demonstrate any denial of equal protection or an 8<sup>th</sup> Amendment violation.

#### Patel v. Wooten, et al., Case No. 96-M-0286, FCI Florence

On March 24, 2000, an oral argument was held regarding the defendants' motion for summary judgment in this religious diet case. At the conclusion of the argument, in which the Judge did not even need to hear from defendants' counsel (private counsel at DOJ expense), the Court granted the defendants' motion for summary judgment. The Court held that there was no equal protection violation, as plaintiff failed to prove that he, as a Hindu, was treated any differently with respect to religious dietary concerns than inmates of other faith groups. He felt the plaintiff was seeking

accommodations that the BOP does not afford to any religious group. The RFRA issues were previously dismissed voluntarily by plaintiff.

**Smocks v. J. W. Booker, et al., Case No. 99-3152-GTV, USP Leavenworth**

In this Bivens-styled action, plaintiff alleged defendants failed to enforce federal laws and that he was subjected to illegal restraint, malicious prosecution, kidnaping, conspiracy, denial of due process, and gross negligence. In this case, plaintiff presented identification at the camp control desk and announced that he was leaving at 12:01 a.m. on March 29, 1999, which was his scheduled release date. Plaintiff ignored orders to stop and was forcibly subdued approximately 100 yards from the camp entrance. The Court concluded that defendants responded responsibly to plaintiff's effort to leave and there is no evidence to suggest that plaintiff was subjected to excessive force. Likewise, the material which details the investigation and indictment which followed plaintiff's actions does not reasonably suggest he was subject to malicious prosecution. On March 29, 2000, the Court concluded that the defendant's uncontested motion should be summarily granted.

**McCurry v. Joe Booker, Case No. 00-3049-RDR, USP Leavenworth**

In this § 2241 petition, the parties entered into a Stipulation of Dismissal Pursuant to Fed. R. Civ. P. 41(a)(1)(ii) because petitioner is no longer being denied eligibility for a reduction in his sentence under 18 U.S.C. § 3621(e)(2)(b), based on a prior state court conviction for serious assault, relief having been granted to petitioner, through utilization of the administrative remedy process.

**PENDING CASES OF INTEREST**

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

On March 13, 2000, District Judge ordered that defendants' motion to dismiss or alternatively for summary judgment is granted in part and denied in part. Specifically, defendants' Rule 12(b) (1) motion for dismissal of claims asserted against defendants in their official capacity was granted. Defendants' motion for summary judgment is granted as to the claims alleging [REDACTED] deprived plaintiff of his address book, that [REDACTED] exerted excessive force against plaintiff, that [REDACTED] verbally threatened plaintiff, that [REDACTED] verbally abused plaintiff and placed him in a holding cells, and that [REDACTED] refused to bring plaintiff a hot meal. Defendants' motion for summary judgment was denied as to the Eighth Amendment claims alleging excessive force by [REDACTED] and an unknown officer, the failure to protect plaintiff from excessive force by [REDACTED] and failure to adequately supervise by [REDACTED]. It was further ordered that the Court's order dated August 9, 1999, staying discovery is lifted and this case is referred to Judge Walter for all further pretrial proceedings. It should be noted that defendants are represented by private counsel at DOJ expense pursuant to 28 C.F.R. § 50.16.

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**Young and Marvin v. Joseph Corriston, Case No. 99-CV-3384, USP Leavenworth**

In this case, plaintiffs allege they were improperly placed in SHU for investigation after an arm chair piece was found missing in the Unicorn Furniture Factory. As relief they request compensation for their lost wages.

**Gometz v. Warden, Case No. 98-D-1356, ADX Florence**

The Magistrate Judge issued an R&R in this Bivens/FTCA case finding that Bivens claims should be dismissed but that the FTCA claims should survive. Magistrate does not embrace the law enforcement detention of goods exception.

**Cordero v. Unicorn, Case No. 99-K-1447, USP Florence**

In February, plaintiff filed papers asking the court to serve copies of all documents on his "jailhouse lawyer." That request was denied. Plaintiff then sought to have the Court order the parties to serve copies of all pleadings on his "paralegal." On March 9, 2000, the Court advised plaintiff that the court did not recognize paralegals as representatives before the court.

**Allen v. BOP, Case No. 00-342, NCRO**

Plaintiff filed under the Freedom of Information Act (FOIA) for copies of phone conversations he had with his attorney while at MCC Chicago. The taped conversations were withheld under Exemption (b)(3) of FOIA.

**UPCOMING HEARINGS AND TRIALS**

**Segien v. James Hanson, Case No. 95-3185-RDR, USP Leavenworth**

This Bivens-styled action (alleged excessive use of force in restraining an inmate in March, 1995) is scheduled for a one week trial in Topeka, Kansas, on April 17, 2000. Lt. Hanson is represented by private counsel paid for by DOJ in this case. Several Leavenworth staff members will be called as witnesses.

**Kikumura v. United States, Case No. 97-CV-52-JPG, USP Marion**

This case was initially scheduled to begin on April 17, 2000. However, it has been indefinitely continued. Plaintiff alleges that sixty-one (61) books were wrongfully confiscated in June of 1994 and seeks \$1,200.00 in compensation.

**CRIMINAL MATTERS**

**US v. Nicolace, FCI Greenville**

Inmate received a sentence of 37 months, \$500 fine, and 3 years of supervised release on charges of violation of 21 USC §§ 841(a)(10) and 846.

**US v. Gregory, FCI Greenville**

**US v. Carter, FCI Greenville**

These two inmates received sentences of 30 months for escape from camp.

**PERSONNEL ISSUES**

[REDACTED]

[REDACTED]

Janice Bonneville, Paralegal Specialist, FCI Pekin, was informed she successfully passed the Illinois Bar Exam.

**STAFF TRAVEL AND LEAVE**

b6

[REDACTED]

Annual Leave 4/21 & 24

[REDACTED]

None scheduled

[REDACTED]

None scheduled