



**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*

November 8, 2001

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

FROM: DARYL KOSIAK, Regional Counsel

SUBJECT: **Monthly Report (October 2001)**

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	29	10	4	14	1	25	430	22	20	0	0.00

Total cases for Calendar Year - 263*

* Due to an error in running the monthly litigation numbers in Lawpack, twenty-three (23) cases were inadvertently unreported for the months of June through September. The total cases for the calendar year has been adjusted to reflect the addition of these twenty-three cases.

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)

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Appeals	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	5	1	4	0	0	0	33	4	0	0	0.00

Mental Health	Petitions filed	Hearings
18 USC § 4245	7	10
18 USC § 4246	0	1

ADMINISTRATIVE CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	280	259	295	276	296	271	244	245	223	228		
#Received	59	56	80	65	69	62	52	86	65	70		
#Answered	76	59	82	52	91	112	56	68	96	65		
#Over 6 month	8	9	9	10	9*	15	13	8	10	3*		
#Pending	259	295	276	296	271	244	245	223	228	216		

Total for Calendar Year - 664

* 1 Claim being investigated by OIA.

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Received	196	223	270	155	206	245	208	166	192	218		
#Answered	250	223	237	210	253	204	270	211	230	251		
# Rejected	97	95	162	72	145	85	107	124	86	107		

Total for Calendar Year - 2079

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FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

FOIA/PA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	99	105	99	107	98	95	104	128	115	71		
#Received	98	70	78	83	96	74	90	98	73	60		
#Processed	92	102	65	67	100	75	79	77	95	91		
#Backlog	13	10	10	9	7	7	8	15	7*	7		

Total for Calendar Year - 820

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

ADVERSE DECISIONS

Nothing to report.

SETTLEMENTS OR JUDGMENTS

Nothing to report.

DECISIONS OF INTEREST

Hill v. Booker, Case No. 00-3040-RDR, USP Leavenworth

In this habeas action, the petitioner sought early release consideration under the Residential Drug Abuse Treatment Program, arguing his conviction for felon in possession of a firearm did not constitute an offense that should preclude him from early release consideration. The court denied the petition, citing the BOP's discretionary authority to make such determinations.

PENDING CASES OF INTEREST

Disch v. Friar, et al., Case No. 01-C-06808, MCC Chicago

In this Bivens action, plaintiff alleges that while being moved from the recreation cage to his cell,

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defendants slammed him on a desk face first and he was hit in the back and ribs. Plaintiff later states he did not see who hit him because he was face down. The allegations contained in this complaint have been referred to the Warden for further investigation.

Bustillo v. Hawk, et al., Case No. 97-WM-445, ADX Florence

Legal staff is currently reviewing eight deposition transcripts to seal security information. Plaintiff is attempting to block the taking of his deposition and his appointed counsel is attempting to withdraw from the case.

Jordan v. Hawk-Sawyer, Case No. 01-B-1332, FCI Florence

In this habeas action, the inmate claims he was denied a lump sum award of Good Time credit after he notified staff of a safety hazard.

Treiber v. Gallegos, Case No. 01-B-726, FCI Florence

In this habeas action, the inmate is attacking the decision of the DHO regarding an incident report he received for the possession of a weapon which resulted in the loss of Good Time. The inmate claims he was denied his right to due process, and claims staff violated policy by failing to hold his cellmate equally accountable for the weapon. The inmate is requesting the Court to reinstate his Good Time and remove the incident report from his prison record.

Barnes v. United States of America, Case No. 01-CV-3202, USP Leavenworth

This FTCA action alleges staff negligence in the treating of an alleged infection to the plaintiff's penis beginning in 1997. Although plaintiff was attempting to sue several staff in their individual capacities, the court, noting that plaintiff has only alleged negligence, dismissed all named defendants and substituted the United States as the sole party defendant.

Gordon v. United States of America, Case No. 01-02986-SBA, USP Leavenworth

This is a personal injury action filed under the FTCA, in which the plaintiff alleges she injured her hand in a grille as it opened on August 5, 2000. She was visiting an inmate when the alleged injury occurred. Plaintiff, who is represented by counsel, not only refused treatment for her alleged injury, but also has failed to provide any documentation verifying that she was injured. This case has been filed in the Northern District of California, and plaintiff seeks unspecified damages.

Morrison v. United States, Case No. 01-3092, FMC Rochester

In this FTCA action, plaintiff alleges delay in transferring him to a medical center by USMS for removal of a stent from urethra to kidney. Plaintiff was a pretrial detainee at the time. He also appears to allege medical malpractice at FMC.

Penn v. Reese, et al., Case No. 01-708, FMC Rochester

This is a Bivens action wherein Plaintiff alleges staff violated his constitutional rights by making him clean his preferred housing room, while on medical idle, and that staff retaliated by moving him to a dormitory room.

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Tracy v. Olson, USP Terre Haute

In this habeas suit, petitioner challenges the determination that he is subject to a DNA test. The inmate has not exhausted his administrative remedies, is not due to be released until 2014, and is not subject to a DNA test until 2013.

RELIGIOUS FREEDOM RESTORATION ACT

No new cases.

UPCOMING HEARINGS AND TRIALS

Navarro v. United States, Case No. 01-C-3249, MCC Chicago

A status hearing was held on this FTCA medical malpractice case. The Court directed that an attorney from a firm be appointed to represent Navarro since he is currently confined at FTC Oakdale, LA. Navarro is scheduled to be released to an INS detainer on December 16, 2001. Discovery has been stayed pending the appointment of counsel. Another status hearing is scheduled for January 9, 2001.

CRIMINAL MATTERS

United States v. Roubideax, Case No. 01-Cr-30144, FCI Greenville

On October 18, 2001, an indictment was filed against Reno Roubideax for violation of 18 U.S.C. 111(a) and (b), Forcible Assault against a Correctional Officer.

United States v. Barriga, Case No. 01-2010601-KHV, USP Leavenworth

On October 18, 2001, this former staff member was indicted by a grand jury and charged with unlawfully attempting to provide approximately 296.58 grams of marijuana to an inmate at USP Leavenworth on or about May 31, 2001. He was also charged with unlawfully, knowingly, and intentionally attempting to possess with intent to distribute marijuana. Lastly, the defendant was charged with unlawfully, knowingly, and intentionally using the United States mail in committing, causing and facilitating the possession with intent to distribute a controlled substance. He faces up to 5 years imprisonment for the first two counts, and up to 4 years imprisonment for the third count.

United States v. Utley, Case No. 01-20073-01-CM, USP Leavenworth

On October 17, 2001, a superceding indictment was issued, charging the defendant with four separate counts of assault on a law enforcement officer, in violation of 18 U.S.C. § 111(a) & (b). Utley faces up to 10 years imprisonment and up to a \$250,000 fine.



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FROM: DARYL KOSIAK, Regional Counsel

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INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
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Total cases for Calendar Year - 263*

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NCR	5	1	4	0	0	0	33	4	0	0	0.00

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18 USC § 4245	7	10
18 USC § 4246	0	1

ADMINISTRATIVE CLAIMS

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Total for Calendar Year - 820

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SETTLEMENTS OR JUDGMENTS

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On October 17, 2001, a superceding indictment was issued, charging the defendant with four separate counts of assault on a law enforcement officer, in violation of 18 U.S.C. § 111(a) & (b). Utley faces up to 10 years imprisonment and up to a \$250,000 fine.

PERSONNEL ISSUES

STAFF TRAVEL AND LEAVE

 November 1 Chicago, IL
November 2 Springfield, IL
November 8-13 Annual Leave
November 19-20 St. Louis & Milan

ble



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

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December 4, 2001

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

FROM: DARYL KOSIAK, Regional Counsel

SUBJECT: Monthly Report (November 2001)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	21	11	4	5	1	17	435	24	18	0	0.00

Total cases for Calendar Year - 284

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

Appeals	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
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NCR	0	0	0	0	0	0	17	0	0	0	0
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Mental Health	Petitions filed	Hearings
18 USC § 4245	4	9
18 USC § 4246	1	2

ADMINISTRATIVE CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	280	259	295	276	296	271	244	245	223	228	216	
#Received	59	56	80	65	69	62	52	86	65	70	53	
#Answered	76	59	82	52	91	112	56	68	96	65	84	
#Over 6 month	8	9	9	10	9*	15	13	8	10	3	9*	
#Pending	259	295	276	296	271	244	245	223	228	216	187	

Total for Calendar Year - 717

*_1 Claim being investigated by OIA.

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Received	196	223	270	155	206	245	208	166	192	218	214	
#Answered	250	223	237	210	253	204	270	211	230	251	158	
# Rejected	97	95	162	72	145	85	107	124	86	107	130	

Total for Calendar Year - 2293

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FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

FOIA/PA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	99	105	99	107	98	95	104	128	115	71	57	
#Received	98	70	78	83	96	74	90	98	73	60	60*	
#Processed	92	102	65	67	100	75	79	77	95	91	60	
#Backlog	13	10	10	9	7	7	8	15	7*	7	6**	

Total for Calendar Year - 880

* Only requests received by NCRO, no requests from CO received for this month.

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

ADVERSE DECISIONS

Nothing to report.

SETTLEMENTS OR JUDGMENTS

Nothing to report.

DECISIONS OF INTEREST

Stocker v. US, FCI Sandstone

This was an FTCA action wherein the inmate alleged the overcrowded and impersonal conditions at SST led to his attempted suicide. On November 26, 2001, legal staff received an Order granting the United States' Motion to Dismiss.

PENDING CASES OF INTEREST

Hakeem Ali Abdul-Shaheed v. United States, Case No. 00-752-JPG, USP Marion

The plaintiff complains that he was referred to a community physician regarding a concern about one of his tonsils. However, the plaintiff alleges the physician removed the other tonsil that was "perfectly normal." He seeks unspecified compensatory and punitive damages.

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Karamo B. Kaba v. Warden Stepp, et al., Case No. 01-150-GPM, USP Marion

The plaintiff claims that defendant Laird conspired with and bribed inmates to assault him in retaliation for filing administrative remedies. Other defendants were allegedly aware of this situation, but took no action to protect the plaintiff and he was assaulted on February 23, 2001. He seeks \$500,000 in damages from all other defendants.

Van Someren v. United States, FMC Rochester

On November 5, 2001, depositions were taken from persons on the Compassionate Release Committee regarding medical care provided to an inmate with a brain tumor. The inmate had consistently refused treatment to have surgical intervention at Mayo Clinic, then sought compassionate release and furloughs for surgery by a surgeon of his choice in California. A Motion for Summary Judgment and/or a Motion to Dismiss will be filed shortly.

Dunn v. Hedrick, et al., Case No. 01-3459-CV-S-SOW-P, USMCFP Springfield

Plaintiff alleges that defendants have opened, delayed, and returned his VA benefit checks, and deprived him of all correspondence that came with the checks. Plaintiff also alleges that he never received any notification that his mail was being opened, delayed, or returned to the VA in accordance with BOP policy. Finally, plaintiff alleges that his personal mail is being lost or destroyed before he receives it.

Arctic v. Mundt, Case No. 01-1998, FCI Waseca

This is a habeas petition that seeks to invalidate Program Statements 5162.02 and 5162.04, for failing to comply with Notice and Comment requirements of the Administrative Procedures Act (APA). The inmate had previously filed a habeas petition with respect to 5162.02, has reentered and completed the DAP program, and now falls under 5162.04.

Kliver v. J. E. Gunja, et al., 01-CV-1604, ADX Florence

Bivens action wherein the inmate claims he became a verified protective custody case upon his cooperation with the government during an investigation. He states he has been the victim of two assaults due to his protective custody issues. He further claims the Bureau of Prisons violated his Eighth Amendment rights by being deliberately indifferent to his safety needs by placing him in harms way and for not taking reasonable measures to ensure his safety. The inmate is seeking both declaratory and injunctive relief from the Court in the following manner; compel the defendants to immediately transfer him to an appropriately secure facility that will not jeopardize his safety, bar the defendants from confining him in any U. S. Penitentiary in the future, and compel the defendants not to house him with any inmates who have been housed within the Special Housing Unit of USP Florence.

Moore v. Perdue, et al., 01-M-1335, USP Florence

Bivens action wherein plaintiff alleges defendants violated his defendants in this case violated his Fifth and Eighth Amendment rights by using excessive force on him and then conspired to "cover up" the use of force by issuing him an incident report for Refusing an Order, Insolence, and Assault. Specifically, plaintiff alleges he was subjected to an unprovoked attack and sustained injuries and permanent scars to his wrist and suffers with his back since the incident. Plaintiff is seeking injunctive relief for the court to order the defendants to resign from their positions, award

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court costs and attorney fees. Plaintiff also seeks to be awarded \$100,000.00 jointly and severally from each defendant for physical and emotional injuries.

RELIGIOUS FREEDOM RESTORATION ACT

No new cases.

UPCOMING HEARINGS AND TRIALS

United States v. Danny Cobb, Case No. 01-CR-40015-GPM, USP Marion

Inmate Cobb, who is charged with escape from the custody of FPC Marion, was arraigned on March 12, 2001. Trial was stayed pending examination to determine competency. The defendant was found mentally competent and trial set for October 2, 2001. On September 17, 2001, defendant changed his plea to guilty. Sentencing is set for December 10, 2001 at 10:30 a.m.

CRIMINAL MATTERS

U.S. v. Moore, 01-CR-30176, FPC Greenville

U.S. v. Terry, 01-CR-30176, FPC Greenville

U.S. v. Johnson, 01-CR-30176, FPC Greenville

On November 28, 2001, Rico Moore (#26076-044), Derrick Terry (#26007-044), and James Johnson (#26078-044) were indicted for Escape from FPC Greenville.

United States of America v. Ricky Lynn Tuck and Patricia A. Tuck, 01-CR-20149-ALL, USP Leavenworth

On November 14, inmate Ricky Tuck and his wife were indicted in an eight count indictment, charging them with Possession with Intent to Distribute a Controlled Substance, in violation of 21 U.S.C. § 846; Use of a Communication Facility (telephone) to facilitate the above offense, in violation of 21 U.S.C. § 843 (5 counts); and Attempting to Possess with Intent to Distribute Methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and § 2. The indictment charges that the inmate and his wife committed the above infractions beginning on February 6, 2000 and ending November 14, 2001

USA v. Walter Walsh, 00-CR-0133, FCI Florence

On 8/3/01 defendant appeared in Court for a change in plea. Guilty plea entered and accepted by the court. Sentencing hearing set for 10-19-01. On 10/18/01, the Court continued the sentencing hearing. A status hearing with respect to the sentencing is scheduled for 11/21/01. Discussions with the AUSA reveal that Walsh is considering attempting to withdrawal his guilty and go to trial. Walsh now believes that he can prevail and be found not guilty at a trial. Close monitoring of this matter continues.



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January 8, 2002

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LITIGATION:

INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	33	23	7	3	0	34	372	27	3	1	0.00

Total cases for Calendar Year - 317

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NCR	0	0	0	0	0	0	28	1	0	0	0.00
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Mental Health	Petitions filed	Hearings
18 USC § 4245	1	0
18 USC § 4246	2	1

ADMINISTRATIVE CLAIMS

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#Pending	280	259	295	276	296	271	244	245	223	228	216	187
#Received	59	56	80	65	69	62	52	86	65	70	53	70
#Answered	76	59	82	52	91	112	56	68	96	65	84	53
#Over 6 month	8	9	9	10	9*	15	13	8	10	3	9*	0
#Pending	259	295	276	296	271	244	245	223	228	216	187	212

Total for Calendar Year - 787

* 1 Claim being investigated by OIA.

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Received	196	223	270	155	206	245	208	166	192	218	214	245
#Answered	250	223	237	210	253	204	270	211	230	251	158	217
# Rejected	97	95	162	72	145	85	107	124	86	107	130	103

Total for Calendar Year - 2538

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FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

FOIA/PA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	99	105	99	107	98	95	104	128	115	71	57	69
#Received	98	70	78	83	96	74	90	98	73	60	60*	77
#Processed	92	102	65	67	100	75	79	77	95	91	60	77
#Backlog	13	10	10	9	7	7	8	15	7*	7	6**	0

Total for Calendar Year - 957

* Only requests received by NCRO, no requests from CO received for this month.

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

ADVERSE DECISIONS

Nothing to report.

SETTLEMENTS OR JUDGMENTS

Appleby-EI v. United States, Case No. 97-N-671, ADX Florence

On December 17, 2001, plaintiff agreed to withdraw his Motion to Vacate Judgment and the settlement funds were posted to his inmate account. Plaintiff signed both a Motion to Withdraw, Motion to Vacate Judgment, and the Receipt and Satisfaction of Settlement.

DECISIONS OF INTEREST

Farmer v. Perrill, et al., Case No. 93-D-1253, FCI Englewood

On December 26, 2001, the Tenth Circuit reversed a decision of the district court and granted judgment for two staff members. Farmer had sued the United States Attorney under the FTCA, and sued the Englewood staff under Bivens, alleging the denial of transsexualism. The FTCA action was dismissed with prejudice for failure to prosecute. Defendants moved for reconsideration of the order denying their motion for summary judgment in this action, invoking section 2676. The district court denied the motion on the premise that the Bivens claim against defendants in their individual capacities were not foreclosed by the dismissal of the related FTCA action because the FTCA barred claims against defendants only in their official capacities. In the interlocutory appeal, however, the Tenth Circuit reversed and held the dismissal of the FTCA action as a bar to further litigation arising out of the same transaction and occurrence.

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Draine v. Gilkey, Case No. 99-620, FCI Greenville

This case was voluntarily dismissed after the BOP received clarification from the sentencing judge regarding his intention to reduce petitioner's sentence under U.S.S.G. § 5G1.3. After receiving clarification, FCI Oxford recalculated petitioner's sentence and dismissal was sought by agency counsel.

Benites-Broches v. Hedrick, et al., Case No. 01-3022-CV-S-1-H, USMCFP Springfield

In this case, petitioner contended that he should be released from confinement and/or deported back to Cuba via INS. The case was dismissed on December 5, 2001.

PENDING CASES OF INTEREST

Baker (Milton) v. L. J. Smith, Case No. 01-CV-2357, USP Florence

This is a Bivens action wherein the inmate is challenging the findings of the DHO. Specifically, the inmate claims that the hearing did not afford him the required due process. Plaintiff seeks expulsion of the incident report and return of his good conduct time. An order directing service of this has not yet been entered. A request for representation is being prepared.

David Merritt Litigation, ADX Florence

Currently, David Merritt has four cases pending: a 1995 Bivens hybrid; a 1997 Habeas; a 1999 Bivens hybrid; and a 2000 Bivens hybrid. Legal staff is attempting to reach a global settlement that would encompass these cases. The inmate has set forth roughly 40 claims in each of the three Bivens cases. As of this time, there are 18 remaining defendants in the 1995 case, 22 remaining defendants in the 1999 case, and 25 remaining defendants in the 2000 case. Furthermore, a Motion to Dismiss is pending in the 1999 case, and the deadline for a Motion for Summary Judgment in the 1995 case is in January.

Michael S. Stevens v. Warden Booker, Case No. 00-3258-GTV, USP Leavenworth

In this action filed pursuant to the Federal Tort Claims Act, plaintiff alleges staff were negligent in placing him in the same cell with inmate Scott Shofler in SHU at USP Leavenworth on July 13, 1998. Plaintiff was assaulted by inmate Shofler early in the morning of July 14, 1998. Because Shofler had killed an inmate at USP Leavenworth a few months prior to his placement in SHU, Stevens claims his placement with Shofler was negligent. Plaintiff claims he suffers acute pain and permanent damage to his spine. He seeks two million dollars in compensatory damages.

Mitchell v. United States, Case No. 01-0742, USP Leavenworth

Plaintiff alleges medical staff at USP Leavenworth were negligent when they failed to surgically repair his broken left wrist. During the investigation of the administrative claim, it was determined the surgery should have been completed and recommended settlement of the claim. However, due to the failure of the plaintiff's attorney to provide medical documents necessary to determine the value of the claim, the claim was denied.

The case is now pending in the Western District of Missouri. A settlement conference was held on Friday, January 4, 2002. Settlement authority up to \$25,000 was granted by the Central

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Office. The mediation ended without a resolution. The plaintiff came from \$150,000 down to \$85,000. The government plans to access some additional medical data. The Mediator believes that if the case goes to trial, the judge will award in excess of \$30,000. This case is being handled by Janice Bonneville, Assistant Regional Counsel.

Diego Gil v. James Reed, et al., Case No. 00-C-724-C, FCI Oxford

Plaintiff alleges that the defendants provided him with inadequate medical care in violation of the 8th Amendment, and that the United States is liable under the FTCA for the negligent or reckless provision of medical care to him. A motion for summary judgment was filed on September 26, 2001. Plaintiff was granted an extension to file a response to this motion, and the Court's decision is pending.

Felton v. Reese, Case No. 01-2278, FMC Rochester

This is a combination Bivens/FTCA action filed in the District of Columbia against the warden and an officer. The inmate claims his constitutional rights were violated when an officer grabbed his toe while conducting a count. Warden Reese has been served, but the officer has not been served. Felton's tort claim is still pending resolution. Information was provided to Paul Schneider in Central Office to assist with response, and representation requests have been initiated.

Huerta-Macias v. US, Case No. 01-1812, FCI Sandstone

This is a combination Bivens/FTCA action in which the plaintiff claims staff at FCI Greenville and FCI Sandstone improperly continued him in the Financial Responsibility Program after a court had ordered him to be free of restitution obligations. All defendants are "John Does," and have not been served. Staff had been working with the United States Attorney's Office to obtain back restitution for payments entered after the order and prior to staff becoming aware of the court's amended restitution order. Representation requests have begun on potential defendants, and the litigation report is being prepared.

Booker T. Gary, Jr. v. Keith E. Olson, Case No. 01-270-C-T/F SD-IN, USP Terre Haute

In this Habeas suit, inmate Booker T. Gary alleges he has been denied access to his legal and personal property in violation of his constitutional rights. It appears the complaint arises out of Booker's placement in SHU in September of 2001. While in general population, this inmate accumulated a voluminous amount of personal property to which, he asserts, staff members have not given him adequate access. A draft response should be provided to the AUSA by the end of January 2002.

RELIGIOUS FREEDOM RESTORATION ACT

No new cases.

UPCOMING HEARINGS AND TRIALS

Hannah v. Williams, et al., Case No. 00-WM-848, USP Florence

A hearing is scheduled for January 17, 2002, on plaintiff's motion for a TRO. Plaintiff is claiming that FCI Sheridan is requiring him to pay for postage and copies made while he was housed at

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USP Florence. Plaintiff alleges that although he agreed to pay for the copies and postage when he obtained funds on his account, he should not be required to pay now because the Court permitted him to proceed *in forma pauperis*.

Kikumura v. Hurley and Gallegos, Case No. 98-B-1442, USP Florence

On November 22, 2001, a Motion to Stay the proceedings was filed by the United States Attorney. The USA is seeking a stay until the BOP is able to fully determine how to manage inmates such as the plaintiff. A hearing on the Motion to Stay is scheduled for January 10, 2002 at 2:00 p.m. in the Federal Courthouse in Denver.

CRIMINAL MATTERS

United States of America v. Michael P. McElhiney, D. Ct. No. 98-CR-40083-01-RDR, 10th Cir. No. 00-3056, USP Leavenworth

On December 26, 2001, the Tenth Circuit Court of Appeals overturned the conviction received by former USP Leavenworth inmate, Michael McElhiney, for Conspiracy to Distribute and Possess Heroin with Intent to Distribute, which is a violation of 21 U.S.C. § 846 & 841(b)(1)(C). McElhiney had been convicted of running a drug smuggling operation in the penitentiary between January and September of 1995. This conviction was the result of the second of two jury trials. The first trial resulted in a hung jury. The second trial also initially had a hung jury, however Judge Richard Rogers provided what are called "Allen charges" to the jury to assist them in reaching a unanimous verdict. These instructions, along with some observations made by the judge, resulted in the conviction being overturned.

PERSONNEL ISSUES



STAFF TRAVEL AND LEAVE

b6

	January 14	Administrator's Retreat
	January 15-18	OGC Meeting
	January 24-25	Annual Leave
	January 14-15	Administrator's Retreat
	January 14 (1/2 day)	Annual Leave
	January 22-February 7	Glynco, GA