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12-14-1992

UNITED STATES GOVERNMENT MEMORANDUM

TO: WALLACE H. CHENEY, GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS
WASHINGTON, D.C. 20534

FROM: DAVE ESSIG, REGIONAL COUNSEL, NORTHEAST REGION
FEDERAL BUREAU OF PRISONS, PHILADELPHIA, PA. 19106

SUBJECT: LEGAL ACTIVITIES REPORT, NORTHEAST REGION *-NOVEMBER*

ADMINISTRATIVE LEGAL ACTIVITIES--SUMMARY REPORT

1992	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
ADMINISTRATIVE REMEDIES												
# PENDING ON FIRST	31	32	45	60	70	63	30	81	70	72	62	
# RECEIVED IN MONTH	49	67	115	117	70	78	109	111	108	86	93	
# ANSWERED IN MONTH	48	54	100	107	77	111	58	122	106	96	129	
# PENDING END OF MO	32	45	60	70	63	30	81	70	72	62	26	
# OVER 30 DAYS	0	0	0	0	0	0	0	0	0	0	0	

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TORT CLAIMS (1992)	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# PENDING ON FIRST	148	159	143	151	142	113	128	141	170	210	196	
# RECEIVED IN MONTH	45	38	54	52	47	73	60	79	81	66	56	
# ANSWERED IN MONTH	34	54	46	61	76	58	47	50	41	80	75	
# PENDING END OF MO	159	143	151	142	113	128	141	170	210	196	177	
# OVER 6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	

FOI/PRIVACY (1992)	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# PENDING ON FIRST	66	59	63	76	72	76	102	97	98	106	130	
# RECEIVED IN MONTH	27	43	61	47	16	88	37	45	29	36	4	
# ANSWERED IN MONTH	34	39	48	51	12	62	42	44	21	12	6	
# PENDING END OF MO	59	63	76	72	76	102	97	98	106	130	128	
# OVER 30 DAYS	44	42	36	47	63	46	60	72	87	98	125	

TORT CLAIM INVESTIGATION STATUS: AS OF 11/30/1992	ALW	DAN	FAI	LEW	LOR	MCK	NYM	OTV	RBK	SCH	LSCI
# PENDING	4	7	33	49	14	7	23	9	13	16	0
# INV OVER 60 DAYS	0	0	5	13	3	2	0	1	0	0	0

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LITIGATION ACTIVITY, 1992, NORTHEAST REGION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# CASES OPEN	247	253	259	264	273	278	296	312	322	281	205	
# NEW CASES RECD	10	11	17	12	20	21	30	26	18	20	27	
# LIT REP DONE	11	6	11	8	23	16	21	20	22	18	21	
# CASES CLOSED	12	5	11	7	11	15	12	10	8	61	103	
# HABEAS CORPUS	1	5	7	3	12	5	7	9	6	6	15	
# FTCA	2	2	0	1	0	1	0	3	2	4	4	

# BIVENS	4	1	5	2	4	8	13	6	4	9	5
# OTHER	3	3	5	6	3	7	10	6	5	1	3
# BIVENS & FTCA	0	0	0	0	1	0	0	2	1	0	0

LITIGATION OF NOTE:

1. ROBERT REGO V. UNITED STATES, CIVIL NO. 92-6547 (EDPA)

INMATE REGO WAS REMOVED FROM FPC MAXWELL AIR FORCE BASE TO TESTIFY FOR THE UNITED STATES IN A MAJOR TRIAL IN PHILADELPHIA. ONE WEEK AFTER ARRIVAL, REGO FILED A HABEAS CORPUS PETITION REQUESTING IMMEDIATE RELEASE THROUGH A CCC OR IMMEDIATE HOME CONFINEMENT. REGO HAS PRESUMPTIVE PAROLE DATE OF APRIL 25, 1993 AND WAS REFERRED FOR 90 DAY CCC PLACEMENT. MAGISTRATE JUDGE HELD HEARING ON PETITION ON DECEMBER 7, 1992. HANK SADOWSKI REPRESENTED

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BOP. COURT HEARD ARGUMENT ON LEGAL ISSUES - PERSONAL JURISDICTION OVER WARDEN IN ALABAMA, NO EXHAUSTION, AND NO RIGHT TO RELIEF REQUESTED. COURT RESERVED RULING BUT LEFT THE IMPRESSION THAT THE PETITION DID NOT BELONG IN EASTERN DISTRICT OF PENNSYLVANIA. CASE COMPLICATED BY SUPPORT OF US ATTORNEY'S OFFICE OF REQUEST FOR EXTENDED CCC PLACEMENT.

2. U.S. V. FRANK SMITH, 90 CR 504 (EDNY)

INMATE SMITH, 38273-019, WAS SERVING A NEW YORK STATE SENTENCE AND BROUGHT INTO FEDERAL CUSTODY VIA WRIT AD PROS. IN JULY 1992 FEDERAL JUDGE IMPOSED 3 YEAR SENTENCE CONSECUTIVE TO THE STATE TERM. INEXPLICABLY, THE CT RECOM THE FEDERAL SENTENCE BE SERVED FIRST, THEN RETURNED TO STATE CUSTODY. WE HAVE NOTIFIED THE COURT THROUGH THE U.S ATTORNEY'S OFFICE THAT WE QUESTION COMPLIANCE W/THE RECOMMENDATION. DEFENSE COUNSEL HAS FILED A REPLY AND THE CT HAS SCHEDULED A HEARING FOR 12/22/1992. HANK SADOWSKI WILL REPRESENT OUR POSITION. IN THE PLEA BARGAIN, THE AUSA AGREED HE WOULD NOT OPPOSE THE REQUEST FOR FEDERAL SERVICE FIRST. WE ARE USING THIS CASE TO TRAIN THE U.S. ATTORNEY'S OFFICE OF BOP POLICY RE: STATE AND FEDERAL SENTENCING ISSUES.

SETTLEMENTS AND AWARDS

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1. CHRISTIAN V. U.S., CIVIL NO. 91-6405 (EDPA)

MEDICAL MALPRACTICE FTCA CASE ALLEGING FCI LORETTO WAS NEGLIGENT IN INITIAL EVALUATION AND FOLLOW UP TREATMENT OF KNEE INJURY SUFFERED BY INMATE JAMES CHRISTIAN, 40123-066. INMATE HAD TWO OUTSIDE OPERATIONS TO REPAIR KNEE, BUT NEITHER HELD. INMATE WAS RELEASED IN MAY 1991. KNEE IS PERMANENTLY DAMAGED. LACK OF A STRUCTURED PHYSICAL THERAPY PROGRAM EXPOSED THE UNITED STATES TO LIABILITY. CASE SETTLED FOR \$75,000 WITH A SET OFF OF \$25,000 FOR A CRIMINAL FINE.

2. SMITH V. U.S., CIVIL NO 91-6318 (SDNY)

FTCA CASE IN WHICH INMATE MARVIN SMITH, 39205-066, ALLEGED PROPERTY LOSS AT FCI OTISVILLE. INMATE WAS A STATE BORDER SERVING A MASSACHUSETTS SENTENCE IN SEVERAL FEDERAL INSTITUTIONS. HE WAS RETURNED TO STATE CUST. IN FEBRUARY 1989. EVIDENCE SHOWED THAT INMATE HAD CERTAIN PROPERTY IN NOVEMBER 1988 AND THAT BOX WAS MAILED TO HIS NEXT INSTITUTION. THERE IS NO RETURN RECEIPT FOR THE BOX. INMATE REQUESTED DAMAGES FOR \$232. CASE

SETTLED FOR \$100.

NOTE:

TO WEED THE CASES WE NEEDED TO PLACE ON THE NEW LMS SYSTEM, WE REQUESTED

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UPDATES ON ALL OLDER CASES. THE RESULT WAS THE CLOSURE OF 164 CASES OVER THE LAST TWO MONTHS. THE FOLLOWING CASES WERE SETTLED WITH OUR APPROVAL BEFORE SETTLEMENT, BUT WE WERE NOT NOTIFIED OF THE FINAL OUTCOME:

3. AGUILERA-QUIJANO V. U.S., CIVIL NO. 90-4009 (SDNY)

FTCA CASE ALLEGING LOST PROPERTY BY FCI OTISVILLE. ON FEBRUARY 7, 1989, INMATE AGUILERA-QUIJANO, 08389-016, WAS RECEIVED AT FCI OTISVILLE AND WAS PLACED IN ADMINISTRATIVE DETENTION. THE OFFICER ON DUTY REMOVED FROM THE INMATE A YELLOW COLOR CHAIN WITH RELIGIOUS FIGURE. HE PREPARED A CONFISCATION FORM AND PUT THE JEWELRY IN THE SEG. SAFE. THE RELIGIOUS JEWELRY NEVER SURFACED AGAIN. INMATE FILED FTCA CASE REQUESTING \$4000. THERE WAS NO EVIDENCE THAT INMATE HAD THE JEWELRY AT ANY OTHER INSTITUTION PRIOR TO THE ARRIVAL AT FCI OTISVILLE. ATTEMPT TO LIMIT HIM TO THE \$100 LISTED ON THE PROPERTY FORM PROVED UNSUCCESSFUL. COURT WAS PUTTING PRESSURE ON AUSA TO SETTLE. INMATE HAD SOME EVIDENCE CONCERNING VALUE OF AT LEAST \$2000. CASE SETTLED IN JULY 1992 FOR 2518.50.

4. COLBERT V. HERSHBERGER, CIVIL NO. 90-4612 (SDNY)

INMATE JACK COLBERT, 12090-054 FILED FTCA CASE ALLEGING PROPERTY LOSS AT FCI OTISVILLE. EVIDENCE SHOWED COLBERT WAS PERMITTED TO HAVE THREE

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REFERENCE BOOKS TO ASSIST HIM AT TRIAL. COLBERT WAS REMOVED FROM FCI OTISVILLE UNDER IAD ON FEBRUARY 3, 1987. ON HIS RETURN IN DECEMBER 1987, THE BOOKS COULD NOT BE LOCATED. CASE SETTLED IN DECEMBER 1991 FOR \$350 BASED ON AN ESTIMATE OBTAINED FROM A BOOK STORE.

TRAVEL AND LEAVE SCHEDULE FOR DECEMBER 1992:

DAVE ESSIG -

TRAVEL--DEC. 3-4 US ATTORNEY'S OFFICE, NEW HAVEN, CT - DEPOSITION IN COLBERT V. SULLIVAN.

ANNUAL LEAVE--DEC. 11, 18-24

HANK SADOWSKI

TRAVEL--DEC. 22 - US DISTRICT COURT - EDNY - US V. SMITH

ANNUAL LEAVE--DEC. 3-4, 28-31

TERESA HUGHES

TRAVEL--NONE SCHEDULED

ANNUAL LEAVE--NONE SCHEDULED

AZZMEIAH VAZQUEZ-SPICER

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TRAVEL--NONE SCHEDULED

ANNUAL LEAVE--NONE SCHEDULED