

UNITED STATES GOVERNMENT

memorandum

Date: November 12, 1996

Reply to David R. Essig, Regional Counsel, Northeast Region  
Attn of: Federal Bureau of Prisons, Philadelphia, Pa. 19106

Subject: Monthly Report - October 1996

To: Wallace H. Cheney, General Counsel and  
Assistant Director, Federal Bureau of Prisons  
Washington, D.C. 20534

ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

Administrative Remedies - 1996

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	130	93	124	59	118	78	98	119	112	79	
Rec'd in month	148	135	119	161	146	122	178	164	137	159	
Ans'd in month	185	104	184	102	186	102	157	171	170	115	
Pending at End	93	124	59	118	78	98	119	112	79	123	
Over 30 days	0	0	0	0	0	0	0	0	0	0	

Administrative Tort Claims - 1996

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	323	356	361	369	364	362	362	326	307	306	
Rec'd in month	95	86	82	74	90	88	77	69	66	79	
Recons. rec'd	2	15	4	10	9	9	9	6	11	5	
Ans'd in month	64	96	78	89	101	97	124	94	78	88	
Pending at End	356	361	369	364	362	362	326	307	306	302	
Over 180 days	0	0	0	0	0	0	0	0	0	0	

Tort Claim Investigation Status: As of October 30, 1996



**FOI/Privacy Act Requests - 1996**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	86	97	115	146	170	141	143	155	99	69	
Rec'd in month	29	39	49	54	35	43	36	33	35	47	
Ans'd in month	18	21	18	30	64	41	24	89	65	60	
Pending at End	97	115	146	170	141	143	155	99	69	56	
Over 30 days	68	81	97	116	107	100	119	66	34	24	

**LITIGATION ACTIVITY - 1996 NORTHEAST REGION**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Cases Open	548	555	567	564	565	569	576	575	580	587	
New Cases	24	24	26	22	24	22	24	14	29	17	
Lit Reports	12	17	21	19	19	20	13	17	15	18	
Cases Closed	16	17	18	25	23	18	17	15	24	10	
Habeas Corpus	8	10	4	7	7	3	11	8	14	9	
FTCA	2	2	4	2	4	8	3	1	1	1	
Bivens	13	9	13	13	12	5	8	2	8	4	
Other	1	3	5	0	0	3	1	1	4	2	
Bivens/FTCA	0	0	0	0	1	3	1	2	2	1	

**SETTLEMENTS AND AWARDS:**

1. Wagner v. United States, Civil No. 4:CV-96-0289 (M.D.Pa. October 18, 1996)

Judge McClure entered summary judgment against the United States and in favor of Inmate Michael Wagner, 03718-010, in the amount of \$172.90 plus costs. The inmate had been taken to Special Housing at USP Allenwood and his property was left unsecured for over three and a half hours. We had argued that the complaint should be dismissed because an institution emergency kept staff from securing the property. The court found that the discretionary function exemption would not apply in this case because the institution was back to normal operations prior to the placement of the inmate in SHU. We are recommending against appeal.

2. Gonzalez v. United States, 95-CV-7448 (E.D.Pa.)

Inmate Mario Gonzalez, 12380-075, filed a Federal Tort Claims complaint alleging that his property worth \$1682.50 was lost at FCI Schuylkill after an institution transfer. The return receipt was signed by staff but the box was never located. Inmate rejected our attempt to settle the administrative claim and brought this action. Case settled for \$750.00.

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3. Jones v. United States, 94-CV-5086 (E.D.Pa.)

This FTCA case was brought by former inmate Rother Jones, Reg. No. 36662-066, who suffered a massive brainstem hemorrhage on October 18, 1991, after being transferred from FCI Loretto to FCI McKean, via USP Lewisburg. Jones had been under prescribed medication to control hypertension. Approximately 2-3 hours after arriving at FCI McKean, he suffered a brainstem hemorrhage, which left him paralyzed from the neck down and affected his speech. The complaint alleged that the failure to provide Jones his medication on October 18, 1991 was the cause of his brainstem hemorrhage. The case was scheduled for trial on November 12, 1996. Case was settled for \$75,000 because of lack of records concerning medication and because of serious nature of injury.

SIGNIFICANT CASES OR TRIALS:

1. Benjamin Mackey v. Bureau of Prisons, Civil No. 96-5286 (E.D.Pa.)

Inmate Benjamin Mackey, 09717-054, at FCI Schuylkill, filed a rambling habeas corpus action challenging a DHO finding that he possessed marijuana and the calculation of prior custody credit. Judge Shapiro held a hearing on the petition for Thursday, October 17, 1996. The court stated from the bench that she was only focusing on two issues: whether the Bureau properly calculated the inmate's parole violation term and whether the DHO forfeited more statutory good time than was available at the time of the infraction. The court requested an additional declaration detailing these issues. Hank Sadowski assisted the AUSA

at the hearing. During the hearing Hank discovered that the institution ISM had miscalculated the full term date to the inmate's benefit. Instead of getting out sooner, the inmate may actually get out later.

2. Lloyd v. Levine, et al. Civil Action No. 96-1827 (D.N.J.)

Judge Simandle held a hearing on October 21, 1996, in the above case. Counsel for Inmate Michael Lloyd, 44935-066, filed what purported to be a § 1983 action requesting essentially injunctive relief to order the inmate to be placed in a CCC for 180 days. He alleged that his CCC placement was improperly influenced by recommendations from sentencing judge and AUSA. In addition to the Warden and other Fort Dix staff, the sentencing judge and the AUSA were named as defendants. We moved to dismiss the complaint. Attorney Al Munguia represented the Bureau. At the hearing, Plaintiff's attorney raised new factual allegations concerning alleged improper contact by the FBI. The court requested a declaration addressing these allegations. The court stated it would rule on our motion after submission of the additional information.

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3. United States v. Legrano, 94 CR 1231 (E.D.N.Y.)

On October 23, 1996, Judge Ross (E.D.N.Y.) called MCC NY Attorney Dominique Raia to request Dr. Voulo (staff physician) testify in a sentencing hearing ASAP. Dr. Voulo previously had treated Legrano while Legrano was at MCC NY. Legrano is regularly seen in various clinics. The issue was whether the BOP could care for Legrano properly if housed at a BOP facility (facing a life sentence). Dr. Voulo testified as to several specific medical conditions and essentially covered his medical treatment since his incarceration with the BOP and opined that the BOP could adequately care for him. The court reserved ruling. Dominique attended the hearing.

4. United States v. Santiago, et al., 96 Cr 402 (S.D.N.Y.)

On October 23, 1996, Judge Leisure held a hearing concerning the scheduling of a co-defendant meeting for the purpose of a plea offer to all defendants. The court instructed the MCC NY to make arrangement for a codefendant meeting for October 28, 1996 at 2:00 pm. Attorney Alma Lopez attended the hearing.

5. **Moscato v. Federal Bureau of Prisons**, 1996 WL 601922(3d Cir. Oct. 22, 1996)

In this case, the Third Circuit established the procedural default rule for habeas corpus cases. The inmate, Phillip Moscato, 08126-050, brought a habeas corpus action challenging a DHO decision from 1993. The primary issues below were the sufficiency of the evidence to support the DHO finding and the denial of a requested witness due to unavailability (the witness was at FPC Allenwood and the inmate had his DHO hearing at LSCI Allenwood). In addition the administrative appeals by the inmate were rejected as untimely. Following the 7th Circuit, the Third Circuit Court of Appeals held that the doctrine of procedural default applies in habeas corpus actions challenging inmate discipline. When an inmate has not fully exhausted administrative remedies and no longer has such a remedy, a court could not consider the habeas petition unless the inmate established cause for the failure to exhaust and prejudice resulting therefrom. In this case, the inmate could not establish cause, and the court did not need to address whether there was prejudice. Hank Sadowski presented oral argument on behalf of the Bureau.

6. **United States v. Zampardi**, 96 Cr 749 (E.D.N.Y.)

Inmate Michael Zampardi, 00128-748, a pretrial detainee at MDC Brooklyn, filed a motion with the criminal trial judge, Judge Gleeson, to be removed from administrative detention. Zampardi was placed in protective custody after the AUSA advised that the FBI received reliable information that a contract was taken out for his life. The detainee offered to "waive" his safety and alleged that the isolation is adversely affecting his health. Judge Gleeson scheduled a hearing for November 1, 1996. The wrong inmate was brought to the hearing and the hearing was held on November 4, 1996. Attorney Azzmeiah Vazquez assisted the AUSA at the hearing. The court reserved ruling.

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7. **United States v. Diekan**, Cr 95-10382 (D. Mass.)

Inmate John Diekan, 20946-038, is serving a 5 month sentence at a CCC in Boston. The CCM ordered him to submit to a routine blood test as part of his physical required to remain at the CCC. Diekan refused and asserted religious grounds. He told the CCM that sometimes he was a Christian Scientist and sometimes he was a Catholic. The CCM found that Diekan had requested weekend passes to attend evening religious service at a Catholic Church. The CCM denied his request not to submit to the blood test. Diekan (a former attorney) filed an emergency motion to enjoin the Bureau from "retaliating"

against him for failure to submit to the blood test. Judge Keeton (the sentencing judge) scheduled a hearing for Monday, October 28, 1996. The court asked CCM Pete Weld to attend the hearing. The CCM told the court that all inmates are so screened to ensure there are no communicable diseases, and he plans to place Diekan in a federal institution so he can be isolated. The court dismissed the motion for lack of jurisdiction. The next day the inmate agreed to the blood test.

8. **United States v. Leggett**, 4:CR-94-0097 (M.D.Pa.)

Defendant Michael K. Leggett, Reg. No. 83644-011 (who is currently housed at USP Lewisburg as a holdover) was charged and found guilty (on November 13, 1995) of assaulting a Unit Manager at USP Allenwood in April 1994. On March 25, 1996, during the sentencing hearing, inmate Leggett assaulted his counsel. On October 17, 1996, after the inmate/defendant was evaluated by at least two mental health experts and new counsel appointed, a hearing was held specifically to decide if Leggett was competent to be sentenced. After the mental health expert testified, USP Lewisburg Attorney Mike Tafelski testified that according to a previous P.S.I. from a 1992 sentencing, he acted as his own "attorney" and that during a conversation Mike had with him he appeared to understand the significance of the issues discussed. Judge Muir has not ruled on the inmate's competency.

**RELIGIOUS CASES:** New cases: See Diekan above.

Significant activity in pending cases:

1. **Munnerlyn (aka Muhammad) v. Wigen**, 95-CV-3668 (E.D.Pa.) -- Inmate Tracy Munnerlyn, 06006-097, brought this Bivens type action alleging that he was placed in administrative detention in retaliation for the practice of his religion. The institution prepared an incident report charging the inmate with encouraging a group demonstration. The incident report was subsequently expunged. The inmate alleges the "Group" is a religious organization. Magistrate Judge recommended partial grant and partial denial of summary judgment. Magistrate Judge recommended denial on claim that personal correspondence with religious references should have been treated as religious material. AUSA has requested to be removed from representation due to inability to argue unconstitutionality of RFRA. Main Justice representation panel has yet to rule.

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2. **Ghana v. Holland**, CV-96-089 (M.D.Pa.) -- This action is a Bivens action by Inmate Emory Ghana, 11416-050, and 29 other inmates at USP Allenwood challenging the limitation on R, X & NC-17 films. Inmate alleges First Amendment violation to deny religious films which may also be so rated. RFRA is not cited as support by Plaintiffs. Plaintiffs request money damages and

injunctive type relief. On October 22, 1996, Court dismissed complaint for failure to exhaust administrative remedies.

**TRAVEL AND LEAVE SCHEDULE FOR NOVEMBER 1996:**

Dave Essig -

Travel - None scheduled

Annual Leave - November 27, 29

Hank Sadowski -

Travel - None scheduled

Annual Leave - November 13-15

Joyce Horikawa -

Travel - November 26 - CLE Course, Philadelphia Annual  
Leave - None scheduled

Ron Hill -

Travel - None scheduled

Annual Leave - November 29

Jay Furtick -

Travel - None scheduled

Annual Leave - November 29

Roy Lathrop

Travel - November 1 - 15 FCI Fort Dix

Annual Leave - November 29

Fort Dix Attorney Al Munguia is on military leave November 4-15. (scheduled prior to notice of Darrin Howard's resignation). Roy Lathrop has been temporarily assigned to FTD to provide legal support in his absence.

cc: Regional Director, NER

Deputy Regional Director, NER

All NER CEOs

All Regional Counsel

All NER institution attorneys and paralegals

Attorneys at GLYNCO and MSTC, Aurora

UNITED STATES GOVERNMENT  
memorandum

Date: December 6, 1996

Reply to David R. Essig, Regional Counsel, Northeast Region  
Attn of: Federal Bureau of Prisons, Philadelphia, Pa. 19106

Subject: Monthly Report - November 1996

To: Wallace H. Cheney, General Counsel and  
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Rec'd in month	148	135	119	161	146	122	178	164	137	159	115
Ans'd in month	185	104	184	102	186	102	157	171	170	115	153
Pending at End	93	124	59	118	78	98	119	112	79	123	85
Over 30 days	0	0	0	0	0	0	0	0	0	0	0

Administrative Tort Claims - 1996

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Pending on 1st	323	356	361	369	364	362	362	326	307	306	302
Rec'd in month	95	86	82	74	90	88	77	69	66	79	58
Recons. rec'd	2	15	4	10	9	9	9	6	11	5	5
Ans'd in month	64	96	78	89	101	97	124	94	78	88	99
Pending at End	356	361	369	364	362	362	326	307	306	302	266
Over 180 days	0	0	0	0	0	0	0	0	0	0	0

Tort Claim Investigation Status: As of November 30, 1996

ALF ALM ALP ALW BRO DAN FAI FTD LEW LOR MCK NYM OTV RBK SCH  
Pending 1 3 23 0 5 11 10 11 28 2 8 6 1 3 6  
Over 60 days 0 0 9 0 0 3 1 0 0 2 0 0 0 0 0

**FOI/Privacy Act Requests - 1996**

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DEC											
Pending on 1st	86	97	115	146	170	141	143	155	99	69	56
Rec'd in month	29	39	49	54	35	43	36	33	35	47	36
Ans'd in month	18	21	18	30	64	41	24	89	65	60	55
Pending at End	97	115	146	170	141	143	155	99	69	56	37
Over 30 days	68	81	97	116	107	100	119	66	34	24	17

**FOIA Requests for records: As of November 30, 1996**

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	0	2	1	1	0	2	1	1	6	0	1	1	1	4	3
Over 30 days	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0

**LITIGATION ACTIVITY - 1996 NORTHEAST REGION**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Cases Open	548	555	567	564	565	569	576	575	580	587	581
New Cases	24	24	26	22	24	22	24	14	29	17	13
Lit Reports	12	17	21	19	19	20	13	17	15	18	7
Cases Closed	16	17	18	25	23	18	17	15	24	10	19
Habeas Corpus	8	10	4	7	7	3	11	8	14	9	3
FTCA	2	2	4	2	4	8	3	1	1	1	1
Bivens	13	9	13	13	12	5	8	2	8	4	9
Other	1	3	5	0	0	3	1	1	4	2	0
Bivens/FTCA	0	0	0	0	1	3	1	2	2	1	0

**SETTLEMENTS AND AWARDS:**

1. **Miller v. Reno**, 4:CV:93-1475 (M.D.Pa.)

Three day trial in EEO case concluded on February 29, 1996 with a jury verdict adverse to the BOP. The staff member was reassigned to his prior correctional officer position after serving as a case manager trainee for 13 months. The staff member alleged that this reassignment was based on race discrimination. In addition the staff member asserted that the reassignment was retaliatory since it

occurred two months after he made a complaint about racial remarks made by his supervisor. The jury found for the staff member on both counts. The case finally settled. We agreed to afford Plaintiff a Case Manager position at USP Lewisburg, attorney fees of \$37,500, and damages of \$15,000.

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2. McCarthy v. United States, 4:CV-95-0723 (M.D.Pa.)

Inmate Arthur McCarthy, 49352-080, filed an FTCA complaint alleging medical malpractice caused him to lose sight in his right eye. Our medical expert concluded that a two week delay in providing the inmate care for a detached retina was outside the appropriate standard of care. Accordingly, case was settled for \$110,000.

SIGNIFICANT CASES OR TRIALS:

1. United States v. Gonzales, No. 95-1605 (S.Ct.)

Oral argument in this criminal appeal has been scheduled before the Supreme Court for December 11, 1996. The issue is whether a federal sentence imposed under 18 U.S.C. § 924(c), which prohibits concurrent service "with any other term of imprisonment," may be ordered to run concurrently with a state sentence, i.e., does "any other term of imprisonment" encompass state sentences as well as federal. The position of the United States is that it encompasses state sentences as well. Miguel Estrada (who argued Reno v. Koray) has been assigned the argument and he has asked Hank Sadowski to assist him.

2. United States v. Zampardi, 96 Cr 749 (E.D.N.Y.)

This is a follow up to this case discussed in last month's report. Inmate Michael Zampardi, 00128-748, a pretrial detainee at MDC Brooklyn, filed a motion with the criminal trial judge, Judge Gleeson, to be removed from administrative detention. Zampardi was placed in protective custody after the AUSA advised that the FBI received reliable information that a contract was taken out for his life. The detainee offered to "waive" his safety and alleged that the isolation is adversely effecting his health. Judge Gleeson scheduled a hearing for November 1, 1996. The wrong inmate was brought to the hearing and the hearing was held on November 4, 1996. Attorney Azzmeiah Vazquez assisted the AUSA at the hearing. On November 6, 1996, the court dismissed the motion for failure to exhaust available remedies within the BOP.

3. United States v. Celester, Crim. No. --- ((D.N.J.))

On December 2, 1996, released defendant William Celester had a sentencing hearing before Judge Garrett Brown in Trenton, NJ. Celester was the former Police Director for Newark, NJ. Celester argued, in part, for a downward departure from the

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sentencing guideline range of 21 to 27 months, because he had a series of medical problems which could not be handled "given the modest state of penal medicine in many facilities." Celester has hypertension, congestive heart failure and malabsorption syndrome secondary to an intestinal bypass. The AUSA submitted a letter from Regional HSA asserting that the medical problems could be handled at any federal institution (also confirmed with Medical Designations). Assistant Regional Counsel Joyce Horikawa attended the hearing. The court himself questioned the defendant's doctor and determined the doctor was unaware of the medical capabilities of the Federal Bureau of Prisons. Not only did the court reject the defendant's request to go below the sentencing guidelines, the court imposed a sentence of 30 months, above the guidelines because Celester violated the public trust.

4. Fisher v. Goord, et al., 96-CV-0486 (W.D.N.Y.)

New York State inmate Amy Fisher ("Long Island Lolita" of Joey Buttafuoco fame) is alleging that a number of New York state institution staff have had sex with her, some with her consent, some without. She has filed a civil rights action against numerous state officials. As part of her relief, she has moved the court to order her transferred to the Federal BOP. The United States is not a party to the action. We have filed an Amicus brief asserting that the court has no jurisdiction and that there is no authority to order the United States to take a state prisoner. Judge Arcara held a hearing on December 3, 1996. The Judge focused on our argument that revised 18 U.S.C. § 3626 sets the standard for his decision on injunctive relief. Neither Plaintiff nor the New York state defendants addressed this statute in their briefs. The court requested Plaintiff to submit a response to this argument within 14 days.

5. United States v. Hammer, 4:CR-96-239 (M.D.Pa.)

Inmate David Hammer, 24507-077, has been charged with the April 1996 murder of an inmate at USP Allenwood. The United States Attorney has requested authorization from DOJ to seek the death penalty. On November 21 & 25, 1996, Judge Muir held hearings on a motion filed by defense counsel challenging the attorney visiting procedure at USP Allenwood. Defense counsel objected to the number of searches (pat and visual) of Hammer to and from each visit. Defense counsel also objected to non-contact visits. Attorney Hope Moro assisted the AUSA at the hearings. The court requested proposed orders from both sides. The court has not issued its decision.

6. State of New York v. Marc Johnson, Crim. No. 13048/95  
(Supreme Ct. N.Y.)

Federal parole violator Marc Johnson, 24552-053, is housed at MDC

Brooklyn pending the parole revocation hearing by the U.S. Parole Commission. Johnson is also facing New York state charges for attempted murder. The Parole Commission denied the District Attorney's request for production because the Commission was to conduct their revocation hearing first. New York State Justice Lott held a hearing on November 21, 1996 to determine if the State had violated speedy trial rights. The ISM from the MDC testified at the hearing concerning the efforts made by the prosecutors to secure the defendant and concerning the position of the Parole Commission. Azzmeiah Vazquez assisted the state prosecutor at the hearing. The state court reserved ruling.

7. United States v. Solomon, -- CR -- (S.D.N.Y.)

On November 4, 1996, Judge Preska held a hearing on allegations by Pretrial detainee Amir Solomon, 36098-054, that he had wanted to attend the trial but was physically unable to do so. In a prior proceeding, the detainee had tried to throw a chair at the Judge. The Judge found he waived his right to attend the trial, but she permitted him to apply for re-entry. Solomon was trying to argue that all the proceedings held in his absence were improper because he was medically unable to apply for reentry. At the hearing, MCC NY staff testified concerning Solomon's ability to attend the court proceedings. Dominique Raia attended the hearing. The court found that Solomon attempt to allege a medical excuse was not credible and determine that he voluntarily did not attend the proceedings.

8. United States v. Muyet, 95 CR. 941 (S.D.N.Y.)

On November 13, 1996, Judge Leisure held a hearing on why one of his prior orders was not complied with by MCC NY. The court had ordered that leal materials be dropped off and delivered to the defendants on a Saturday. Instead the inmates did not receive the materials until the following Monday. Despite written instructions to staff, the materials were inadvertently placed in the mail room instead of being immediately delivered. The Warden personally appeared at the hearing and apologized to the court for the error. (Dominique Raia was at the Mathurin hearing below).

The court accepted the apology.

On November 20, 1996, the law clerk for the judge asked the Warden to agree for a one time visit between detainee John Muyet, 38027-054, and a non-family visitor. Arrangements were attempted for the visit but the inmate could not contact his visitor and demanded instead that she be added to his permanent visiting list. The inmate threatened that if his request as denied, the Judge would make the Warden appear in court again. The Warden sent a letter to the court advising him of this situation.

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9. United States v. Mathurin, CR (S.D.N.Y.)

On November 13, 1996, a former Physician's Assistant at MCC NY testified in the criminal trial of Pierre Mathurin, 42870-054. As part of his defense to drug charges, the inmate alleged that he had a leg injury which required him to have a narcotic in his possession. The former PA testified that the inmate did not have a leg injury which required him to take a narcotic. Dominique Raia attended the hearing.

RELIGIOUS CASES: New cases: None

Significant activity in pending cases:

1. Munnerlyn (aka Muhammad) v. Wigen, 95-CV-3668 (E.D.Pa.)  
-- Inmate Tracy Munnerlyn, 06006-097, brought this Bivens type action alleging that he was placed in administrative detention in retaliation for the practice of his religion. The institution prepared an incident report charging the inmate with encouraging a group demonstration. The incident report was subsequently expunged. The inmate alleges the "Group" is a religious organization. Magistrate Judge recommended partial grant and partial denial of summary judgment. Magistrate Judge recommended denial on claim that personal correspondence with religious references should have been treated as religious material. AUSA has requested to be removed from representation due to inability to argue unconstitutionality of RFRA. An attorney

from the Torts Branch has been assigned to represent the Defendants.

TRAVEL AND LEAVE SCHEDULE FOR DECEMBER 1996:

Dave Essig -

Travel - None scheduled

Annual Leave - December 20, 23, 24

Hank Sadowski -

Travel - December 11 - Supreme Court - Gonzales argument

Annual Leave - December 26-January 3

Joyce Horikawa -

Travel - December 2 - U.S. v. Celester sentencing hearing - Trenton, NJ

Annual Leave - December 23-24

Ron Hill -

Travel - None scheduled

Annual Leave - December 2, 6, 9, 10, 27, 30

Jay Furtick -

Travel - None scheduled

Annual Leave - January 2-3

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Roy Lathrop

Travel - None scheduled

Annual Leave - December 23-27

cc: Regional Director, NER  
Deputy Regional Director, NER  
All NER CEOs  
All Regional Counsel

All NER institution attorneys and paralegals  
Attorneys at GLYNCO and MSTC, Aurora

UNITED STATES GOVERNMENT

memorandum

Date: January 10, 1997

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0											

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9											

**FOIA Requests for records: As of December 30, 1996**

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	0	2	2	1	0	2	0	2	2	1	1	2	2	4	2
Over 30 days	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0

**LITIGATION ACTIVITY - 1996 NORTHEAST REGION**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Cases Open	548	555	567	564	565	569	576	575	580	587	581
570											
New Cases	24	24	26	22	24	22	24	14	29	17	13
14											
Lit Reports	12	17	21	19	19	20	13	17	15	18	7
8											
Cases Closed	16	17	18	25	23	18	17	15	24	10	19
25											
Habeas Corpus	8	10	4	7	7	3	11	8	14	9	3
4											
FTCA	2	2	4	2	4	8	3	1	1	1	1
3											
Bivens	13	9	13	13	12	5	8	2	8	4	9
4											
Other	1	3	5	0	0	3	1	1	4	2	0
2											
Bivens/FTCA	0	0	0	0	1	3	1	2	2	1	0

SETTLEMENTS AND AWARDS: None

SIGNIFICANT CASES OR TRIALS:

1. United States v. Gonzales, No. 95-1605 (S.Ct.)

Oral argument in this criminal appeal was heard before the Supreme Court on December 11, 1996. The issue is whether a federal sentence imposed under 18 U.S.C. § 924(c), which prohibits concurrent service "with any other term of imprisonment," may be ordered to run concurrently with a state sentence, i.e., does "any other term of imprisonment" encompass state sentences as well as federal. The position of the United States is that it encompasses state sentences as well. Miguel Estrada (who argued Reno v. Koray) presented argument on behalf of the United States. The oral argument went well and the Court appeared to have a firm understanding that the statute was directed to federal sentences and was not an attempt to control state sentencing discretion. Hank Sadowski assisted Mr. Estrada at the argument.

2. Terrance Jones v. Meko, Civil No. 96-4 (W.D.Pa.)

On November 27, 1996, the United States District Court for the Western District of Pennsylvania granted the petition for writ of habeas corpus in the above case. The court summarily adopted the Report and Recommendation of the Magistrate Judge which found that the Bureau incorrectly concluded Petitioner was ineligible for 18 U.S.C. § 3621(e) early reduction because Petitioner Terrance L. Jones, Register No. 03840-055, had committed a crime of violence. The court rejected our rationale that a two point enhancement for firearms possession automatically constitutes a crime of violence. We had construed the order granting the petition as one finding Jones eligible for early reduction. Jones had a projected release (before early reduction) of December 12, 1997, the institution was exploring CCC placement for community transition. This had the impact on reducing the maximum possible reduction for Jones to about 6 months. On the basis of a letter written by Jones to the court, Judge McLaughlin held a telephone hearing on December 11, 1996. Dave Essig represented the Bureau. The Judge concluded that his intention was that Jones receive the maximum benefit and ordered Jones released on December 12, 1996.

3. Hunter v. Malinov, Civil Action No. 96-1195 (EDPA)

Inmate Milton Hunter, 18759-016, brought a Bivens action against medical staff at FCI Schuylkill alleging that he had prostate cancer and staff has not properly treated him. Inmate had since been transferred to FCI Cumberland. On December 12, 1996, Judge Shapiro held a status conference to go over discovery issues. The primary problem was a demand by appointed counsel to photograph portions of the medical department at FCI Schuylkill. Hank Sadowski assisted the AUSA. Counsel for Hunter agreed to withdraw his request for photos until he toured the FCI.

4. Fisher v. Goord, et al., 96-CV-0486 (W.D.N.Y.)

New York State inmate Amy Fisher ("Long Island Lolita" of Joey Buttafuoco

fame) is alleging that a number of New York state institution staff have had sex with her, some with her consent, some without. She has filed a civil rights action against numerous state officials. As part of her relief, she has moved the court to order her transferred to the Federal BOP. The United States is not a party to the action. We have filed an Amicus brief asserting that the court has no jurisdiction and that there is no authority to order the United States to take a state prisoner. Judge Arcara held a hearing on December 3, 1996.

The Judge focused on our argument that revised 18 U.S.C. § 3626 sets the standard for his decision on injunctive relief. Neither Plaintiff nor the New York state defendants addressed this statute in their briefs. The court requested Plaintiff to submit a response to this argument within 14 days of the hearing. The Plaintiff submitted a response asserting that Section 3626 is unconstitutional.

5. United States v. Hammer, 4:CR-96-239 (M.D.Pa.)

Inmate David Hammer, 24507-077, has been charged with the April 1996 murder of an inmate at USP Allenwood. The United States Attorney has requested authorization from DOJ to seek the death penalty. On November 21 & 25, 1996, Judge Muir held hearings on a motion filed by defense counsel challenging the attorney visiting procedure at USP Allenwood. Defense counsel objected to the number of searches (pat and visual) of Hammer to and from each visit. Defense counsel also objected to non-contact visits. Attorney Hope Moro assisted the AUSA at the hearings. In an 31 page opinion dated December 5, 1996, the court denied the defendant's motion.

6. Harris v. Bureau of Prisons, et al., Civil Action No. 96-6549 (E.D.Pa.)

Counsel for former inmate William Harris, 44917-066 filed a combination FTCA and Bivens complaint against the Bureau of Prisons and staff at FCI Schuylkill; alleging negligent medical treatment for a detached retina in early 1995. As a result, he allegedly lost sight in one eye. None of the Bureau defendants have been served. The U.S. Attorney was served on December 3, 1996. Judge Marvin Katz held a pretrial conference on December 18, 1996. Joyce Horikawa assisted the AUSA at the conference.

Plaintiff's attorney reported that Plaintiff recently died of a heart attack, and she was not sure if she would pursue the case. She also indicated that she did not know the jurisdictional basis for her allegations of statutory violations. The court gave her 30 days in which to file an amended complaint, naming the United States as the sole defendant under the FTCA. Plaintiff agreed that she would request no more than \$100,000.00. The judge indicated that once Plaintiff filed an amended complaint, he would place

this case on the arbitration docket.

7. United States v. Marsico, Criminal No. 96-261 (E.D.Pa.)

Defendant, Michael Marsico, Reg. No. 49961-066, had a sentencing hearing on December 19, 1996 before Judge Robreno. The Defendant had pleaded guilty to 2 counts of bank robbery. Defense counsel requested a downward departure from the applicable sentencing guidelines because of defendant's history of drug abuse and psychological problems, including two post-arrest suicide attempts. Counsel was implying that the Bureau of Prisons could not adequately treat the defendant. Joyce Horikawa attended the hearing with Dr. Gerard Bryant, the Regional Psychology Administrator.

The AUSA advised the court that Bureau of Prisons staff were available to address the treatment available to inmates. On questioning from the court, defense counsel conceded that the Bureau of Prisons could handle defendant's psychological problems. The court denied defendant's motion for a downward departure, and sentenced Marsico to a sentence of 156 months. Judge Robreno stated, given defendant's inability to correct his drug addiction on his own, the Bureau may be the only place where Marsico could adequately address his drug problem.

8. United States v. Price, Crim. No. 96-145-01 (E.D.Pa.)

Pretrial releasee Kenneth Price is scheduled for sentencing before Judge Rendell on January 10, 1997. The defendant is arguing that his advanced liver condition is an extraordinary circumstance justifying downward departure from the sentencing guidelines of 21-27 months. The AUSA retained a medical expert to testify that the medical condition is not as severe as presented by defendant. The AUSA requested the Bureau's assistance if the court has questions concerning the ability of the Bureau to care for the defendant. Hank Sadowski will attend the hearing.

9. Li v. Canarozzi, et al., 95 Civ. 0706 (S.D.N.Y.)

Trial has been scheduled for the week of February 3, 1997

for this combined Bivens/Federal Tort Claims Act complaint brought by former pretrial detainee Jian An Li, 44661-053, who alleges that six officers at MCC NY assaulted him on an elevator on

November 10, 1994. Staff were responding to a disturbance involving a fight among 13 inmates. Judge Sand has not ruled on several motions filed by the AUSA. A hearing was held on the motions for January 9, 1997. The court dismissed the FTCA count

and permitted the Bivens case to proceed to trial. Dominique Raia and Alma Lopez attended the hearing.

10. Palmer v. United States, CV-95-383 (M.D.Pa.)

This Federal Tort Claims Act case is listed for trial on January 15, 1996 before Judge Kosik. Inmate Lovell Palmer, 23307-083 alleged that he slipped and fell in January 1994 at USP Lewisburg. His administrative tort claim was for \$1000. In his complaint, he requested damages in excess of \$25,000. The AUSA filed a motion to limit the inmate to the \$1000. On pressure from the court (and to have expense of trial), we offered settlement to the inmate in the amount of \$1000 which the inmate refused. We have moved for partial summary judgment against the United States in the amount of \$1000. We have requested the court to bifurcate the trial and hold a hearing on the pending motions before proceeding to the phase wherein most of the staff and inmate witnesses would have to be produced.

RELIGIOUS CASES: New cases: None

Significant activity in pending cases:

1. Ghana v. Holland, Civil No. 96-0191 (M.D.Pa.)

Citing RFRA, Inmate Emory Ghana, 11416-050, alleges that USP Allenwood improperly removed him from Common Fare (he was allegedly eating other food) and that USP improperly denied his request for a cassette tape player and religious tapes while in Special Housing. On November 27, 1996, the court granted our motion to dismiss on the basis of Petitioner's failure to exhaust administrative remedies.

TRAVEL AND LEAVE SCHEDULE FOR JANUARY 1997:

Dave Essig -  
Travel - None scheduled  
Annual Leave - None scheduled

Hank Sadowski -

Travel - January 30 - US Attorney's Office, Newark, NJ

- Presentation before AUSAs

Annual Leave - None scheduled

Joyce Horikawa -

Travel - None scheduled

Annual Leave - None scheduled

Ron Hill -

Travel - None scheduled

Annual Leave - None scheduled

Jay Furtick -

Travel - January 21 - 31 - FCI Fort Dix - Institution  
Familiarization

Annual Leave - None scheduled

Roy Lathrop has been selected for the Paralegal Specialist at FCI Estill. Roy's last day in the NER was January 2, 1997. We wish him well in his new assignment.

cc: Regional Director, NER

Deputy Regional Director, NER

All NER CEOs

All Regional Counsel

All NER institution attorneys and paralegals

Attorneys at GLYNCO and MSTC, Aurora