

UNITED STATES GOVERNMENT

memorandum

Date: June 12, 1998

Reply to Henry J. Sadowski, Regional Counsel, Northeast Region
 Attn of: Federal Bureau of Prisons, Philadelphia, PA 19106

Subject: **Monthly Report - May 1998**

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

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	110	91	146	162	167							
Rec'd in month	113	155	187	188	187							
Ans'd in month	132	100	171	183	174							
Pending at End	91	146	162	167	180							
Over 30 days	0	0	0	0	0							

B. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	236	262	261	283	320							
Rec'd in month	77	73	92	73	60							
Recons. rec'd	3	2	3	4	1							
Ans'd in month	54	76	73	40	33							
Pending at End	262	261	283	320	348							
Over 180 days	0	0	0	0	0							

C. Tort Claim Investigation Status: As of May 30, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	3	12	14	1	2	7	3	15	12	2	9	9	7	10	9
Over 60 days	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32							
Rec'd in month	34	28	32	38	41							
Ans'd in month	58	35	29	21	41							
Pending at End	13	9	15	32	32							
Over 30 days	1	1	0	1	1							

E. FOIA Requests for records: As of May 30, 1998

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

*This file has not been received from archives.

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625							
New Cases	13	15	21	24	19							
Habeas Corpus	5	7	13	13	15							
FTCA	1	4	2	4	3							
Bivens	1	2	3	4	1							
Other	4	2	1	1	0							
Bivens/FTCA	2	0	2	2	0							
Lit Reports	8	10	10	9	9							
Cases Closed	66	7	12	5	5							

B. SETTLEMENTS AND AWARDS: - None**C. SIGNIFICANT CASES, TRIALS or HEARINGS:**

1) Royce v. Hahn, 1998 WESTLAW 272632 (3d Cir. May 29, 1998)

The Third Circuit held that the conviction for possession of a firearm by a felon is not a crime of violence which would trigger the notice provisions of 18 U.S.C. § 4042(b) (requiring notice of release to law enforcement officials for drug or violent offenders). The Court also held that a conviction for possession of a machine gun was not crime of violence for these purposes. We are considering a petition for rehearing, especially on the machine gun conviction.

2) U.S. v. Guzman et. al., 97 CR 786 (SAS) (S.D.N.Y.)

On May 27 and May 28, 1998, correctional staff from MCC New York testified pursuant to defense subpoenas in the above-referenced case. The underlying criminal case, which involves the Power Rules criminal enterprise, originally involved an indictment alleging the organization engaged in various violent criminal activity and narcotics trafficking. The indictment was superseded and some of the defendants were charged with witness tampering. Staff testified concerning whether conversations occurred between the defendants and government inmate witnesses that may support a defense claim that the government witnesses have a bias against the defendants. Case is still pending.

3) People of the State of New York v. James C. Allen

On May 20, 1998, an R&D staff member from MCC New York testified in a state criminal proceeding that was filed against former federal inmate James C. Allen for introducing contraband into the state correctional facility. It was alleged that Mr. Allen introduced a razor into the facility. The defendant argued that the razor was with him when he left MCC NY. The jury found the defendant not guilty of introduction of contraband.

4) United States v. Louis Acosta, Crim. NO. 96-00556-02 (E.D.Pa.)

On May 28, 1998, Quincy Heck, Health Systems Administrator, NERO and Michael Tafelski assisted the AUSA in a sentencing hearing in which the defendant attempted to argue for a downward departure based upon his medical condition (i.e. - wheelchair). The Judge commented from the bench that testimony was not required as he understood that the BOP could accommodate the defendant's medical condition.

UPCOMING HEARINGS - None Scheduled

D. RELIGIOUS CASES: - No new activity

E. ENSIGN AMENDMENT CASES: No new activity

F. PLRA 1915 DISMISSALS:

1) Malloy v. MCC Correctional Officer, 97 Civ 9079 (MBM) (SDNY)
The above referenced case was dismissed sua sponte by the District Court Judge as the Plaintiff, inmate Anthony Malloy, Reg. No 07323-018, filed a complaint in violation of a previous

court order (imposed because of abuse of the courts resources) barring him from filing any claims unless he is under imminent danger of serious injury. As he was in a state correctional facility at the time he filed a complaint concerning a BOP staff member, the court stated the inmate did not meet the standard.

III. TRAVEL AND LEAVE SCHEDULE FOR MAY 1998:

Hank Sadowski - Travel - June 8 - Meeting with U.S. Attorney's Office, Brooklyn, NY and MDC Brooklyn visit

June 19 - Legal Eagle Workgroup, OGC, Wash., DC

June 22 - Accompany Regional Director in meeting with District Judges, Philadelphia

Annual Leave - June 29-July 2

Mike Tafelski - Travel - None Scheduled

Annual Leave - June 1-5

Toni Brown - Travel - June 18-19 FCI Danbury

Annual Leave - June 22-23

Les Owen - Travel - June 16, 1998 Pittsburgh - Attend Deposition

Annual Leave - June 8-9

Ron Hill - Travel - None Scheduled

Annual Leave - None Scheduled

James Vogel - Travel - None Scheduled

Annual Leave - None Scheduled

NOTES:

- Chris Chambers, Paralegal Trainee, report on June 8, 1998. Chris previously worked in the ISM department at the ADMAX, Florence.

- Dominique Raia, Attorney Advisor, MCC NY, received an award from Mary Jo White, U.S. Attorney, Southern District of New York, for her assistance throughout the criminal trials of the World Trade Center terrorists.

cc: Regional Director and Deputy Regional Director, NER

All NER Wardens

All Regional Counsel and Associate General Counsel

All NER institution attorneys and paralegals

UNITED STATES GOVERNMENT

memorandum

Northeast Region, Philadelphia, PA
FEDERAL BUREAU OF PRISONS

July 15, 1998

MEMORANDUM FOR WALLACE H. CHENEY, GENERAL COUNSEL

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - June 1998

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	110	91	146	162	167	180						
Rec'd in month	113	155	187	188	187	172						
Ans'd in month	132	100	171	183	174	207						
Pending at End	91	146	162	167	180	145						
Over 30 days	0	0	0	0	0	0						

B. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	236	262	261	283	320	348						
Rec'd in month	77	73	92	73	60	64						
Recons. rec'd	3	2	3	4	1	0						
Ans'd in month	54	76	73	40	33	93						
Pending at End	262	261	283	320	348	319						
Over 180 days	0	0	0	0	0	0						

C. Tort Claim Investigation Status: As of June 30, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	2	1	10	0	6	7	6	15	12	0	7	7	5	16	7

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32	32						
Rec'd in month	34	28	32	38	41	31						
Ans'd in month	58	35	29	21	41	59						
Pending at End	13	9	15	32	32	4						
Over 30 days	1	1	0	1	1	0						

E. FOIA Requests for records: As of June 30, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	1	0	1	3	0	4	0	2	1	0	0	2	0	0	0
Over 20 days	0	0	0	0	1	2	0	0	1*	0	0	0	0	0	0

*This file has not been received from archives.

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625	639						
New Cases	13	15	21	24	19	13						
Habeas Corpus	5	7	13	13	15	6						
FTCA	1	4	2	4	3	1						
Bivens	1	2	3	4	1	3						
Other	4	2	1	1	0	3						
Bivens/FTCA	2	0	2	2	0	0						
Lit Reports	8	10	10	9	9	10						
Cases Closed	66	7	12	5	5	26						

B. SETTLEMENTS AND AWARDS: -

1) Administrator of the Estate of Robert Bates v. United States, Civil No. 97-0048, E.D.Pa.

OK
Inmate died of a coronary at FCI Fairton. During discovery, new facts were revealed indicating that settlement was in the best interest of the Bureau of Prisons. This FTCA wrongful death originally sought \$250,000.00 in damages. The case settled for \$150,000.00.

2) Rogers v. MCC, et al., 96 Civ. 6811 (S.D.N.Y.)

~~Pro se former inmate filed suit against three physician assistants and one cook supervisor.~~ *former inmate,* Plaintiff claims he injured his eyes with a degreaser solution while cleaning the stove in food services, as part of his job. The parties agreed to settled this ^{FTCA} claim for \$2,500.00, which sum shall be in full settlement of any and all claims against the individual defendants, the United States, MCC, or any department, agency, present or former agents, officer or employee of the United States.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1) Nicholas LaSorsa v. Fredrick Menifee, 97 CV 4827 (S.D.N.Y.).

In an exercise of its discretion, the Bureau of Prisons denied Inmate LaSorsa early release because he received a two-level enhancement for possession of a firearm. Although Inmate LaSorsa successfully completed a drug treatment program, the Court ruled that 18 U.S.C. § 3621(e)(2)(B) and 28 C.F.R. § 550.58 do not in any way limit the BOP's discretion to deny early release to prisoners otherwise eligible for release. The Court stated the BOP's decision to deny early release was a rational exercise of that discretion.

2) U.S. v. Gregory Scarpa, Jr., S8 97 Cr. 786 (E.D.N.Y.)

On May 28, 1998, MCC NY received a "so ordered" subpoena from the attorney for inmate Gregory Scarpa, Jr., Register Number 10099-050. The subpoena sought relevant documentation and information which would identify the cell location of Gregory Scarpa, Jr. and those inmates housed on the same tier as inmate Scarpa. The subpoena sought information implicating the WITSEC program. A status conference was held on June 9, 1998, before Judge Raggi, to discuss MCC New York's compliance with and objections to the subpoena. Clinton Stroble represented the MCC at this hearing. At the end of the hearing, Judge Raggi requested that MCC clarify several discrepancies in the responsive document sent to Scarpa's attorney and to provide additional information responsive to the subpoena.

4) U.S. v. Anthony Martinez, CR-97-725 (E.D.N.Y.)

On June 5, 1998, former Unit Manager, Anthony Martinez, was convicted of three counts of Bribery, in violation 18 U.S.C. §201, and one count of Attempting to Provide Heroin to an Inmate, in violation of 18 U.S.C. §1791. Sentencing is pending.

5) Brown v. Morton, CV-95-2881 (D.N.J.)

On June 5, 1998, a teleconference took place between inmate Orson Brown, AUSA Kevin Mulry and Staff Attorney Azzmeiah Vazquez. Inmate Brown filed a Bivens action in 1995 alleging failure to protect issues when he was assaulted by inmate Anthony Glass on the unit. Magistrate Judge Gold ordered MDC to provide inmate Brown with information regarding instances where various named defendants were the subject of a grievance, complaint or disciplinary action with respect to assault, failing to intercede to stop an assault; failing to properly supervise with respect to such actions; interrogatory answers from various staff with respect to what they knew about the Glass' medical care and whether or not he posed a threat to other inmates or staff; and any administrative, medical and screening information regarding inmate Glass.

6) United States v. Pellulo: Crim. No. ----- (E.D.Pa.)

X On June 17, 1998, Bobbie Truman, Attorney and Joe Guidoness, Case Manager (FCI Fairton) and Gene Dixon, Paralegal (FCI Schuylkill) attended a hearing on a motion filed by inmate Leonard Pellulo, 44140-066 challenging the use, in a criminal prosecution, calls recorded on inmate phones. Inmate Pellulo challenged whether he knew the phones were monitored and also claimed that an inmate in the Bureau of Prisons can not make unmonitored telephone calls to his attorneys. He further asserted that he would announce over the monitored lines that the call was to his attorney and that announcement should evoke the attorney client privilege. Judge Robreno has taken this matter under advisement.

7) United States v. Hammer, Crim. ----- (M.D.Pa.)

X The trial of David Paul Hammer, Reg. No. 24507-077 concluded abruptly when he plead guilty to the indictment. The death penalty phase of the prosecution began on June 30, 1998. Attorneys Tim Roberts and Nellie Torres have been assisting and attending the proceedings, when possible.

UPCOMING HEARINGS - None Scheduled

D. RELIGIOUS CASES: - No new activity

E. ENSIGN AMENDMENT CASES: No new activity

F. PLRA 1915 DISMISSALS: None

III. TRAVEL AND LEAVE SCHEDULE FOR JULY 1998:

Hank Sadowski -Travel - July 27-31 National Legal Training
Annual Leave - None Scheduled

Mike Tafelski -Travel - July 27-31 National Legal Training
Annual Leave - July 13-17

Toni Brown - Travel - None Scheduled
Annual Leave - None Scheduled

Les Owen - Travel - None Scheduled
Annual Leave - None Scheduled

Ron Hill - Travel - None Scheduled
Annual Leave - None Scheduled

James Vogel - Travel - None Scheduled
Annual Leave - July 30, 31, 1998

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32	32	4					
Rec'd in month	34	28	32	38	41	31	45					
Ans'd in month	58	35	29	21	41	59	27					
Pending at End	13	9	15	32	32	4	22					
Over 20 days	1	1	0	1	1	0	6*					

* Records awaiting retrieval from archives.

E. FOIA Requests for records: As of July 31, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	1	0	0	0	0	5	4	1	1	1	2	1	1	0	0
Over 20 days	0	0	0	0	0	3*	1*	0	0	1*	0	1*	0	0	0

*This file has not been received from archives.

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625	639	613					
New Cases	13	15	21	24	19	13	11					
Habeas Corpus	5	7	13	13	15	6	3					
FTCA	1	4	2	4	3	1	1					
Bivens	1	2	3	4	1	3	6					
Other	4	2	1	1	0	3	1					
Bivens/FTCA	2	0	2	2	0	0	0					
Lit Reports	8	10	10	9	9	10	4					
Cases Closed	66	7	12	5	5	26	14					

B. SETTLEMENTS AND AWARDS: - None**C. SIGNIFICANT CASES, TRIALS or HEARINGS:**

Significant New Cases:

McClurg v. Harding, 98-605 (D. Conn)

Holder v. Harding, 98-656 (D. Conn)

FCI Danbury inmates Penelope McClurg, 21528-018 and Tinia Holder, 09474-424, filed separate, similar motions requesting an expedited hearing and temporary restraining order against the practice of cross-gender pat searches at FCI Danbury. Both

inmates have a history of being sexually abused and are assigned to the "Bridge Unit", which is a housing unit for women who have suffered traumatic experiences, including sexual assault/abuse. Counsel has been appointed to represent both inmates. Under informal pressure from the court, the Warden agreed to exempt the two inmates from routine cross-gender pat searches until a full hearing on the merits can be held. The hearing is currently scheduled for October 1998. We are trying to move up the hearing date.

Trials:

United States v. Hammer, M.D. PA

On July 24, 1998, the jury returned a death penalty verdict against inmate David Paul Hammer, 24507-077 for the murder of another inmate at USP Allenwood. Formal imposition of sentence was scheduled for September 17, 1998. The inmate fired his attorneys and moved for immediate imposition of the death penalty. After an August 3, 1998 hearing, Judge Muir issued an order for another competency hearing before ruling on the inmate's motion.

Hearings:

1) U.S. v. Castaldo, Crim. No. ----- (S.D.N.Y.)

On June 30, 1998, MCC New York received a memorandum from an AUSA indicating a credible source informed him that the life of inmate James Castaldo, 16032-050, may be in danger. Castaldo was removed from general population and placed in administrative detention pending a threat assessment. The inmate objected to the criminal trial judge. Judge Keenan requested a written explanation by 9:30 a.m. on July 2, 1998 and scheduled a hearing for 10:30 a.m. At the hearing, the Court determined the issue was not ripe since the threat assessment had not yet been completed. The Judge expressed some concern for the adequacy of the reasons on the administrative detention order. After the assessment was completed, the threat was found to be too vague. The inmate was released to general population on July 13, 1998. Clinton Stroble represented the MCC NY.

2) U.S. v. Muyet, Crim. No. ----- (S.D.N.Y.)

On July 27-29, 1998 the District Judge Peter K. Leisure held three hearings to address two allegations by inmate John Muyet,

E. ENSIGN AMENDMENT CASES:

Nyhus v. Reno, et al., C.A. No. 97-324E (W.D.Pa.)

Craviero v. Reno, et al., C.A. No. 97-31E (W.D.Pa.)

The above-referenced cases were both filed by FCI McKean inmates challenging various components of the Ensign Amendment and the BOP's policy change on personal property. The Magistrate Judge assigned to both cases issued a report and Recommendation dismissing the cases. She found that Bureau policy placed reasonable limitations and was within its discretion. The Court considered the Ensign amendment allegations voluntarily withdrawn since the Plaintiffs have filed, with the assistance of counsel, a new case styled as a class action (Wolf, Craviero, and Nyhuis v. Reno, et.al, 97-408E).

F. PLRA 1915 DISMISSALS: None**III. TRAVEL AND LEAVE SCHEDULE FOR AUGUST 1998:**

Hank Sadowski -Travel - Aug. 31 - Sept. 2 - Sentencing Training
Annual Leave - August 17 - 21

Mike Tafelski -Travel - None Scheduled
Annual Leave - August 28, 1998

Toni Brown - Travel - None Scheduled
Annual Leave - August 24, 1998

Les Owen - Reports to MDC Brooklyn on August 17, 1998

Ron Hill - Travel - None Scheduled
Annual Leave - None Scheduled

James Vogel - Travel - None Scheduled
Annual Leave - August 14, 1998

UNITED STATES GOVERNMENT

memorandum

Northeast Region, Philadelphia, PA
FEDERAL BUREAU OF PRISONS

September 18, 1998

MEMORANDUM FOR WALLACE H. CHENEY, ASSISTANT DIRECTOR AND GENERAL
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - August 1998

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	110	91	146	162	167	180	145	146				
Rec'd in month	113	155	187	188	187	172	153	151				
Ans'd in month	132	100	171	183	174	207	152	153				
Pending at End	91	146	162	167	180	145	146	144				
Over 30 days	0	0	0	0	0	0	0	0				

B. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	236	262	261	283	320	348	319	296				
Rec'd in month	77	73	92	73	60	64	51	60				
Recons. rec'd	3	2	3	4	1	0	3	5				
Ans'd in month	54	76	73	40	33	93	77	90				
Pending at End	262	261	283	320	348	319	296	271				
Over 180 days	0	0	0	0	0	0	0	0				

C. Tort Claim Investigation Status: As of August 31, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBB	...
Pending	1	3	11	0	6	5	2	15	7	3	7	3	3	10	...
Over 60 days	0	0	0	0	0	0	1	5	0	0	1	0	0	0	...

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32	32	4	22				
Rec'd in month	34	28	32	38	41	31	45	37				
Ans'd in month	58	35	29	21	41	59	27	37				
Pending at End	13	9	15	32	32	4	22	22				
Over 20 days	1	1	0	1	1	0	6	8*				

* 5 pending retrieval from archives.

E. FOIA Requests for records: As of August 31, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	1	0	0	0	0	4	4	1	6	1	2	1	1	0	0
Over 20 days	0	0	0	0	0	4*	1	1	1	0	0	1*	0	0	0

*This file has not been received from archives.

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625	639	626	623				
New Cases	13	15	21	24	19	13	11	20				
Habeas Corpus	5	7	13	13	15	6	3	13				
FTCA	1	4	2	4	3	1	1	1				
Bivens	1	2	3	4	1	3	6	2				
Other	4	2	1	1	0	3	1	4				
Bivens/FTCA	2	0	2	2	0	0	0	0				
Lit Reports	8	10	10	9	9	10	4	8				
Cases Closed	66	7	12	5	5	26	14	21				

B. SETTLEMENTS AND AWARDS: -

1. Johnstone v. United States 95-5714 (EDPA) - Former FMC Ft. Worth inmate, who suffered penile implant damage while on a work assignment, filed an Inmate Accident Compensation claim after exhausting his internal appeals. After IAC review of new information, case was settled for \$20,854.00

2. Fears v. United States - 97-23 (WDPA) - FCI McKean inmate Shawn Fears, 34183-060, filed a FTCA complaint requesting \$2496.00 for the alleged loss of personal property. Staff had packed the inmate's property when he was placed in SHU. The property was later destroyed during an institution disturbance. The district court denied our motion for summary judgment.

which we raised the discretionary function defense. Case settled for \$500.

3. Custard v. Essig, et. al., 4:CV-96-1835 (MDPA) - USP Lewisburg inmate Bob Custard, 07539-055, filed FTCA action requesting damages for injuries allegedly incurred when he slipped from an upper bunk and fell into an exposed steam pipe in SHU. Inmate had a lower bunk slip. Case settled for \$1800.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

Significant New Cases:

1. Holder v. Harding, 98-656 (D. Conn); Codianni-Robles v. Harding, 98- (D.Conn) - In these two cases, female inmates are challenging the ability of male staff to conduct routine pat searches. Both inmates have been assigned to the Bridge Unit, a housing unit for women who have suffered traumatic experiences, including sexual assault or abuse. Counsel has been appointed to represent each inmate. A hearing is currently scheduled in Holder for October 19, 1998. We are in the process of complying with lengthy discovery requests. Mike Tafelski and Danbury Paralegal Specialist Patty Gotts will assist the AUSA at the hearing.

2. Fairweather v. U.S. Dept of Justice, Fed. Bureau of Prisons, 4:98-CV-1432 (MDPA) - USP Lewisburg Correctional officer challenges the application of the "misdemeanor domestic crime of violence" to his prior offense. Assigned to Lori Cunningham.

Hearings:

1. U.S. v. Carozzo and DiMaria, Crim. No. 97-CR-80 (E.D.N.Y.)

On August 19, 1998, MDC Brooklyn Staff attorney Les Owen and ISM David Williams attended a sentencing hearing. Mr. Williams testified regarding the application of prior custody credit and sentence aggregation.

2. United States v. Enlow, Cr. 94-265 (E.D.Pa.)

On September 4, 1998, defendant Idris Enlow, 47528-066, had a resentencing hearing before Judge Brody. A question arose concerning the interaction of the federal sentence with a state

parole violation warrant. Prior to the hearing, the court conveyed her intent to have the defendant be in primary federal custody. The state agreed to withdraw the state violation warrant and to reissue it as a detainer. I represented at the hearing that the Federal Bureau of Prisons would accept primary jurisdiction. I also addressed some issues concerning sentence computation. The court was satisfied and sentenced the defendant to 90 months.

D. RELIGIOUS CASES: - No new activity

E. ENSIGN AMENDMENT CASES: - No new activity

F. PLRA 1915 DISMISSALS: None

III. TRAVEL AND LEAVE SCHEDULE FOR SEPTEMBER 1998:

Hank Sadowski -Travel - None Scheduled
Annual Leave - None Scheduled

Mike Tafelski -Travel - September 14 -18 -- Recruiting Trip to
Boston (OAPM)and visit to FMC Devens and FCI
Danbury.
Annual Leave - September 23, 1998

Toni Brown - Travel - None Scheduled
Annual Leave - None Scheduled

Ron Hill - Travel - None Scheduled
Annual Leave - September 11-18

James Vogel - Travel - None Scheduled
Annual Leave - None Scheduled

NOTE: Honors Attorney Chris Synsvoll reported for duty in NERO on September 14, 1998.

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32	32	4	22	22			
Rec'd in month	34	28	32	38	41	31	45	37	41			
Ans'd in month	58	35	29	21	41	59	27	37	48			
Pending at End	13	9	15	32	32	4	22	22	15			
Over 20 days	1	1	0	1	1	0	6	8	1			

E. FOIA Requests for records: As of September 30, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	0	0	0	0	0	3	0	0	3	1	4	1	0	2	0
Over 20 days	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625	639	626	623	617			
New Cases	13	15	21	24	19	13	11	20	12			
Habeas Corpus	5	7	13	13	15	6	3	13	5			
FTCA	1	4	2	4	3	1	1	1	1			
Bivens	1	2	3	4	1	3	6	2	5			
Other	4	2	1	1	0	3	1	4	1			
Bivens/FTCA	2	0	2	2	0	0	0	0	0			
Lit Reports	8	10	10	9	9	10	4	8	9			
Cases Closed	66	7	12	5	5	26	14	21	18			

B. SETTLEMENTS AND AWARDS: -

1. Dziamba v. United States, 97-395 (D.N.J.) -- FTCA case in which inmate alleged staff failed to protect him from sexual assault at FCI Finton. Case settled on eve of trial.
2. Schrader v. Reno, et al., Appeal No. 97-7610 (3d Cir.; No. 4:CV-96-1467 (M.D.Pa.)) -- On September 9, 1998, a mediation conference was held in the above-referenced appeal. In addition, plaintiff filed a complaint alleging sex discrimination under Title VII, 42 U.S.C. § 2000(e); and a number of other statutory and constitutional grounds. The district court granted summary judgment in our favor. Plaintiff filed a Notice of Appeal to the Third Circuit challenging only the resolution of the Title VII claim.

claim. The Third Circuit requested the parties to consider participation in Alternative Dispute Resolution (ADR). We decided to pursue settlement since there was the possibility of a reversal on appeal and since the termination letter improperly referred to a discharge for medical reasons notwithstanding all medical evaluations confirmed fitness for duty. The case was settled for \$100,000.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

Significant Cases:

1. Holder v. Harding, 98-656 (D. Conn); Codianni-Robles v. Harding, 98-1481(D.Conn) - Two female inmates are challenging the ability of male staff to conduct routine pat searches. Both inmates have been assigned to the Bridge Unit, a housing unit for women who have suffered traumatic experiences, including sexual assault or abuse. Counsel has been appointed to represent each inmate. Counsel for all parties have had numerous telephone conference calls with the court regarding discovery and other issues. On October 13, 1998, Holder filed for a TRO to restrain Danbury staff from subjecting her to routine cross gender pat searches and to order staff not retaliate against her. We are vehemently opposing. A hearing is scheduled for October 14, 1998. The hearing on the merits of the underlying petition has been rescheduled for November 30 and December 1, 1998.

Upcoming Trials:

1. Chinchilla v. United States, 97 CV 0846 (SDNY) -- Plaintiff, inmate Roger Chinchilla, Reg. No. 43293-053, alleged that the negligent maintenance of a soccer field at FCI Otisville caused him to suffer a severe and permanent injury to his leg. Plaintiff, inmate, after colliding with another inmate, suffered a broken leg. After discovery and unsuccessful dispositive motions, the case is scheduled for trial on October 19, 1998. The defendant is expected to call FCI Otisville staff who witnessed the incident and were familiar with the well-maintained condition of the field.

2. Carter v. Luther, Civil Action No. 94-72E (WDPA) - Former inmate Joseph Carl Carter, Reg. No. 32856-004, alleges deliberate indifference to his medical needs (asthma) by the Warden at FCI McKean. Specifically, he alleges that he personally advised the Warden during his rounds throughout the prison that the conditions (high temperatures and poor air quality) were

worsened his medical condition. It is anticipated that the case will go to trial within the next two months.

D. RELIGIOUS CASES: - No new activity

E. ENSIGN AMENDMENT CASES: - No new activity

F. PLRA 1915 DISMISSALS: None

III. TRAVEL AND LEAVE SCHEDULE FOR OCTOBER 1998:

Hank Sadowski -Travel - 10/14 - Meeting in OGC regarding Holder.
Annual Leave - None Scheduled

Mike Tafelski -Travel - 10/8 -10/9 -- New Haven/FCI Danbury
10/14 - Meeting on OGC regarding Holder.
10/16-23 - FCI Danbury and U.S. Attorney
office for preparation of Holder.
Annual Leave - None Scheduled

Toni Brown - Travel - 10/5-10/8 -- Women in Corrections Conf.
Annual Leave - 10/9

Chris Synsvoll-Travel - 10/26-11/6 -- FCI Ft. Dix for I.F.
Annual Leave - None Scheduled

Ron Hill - Travel - None Scheduled
Annual Leave - None Scheduled

James Vogel - Travel - None Scheduled
Annual Leave - 10/16/98

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets
Philadelphia, PA. 19106

November 16, 1998

MEMORANDUM FOR WALLACE H. CHENEY, ASSISTANT DIRECTOR AND GENERAL
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - October 1998

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	110	91	146	162	167	180	145	146	144	132		
Rec'd in month	113	155	187	188	187	172	153	151	148	182		
Ans'd in month	132	100	171	183	174	207	152	153	160	149		
Pending at End	91	146	162	167	180	145	146	144	132	165		
Over 30 days	0	0	0	0	0	0	0	0	0	0		

B. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	236	262	261	283	320	348	319	296	271	265		
Rec'd in month	77	73	92	73	60	64	51	60	57	57		
Recons. rec'd	3	2	3	4	1	0	3	5	1	0		
Ans'd in month	54	76	73	40	33	93	77	90	64	101		
Pending at End	262	261	283	320	348	319	296	271	265	221		
Over 180 days	0	0	0	0	0	0	0	0	0	0		

C. Tort Claim Investigation Status: As of October 31, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	4	6	8	5	6	5	3	17	7	1	5	3	3	7	3
Over 60 days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32	32	4	22	22	15		
Rec'd in month	34	28	32	38	41	31	45	37	41	46		
Ans'd in month	58	35	29	21	41	59	27	37	48	32		
Pending at End	13	9	15	32	32	4	22	22	15	29		
Over 20 days	1	1	0	1	1	0	6	8	1	1		

E. FOIA Requests for records: As of October 31, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH	NER
Pending	5	0	1	1	0	5	0	2	1	0	6	1	1	1	2	2
Over 20 days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625	639	626	623	622	616		
New Cases	13	15	21	24	19	13	11	20	12	30		
Habeas Corpus	5	7	13	13	15	6	3	13	5	14		
FTCA	1	4	2	4	3	1	1	1	1	3		
Bivens	1	2	3	4	1	3	6	2	5	9		
Other	4	2	1	1	0	3	1	4	1	2		
Bivens/FTCA	2	0	2	2	0	0	0	0	0	2		
Lit Reports	8	10	10	9	9	10	4	8	9	11		
Cases Closed	66	7	12	5	5	26	14	21	18	17		

B. SETTLEMENTS AND AWARDS: -

1. Cuoco v. United States, et. al., 93 Civ. 1268 (S.D.N.Y.) - This Bivens/FTCA case in which John Andrew Cuoco, 80894-054, alleged excessive use of force was settled for \$10,000 under the FTCA prior to trial based upon the strong recommendation of the U.S. Attorney's office.

2. Cuoco v. United States, et. al., 93 Civ. 2806 (S.D.N.Y.) - In this Bivens/FTCA case, inmate Cuoco alleged that he suffered from the salmonella poisoning that occurred at FCI Otisville in October 1991. Prior to trial, experts agreed that the Plaintiff received medical care consistent with salmonella poisoning for a period of 8-10 days. Case settled under the FTCA for \$3,500 on

the basis of the settlements in similar OTV salmonella cases.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. United States v. Hammer, 4:CR-96-239 (M.D.Pa.) - On November 4, 1998, Judge Muir formally imposed the sanction of death upon inmate David Paul Hammer, 24507-077, for the 1996 strangulation killing of his cellmate. The Judge issued an order that the inmate be put to death on January 14, 1999, unless an appeal is filed. On November 10, 1998, Hammer filed a pro se notice of appeal. FCC Allenwood Attorneys Tim Roberts and Nellie Torres assisted the AUSA throughout the trial and sentencing.

2. Chinchilla v. United States, 97 CV 0846 (S.D.N.Y.) - On October 19, 1998, the FTCA claim filed by inmate Roger Chinchilla, 43293-053, went to trial. The Plaintiff alleged that the negligent maintenance of a soccer field at FCI Otisville caused him to suffer a severe and permanent injury to his leg. Our evidence showed that the inmate suffered a broken leg, caused by a collision with another inmate. Four hours after the trial, the Court ruled in favor of the government, based in large part upon the excellent staff testimony. FCI Otisville Paralegal Ros Bingham assisted the AUSA.

3. Lowe v. United States, 97-3038 (N.D.Iowa) - This FTCA case filed by former ICC inmate Danny Lowe, 07100-029, went to trial on October 27, 1998. The plaintiff alleged that a delay in antibiotic treatment for his teeth caused an abscess and subsequent extraction of teeth. The Court ruled in the government's favor.

4. Funches v. Reish, et.al., 97-Civ-7611 (LBS) (SDNY) On October 5, 1998 Court issued an order dismissing this case brought by paraplegic inmate Edward Funches, 37764-054, who was housed at MCC NY. The Plaintiff alleged improper medical care and violation of the ADA (access to religious services and outdoor recreation were allegedly not available). Some aspects of this dismissal were without prejudice after exhaustion of remedies. MCC NY Attorney Clinton Stroble assisted the AUSA.

5. Holder v. Harding, 98-656 (D. Conn); Codianni-Robles v. Harding, 98-1481(D.Conn) - These cases have been discussed in prior monthly reports. Two female inmates are challenging the ability of male staff to conduct routine pat searches. A hearing on the merits of issuing a permanent injunction is scheduled for December 15, 1998. In the interim, Inmate Tinia Holder, 09474-

424, requested a TRO on the basis that a number of actions taken by staff amounted to retaliation for fining the lawsuit. The court held a hearing on October 20 and 28, 1998. On November 10, 1998, the Court issued an order prohibiting the assignment of a particular officer (who the Court found had intentionally violated the parties agreement exempting the Petitioner from routine cross-gender pat searches) from any correctional post that may put him in contact with the petitioner and formalizing the previously agreed upon exemption. On November 12, inmate Holder alleged that a male officer pat searched her on November 11, 1998. The officer denied this allegation. An emergency hearing was held on November 13, 1998, to be completed on November 17, 1998. Mike Tafelski has been assisting the AUSA at the hearings.

UPCOMING HEARINGS/TRIALS:

1. United States v. Rodney Robinson, Crim -- (E.D.N.Y.)

Trial of "Badfellas" defendant and former MDC Brooklyn staff member began on November 9, 1998. MDC Brooklyn Attorney Azzmeiah Vazquez has been assisting the U.S. Attorneys office.

2. Carter v. Luther, Civil Action No. 94-72E (W.D.PA.) - Inmate Joseph Carl Carter, 32856-004, alleged deliberate indifference to his medical needs (asthma) by the former Warden at FCI McKean. Specifically, he alleges that he personally advised the Warden during his rounds through the SHU that the conditions (high temperatures and poor air quality worsened his medical condition. It is anticipated that the case will go to trial within the next two months. Assistant Regional Counsel, Toni Brown is assisting the AUSA.

3. United States v. Lawyer Lee Walker, CR:96- (M.D.PA.)

The trial of inmate Lawyer Lee Walker, 26727-083, for the assault of food service worker at USP Lewisburg in July 1996 is scheduled for January 1999. The original guilty plea was reversed and remanded for additional fact-finding by the Third Circuit on the issue of whether a food service supervisor is a "corrections officer" for purposes of the Sentencing Guidelines.

D. RELIGIOUS CASES: - No new activity

E. ENSIGN AMENDMENT CASES: - No new activity

F. PLRA 1915 DISMISSALS: None

III. TRAVEL AND LEAVE SCHEDULE FOR NOVEMBER 1998:

██████████ b6 -Travel - 11/16 -11/20 - General Counsel Meeting
Annual Leave - None Scheduled

██████████ b6 -Travel - 11/12- 13 -- Holder case, New Haven, CT

Annual Leave - 11/27, 11/30

██████████ b6- Travel - None Scheduled
Annual Leave - 11/27

██████████ b6-Travel - 11/16 - 11/20 - New Attorney Training
Annual Leave - None Scheduled

██████████ - b6 Travel - None Scheduled
Annual Leave - None Scheduled

██████████ b6 - Travel - None Scheduled
Annual Leave - None Scheduled

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets
Philadelphia, PA. 19106

December 10, 1998

MEMORANDUM FOR WALLACE H. CHENEY, ASSISTANT DIRECTOR AND GENERAL COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - November 1998

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	110	91	146	162	167	180	145	146	144	132	165	
Rec'd in month	113	155	187	188	187	172	153	151	148	182	170	
Ans'd in month	132	100	171	183	174	207	152	153	160	149	166	
Pending at End	91	146	162	167	180	145	146	144	132	165	169	
Over 30 days	0	0	0	0	0	0	0	0	0	0	0	

B. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	236	262	261	283	320	348	319	296	271	265	221	
Rec'd in month	77	73	92	73	60	64	51	60	57	57	56	
Recons. rec'd	3	2	3	4	1	0	3	5	1	0	1	
Ans'd in month	54	76	73	40	33	93	77	90	64	101	70	
Pending at End	262	261	283	320	348	319	296	271	265	221	208	
Over 180 days	0	0	0	0	0	0	0	0	0	0	0	

C. Tort Claim Investigation Status: As of November 30, 1998

	ALF	AIM	ALP	ALW	BRO	DAN	FAT	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	8	4	9	5	10	7	6	16	1	3	6	6	2	6	1
Over 60 days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32	32	4	22	22	15	29	
Rec'd in month	34	28	32	38	41	31	45	37	41	46	25	
Ans'd in month	58	35	29	21	41	59	27	37	48	32	50	
Pending at End	13	9	15	32	32	4	22	22	15	29	4	
Over 20 days	1	1	0	1	1	0	6	8	1	1	0	

E. FOIA Requests for records: As of November 30, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAL	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH	NER
Pending	1	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0
Over 20 days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625	639	626	623	622	616	629	
New Cases	13	15	21	24	19	13	11	20	12	30	11	
Habeas Corpus	5	7	13	13	15	6	3	13	5	14	10	
FTCA	1	4	2	4	3	1	1	1	1	3	0	
Bivens	1	2	3	4	1	3	6	2	5	9	1	
Other	4	2	1	1	0	3	1	4	1	2	0	
Bivens/FTCA	2	0	2	2	0	0	0	0	0	2	0	
Lit Reports	8	10	10	9	9	10	4	8	9	11	13	
Cases Closed	66	7	12	5	5	26	14	21	18	17	6	

B. SETTLEMENTS AND AWARDS: -

1. Tejada v. United States, 97-1942 (D.N.J.) - Former inmate Pedro Tejada, 63389-061, filed this FTCA case alleging that he suffered a serious and severe injury to his left wrist while playing basketball at FCI Ft. Dix and came under the medical care of staff at FCI Ft. Dix and later USMCFP Springfield. Plaintiff claims he has sustained irreversible damage to his left wrist and requested \$900,000.00. Liability exposure existed as a result of an almost three month delay between the diagnosis of a wrist fracture and the examination by the orthopedic specialist. On September 22, 1998, after a non-binding arbitration hearing, an arbitrator found in favor of the plaintiff in the amount of \$38,500.00. The AUSA recommended the government accept the arbitrator's finding. After consultation with the Office of

General Counsel and Health Services Division, approval was granted to settle for the amount of the arbitration award.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. Holder v. Harding, 98-656 (D. Conn); Codianni-Robles v. Harding, 98-1481(D.Conn) - These cases have been discussed in prior monthly reports. Two female inmates are challenging the ability of male staff to conduct routine pat searches. On November 9, 1998, the On November 13 and 17, 1998, hearings were held in response to the Petitioner's Motion to hold respondent in Contempt. The Petitioner alleged that while exiting the dining hall, a male staff member pat searched her contrary to the Court's November 9, 1998 Order prohibiting it. On November 24, 1998, the Court issued an order denying the Petitioner's request (without making a factual finding) and ordered that the Warden provide all staff notice of the Court's November 9, 1998 within 72 hours. On December 3, 1998, another hearing was held after the inmate alleged that she was once again cross-gender pat searched on November 29, 1998. No decision has been issued by the Court. Mike Tafelski has been assisting the AUSA at the hearings.

NOTE: Two more petitions have been filed by FCI Danbury inmates containing, in part, the same allegation.

2. United States v. Rodney Robinson, Crim -- (E.D.N.Y.)- On November 24, 1998, a jury verdict of guilty was returned against one of the "Badfellas" defendant and former MDC Brooklyn staff member Rodney Robinson. He was found guilty on two counts of bribery and one count of introducing heroin into a correctional facility. He faces a mandatory minimum of eight years imprisonment. MDC Brooklyn Attorneys Azzmeiah Vazquez and Les Owen have been assisting the U.S. Attorneys office.

3. United States v. Luis, 98 Cr. 680(SDNY) - On November 12, 1998, a hearing was held before Judge Schwartz regarding the feasibility of satisfying subpoenas issued by defense counsel. Dominique Raia attended the hearing and explained to the Court the procedures and response times.

4. United States v. Bin Laden, S2-98 Cr. 1023 (S.D.N.Y.) - On November 16 and November 17, 1998, Judge Sand of the Southern District of New York held hearings concerning allegations and complaints made by pre-trial inmates being held at MCC NY in connection with the embassy bombings in Africa (Mohamed Rasheed Al-Owhali, 42371-054; Mohammed Sadiq Odeh, 42375-054; Wadih

Elias El-Hage, 42393-054). The Judge, the AUSA, and defense counsel, toured the area where the inmates are housed. Judge Sand concluded that based upon the totality of the circumstances, the housing conditions are not only adequate, but even better than the rest of the SHU inmates.

UPCOMING HEARINGS/TRIALS

1. Carter v. Luther, Civil Action No. 94-72E (W.D.PA.) - Inmate Joseph Carl Carter, 32856-004, alleged deliberate indifference to his medical needs (asthma) by the former Warden at FCI McKean. Specifically, he alleges that he personally advised the Warden during his rounds through the SHU that the conditions (high temperatures and poor air quality worsened his medical condition. The case is scheduled for trial on December 14, 1998. Assistant Regional Counsel, Toni Brown is assisting the AUSA.

2. United States v. Walker, 4:CR:97-0012(M.D.PA.)- The resentencing of inmate Lawyer Lee Walker, 26727-083, for the assault of food service worker at USP Lewisburg in July 1996 was scheduled for December 9, 1998. The original guilty plea was reversed and remanded for additional fact-finding by the Third Circuit on the issue of whether a food service supervisor is a "corrections officer" for purposes of the Sentencing Guidelines.


3. Menillo v. Warden, No. 98-7340 (3d Cir.) - On December 10, 1998, oral argument is scheduled held before the U.S. Court of Appeals for the Third Circuit. Hank Sadowski is to argue on behalf of the Respondent. The underlying habeas corpus petition involved a challenge to the sentence computation as calculated by the Bureau of Prisons. The issue is whether, for about a two year period, the inmate was under the primary jurisdiction of the state authorities or the federal authorities while in pretrial status.

D. RELIGIOUS CASES: - No new activity

E. ENSIGN AMENDMENT CASES: - No new activity

F. PLRA 1915 DISMISSALS: None

III. TRAVEL AND LEAVE SCHEDULE FOR DECEMBER 1998:

 - Travel - None Scheduled
Annual Leave - December 11, 18, 28-31

U.S. DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

NORTHEAST REGIONAL OFFICE

**U.S. CUSTOM HOUSE
2ND & CHESTNUT STREETS
PHILADELPHIA, PA. 19106**

January 13, 1999

MEMORANDUM FOR CAROLYN SABOL, ACTING ASSISTANT DIRECTOR/GENERAL
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - December 1998

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

A. Administrative Remedies - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	110	91	146	162	167	180	145	146	144	132	165	169
Rec'd in month	113	155	187	188	187	172	153	151	148	182	170	183
Ans'd in month	132	100	171	183	174	207	152	153	160	149	166	185
Pending at End	91	146	162	167	180	145	146	144	132	165	169	167
Over 30 days	0	0	0	0	0	0	0	0	0	0	0	0

B. Administrative Tort Claims - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	236	262	261	283	320	348	319	296	271	265	221	208
Rec'd in month	77	73	92	73	60	64	51	60	57	57	56	81
Recons. rec'd	3	2	3	4	1	0	3	5	1	0	1	0
Ans'd in month	54	76	73	40	33	93	77	90	64	101	70	44
Pending at End	262	261	283	320	348	319	296	271	265	221	208	245
Over 180 days	0	0	0	0	0	0	0	0	0	0	0	0

C. Tort Claim Investigation Status: As of December 31, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	8	3	11	1	10	7	6	12	3	2	2	4	1	7	0
Over 60 days	0	0	0	0	2	0	0	4	0	0	0	0	0	0	0

D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32	32	4	22	22	15	29	4
Rec'd in month	34	28	32	38	41	31	45	37	41	46	25	31
Ans'd in month	58	35	29	21	41	59	27	37	48	32	50	24
Pending at End	13	9	15	32	32	4	22	22	15	29	4	11
Over 20 days	1	1	0	1	1	0	6	8	1	1	0	4

E. FOIA Requests for records: As of December 31, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH	NER	DEV
Pending	1	0	0	0	0	2	0	2	1	0	3	0	0	2	0	0	1
>20 days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0

II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625	639	626	623	622	616	629	634
New Cases	13	15	21	24	19	13	11	20	12	30	11	13
Habeas Corpus	5	7	13	13	15	6	3	13	5	14	10	7
FTCA	1	4	2	4	3	1	1	1	1	3	0	1
Bivens	1	2	3	4	1	3	6	2	5	9	1	4
Other	4	2	1	1	0	3	1	4	1	2	0	0
Bivens/FTCA	2	0	2	2	0	0	0	0	0	2	0	1
Lit Reports	8	10	10	9	9	10	4	8	9	11	13	5
Cases Closed	66	7	12	5	5	26	14	21	18	17	6	14

B. SETTLEMENTS AND AWARDS: -

1. Raineri v. U.S., 92-2509 (D.N.J.) - In this FTCA case, the United States agreed to pay \$164.64 to inmate Bruce Raineri, 19006-038 for property lost when he was placed in the Special Housing Unit at FCI Fairton in May 1996. [REDACTED]

b2

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. Menillo v. Warden, No. 98-7340 (3d Cir. January 11, 1999) - On December 10, 1998, I presented oral argument before the Third Circuit in this appeal of a habeas corpus case. The inmate was sentenced on both state and federal charges. The inmate was

seeking a ruling that the federal government, not the state, was the primary custodian, which would have caused him to receive

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about two years of prior custody credit. The district court denied the petition. In a January 11, 1999 "not precedential" opinion, the Third Circuit affirmed the denial of habeas relief and held the record supported the Bureau's determination that the inmate was in the primary jurisdiction of the state.

2. United States v. Walker, 4:CR:97-0012(M.D.PA.)- Inmate Lawyer Lee Walker, 26727-083, was convicted of the assault of food service worker at USP Lewisburg in July 1996. A resentencing hearing was required by the Third Circuit decision in United States v. Walker, 149 F.3d 238 (3d Cir, . 1998), which implied that, for sentencing guidelines purposes, all Bureau staff may not meet the definition of law enforcement officer. On December 29, 1999, the district court held that the evidence supported a finding that the food service supervisor was a law enforcement officer for purposes of the sentencing guidelines.

b2

3. Rios v. Wiley, 1:CV-98-1507 (M.D.PA.) - On December 8, 1998, in this habeas corpus case, the court ordered that FPC Allenwood grant inmate Francisco Rios, 31077-054, additional prior custody credit for about 22 months already credited towards his state sentence. This credit would be directly contrary to 18 U.S.C. § 3585(b). The court granted our motion to stay his order. A motion to amend the order is pending.

4. Holder v. Harding, 98-656 (D. Conn) - In this cross gender pat search case out of Danbury (discussed in prior reports), there has been no decision from the court after the December 3, 1998 contempt hearing. This hearing was held after the inmate alleged that she was once again cross-gender pat searched on November 29, 1998. Mike Tafelski has been assisting the AUSA at the hearings.

UPCOMING HEARINGS/TRIALS

1. Carter v. Luther, Civil Action No. 94-72E (W.D.PA.) - Inmate Joseph Carl Carter, 32856-004, alleged deliberate indifference to his medical needs (asthma) by the former Warden at FCI McKean. Specifically, he alleges that he personally advised the Warden during his rounds through the SHU that the conditions (high temperatures and poor air quality worsened his medical condition. The case proceeded to trial on January 11, 1998. Assistant Regional Counsel Toni Brown is assisting the AUSA.

D. RELIGIOUS CASES: - No new activity

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E. ENSIGN AMENDMENT CASES: - No new activity

F. PLRA 1915 DISMISSALS: None

III. TRAVEL AND LEAVE SCHEDULE FOR JANUARY 1999:

██████████ b6 -Travel - None Scheduled
Annual Leave - None Scheduled

██████████ b6 -Travel - January 11-Holder depositions, Danbury
January 13-14 Holder depositions, MARO
Annual Leave - January 7

██████████ b6 - Travel - January 11-13 - Erie, PA for Carter
trial Annual Leave - January 4-5

██████████ b6 -Travel - January 11 - February 1, 1999 -
GLYNCO
Annual Leave - None Scheduled

██████████ b6- Travel - None Scheduled
Annual Leave - January 5-8

██████████ b6- Travel - None Scheduled
Annual Leave - None Scheduled