

U.S. Department of Justice  
Federal Bureau of Prisons  
Northeast Regional Office

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

February 23, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel  
SUBJECT: Monthly Report - January 2001

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	161											
Rec'd in month	173											
Ans'd in month	185											
Pending at End	149											
Over 30 days	0											

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335											
Rec'd in month	93											
Recons. rec'd	3											
Ans'd in month	77											
Pending at End	354											
Over 180 days	0											

**C. Tort Claim Investigation Status: As of January 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	
RBK SCH																	
Pending	5	7	14	2	18	1	0	6	2	17	4	2	4	2	1	5	4

1  
 Over 60 days 3 4 6 1 3 0 0 0 0 4 0 0 0 0 0 1  
 0

2

**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46											
Rec'd in month	44											
Ans'd in month	70											
Pending at End	20											
Over 20 days	2*											

\* Note: Archived records.

**E. FOIA Requests for records: As of January 31, 2001**

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

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION**

**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	400											
New Cases	11											
Habeas Corpus	7											
FTCA	1											
Bivens	1											
Other	1											
Bivens/FTCA	1											
Lit Reports	10											
Cases Closed	10											

**B. SIGNIFICANT LITIGATION MATTERS:** None

**C. HEARINGS/TRIALS:** -

1) Toolasprashad v. Lane, et al. (4:CV-98-1234) (MDPA) (Biv) - Plaintiff alleged that five FCI Allenwood staff transferred him in retaliation for exercising his First Amendment rights. Trial commenced with jury selection on January 3, 2001. On January 4, 2001, the Plaintiff elected to dismiss his case with prejudice. It should be noted that

the Plaintiff had unsuccessfully tried to have subpoenas served on a number of current and former staff. At the time of trial, he was limited to presenting the retaliatory transfer issue, thwarting his plan to use racial allegations. Judge Muir was extremely upset over the fact that the Plaintiff waited so long to dismiss his case. FCC

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Allenwood Attorney Mike Sullivan served as co-counsel for the trial.

2) Vorhaur v. Zenk (3:CV-00-0444) (MDPA) (HC) - Petitioner sought thirty one (31) days of jail time credit for the period of time from when he alleged he was paroled from a state sentence until the time the USM took him into custody. An evidentiary hearing was concluded on January 11, 2001, at which time the court ordered FCI Allenwood to award the credit. After careful consideration of the unique circumstances surrounding this case, it has been decided not to recommend appeal.

3) U.S. v. Zhang, Cr. No. 98-356 (EDPA) - On February 2, 2001, Judge Schiller held a hearing regarding the status of a deportation hearing for inmate Jun Qing Zhang, 52008-066. On December 1, 2000, the court sentenced the inmate to 36 months, but if INS ordered deportation, the inmate was to be transferred to INS for deportation. The Court ordered the hearing when it learned INS would probably not consider a deportation order until near the end of the sentence. At the hearing, the AUSA, INS counsel, and I explained the process and tried to accommodate the Court's intent, to the extent possible. The court was advised that there was a statute prohibiting earlier release from a not-completed sentence unless approved by the Attorney General. The court recommended that the inmate be transferred to LSCI Allenwood where INS holds hearings. We complied with that recommendation.

**D. RELIGIOUS CASES:**

1) Toulouse, et. al. v. United States, et.al., 00-4840 (JAP) (DNJ) Three FCI Fort Dix inmates allege that the institution has not provided them proper materials to perform the required sweat lodge ceremonies. In addition, one inmate alleges that he was injured trying to split firewood. The representation requests of the individually named defendants have been forwarded to Main Justice for review and possible granting of private representation.

**E. ENSIGN AMENDMENT CASES:** - No new activity.

**III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:**

**REFERRALS:**

1) USP Allenwood - 11 referrals (3 inmate on staff assaults, 1 inmate on inmate assault with a weapon, 1 possession of escape paraphernalia, 5 drug related (1 introduction of marijuana, 4 possession of brown tar

heroin))

- 2) FCI Allenwood - 5 referrals (3 inmate on staff assaults, 1 inmate on inmate fight, 1 possible inmate on inmate rape)
- 3) LSCI Allenwood - 2 referrals (2 inmate on inmate fights (both

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declined)

- 4) FPC Allenwood - 1 referral (inmate on inmate fight)
- 5) MCC New York - 2 referrals (Inmate used institution telephone to issue a hit on a fellow gang member on the street; inmate arrived with marijuana-filled balloon inside him)

U.S. v. Macario Garcia - Sentencing is scheduled for March 9, 2001. The defendant pled guilty to two of twenty one counts for assaulting staff at USP Lewisburg and USP Allenwood.

. v. Kenney (4:CR-99-0280) - Inmate charge with assault on USP Allenwood Unit Manager. Case removed from January 2001 trial list. Currently scheduled for April 17, 2001. Mental Health examination was ordered by the court. Inmate Kenney is already approved for transfer to USP Marion.

. v. Latimore (4:CR-00-0331) - Inmate Edward Latimore, #33260-060 is charged in the hostage incident at USP Allenwood on August 29, 2000. Trial is scheduled for May 1, 2001.

**VEL AND LEAVE SCHEDULE FOR FEBRUARY 2001:**

b6 Travel: OGC Meeting - February 27-March 2  
Annual Leave: February 16

b6 Travel - Atty Supv. Training - February 4-8  
FMC Devens Staff Assist - February 21  
Annual Leave - None

b6 Travel - None scheduled  
Annual Leave - None scheduled

b6 1 Travel - None Scheduled  
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**

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

March 15, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - February 2001

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	161	149										
Rec'd in month	173	232										
Ans'd in month	185	142										
Pending at End	149	239										
Over 30 days	0	0										

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354										
Rec'd in month	93	90										
Recons. rec'd	3	4										
Ans'd in month	77	105										
Pending at End	354	343										
Over 180 days	0	0										

**C. Tort Claim Investigation Status: As of February 28, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
Pending	10	12	20	5	20	2	4	9	3	15	6	3	7	6	3	7	5	8

Over 60 days 3 2 8 1 0 0 0 0 0 3 0 0 0 0 0 0 1 0  
 2

**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20										
Rec'd in month	44	64										
Ans'd in month	70	33										
Pending at End	20	51										
Over 20 days	2*	5*										

\* Note: Archived records.

**E. FOIA Requests for records: As of February 28, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH	NER
Pending	1	6	0	1	3	0	5	4	1	3	4	6	4	2	2	1	5	2	1
>20 days*	0	1	0	0	1	0	0	0	0	0	0	0	0	1	1	0	0	1	0

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION**

**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	400	401										
New Cases	11	14										
Habeas Corpus	7	8										
FTCA	1	2										
Bivens	1	4										
Other	1	0										
Bivens/FTCA	1	0										
Cases Closed	10	17										

**B. SIGNIFICANT LITIGATION MATTERS:**

1) Berman v. United States, 3:CV-96-1708(MDPA) - On February 28, 2001, the Court entered judgement against the United States in this FTCA case. Trial was completed in August 2000. The Court found that the United States was negligent in the medical care it provided to former inmate Jeffrey Berman, 42588-066. This inmate arrived at USP Lewisburg Camp in September 1993 with an existing, long standing ileostomy. While at the camp, the Court essentially found that the medical care was negligent by failing to provide the proper opportunities for dilations and by failing to provide an adequate number of the proper bags. The inmate was transferred to FMC Fort Worth in September 1994. While there, he underwent surgical procedures to revise his ileostomy with varying degrees of success. The Court awarded the Plaintiff \$178, 294.00 (\$150,000 pain and

suffering and \$78,294 for post-release medical expenses)

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**C. HEARINGS/TRIALS:** -

1) United States v. Abdelghani Meskini, 00 Cr. 15 (SDNY) - Judge Keenan held a hearing to address two letters from a defense attorney in which he claimed that MCC New York was enforcing an unfair and inconsistent legal mail policy which was interfering with his client's, Abdelghani Meskini, 44712-054, right to counsel. The attorney had been attempting to get some legal materials to his client, but would not follow the procedures explained to him by legal staff. MCC Attorney Andrea Girolamo assisted at the hearing. Special mail procedures were briefly explained to the judge, who instructed the defense attorney to follow the instruction. The court recognized that mail handling is a security issue for the MCC.

2) United States v. Myles Rappaport (SDNY) - Inmate Myles Rappaport, 39477-053, was criminally charged with filing false income tax returns after he procured names and social security numbers of approximately 20 inmates while he was incarcerated at FCI Fairton and then used this information to file false returns. On February 20, 2001, Mike Dellamarco, ISM Manager, testified at trial, explaining SENTRY printouts that identified inmates' social security numbers, and dates and places of incarceration. Inmate Rappaport was convicted. AUSA Bill Johnson handled the case.

3) United States v. Thomas O'Brien - (EDNY) - Judge Kimba Wood held a hearing on February 7, 2001, regarding the decision by the Warden at MDC Brooklyn not to permit a psychiatrist to bring a video camera and lap top computer into the institution to conduct an evaluation of an inmate. The inmate's attorney and the psychiatrist argued that the video camera and computer were essential tools and would help, not only the doctor, but the finder of fact as well. MDC Brooklyn argued that the Warden has discretion to determine what may be brought into an institution. The Warden had legitimate security concerns with permitting the camera and laptop into the institution.

Judge Wood found that it would be in the best interest of justice to allow the psychiatrist to use the video camera and computer. However, the court stated that she would not second-guess the administrative correctional decisions of the Warden. Judge Wood ordered the U. S. Marshals to transport the inmate from MDC Brooklyn to a holding area in the courthouse where the evaluation could take place. MDC Brooklyn was represented at the hearing by Todd Bailey, Attorney and James Sherman, Associate Warden.

**D. RELIGIOUS CASES:**

1) Toulouse, et. al. v. United States, et.al., 00-4840 (DNJ)

Three FCI Fort Dix inmates allege that the institution has not

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provided them proper materials to perform the required sweat lodge ceremonies. In addition, one inmate alleges that he was injured trying to split firewood. The representation requests of the individually named defendants have been forwarded to Main Justice for review and possible granting of private representation.

**E. ENSIGN AMENDMENT CASES:** - No new activity.

**III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:**

U.S. v. Kenney (4:CR-99-0280) - Inmate charged with assault on USP Allenwood Unit Manager. Case removed from January 2001 trial list. Currently scheduled for April 17, 2001. Mental Health examination was ordered by the court. Inmate Kenney has been approved for eventual transfer to USP Marion.

U.S. v. Latimore (4:CR-00-0331) - Inmate Edward Latimore, 33260-060, is charged in the hostage incident at USP Allenwood from August 29, 2000. Trial is scheduled for May 1, 2001.

**TRAVEL AND LEAVE SCHEDULE FOR MARCH 2001:**

[REDACTED] Travel: MARO (EEO Counselors Training) March 6  
Annual Leave: None Scheduled

[REDACTED] Travel - None Scheduled  
Annual Leave - March 14-16

[REDACTED] Travel - None Scheduled  
Annual Leave - March 9-13

[REDACTED] Travel - None Scheduled  
Annual Leave - None Scheduled

[REDACTED] Travel - DHO Training/MSTC - March 5-9  
Annual Leave - None Scheduled

[REDACTED] Travel - None Scheduled  
Annual Leave - None scheduled

[REDACTED] 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*

April 13, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel  
SUBJECT: Monthly Report - March 2001

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	161	149	239									
Rec'd in month	173	232	202									
Ans'd in month	185	142	251									
Pending at End	149	239	190									
Over 30 days	0	0	0									

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354	343									
Rec'd in month	93	90	81									
Recons. rec'd	3	4	11									
Ans'd in month	77	105	82									
Pending at End	354	343	353									
Over 180 days	0	0	0									

**C. Tort Claim Investigation Status: As of March 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	
RBK SCH																	
Pending	6	15	15	6	21	3	6	11	2	15	9	3	8	5	1	3	6

5  
 Over 60 days 1 2 0 1 4 0 0 0 0 6 0 0 0 0 0 0  
 1  
 2

**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20	51									
Rec'd in month	44	64	77									
Ans'd in month	70	33	105									
Pending at End	20	51	23									
Over 20 days	2*	5*	0									

\* Note: Archived records.

**E. FOIA Requests for records: As of March 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
NER																		
Pending	0	0	3	0	1	0	5	3	3	2	2	3	0	0	1	0	0	0
>20 days*	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION**

**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	400	401	398									
New Cases	11	14	11									
Habeas Corpus	7	8	5									
FTCA	1	2	1									
Bivens	1	4	3									
Other	1	0	0									
Bivens/FTCA	1	0	2									
Cases Closed	10	17	9									

**B. SIGNIFICANT LITIGATION MATTERS:**

1) Wolf, et al. v. Reno, Civil No. 978-408 (WDPA March 2001) - This case was discussed in prior reports. Three inmates at FCI McKean have requested injunctive type relief challenging the application of the Ensign Amendment and the part of the Zimmer Amendment which prohibits the showing of R, X, and NC-17 films. The District Court granted the Government's motion to dismiss. The Court found the Ensign and Zimmer amendments, and their implementing regulations, to be neutral and reasonable, and rationally related to penological interests.

**C. HEARINGS/TRIALS:** -

1) United States v. Hector Ayala, (EDPA) On March 5, 2001, the Court held a resentencing on a case involving a joint state federal plea

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agreement which did not properly take into account state law. This office has been working with the U.S. Attorney's office over the past three years in an effort to best accommodate the Federal Court's intent. Ron Booher, Regional ISM and Michael Tafelski assisted at the hearing.

2) United States v. Bin Laden, 98 Cr. 1023 (SDNY) - The trial judge held two hearings involving MCC NY in the Embassy Bombing case. On March 27, 2001, Judge Sand held a hearing regarding the conditions of confinement for inmate Mohammed Adam, 45047-054. The attorney complained about restrictions. The court told the defense attorney she needed to abide by MCC's policies.

On March 29, 2001, Judge Sand held a hearing concerning voluminous subpoenas served by the attorney for inmate Mohammed Al-Owhali, 42371-054, on the media, numerous government agencies (including MCC New York), and current and former government employees. Judge Sand was extremely skeptical about the attorney's justification for the subpoenas and held them to be over broad. Judge Sand instructed the attorney to revise the subpoenas to government entities and resubmit them for review.

3) U.S. v. Mercardo, - (SDNY) On April 3, 2001, a sentencing hearing was held before Judge Marrero regarding MCC New York inmate Damaso Mercardo, 12353-054. The hearing was expedited as concerns for the medical care of the inmate needed to be addressed. Dr. Glover and Andrea Girolamo, Attorney assisted at the hearing by explaining the inmate's medical condition and the care the Bureau can provide. The judge sentenced the inmate to the balance of his supervised release time (7 months), committed him to the custody of the Bureau and asked that he be placed at a facility where he can receive adequate medical care.

**D. RELIGIOUS CASES:**

1) Toulouse, et. al. v. United States, et. al., 00-4840 (DNJ) Three FCI Fort Dix inmates allege that the institution has not provided them proper materials to perform the required sweat lodge ceremonies. In addition, one inmate alleges that he was injured trying to split firewood. The representation requests of the

individually named defendants has been approved by Main Justice and private counsel has been selected.

**E. ENSIGN AMENDMENT CASES:** -See note above.

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**III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:**

. v. Latimore (4:CR-00-0331) - Inmate Edward Latimore, 33260-060, is charged in the hostage incident at USP Allenwood from August 29, 2000. Trial is scheduled for May 1, 2001.

**VEL AND LEAVE SCHEDULE FOR APRIL 2001:**

Travel: 4/24 - FCI Fort Dix (Jurisdiction meeting)  
Annual Leave: 4/16-4/18

Travel - None Scheduled  
Annual Leave - 4/13

Travel - Med/Leg Training FMC Butner 4/23-4/27  
Annual Leave - None Scheduled

Travel - None Scheduled  
Annual Leave - March 9-13

Travel - 4/16-4/19 Jekyll Island, Plgl Training Seminar Workgroup  
Annual Leave - 4/20, 23

Travel - None Scheduled  
Annual Leave - 4/30 - 5/4

Travel - None Scheduled  
Annual Leave - None scheduled

Travel - None Scheduled  
Annual Leave - None Scheduled

E: Welcome:

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

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

May 21, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel  
SUBJECT: Monthly Report - April 2001

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	161	149	239	190								
Rec'd in month	173	232	202	185								
Ans'd in month	185	142	251	190								
Pending at End	149	239	190	185								
Over 30 days	0	0	0	0								

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354	343	353								
Rec'd in month	93	90	81	86								
Recons. rec'd	3	4	11	1								
Ans'd in month	77	105	82	84								
Pending at End	354	343	353	355								
Over 180 days	0	0	0	0								

**C. Tort Claim Investigation Status: As of April 30, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
Pending	4	18	24	8	14	3	10	14	3	13	2	4	16	5	4	4	6	6
Over 60 days	4	7	8	3	0	0	1	1	0	3	0	0	0	0	0	0	1	2

**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20	51	23								
Rec'd in month	44	64	77	54								
Ans'd in month	70	33	105	47								
Pending at End	20	51	23	30								
Over 20 days	2*	5*	0	0								

\* Note: Archived records.

**E. FOIA Requests for records: As of April 30, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH	NER
Pending	0	1	4	1	1	2	1	1	0	9	2	1	1	0	1	2	1	2	0
>20 days*	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION****A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	400	401	398	400								
New Cases	11	14	11	10								
Habeas Corpus	7	8	5	6								
FTCA	1	2	1	0								
Bivens	1	4	3	3								
Other	1	0	0	1								
Bivens/FTCA	1	0	2	0								
Cases Closed	10	17	9	8								

**B. SIGNIFICANT LITIGATION MATTERS:**

1) Brady v. Hawk, Civ No. 97-2515 (D.N.J.) - On April 26, 2001, the Court dismissed this action filed by current FCI Schuylkill inmate Duane Brady, 06648-067, who alleged that while at FCI Fort Dix he was exposed to asbestos both during his work assignment and housing assignment. The Court held that the inmate's exclusive remedy was the Inmate Accident Compensation Act and he had not properly exhausted this remedy. The case had generated a great deal of discovery material. b7c

**C. HEARINGS/TRIALS: -**

1) United States v. Latimore, (4:CR-00-0331) - Inmate Edward Latimore, 33260-060, is charged in the hostage incident at USP Allenwood from August 29, 2000. The Court denied, after numerous days of testimony,

the Defendant's motion to suppress his confession. Supervisory Attorney Advisor Michael Sullivan assisted the AUSA. Trial tentatively scheduled for August 2001.

2) United States v. Mercado, Crim No. (SDNY) On April 3, 2001, a hearing was held regarding the sentencing of Damaso Mercado, 12353-054, who was placed at MCC New York on March 19, 2001, because he violated supervised release (failed numerous drug tests). The inmate was found to have a medical condition in advance stages, which is also drug resistant. In order to facilitate his move to a medical center, we requested the AUSA to try to expedite the sentencing; all parties agreed. MCC New York medical staff testified at the sentencing to explain the inmate's medical condition and the care the BOP can provide at a Federal Medical Center. The defendant received a 7 month term (the balance of his supervised release time). The court recommended the defendant be placed at a facility where he can receive adequate care. His designation was expedited to FMC Rochester. MCC NY Attorney Andrea Girolamo assisted the AUSA.

**D. RELIGIOUS CASES:**

1) Ash-Bey v. Fauntleroy, et. al., 98-1447 (DNJ)  
 FCI Fort Dix inmate alleged violation of RFRA occurred when he was not allowed to wear his religious headwear on the compound. In April, the Court dismissed the case. Private counsel represented the individual defendants.

**E. ENSIGN AMENDMENT CASES:** -No new activity.

**III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:**

S. v. Kenney, 4:CR-99-0280 (MDPA) - USP Allenwood inmate  
 05238-041 is charged with assaulting a unit manager by punching him in the face. Trial is scheduled to begin on May 22, 2001.

**AVEL AND LEAVE SCHEDULE FOR MAY 2001:**

Travel: 5/10 - Hartford, CT - Bureau Training for  
 USPOs for Connecticut and Rhode Island  
 5/22-26 - Sentencing Training - MSTC  
 Annual Leave: None

i Travel - 5/9, 5/14-16 - MDC Brooklyn  
 Annual Leave - 5/11

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

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

June 21, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel  
SUBJECT: Monthly Report - May 2001

*Please  
File*

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	161	149	239	190	185							
Rec'd in month	173	232	202	185	223							
Ans'd in month	185	142	251	190	189							
Pending at End	149	239	190	185	219							
Over 30 days	0	0	0	0	0							

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354	343	353	355							
Rec'd in month	93	90	81	86	81							
Recons. rec'd	3	4	11	1	4							
Ans'd in month	77	105	82	84	78							
Pending at End	354	343	353	355	362							
Over 180 days	0	0	0	0	0							

**C. Tort Claim Investigation Status: As of May 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
Pending	4	18	26	6	14	5	8	17	1	19	6	2	12	3	2	3	7	8
Over 60 days	3	7	10	3	0	0	4	3	0	3	0	0	0	0	0	0	1	2



**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20	51	23	30							
Rec'd in month	44	64	77	54	71							
Ans'd in month	70	33	105	47	81							
Pending at End	20	51	23	30	20							
Over 20 days	2*	5*	0	0	3*							

\* Note: Archived records.

**E. FOIA Requests for records: As of May 31, 2001**

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

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION****A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	400	401	398	400	402							
New Cases	11	14	11	10	9							
Habeas Corpus	7	8	5	6	5							
FTCA	1	2	1	0	0							
Bivens	1	4	3	3	4							
Other	1	0	0	1	0							
Bivens/FTCA	1	0	2	0	0							
Cases Closed	10	17	9	8	9							

**B. SIGNIFICANT LITIGATION MATTERS:**

1) Robbio v. Shearin, Civil No. 01-167J(WDPA) - On May 24, 2001, FCI Loretto inmate Joseph Robbio, 02890-020, filed a request for an emergency hearing concerning his continued designation at FCI Loretto. The United States Magistrate Judge scheduled an emergency hearing in part because the inmate also alleged he had been threatened with a knife by another inmate and he feared for his safety. He was seeking an immediate transfer to a minimum security facility or camp. At the June 5, 2001 hearing, the Judge treated the request as one for injunctive relief and insisted the inmate to agree to pay the \$150.00 filing fee. He also allowed the inmate to present new evidence, all of which dealt with issues concerning other inmates, not himself. The complaint was dismissed for failing to exhaust Administrative Remedies. CLC NER Assistant Regional Counsel Roberta Truman assisted the AUSA in witness preparation and at trial.

**C. HEARINGS/TRIALS: -**

See above

D. RELIGIOUS CASES: No new activity

E. ENSIGN AMENDMENT CASES: -No new activity.

III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:

TRIAL:

v. Kenney, 4:CR-99-0280 (MDPA) - USP Allenwood inmate John C. Kenney, 05238-041 was charged with assaulting a unit manager by punching him in the face, resisting arrest, and possession of a weapon. On Wednesday, May 30, 2001, the 5 1/2 day trial concluded. On June 4, 2001, the jury found inmate Kenney not guilty by reason of insanity of assaulting the USP Allenwood Unit Manager and not guilty of resisting staff. The jury did find inmate Kenney guilty of possession of a weapon. Although USP Allenwood staff did an outstanding job refuting inmate Kenney's mental health defense, it appears as though the jury believed that he did in fact suffer from a mental defect. FCC Allenwood Supervisory Attorney Mike Sullivan actively assisted the AUSA in all stages of the trial.

States v. Bin Laden, 98 Cr. 1023 (SDNY) - On May 29, 2001, the all four Bin Laden defendants" were found guilty on 302 counts of murder. The death penalty phase immediately began for defendants Al-'Owhali and K. Mohammed. On June 12, 2001, the jury decided against imposing the death penalty on defendant Al'Owhali. The sentencing phase of the case continues.

ERRALS:

Allenwood: 6 referrals (4 possessions of a weapon, 2 inmate on inmate assault)  
Allenwood: 4 referrals (1 attempted introduction of narcotics (discovered via telephone monitoring), 1 assault on staff (minor), 2 inmate on inmate assaults)  
I Allenwood: 1 referral (inmate on inmate assault)  
Allenwood: 1 referral for threatening over the phone.  
Lewisburg: 1 referral (inmate, while being escorted, assaulted officer with feces)

VEL AND LEAVE SCHEDULE FOR JUNE 2001:

[REDACTED] Travel: None Scheduled  
Annual Leave: June 18, June 28 - July 6.

[REDACTED] Travel - OGC, DHO Workgroup - June 5;

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U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

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

August 24, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - June and July 2001

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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Rec'd in month	173	232	202	185	223	210	205					
Ans'd in month	185	142	251	190	189	228	210					
Pending at End	149	239	190	185	219	201	195					
Over 30 days	0	0	0	0	0	0	0					

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354	343	353	355	362	343					
Rec'd in month	93	90	81	86	81	90	78					
Recons. rec'd	3	4	11	1	4	4	3					
Ans'd in month	77	105	82	84	78	113	82					
Pending at End	354	343	353	355	362	343	342					
Over 180 days	0	0	0	0	0	0	0					

**C. Tort Claim Investigation Status: As of July 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
Pending	2	15	9	1	18	5	9	14	9	14	4	0	6	5	0	1	7	4
Over 60 days	0	1	1	0	0	0	0	3	0	3	0	0	0	0	0	0	0	1

**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20	51	23	30	20	47					
Rec'd in month	44	64	77	54	71	72	82					
Ans'd in month	70	33	105	47	81	45	84					
Pending at End	20	51	23	30	20	47	45					
Over 20 days	2*	5*	0	0	3*	2*	3*					

\* Note: Archived records.

**E. FOIA Requests for records: As of July 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH	NER
Pending	2	1	4	1	4	1	5	3	2	1	6	1	3	1	3	2	2	2	1
>20 days*	0	0	0	0	2*	0	1*	0	0	0	0	0	0	0	0	0	0	0	0

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION****A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	400	401	398	400	402	402						
New Cases	11	14	11	10	9	10						
Habeas Corpus	7	8	5	6	5	8						
FTCA	1	2	1	0	0	0						
Bivens	1	4	3	3	4	2						
Other	1	0	0	1	0	0						
Bivens/FTCA	1	0	2	0	0	0						
Cases Closed	10	17	9	8	9	20						

**B. SIGNIFICANT LITIGATION MATTERS:**

1) Smith v. DOJ, No. 00-5211 (D.C. Cir. June 12, 2001) - In this FOIA case, the Court of Appeals for the D.C. Circuit reversed the district court and ordered the government to produce recordings of an inmate's monitored telephone calls with an attorney. The district court upheld the Bureau's application of exemption (b)(3) to the recordings. Our position was that the recording fell within the provision of Title III (the wiretap statute) and disclosure was permissible only under 18 U.S.C. § 2517 of that Act. The Court of Appeals recognized that Title III is a statutory scheme which satisfies exemption (b)(3), and so recordings covered by Title III need not be disclosed under FOIA. However, the court held that the Bureau recordings were made pursuant to an exception to Title III, and therefore were not covered by Title III at all. Thus, the court reasoned discovery is not governed by 18

U.S.C. § 2517. DOJ decided not to pursue further appellate review. The FOIA Branch is assessing other exemptions and practical methods to address future FOIA requests for such tapes.

**C. HEARINGS/TRIALS:** -

- 1) U.S. v. Vince Davis, Criminal No. 01-940 (SDNY) - On June 1, 2001, Judge Griesa held a hearing concerning the medical care of an MDC Brooklyn inmate. MDC BRO Medical Officer Dr. Francin provided testimony concluding that the inmate had received adequate medical care and medication for his sickle-cell anemia condition. Dr. Francin's testimony convinced the Court that Davis was receiving adequate care for his condition, and the Court was assured that if Davis in fact suffered from a sickle-cell attack, he would be hospitalized at a local hospital. The Judge noted he was not going to interfere in the medical and administrative decisions of the MDC since they do an admirable job of caring for inmates. Attorney Les Owen assisted at the hearing.
- 2) U. S. v. Joseph Watts, Criminal No. 01-011 (EDNY) - On July 3, 2001, a hearing was held before Judge Trager in response to a court order that the MDC not wake the pretrial detainee prior to 6:30 a.m. on days of the trial. The judge issued the order after defense counsel stated that Watts was awoken too early and was too tired to participate in his own defense. The AUSA asked the judge to vacate the order and offered to transfer Watts to MCC New York where he would be allowed to sleep later due to a different movement schedule of USMS inmates. The court agreed to vacate the order and seemed satisfied by the compromise. However, defense counsel objected on the grounds that Watts was more comfortable in MDC Brooklyn and opted to have the inmate remain in MDC Brooklyn and get up early. The Court vacated the order, but asked that the US Attorney's Office and the Bureau of Prisons review the procedures used to get inmates to court on time.
- 3) Monsalve v. Parks, et al., 01 Civ. 6010 (SDNY) On July 3, 2001, *Bivens* plaintiff, Juan Monsalve, 58156-053, requested an Order to Show Cause why he should not be removed from administrative detention at MCC NY. He was placed in SHU based on his possession of escape paraphernalia (a dummy). On July 12, 2001, Judge McKenna held a hearing. Attorney Andrea Girolamo attended the hearing. On July 16, 2001, Judge McKenna issued a Memorandum and Order denying plaintiff's motion, based on the fact that he has not exhausted his administrative remedies.
- 4) United States v. Jaime Lara, 98-CR-1164 (SDNY) - On July 13, 2001, Judge Berman granted an emergency hearing to address a motion filed by the attorney for MCC NY inmate Jaime Lara, 44680-054, alleging that

4

Lara reported experiencing severe abdominal pain and blood in his urine, and that MCC personnel failed to address his condition. Defense counsel had called the Legal Department the day prior to articulate his concerns. In response, Health Services was notified and the

inmate was examined that evening. He was found to be in no acute distress, and blood and urine were drawn for immediate testing. Senior Staff Attorney Les Owen informed the Court the actions taken by MCC personnel, and provided assurances that Lara's medical needs would be met. The Court was satisfied with MCC's efforts and suggested that Defense counsel follow up the situation with the MCC Legal Department the following week.

5) United States v. Davis, Crim No. 00-10124(D. Mass) On July 16, 2001, I attended a post-sentencing hearing ordered by Judge Woodlock to discuss the Medical Designation's decision to not follow the court's recommendation for direct court commitment to a community corrections center for service of the 15-month sentence. The Judge was particularly concerned that the AUSA wrote a letter to the Bureau disagreeing with the Court's recommendation. The court requested that the person making the designation attend the hearing. Dr. Cary Mack from Medical Designation made the decision to designate the inmate to an institution instead of to a CCC. Dr. Mack did a fine job in testifying how he reached his decision. After direct questioning from the court, the court was satisfied that Dr. Mack was not privy to the letter from the AUSA. NER Designator Tom Washburn also testified on general issues concerning designations. After the hearing, the court was disturbed that the position of the AUSA did not include the court's view that the prior record of Mr. Davis was over ten years old and did not truly reflect his present status. The court asked the Bureau to reconsider its designation in light of this information. I attended the hearing and agreed to submit the court's views for reconsideration.

6) Sully-Martinez v. Dr. Glover, et al., 00 Civ. 5997 (SDNY) - MCC NY inmate Sully-Martinez, # 45682-004, claims deliberate indifference to his medical needs based on the claim that he should have received a skin graft for a fissure on his right middle finger, injured while working at UNICOR in 1992. On July 18, 2001, there was a status conference before Judge Lynch at which the pro se plaintiff attended. Judge Lynch attempted to explain the applicable law to Sully-Martinez, and expressed doubt that the actions taken by the MCC could arise to the level of deliberate indifference. Judge Lynch stated that it appeared that the MCC had provided quite extensive medical care to the inmate and reminded the inmate that doctors are only doctors, not "miracle workers." The court set an expedited schedule for the filing of remaining documents on the summary judgment motion. We anticipate a prompt decision. Andrea Girolamo attended on behalf of the MCC.

7) United States v. Agnew, CR-93-435 (EDNY) - FMC Rochester inmate David Agnew, #51461-053, wrote Judge Platt, his sentencing Judge, complaining of various inadequacies concerning his medical care. Agnew, who suffers chronic back pain associated with a body-surfing injury in 1985, was part of a clinical trial for an experimental pain relief drug, Ziconotide, prior to his incarceration. Using his medical condition, Agnew had successfully delayed his sentencing for nearly three years. On February 3, 2001, Agnew was sentenced to 5 years in prison for his role in a large-scale drug distribution ring. The Bureau had attended a number of hearings prior to the actual sentencing. After clearance through Health Services Division, the Bureau agreed to the following three requests from the Judge: (1) that Agnew be

designated to FMC Rochester for initial commitment and evaluation; (2) that he be allowed to remain on his experimental medication for 30 days (he was to report with a 30-day supply in his intrathecal pump); and (3) that the Bureau of Prisons would make application to the drug company to continue Agnew in the clinical trial for Ziconotide. The Bureau complied with each of these requests.

Judge Platt held hearings on July 30 & 31, 2001, to address what he considers the Bureau's failings to abide by his "order." Judge Platt believes that the BOP agreed to keep Agnew on the Ziconotide (which is not supported by the record). At the previous hearings, Judge Platt had specifically recognized the right of the Bureau's treating physicians to make the determination as to what course of treatment would be medically appropriate for Agnew. At the hearings, Judge Platt repeatedly threatened to release Agnew if he was not put back on the Ziconotide immediately. Medical records revealed that the inmate was evaluated by the Mayo Clinic, University of Minnesota at Rochester, and FMC Rochester each of whom had determined that the medication was not effective in pain relief for the inmate. Judge Platt indicated that he wants a written submission by the inmate's former physician (who was administering the clinical trial), as to whether or not he believes the inmate should continue on the Ziconotide. The court will give the Bureau an opportunity to respond, and hold a full-fledged hearing, with witness testimony, if necessary. He did not set any dates for either submission.

Senior Staff Attorney Les Owen assisted the AUSA at the hearings, with significant telephonic and documentary assistance from FMC Rochester's Attorney Mary Benning, Associate Warden Dave Good, and Staff Physician Fred Roberson. All three were standing by, via telephone, during both hearings in case the Judge wished to hear from them.

D. RELIGIOUS CASES: No new activity

E. ENSIGN AMENDMENT CASES: -No new activity.

III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:

TRIAL:

ted States v. Bin Laden, 98 Cr. 1023 (SDNY) - On May 29, 2001, the all four "Bin Laden defendants" were found guilty on 302 counts of murder. The death penalty phase immediately began for defendants Al-'Owhali and K. Mohammed. The jury decided against imposing the death penalty on either of these two defendants. MCC New York staff testified concerning the attack by K. Mohammed on Officer Pepe.

ERRALS:

Brooklyn: 2 referrals (2 inmate on staff assaults)  
 Lewisburg: 1 referral (29 inmates involved in large scale incident on June 26, 2001)  
 Elkton: 1 referral (escape of two inmates)  
 Fort Dix: 5 referrals (4 inmate on staff, 1 inmate forgery)  
 New York: 2 referrals (1, inmate assault on staff, 1 introduction of contraband (marijuana))

VEL AND LEAVE SCHEDULE FOR AUGUST 2001:

[REDACTED] Travel: Prisoner Litigation Seminar August 14 & 15,  
 USP LEW/FCC ALW August 16  
 Annual Leave: August 20-24, 2001

[REDACTED] Travel - None Scheduled  
 Annual Leave - None Scheduled

[REDACTED] Travel - Prisoner Litigation Seminar - August 13-17  
 Annual Leave - None Scheduled

[REDACTED] Travel - None Scheduled  
 Annual Leave - None Scheduled

[REDACTED] Travel - Legal Liaison training, FCI Danbury - August  
 27-28  
 Annual Leave - August 29-31

[REDACTED] Travel - None Scheduled  
 Annual Leave - None Schedules

[REDACTED] Travel - FOI Retreat August 14-16  
 Annual Leave - None Scheduled



U.S. Department of Justice

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August 24, 2001

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COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

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Over 30 days	0	0	0	0	0	0	0					

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Pending at End	354	343	353	355	362	343	342					
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**C. Tort Claim Investigation Status: As of July 31, 2001**

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**D. FOI/Privacy Act Requests - 2001**

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Over 20 days	2*	5*	0	0	3*	2*	3*					

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Pending	2	1	4	1	4	1	5	3	2	1	6	1	3	1	3	2	2	2	1
>20 days*	0	0	0	0	2*	0	1*	0	0	0	0	0	0	0	0	0	0	0	0

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3) Monsalve v. Parks, et al., 01 Civ. 6010 (SDNY) On July 3, 2001, *Bivens* plaintiff, Juan Monsalve, 58156-053, requested an Order to Show Cause why he should not be removed from administrative detention at MCC NY. He was placed in SHU based on his possession of escape paraphernalia (a dummy). On July 12, 2001, Judge McKenna held a hearing. Attorney Andrea Girolamo attended the hearing. On July 16, 2001, Judge McKenna issued a Memorandum and Order denying plaintiff's motion, based on the fact that he has not exhausted his administrative remedies.

4) United States v. Jaime Lara, 98-CR-1164 (SDNY) - On July 13, 2001, Judge Berman granted an emergency hearing to address a motion filed by the attorney for MCC NY inmate Jaime Lara, 44680-054, alleging that

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Lara reported experiencing severe abdominal pain and blood in his urine, and that MCC personnel failed to address his condition. Defense counsel had called the Legal Department the day prior to articulate his concerns. In response, Health Services was notified and the

inmate was examined that evening. He was found to be in no acute distress, and blood and urine were drawn for immediate testing. Senior Staff Attorney Les Owen informed the Court of the actions taken by MCC personnel, and provided assurances that Lara's medical needs would be met. The Court was satisfied with MCC's efforts and suggested that Defense counsel follow up the situation with the MCC Legal Department the following week.

5) United States v. Davis, Crim No. 00-10124(D. Mass) On July 16, 2001, I attended a post-sentencing hearing ordered by Judge Woodlock to discuss the Medical Designation's decision to not follow the court's recommendation for direct court commitment to a community corrections center for service of the 15-month sentence. The Judge was particularly concerned that the AUSA wrote a letter to the Bureau disagreeing with the Court's recommendation. The court requested that the person making the designation attend the hearing. Dr. Cary Mack from Medical Designation made the decision to designate the inmate to an institution instead of to a CCC. Dr. Mack did a fine job in testifying how he reached his decision. After direct questioning from the court, the court was satisfied that Dr. Mack was not privy to the letter from the AUSA. NER Designator Tom Washburn also testified on general issues concerning designations. After the hearing, the court was disturbed that the position of the AUSA did not include the court's view that the prior record of Mr. Davis was over ten years old and did not truly reflect his present status. The court asked the Bureau to reconsider its designation in light of this information. I attended the hearing and agreed to submit the court's views for reconsideration.

6) Sully-Martinez v. Dr. Glover, et al., 00 Civ. 5997 (SDNY) - MCC NY inmate [REDACTED] b7  
[REDACTED] claims deliberate indifference to his medical needs based on the claim that he should have received a skin graft for a fissure on his right middle finger, injured while working at UNICOR in 1992. On July 18, 2001, there was a status conference before Judge Lynch at which the pro se plaintiff attended. Judge Lynch attempted to explain the applicable law to Sully-Martinez, and expressed doubt that the actions taken by the MCC could rise to the level of deliberate indifference. Judge Lynch stated that it appeared that the MCC had provided quite extensive medical care to the inmate and reminded the inmate that doctors are only doctors, not "miracle workers." The court set an expedited schedule for the filing of remaining documents on the summary judgment motion. We anticipate a prompt decision. Andrea Girolamo attended on behalf of the MCC.

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7) United States v. Agnew, CR-93-435 (EDNY) - FMC Rochester inmate [REDACTED] b7  
[REDACTED] wrote Judge Platt, his sentencing Judge, complaining of various inadequacies concerning his medical care. Agnew, who suffers chronic back pain associated with a body-surfing injury in 1985, was part of a clinical trial for an experimental pain relief drug, Ziconotide, prior to his incarceration. Using his medical condition, Agnew had successfully delayed his sentencing for nearly three years. On February 3, 2001, Agnew was sentenced to 5 years in prison for his role in a large-scale drug distribution ring. The Bureau had attended a number of hearings prior to the actual sentencing. After clearance through Health Services Division, the Bureau agreed to the following three requests from the Judge: (1) that Agnew be

designated to FMC Rochester for initial commitment and evaluation; (2) that he be allowed to remain on his experimental medication for 30 days (he was to report with a 30-day supply in his intrathecal pump); and (3) that the Bureau of Prisons would make application to the drug company to continue Agnew in the clinical trial for Ziconotide. The Bureau complied with each of these requests.

Judge Platt held hearings on July 30 & 31, 2001, to address what he considers the Bureau's failings to abide by his "order." Judge Platt believes that the BOP agreed to keep Agnew on the Ziconotide (which is not supported by the record). At the previous hearings, Judge Platt had specifically recognized the right of the Bureau's treating physicians to make the determination as to what course of treatment would be medically appropriate for Agnew. At the hearings, Judge Platt repeatedly threatened to release Agnew if he was not put back on the Ziconotide immediately. Medical records revealed that the inmate was evaluated by the Mayo Clinic, University of Minnesota at Rochester, and FMC Rochester each of whom had determined that the medication was not effective in pain relief for the inmate. Judge Platt indicated that he wants a written submission by the inmate's former physician (who was administering the clinical trial), as to whether or not he believes the inmate should continue on the Ziconotide. The court will give the Bureau an opportunity to respond, and hold a full-fledged hearing, with witness testimony, if necessary. He did not set any dates for either submission.

Senior Staff Attorney Les Owen assisted the AUSA at the hearings, with significant telephonic and documentary assistance from FMC Rochester's Attorney Mary Benning, Associate Warden Dave Good, and Staff Physician Fred Roberson. All three were standing by, via telephone, during both hearings in case the Judge wished to hear from them.

D. RELIGIOUS CASES: No new activity

E. ENSIGN AMENDMENT CASES: -No new activity.

III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:

TRIAL:

United States v. Bin Laden, 98 Cr. 1023 (SDNY) - On May 29, 2001, the all four "Bin Laden defendants" were found guilty on 302 counts of murder. The death penalty phase immediately began for defendants Al-'Owhali and K. Mohammed. The jury decided against imposing the death penalty on either of these two defendants. MCC New York staff testified concerning the attack by K. Mohammed on Officer Pepe.

REFERRALS:

Brooklyn: 2 referrals (2 inmate on staff assaults)  
 Lewisburg: 1 referral (29 inmates involved in large scale incident on June 26, 2001)  
 Elkton: 1 referral (escape of two inmates)  
 Fort Dix: 5 referrals (4 inmate on staff, 1 inmate forgery)  
 New York: 2 referrals (1, inmate assault on staff, 1 introduction of contraband (marijuana))

TRAVEL AND LEAVE SCHEDULE FOR AUGUST 2001:

[REDACTED] Travel: Prisoner Litigation Seminar August 14 & 15,  
 USP LEW/FCC ALW August 16  
 Annual Leave: August 20-24, 2001

[REDACTED] Travel - None Scheduled  
 Annual Leave - None Scheduled

[REDACTED] Travel - Prisoner Litigation Seminar - August 13-17  
 Annual Leave - None Scheduled

[REDACTED] Travel - None Scheduled  
 Annual Leave - None Scheduled

[REDACTED] Travel - Legal Liaison training, FCI Danbury - August  
 27-28  
 Annual Leave - August 29-31

[REDACTED] Travel - None Scheduled  
 Annual Leave - None Schedules

[REDACTED] Travel - FOI Retreat August 14-16  
 Annual Leave - None Scheduled

**U.S. DEPARTMENT OF JUSTICE**

Federal Bureau of Prisons

**NORTHEAST REGIONAL OFFICE**

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

October 10, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - August/September 2001

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	161	149	239	190	185	219	201	195	182			
Rec'd in month	173	232	202	185	223	210	205	193	173			
Ans'd in month	185	142	251	190	189	228	210	206	172			
Pending at End	149	239	190	185	219	201	195	182	183			
Over 30 days	0	0	0	0	0	0	0	0	0			

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354	343	353	355	362	343	342	340			
Rec'd in month	93	90	81	86	81	90	78	101	59			
Recons. rec'd	3	4	11	1	4	4	3	7	9			
Ans'd in month	77	105	82	84	78	113	82	110	89			
Pending at End	354	343	353	355	362	343	342	340	319			
Over 180 days	0	0	0	0	0	0	0	0	0			

**C. Tort Claim Investigation Status: As of September 30, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
Pending	1	8	7	1	27	5	11	13	4	20	10	2	3	18	3	2	8	2
Over 60 days	0	3	1	0	1	0	5	1	0	1	0	0	0	2	0	0	0	0

**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20	51	23	30	20	47	45	18			
Rec'd in month	44	64	77	54	71	72	82	56	75			
Ans'd in month	70	33	105	47	81	45	84	83	51			
Pending at End	20	51	23	30	20	47	45	18	42			
Over 20 days	2*	5*	0	0	3*	2*	3*	0	0			

\* Note: Archived records.

**E. FOIA Requests for records: As of September 30, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH	NER
Pending	1	4	1	1	2	4	5	1	2	7	3	1	2	1	0	2	1	4	0
>20 days*	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION****A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	(JUN	JUL)	AUG	SEP	OCT	NOV	DEC
Open on 1st	400	401	398	400	402	402		392	392			
New Cases	11	14	11	10	9	10		10	3			
Habeas Corpus	7	8	5	6	5	8		6	2			
FTCA	1	2	1	0	0	0		1	0			
Bivens	1	4	3	3	4	2		3	1			
Other	1	0	0	1	0	0		0	0			
Bivens/FTCA	1	0	2	0	0	0		0	0			
Cases Closed	10	17	9	8	9	20		10	18			

**B. SIGNIFICANT LITIGATION MATTERS:**

- 1) Tully v. Hasty and Rementer, 00-CV-5856 (E.D.N.Y.)  
Tully v. BOP, 00-CV-5366 (E.D.N.Y.)

Former employee alleged violations of the Privacy Act and Bivens claims stemming from actions taken by supervisors to require Plaintiff to return from work and curb military absences. The Court ruled that the Civil Service Reform Act precludes jurisdiction over Plaintiff's Bivens claims. Some of Plaintiff's Privacy Act claims were barred by a prior settlement agreement. The rest were dismissed as Plaintiff's suit was deemed to have constructively waived his privacy interests in the documents in question.



2) Chilingirian v. Ellis, et.al. Civ No. (WDPA)

On August 23, 2001, a telephonic hearing was held regarding the Petitioner's Motion for a Temporary Restraining Order in which he requested to be free of retaliation for his filing in June 2001 in which he requested an immediate furlough to attend his son's wedding. The Magistrate Judge recommended denying the motion as it is an extraordinary remedy and the allegations were speculative.

**C. HEARINGS/TRIALS: -**

1) Cuoco v. Luther, et.al., 95-330 (Erie) (WDPA)

This Bivens case is scheduled for a two week trial in the Western District of Pennsylvania beginning on October 15, 2001. The Plaintiff, inmate John Cuoco, Reg. No. 80894-054, names 18 defendants and alleges that during October 1993, while housed at FCI McKean, staff failed to protect him from being the victim of a sexual assault. Assistant U.S. Attorney Paul Skirtich is representing the defendants. James Vogel, Paralegal Specialist, NER, will assist at trial.

**D. RELIGIOUS CASES:**

Toulouse et al, v. U.S., et al., 00-CV-4840 (JAP) (D.N.J.) RFRA case filed by three former FCI Fort Dix alleging religious services staff interfered with proper sweat lodge ceremonies. Case dismissed as Plaintiff's withdrew complaint. Private counsel appeared for Defendants.

**E. ENSIGN AMENDMENT CASES: -**

Wolf, et al. v. Reno, 01-1869 (3d Cir) (Dist. Ct. No. 978-408) (WDPA March 2001) - This case was discussed in prior reports. Three inmates at FCI McKean have requested injunctive type relief challenging the application of the Ensign Amendment and the part of the Zimmer Amendment which prohibits the showing of R, X, and NC-17 films. The District Court granted the Government's motion to dismiss. The Court found the Ensign and Zimmer amendments, and their implementing regulations, to be neutral and reasonable, and rationally related to penological interests. Oral argument is anticipated in January 2002.

**III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:**

**TRIAL/SENTENCINGS:**

U.S. v. Powers, Cr. No. (D.N.J.)

On October 1, 2001, Inmate John J. Powers, 03220-028 was sentenced to a consecutive term of 45 months for his escape from FCI Fairton in May 1999.

U.S. v. James, Cr. No. (M.D.PA.)

On September 13, 2001, former LSCI Allenwood Correctional Counselor Mark James was sentenced to 18 months (which is above the guidelines) and \$4000 fine on three counts (Conspiracy to Receive Bribes and Destroy Public Documents; Receipt of Bribes by Public Official; and Destruction of Public Documents).

U.S. v. Latimore (4:CR-00-0331) (M.D.PA.)- Inmate Edward Latimore, 33260-060, is scheduled to be sentenced on October 18, 2001 for the hostage incident at USP Allenwood in August 2000.

## REFERRALS:

MDC Brooklyn: 1 referral (Inmate on staff assault - pen)  
 USP Lewisburg: 3 referrals (Inmate on staff (liquid); inmate lunged at DHO; Two inmates assaulted one inmate)  
 FCI Fort Dix: 2 arraignments for misdemeanor assault conducted on military base before Magistrate Judge  
 FMC Devens: 1 referral - An inmate, in an outgoing, unsealed, general correspondence letter placed in the unit mailbox, admitted to his attorney that he had committed a murder. He wrote that he had been arrested but never convicted/charged. The admission was referred to the U.S. Attorney's Office for the District of Columbia, who intends to prosecute.

TRAVEL AND LEAVE SCHEDULE FOR OCTOBER 2001:

██████████ Travel: MCC NY and MDC BRO - October 4  
 DOJ Attorney Interview Training - October 11  
 Attorney Supervisor's Training - Oct. 15-19  
 Annual Leave: None Scheduled

██████████ Travel - DOJ Attorney Interview Training - October 11  
 FMC Devens Staff Assist - October 22-24  
 Annual Leave - None Scheduled

██████████ Travel -Attorney Supervisor's Training - Oct. 15-19  
 Annual Leave - None Scheduled

██████████ Travel - None Scheduled  
 Extended Annual Leave due to family medical issue

██████████ Travel - None Scheduled  
 Annual Leave - October 5-12 (Wedding/Honeymoon)

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

b6

[REDACTED]

Travel - None Scheduled  
Annual Leave - October 24-30

[REDACTED]

Travel - Cuoco Trial - Erie, PA October 13-26  
Annual Leave - None Scheduled

b6

U.S. DEPARTMENT OF JUSTICE

File

Federal Bureau of Prisons

SOUTHEAST REGIONAL OFFICE

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

October 10, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - August/September 2001

I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT

**A. Administrative Remedies - 2001**

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Ans'd in month	185	142	251	190	189	228	210	206	172			
Pending at End	149	239	190	185	219	201	195	182	183			
Over 30 days	0	0	0	0	0	0	0	0	0			

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354	343	353	355	362	343	342	340			
Rec'd in month	93	90	81	86	81	90	78	101	59			
Recons. rec'd	3	4	11	1	4	4	3	7	9			
Ans'd in month	77	105	82	84	78	113	82	110	89			
Pending at End	354	343	353	355	362	343	342	340	319			
Over 180 days	0	0	0	0	0	0	0	0	0			

**C. Tort Claim Investigation Status: As of September 30, 2001**

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Over 60 days	0	3	1	0	1	0	5	1	0	1	0	0	0	2	0	0	0	0

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FTCA	1	2	1	0	0	0	1	0			
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 FMC Devens Staff Assist - October 22-24  
 Annual Leave - None Scheduled

 Travel - Attorney Supervisor's Training - Oct. 15-19  
 Annual Leave - None Scheduled

 Travel - None Scheduled  
 Extended Annual Leave due to family medical issue

 Travel - None Scheduled  
 Annual Leave - October 5-12 (Wedding/Honeymoon)

 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

November 23, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - October 2001

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT****A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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Rec'd in month	173	232	202	185	223	210	205	193	173	192		
Ans'd in month	185	142	251	190	189	228	210	206	172	206		
Pending at End	149	239	190	185	219	201	195	182	183	169		
Over 30 days	0	0	0	0	0	0	0	0	0	0		

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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Ans'd in month	77	105	82	84	78	113	82	110	89	108		
Pending at End	354	343	353	355	362	343	342	340	319	297		
Over 180 days	0	0	0	0	0	0	0	0	0	0		

**C. Tort Claim Investigation Status: As of October 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
Pending	1	5	8	0	29	0	9	14	7	18	3	0	5	16	0	3	7	5
Over 60 days	0	0	1	0	1	0	0	0	0	1	0	0	0	3	0	0	2	0



**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20	51	23	30	20	47	45	18	42		
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Ans'd in month	70	33	105	47	81	45	84	83	51	75		
Pending at End	20	51	23	30	20	47	45	18	42	20		
Over 20 days	2*	5*	0	0	3*	2*	3*	0	0	0		

\* Note: Archived records.

**E. FOIA Requests for records: As of October 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH	NER	
Pending																				
>20 days*	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION****A. SUMMARY REPORT**

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FTCA	1	2	1	0	0	0	1	0	1		
Bivens	1	4	3	3	4	2	3	1	2		
Other	1	0	0	1	0	0	0	0	0		
Bivens/FTCA	1	0	2	0	0	0	0	0	0		
Cases Closed	10	17	9	8	9	20	10	18	17		

**B. SIGNIFICANT LITIGATION MATTERS:****C. HEARINGS/TRIALS: -**

1) Muhannad v. Reyes, et.al, 4:CV-99-0468 (MDPA)

This case, originally filed as a Bivens but converted to an FTCA, was filed by USP Lewisburg inmate Anthony Austin, 12760-047 claiming inadequate medical care for a hand injury. A one day trial occurred on November 4, 2001, at which time the Judge dismissed the case. Lori Cunningham assisted the AUSA.

Infante v. Frank, et.al. CV-97-824 (MDPA)

This Bivens case filed by now former inmate Robert Infante, 02421-082 challenges his work assignment due to a medical condition. Three

defendants remain. Jury selection is scheduled to begin on December 3, 2001. Michael Sullivan and Jeff Fromm are assisting the AUSA.

**D. RELIGIOUS CASES:**

Jackson v. Hasty, et.al, Civ. No. 00-CV-2808 (EDNY) USP Leavenworth inmate Patrick Jackson, 13340-004, alleges that while housed at MDC Brooklyn for approximately four months, he was denied his religious diet. Jackson, a Rastafarian, failed to submit the completed religious diet form.

**E. ENSIGN AMENDMENT CASES: -**

Wolf, et al. v. Reno, 01-1869 (3d Cir) - This case was discussed in prior reports. Three inmates at FCI McKean have requested injunctive type relief challenging the application of the Ensign Amendment and the part of the Zimmer Amendment which prohibits the showing of R, X, and NC-17 films. The District Court granted the Government's motion to dismiss after a finding that the Ensign and Zimmer amendments, as implemented, to be neutral and reasonable, and rationally related to penological interests. Oral argument is anticipated in January 2002.

**III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:**

**TRIAL/SENTENCINGS:**

S. v. Latimore 4:CR-00-0331 (M.D.PA.)- Inmate Edward Latimore, 33260-060, was sentenced on October 18, 2001 for the staff hostage incident at USP Allenwood in August 2000. He received a consecutive sentence of 96 months, and \$300 special assessment.

S. v. Kenney, 4:CR- (MDPA)- Inmate John Kenney, 05238-041 was sentenced for possession of a weapon resulting from a September 1999 incident in which the inmate assaulted a USP Allenwood Unit Manager. Kenney received a 41 month consecutive sentence and a \$100.00 dollar special assessment. The jury found inmate Kenney not guilty of resisting staff and not guilty by reason of insanity of assaulting staff. The weapon (razor blade) was found in the inmate's possession after the assault had occurred.

**ERRALS:**

Allenwood: Suspected arson in recreation building referred to FBI

I Allenwood: 3 referrals (inmate on inmate fight; documents found regarding a counterfeiting scheme; inmate billing purchase of personal books to

Education Dept.)

FCI Allenwood: 4 referrals (2 inmate assaults on staff (throwing a  
4

book, pulling cuffs through wicket); possession of narcotics (marijuana); inmate  
placing baby powder in envelope to scare another inmate).

USP Allenwood: 4 referrals (2 inmate on inmate assaults, 1 possession of weapon,  
1 use of mail to threaten another)

USP Lewisburg: 2 referrals (Inmates on staff with injury (puncture wound and  
scratches; inmate on inmate fight)

FCI Fort Dix: 2 arraignments for misdemeanor assault conducted on  
military base before Magistrate Judge; 4 referrals

FCI Otisville: 6 (4 inmate on inmate assaults, 2 improper use of mail)

TRAVEL AND LEAVE SCHEDULE FOR NOVEMBER 2001:

[Redacted] Travel: Honors Attorneys Interviews (PHL)- Nov 1  
Fed. P.D. Meeting - Boston - Nov 2  
New Atty Training - D.C. - Nov 15  
Annual Leave: Nov 6-9

[Redacted] Travel - FCC Allenwood After Action Nov 13-14  
Annual Leave - Nov 23

[Redacted] Travel -None  
Annual Leave - Nov 21, 23

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[Redacted] Travel - None Scheduled  
Periodic/Extended Leave for family medical issue  
[Redacted] Travel - New Atty Training - Nov 13-15  
Annual Leave - None Scheduled

[Redacted] Travel - None Scheduled  
Annual Leave - Nov 21, 23

[Redacted] Travel - None Scheduled  
Annual Leave - Nov 21

[Redacted] Travel - None  
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 27, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - November 2001

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	161	149	239	190	185	219	201	195	182	183	169	
Rec'd in month	173	232	202	185	223	210	205	193	173	192	175	
Ans'd in month	185	142	251	190	189	228	210	206	172	206	176	
Pending at End	149	239	190	185	219	201	195	182	183	169	168	
Over 30 days	0	0	0	0	0	0	0	0	0	0	0	

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354	343	353	355	362	343	342	340	319	297	
Rec'd in month	93	90	81	86	81	90	78	101	59	78	78	
Recons. rec'd	3	4	11	1	4	4	3	7	9	8	4	
Ans'd in month	77	105	82	84	78	113	82	110	89	108	83	
Pending at End	354	343	353	355	362	343	342	340	319	297	298	
Over 180 days	0	0	0	0	0	0	0	0	0	0	0	

**C. Tort Claim Investigation Status: As of November 30, 2001**

	ALP	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTS	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
Pending	2	3	7	1	32	1	7	12	3	11	2	1	4	13	1	5	3	6
Over 60 days	1	1	0	0	1	0	2	0	0	0	0	0	0	9	0	0	1	0

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**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20	51	23	30	20	47	45	18	42	20	
Rec'd in month	44	64	77	54	71	72	82	56	75	53	8	
Ans'd in month	70	33	105	47	81	45	84	83	51	75	15	
Pending at End	20	51	23	30	20	47	45	18	42	20	13	
Over 20 days	2*	5*	0	0	3*	2*	3*	0	0	0	5*	

\* Note: Archived records.

**E. FOIA Requests for records: As of November 30, 2001**

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

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION****A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	(JUN	JUL)	AUG	SEP	OCT	NOV	DEC
Open on 1st	400	401	398	400	402	402		392	392	377	366	
New Cases	11	14	11	10	9	10		10	3	6	18	
Habeas Corpus	7	8	5	6	5	8		6	2	3	9	
FTCA	1	2	1	0	0	0		1	0	1	1	
Bivens	1	4	3	3	4	2		3	1	2	6	
Other	1	0	0	1	0	0		0	0	0	2	
Bivens/FTCA	1	0	2	0	0	0		0	0	0	0	
Cases Closed	10	17	9	8	9	20		10	18	17	8	

**B. SIGNIFICANT LITIGATION MATTERS:****C. HEARINGS/TRIALS: -**

1) Infante v. Frank, et.al. CV-97-824 (MDPA) - In this Bivens case, former inmate Robert Infante, 02421-082, alleged that UNICOR staff had forced him to exceed his medical restrictions at USP Allenwood in 1997. Mr. Infante was released from custody in November 2001. After his release, the inmate did not comply with several court orders and rules regarding pre-trial preparation. The court issued an order prohibiting him from calling any witnesses and from using his fifty four exhibits in the case, although the court did allow Mr. Infante to testify and to use our witnesses and exhibits. On December 3, 2001, when the case was called for jury selection, Mr. Infante was not able

to be located. The court ordered the case dismissed. Michael

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Sullivan and Jeff Fromm assisted the AUSA.

2. U.S. v. Gregory Ferguson, 99 CR 1262 (SDNY) - On November 20, 2001, the criminal trial judge held a hearing to address religious diets issues raised by the attorney for MDC Brooklyn inmate Gregory Ferguson, # 41238-054, a Rastafarian. The issue involved the decision to remove the inmate from the certified foods program as stated in the Warden's BP-9 response, which instructed him to apply for the "No Flesh" diet if he wished to receive vegetarian meals. The government argued that a lactose-free, No Flesh diet adequately meets Ferguson's religious and dietary needs. The inmate's attorney argued that Ferguson had been receiving meals of raw vegetables for three years through the Common Fare program and the No Flesh diet does not satisfy Rastafarian requirements. The Court withheld judgement pending the outcome of the administrative remedy process, but requested MDC Brooklyn should provide Ferguson with raw vegetables until the process has been exhausted. The AUSA agreed. Attorney Todd Bailey assisted the AUSA at the hearing. b5

3. U.S. v. Joseph Rini, 00 CR 237 (SDNY) - Counsel for defendant Joseph Rini (free on bail) subpoenaed any and all telephone calls made by another inmate "to date, and henceforth." In addition, counsel presented a court order directing the Bureau of Prisons maintain the tape recorded telephone conversations and ordered the Bureau of Prisons not to divulge the existence of the order or subpoena to anyone. In October 2001, Todd Bailey, Staff Attorney, represented MDC Brooklyn at a hearing and argued that the subpoena was overly broad; would unduly burden MDC staff; the subpoena's request for calls "henceforth" was prohibited by federal wiretap statutes; the order impeded MDC's ability to properly release information through the U.S. Attorney's Office; and, the order prevented MDC from exploring these and other defenses with the U.S. Attorney's Office. The Court agreed the subpoena was overly broad and narrowed the request to calls made to one phone number (a total of seven phone calls). The Court also agreed that a request for calls "henceforth" was improper and restricted the request to calls up to the date of the subpoena. Finally, the Court modified the order to allow MDC Brooklyn to contact the Civil Division of the US Attorney's Office, which then formally responded to and objected to the subpoena. The issue became moot when Rini pled guilty in his criminal case and withdrew the subpoena.

4. United States v. Hunton, CV-01-4592 - Civil action to evict an MDC Brooklyn employee from staff housing and recover unpaid past due rent. Hunton vacated her Dayton Manor apartment November 22, 2001. MDC Brooklyn is pursuing summary judgement to recover unpaid back rent.

D. RELIGIOUS CASES:

E. ENSIGN AMENDMENT CASES: -

Wolf, et al. v. Reno, 01-1869 (3d Cir) - This case was discussed in prior reports. Three inmates at FCI McKean have requested injunctive type relief challenging the application of the Ensign Amendment and the part of the Zimmer Amendment which prohibits the showing of R, X, and NC-17 films. The District Court granted the Government's motion to dismiss after a finding that the Ensign and Zimmer amendments, as implemented, to be neutral and reasonable, and rationally related to penological interests. Oral argument is anticipated in January 2002.

III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:

TRIAL/SENTENCINGS:

REFERRALS:

FCI Allenwood: 2 referrals (inmate on inmate assaults)

USP Allenwood: 8 referrals (2 inmate on staff assaults (minor - without injury); 2 threatening staff; 2 inmate on inmate assaults (one attempted killing); 2 possession of weapon)

USP Lewisburg: 3 referrals (Inmate on staff without injury (threw a magazine); 2 inmate on inmate fight)

FCI Schuylkill: 1 referral (Inmate alleged sexual assault by another inmate)

TRAVEL AND LEAVE SCHEDULE FOR DECEMBER 2001:

[REDACTED] Travel: None Scheduled  
Annual Leave: Dec. 26, 31

[REDACTED] Travel - Newark, N.J. - Sentencing Hearing Dec. 18  
Annual Leave - Dec. 26-31

[REDACTED] Travel -None  
Annual Leave - Dec. 19-21

[REDACTED] Travel - None Scheduled  
Periodic/Extended Leave for family medical issue  
[REDACTED] Travel - I.F. (at FCI Fairton) Dec. 3 - 14

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**U.S. Department of Justice**

**Federal Bureau of Prisons**

**Northeast Regional Office**

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

January 22, 2002

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/GENERAL  
COUNSEL, FEDERAL BUREAU OF PRISONS**

**FROM:** Henry J. Sadowski, Regional Counsel

**SUBJECT:** Monthly Report - December 2001

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	161	149	239	190	185	219	201	195	182	183	169	168
Rec'd in month	173	232	202	185	223	210	205	193	173	192	175	167
Ans'd in month	185	142	251	190	189	228	210	206	172	206	176	167
Pending at End	149	239	190	185	219	201	195	182	183	169	168	168
Over 30 days	0	0	0	0	0	0	0	0	0	0	0	0

**B. Administrative Tort Claims - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	335	354	343	353	355	362	343	342	340	319	297	298
Rec'd in month	93	90	81	86	81	90	78	101	59	78	78	66
Recons. rec'd	3	4	11	1	4	4	3	7	9	8	4	2
Ans'd in month	77	105	82	84	78	113	82	110	89	108	83	83
Pending at End	354	343	353	355	362	343	342	340	319	297	298	293
Over 180 days	0	0	0	0	0	0	0	0	0	0	0	0

**C. Tort Claim Investigation Status: As of December 31, 2001**

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	ELK	FAI	FTD	LEW	LOR	MCK	NYM	OTV	PHL	RBK	SCH
Pending	2	8	11	5	23	2	9	9	5	10	5	0	10	15	4	3	0	14
Over 60 days	0	0	2	0	11	0	3	1	0	0	0	0	0	10	0	0	0	1



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**D. FOI/Privacy Act Requests - 2001**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	46	20	51	23	30	20	47	45	18	42	20	13
Rec'd in month	44	64	77	54	71	72	82	56	75	53	8	30
Ans'd in month	70	33	105	47	81	45	84	83	51	75	15	30
Pending at End	20	51	23	30	20	47	45	18	42	20	13	19
Over 20 days	2*	5*	0	0	3*	2*	3*	0	0	0	5*	1*

\* Note: Archived records.

**E. FOIA Requests for records: As of December 31, 2001**

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

\*Note all are archived records

**II. LITIGATION ACTIVITY - 2001 NORTHEAST REGION****A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	(JUN	JUL)	AUG	SEP	OCT	NOV	DEC**
Open on 1st	400	401	398	400	402	402		392	392	377	366	
New Cases	11	14	11	10	9	10		10	3	6	18	
Habeas Corpus	7	8	5	6	5	8		6	2	3	9	
FTCA	1	2	1	0	0	0		1	0	1	1	
Bivens	1	4	3	3	4	2		3	1	2	6	
Other	1	0	0	1	0	0		0	0	0	2	
Bivens/FTCA	1	0	2	0	0	0		0	0	0	0	
Cases Closed	10	17	9	8	9	20		10	18	17	8	

\*\* The discovery of a glitch in processing incoming cases has required an adjustment of litigation numbers. The revised numbers for each month are set forth below. The 53 noted for December are actually cases from earlier in the year which were logged into Lawpack in December.

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
New Cases	15	17	15	15	13	16	20	10	13	25	28	53

**B. SIGNIFICANT LITIGATION MATTERS:****1. Haywood v. Alcantara & Lassi, 99 CV 1127 (EDNY)**

This Bivens action filed by an inmate at MDC Brooklyn alleged that two correctional officers were deliberately indifferent to the safety of

the Plaintiff by not removing him from the housing unit. The Unit Officer, who had received some information, moved the inmate to a bed closer to the officer's station in the open dormitory type unit. The Officer also reported it to the Lieutenant's office and relayed the information to the officer who relieved her. Later that evening, the Plaintiff was attacked. The Court, in granting the Defendant's Motion for Summary Judgement, held that "the officers did place themselves on a heightened alert, they did not observe anything in the moments before the attack to suggest it was coming and, therefore, I don't see anything about their failure to take greater preventive action that could support an Eighth Amendment claim." Plaintiff has filed a Notice of Appeal. Les Owen and Todd Bailey assisted the AUSA on this case.

**C. HEARINGS/TRIALS:** -

1. U.S. v. Mauriello, CR-S-97-082 (D. Nevada) - On December 21, 2001, telephonic hearing was held concerning a request by LSCI Allenwood inmate Stephen Mauriello, 32013-048 for halfway house placement, home confinement, or compassionate release. The sentencing judge ruled that he did not have jurisdiction over the issue. Mike Sullivan presented the arguments on behalf of the Bureau.
  2. U.S. v. Barnes, Crim. No. 00-06, Civ. No. 01-4454 (EDPA) On December 21, 2001, a hearing was held on the inmate's motion for a resentencing based upon trial counsel's ineffective assistance of counsel (regarding appeal time frames) and requesting a downward departure based upon allegations that FDC Philadelphia could not provide proper medical care. AUSA requested Bureau assistance in case the medical issue had to be addressed. Regional and institutional staff assisted and attended the hearing, although no testimony was necessary as the Court agreed to reissue a J&C to permit the inmate to file an appeal.
  3. Gammon v. Warden, FMC Devens, et al. (Civil No. C01-435-M, D.N.H.) In a motion before the sentencing court, FMC Devens inmate Frank Gammon, 01578-081 alleged the Bureau of Prisons was not treating his chronic back pain as indicated by a letter from the Medical Director prior to sentencing. The Court determined this to be habeas petition contesting "the conditions of his confinement" and ordered a Magistrate's hearing to review the inmate's request for injunctive relief.
- On December 18, 2001, Dr. Karl Bernhardt, Staff Physician, at FMC Devens, testified concerning the treatment and medications Gammon has received since his November 9, 2001, arrival at FMC Devens. Dr. Bernhardt also provided a synopsis of the treatment plans being

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considered and any pending consultation orders. William Baumgartel, Paralegal Specialist, also testified concerning the Bureau's Administrative Remedy Program and the inmate's failure to exhaust. The Magistrate Judge acknowledged the improper venue and jurisdiction as well as the inmate's failure to exhaust, but did not indicate what recommendation would be forwarded to the District Judge.

4. U.S. v. McKeithan (Criminal No. 1:00-CR-278-01, M.D.PA) On December 20, 2001, a video conference sentencing hearing was conducted at FMC Devens for inmate Curtis McKeithan, 04888-067. Due to a history of heart attacks he was admitted to FMC Devens as a pre-sentence inmate and stipulated to appear at sentencing via video conference. Upon conclusion of arguments, Judge Rambo announced a sentence of 420 months.

D. RELIGIOUS CASES: None

E. ENSIGN AMENDMENT CASES: -

Wolf, et al. v. Reno, 01-1869 (3d Cir) - This case was discussed in prior reports. Three inmates at FCI McKean had requested injunctive type relief challenging the application of the Ensign Amendment and the part of the Zimmer Amendment which prohibits the showing of R, X, and NC-17 films. The District Court granted the Government's motion to dismiss after a finding that the Ensign and Zimmer amendments, as implemented, to be neutral and reasonable, and rationally related to penological interests. Oral argument was held before the Court of Appeals on January 7, 2002. The argument was very well presented by DOJ Attorney Ed Himmelfarb on behalf of the government.

III. CRIMINAL REFERRALS/PROSECUTIONS/TRIALS:

TRIAL/SENTENCINGS:

REFERRALS:

FCI Allenwood: 2 referrals (1 - inmate on phone threatened to kill his boyfriend (former inmate) if messing around; 1 - inmate assaulted another inmate with cane)  
 LSCI Allenwood: 1 referral (inmate on inmate assault)  
 USP Allenwood: 8 referrals (1 inmate on staff assault (minor - without

injury); 4 inmate on inmate assaults; 3 possession of weapon)

USP Lewisburg: 1 referral (Inmate attempted to stab another inmate with piece of window wire through the cell door window)

FCI Otisville: 1 referral (introduction of narcotics)

FCI Schuylkill: 1 referral (Inmate on inmate assault)

TRAVEL AND LEAVE SCHEDULE FOR JANUARY 2001:

[Redacted] Travel: January 10, 2002 - FCI Fort Dix  
January 15-18, 2002 - General Counsel Meeting - Los Angeles  
Annual Leave: January 9, 2002

[Redacted] Travel - None Scheduled  
Annual Leave - None Scheduled  
[Redacted] Travel -None  
Annual Leave - None Scheduled

[Redacted] Travel - None Scheduled  
Periodic/Extended Leave for family medical issue  
[Redacted] Travel - FCC Allenwood, January 14-18, 2002  
Annual Leave - None Scheduled

[Redacted] Travel - None Scheduled  
Annual Leave - January 8, 2002

[Redacted] Travel - None Scheduled  
Annual Leave - January 11, 2002

[Redacted] Travel - None Scheduled  
Annual Leave - January 10, 18, 2002

[Redacted] Travel - None  
Annual Leave - None Scheduled

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