

memorandum

Call Dave

Joze Swann
FYI

DATE: January 22, 1993

REPLY TO
ATTN OF:

David R. Essig
David R. Essig, Regional Counsel, Northeast Region
Room 801, US Custom House, 2nd & Chestnut, Phila., Pa. 19106

SUBJECT:

Quarterly Report - October 1, 1992 through December 31, 1992

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

Attached are the statistics requested for the quarterly report for the first quarter of FY 1993. I also recently compared the four areas (Ad Remedies, Torts, FOIA, and Litigation) during calendar years 1991 and 1992. The average filings per month during these two years are as follows:

	1991	1992	
Ad Remedies	56.83	89.16	Increase of 57%
Torts	48.58	59.75	Increase of 23%
FOIA	20.33	37.08	Increase of 82%
Lit.	13.66	19.42	Increase of 42%

The following is a synopsis of the significant cases in litigation during the quarter:

HEARINGS OR TRIALS

1. Yarden v. Cooksey, Civil No. 92-4321 (DNJ).

Inmate Daniel Yarden, 16843-038, at FCI Fairton was scheduled for transfer to FCI Oakdale for INS deportation hearing. Attorney filed petition for habeas corpus with motion for restraining order to block transfer. The gravamen of the petition was the assertion of the right to have a deportation hearing locally, at a place near Boston, Massachusetts, not at a distant location, i.e., Louisiana. Judge Irenas held emergency hearing on October 9, 1992 and denied petition and motion from the bench, but ordered the inmate kept at FCI Fairton for several days to permit an emergency appeal. Petitioner decided against appeal and the petition was formally denied on October 14, 1992. Petitioner transferred from FCI Fairton later that day.

2. Rego v. United States, Civil No. 92-6547 (EDPA).

Inmate Robert Rego, 36014-066, was removed from FPC Maxwell Air Force Base to testify on behalf of the United States in a major criminal trial involving organized crime in Philadelphia. One week after arrival, inmate filed a petition for habeas corpus requesting immediate release through a CCC or home confinement. Inmate has presumptive parole date for April 25, 1993. Court held hearing on petition on December 7, 1992. The U.S. Attorney's Office had supported Inmate's request for extended community placement even prior to filing of petition, but AUSA deferred to discretion of the Bureau of Prisons. Hank Sadowski represented BOP at hearing. On December 14, 1992, Court dismissed petition for lack of jurisdiction over custodian (Warden at Maxwell), failure to exhaust administrative remedies, and on merits (no showing that inmate had right to relief requested).

SETTLEMENTS OR AWARDS

1. Margiotta v. U.S. Bureau of Prisons, 91-228E (WDPA)

Inmate Joseph Margiotta, 09067-016, brought this FTCA case for property lost on his transfer from FCI McKean to FCI Oxford in October 1990. Inmate sought damages of \$545.95. Original posture in responding to complaint was that inmate received all property at FCI Oxford. Additional evidence surfaced that one box of property was sent by FCI McKean but not received at FCI Oxford. Although fault may have been at least partially attributed to Post Office, we determined that it was best to settle case for \$150.

2. Christian v. United States, Civil No. 91-6405 (EDPA)

Former Inmate James Christian, 40123-066, filed this medical malpractice FTCA case alleging negligent care in initial evaluation and follow up treatment of knee injury suffered by inmate in basketball game. Inmate had two outside operations to repair knee, but neither held. Inmate was released on March 29, 1991. Our medical expert determined that knee was permanently damaged and that lack of a structured physical therapy program after the first operation exposed the United States to liability. In addition our defense of this case was hampered by anticipated testimony from former FCI Loretto doctor, who was somewhat hostile to FCI Loretto administration. Case settled for \$75,000 with a set off of \$25,000 for a criminal fine.

3. Smith v. United States, Civil No. 91-6405 (EDPA)

State inmate Marvin Smith, 39205-066, brought FTCA case for property lost during his stay at FCI Otisville. Inmate was a state border serving a Massachusetts sentence at several federal institutions before his return to state custody in February 1989. Evidence showed that Smith had property in November 1988 and that box was mailed to next institution. There is no record that box was received. Inmate requested damages of \$232. Case settled for \$100.

4. Richard Young v. Keohane, Civil No. 88-1995 (MDPA).

Inmate Richard Young, 03478-067, filed this combination FTCA and Bivens Case in 1988 challenging the conditions of his confinement as a pretrial detainee held at USP Lewisburg from June 1988 through October 1988. Inmate completed his federal sentence in August 1990 and is now in Pennsylvania state custody. In November 1992 Judge Conaboy issued a ruling on long standing motion for summary judgment on Bivens aspect of case. The Court dismissed some defendant, but found genuine issues of fact to deny dismissal for qualified immunity for numerous USP Lewisburg defendants. After a pretrial conference with the court, inmate agreed to settle entire case under FTCA count for \$500.

PENDING PROBLEMATIC LITIGATION

1. Santos v. United States, et al., 89-CIV-1184 (SDNY)

This combination FTCA and Bivens case brought by former inmate Ana Santos, Register No. 25977-053 was discussed in last quarter's report. Bivens case names Doug Lansing, Former Warden, MCC NY and two former staff members at MCC: a correctional officer (who was denied representation by U.S. Attorney) and a physician's assistant (who has not yet been served or requested U.S. representation). Santos alleged that correctional officer raped her in July 1987 and that she requested an abortion from the PA in September 1987. PA ordered a pregnancy test and allegedly told Santos not to say anything because she could get in trouble. Santos was transferred to FCI Alderson on September 30, 1987, released from custody on March 31, 1988, and had a son on May 3, 1988. The officer admitted having sex with the inmate, but denied it was a rape.

On June 16, 1992, Judge Owen denied our motion to dismiss Doug Lansing from the Bivens action. The court held the complaint alleged a cause of action against Lansing for his failure to train staff at MCC NY, failure to adequately supervise staff, and promoting an atmosphere where the violation of inmates' abortion rights could occur. The Court also held that the constitutional right to an inmates' abortion was clearly

established in September 1987. The U.S. Attorney's office requested a rehearing with the District Court. Court denied motion to reconsider. An interlocutory appeal was authorize and filed. Briefs were filed and a settlement conference was held with the AUSA and Plaintiff's attorney. A settlement proposal was agreed between counsel, subject to approval by the Bureau. The proposal has been referred for consideration by General Counsel.

2. Worthington v. Bureau of Prisons, Civil No. 89-7048 (SDNY)

FTCA case for medical malpractice brought by former inmate Robert Worthington, Register No. 12930-054, alleging improper treatment at FCI Otisville. Worthington was received at FCI Otisville on January 8, 1987 with advanced glaucoma in his left eye. He eventually lost the vision in his eye sometime between July 1987 (according to Worthington) and December 1987 (according to BOP medical records). He entered FCI Otisville with 20/30 vision in this eye, but the medical records do not show the field of vision. There are disputes concerning whether the required medical eye drops were provided to Worthington and whether Worthington missed scheduled appointments. Our medical expert does not think that the blindness in the eye was caused by his medical treatment in the BOP. However, even treating the version of the facts in the best light to the BOP, our expert opines that Worthington had less than optimal follow up by an ophthalmologist during his incarceration. Our main defenses at trial are expected to be lack of causation: that the blindness was to occur in any event and was not the result of BOP negligence, and contributory negligence: inmate did not follow prescribed treatment prior to incarceration and during incarceration. The court has requested settlement be explored. Two settlement conferences have been held with a third scheduled in February 1993. This is probably a case which we will support a reasonable settlement, given the permanent injury and the lack of optimal care.

LITIGATION TRACKING; TORT INFORMATION MANAGEMENT SYSTEM; AND FOI MANAGEMENT SYSTEM:

The software for the litigation tracking system has been successfully implemented in the Northeast Region. All cases filed during this quarter (Oct-Dec) have been loaded and are in the system. We will load the other pending cases as time permits.

The Tort Information Management System (TIMS) has been successfully implemented and has been operational for one year. All yearly tort statistics enclosed were gleaned from the system. Our sincere appreciation to you and your staff on all the help and changes made to the system at our request.

The FOI Management System was reviewed and comments were submitted to the FOIA section. We are awaiting receipt of the updated software in order to implement this system in the region. We have received the Freedom of Information and Privacy Act Handbook and believe it will serve as an excellent guide to operation of FOIA and Privacy Act in the Bureau.

We have begun to forward pending FOIA/PA requests to the Paralegal Training Academy in Aurora for review and processing. We anticipate that this will be helpful to attempting to continue processing these requests until the paralegal position in the regional office can be recruited and filled.

Enclosures:

cc: G.C. Wilkinson, Regional Director (w/enclosures)
L. Conner, Deputy Regional Director (w/enclosures)
file

NORTHEAST REGIONAL OFFICE
FOI/PA REQUESTS QUARTERLY REPORTS

FROM 10/01/1992 TO 12/31/1992

LOC	NUM	PROC	PEND	OD	A/OD	A/P	CA
MXR							
NER	52	62	96	88	-	-	1
SER							
NCR							
SCR							
WXR							
CO							
TORT							

NARRATIVE ANALYSIS

DEFINITIONS:

LOC - LOCATION
NUM - NUMBER FILED IN QUARTER
PROC - PROCESSED
PEND - PENDING
OD - OVERDUE
A/OD - AVERAGE NUMBER OF DAYS OVERDUE
A/P - AVERAGE LENGTH OF TIME TO PROCESS
CA - CIVIL ACTIONS FILED UNDER FOI/PA ACTS

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 10/01/1992 TO 12/31/1992

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	246	73	7	19	-0-	8	3	21	173	40	-0-
SER											
NCR											
SCR											
WXR											
TOT											

NARRATIVE ANALYSIS

DEFINITIONS

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MED - NUMBER OF MEDICAL REMEDIES FILED

MH - NUMBER OF MENTAL HEALTH REMEDIES FILED

LEG - NUMBER OF LEGAL REMEDIES FILED

FD - NUMBER OF FOOD REMEDIES FILED

GRT - TOTAL OF NUMBER OF REMEDIES GRANTED

DEN - TOTAL NUMBER OF REMEDIES DENIED

PEN - TOTAL NUMBER OF REMEDIES PENDING

OD - TOTAL NUMBER OF REMEDIES OVERDUE

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 10/01/92 TO 12/31/92

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	68	28	9	20	11	58	215	175	2	4	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

NARRATIVE ANALYSIS

DEFINITIONS:

LOC - LOCATION
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HC - NUMBER OF HABEAS CORPUS ACTIONS FILED
FTC - NUMBER OF FTCA ACTIONS FILED
BIV - NUMBER OF BIVENS ACTIONS FILED
OTH - OTHER ACTIONS FILED
ANS - NUMBER OF LITIGATION REPORTS COMPLETED
PEN - PENDING
CLD - NUMBER OF ACTIONS CLOSED
H/T - NUMBER OF HEARINGS OR TRIALS (INCLUDE INFO IN NARRATIVE)
SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)
AWD - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)
GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE IN NARRATIVE)

Tort Claims First Quarter - FY93 (October 01, 1992 - December 31, 1992)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	175	141	23	3	0	6	29	2450	188	101	0	0	84

Variable Definition

Time Period

Num - Number of claims filed 10/01/92 =< D_Accept <= 12/31/92
 PP - Personal Property claims 10/01/92 =< D_Accept <= 12/31/92
 PI - Personal Injury claims 10/01/92 =< D_Accept <= 12/31/92
 PPPI - Both PP & PI claims 10/01/92 =< D_Accept <= 12/31/92
 WD - Wrongful Death claims 10/01/92 =< D_Accept <= 12/31/92
 Med - Medical claims 10/01/92 =< D_Accept <= 12/31/92
 Set - Settled/approved claims 10/01/92 =< D_Closed <= 12/31/92
 Amnt - Amount paid 10/01/92 =< D_Closed <= 12/31/92
 Pen - Pending/open claims >> Entire Database
 Den - Number of claims Denied 10/01/92 =< D_Closed <= 12/31/92
 OD - Number of claims OverDue >> Entire Database
 A/O - Avg number of days Overdue 10/01/92 =< D_Closed <= 12/31/92
 A/P - Avg number of days to Process .. 10/01/92 =< D_Closed <= 12/31/92
 > Med = PIM+ WDM+ PPPIM+ PPWDM > WD = WD+ PPWD

> Press any key to continue

Tort Claims Statistics - CY92 (January 01, 1992 - December 31, 1992)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	660	528	109	7	0	12	84	10050	165	192	0	0	73

Variable Definition

Time Period

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 PP - Personal Property claims 01/01/92 =< D_Accept <= 12/31/92
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 ▶ Med = PIM+ WDM+ PPPIM+ PPWDM ▶ WD = WD+ PPWD

▶ Press any key to continue

Tort Claims Statistics - FY92 (October 01, 1991 - September 30, 1992)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	488	390	86	4	0	6	53	5779	165	91	0	0	64

Variable Definition

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Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	190	155	24	3	0	6	36	4452	165	126	0	0	89

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 Pen - Pending/open claims >> Entire Database
 Den - Number of claims Denied 10/01/92 =< D_Closed <= 12/31/92
 OD - Number of claims OverDue >> Entire Database
 A/O - Avg number of days Overdue 10/01/92 =< D_Closed <= 12/31/92
 A/P - Avg number of days to Process .. 10/01/92 =< D_Closed <= 12/31/92
 > Med = PIM+ WDM+ PPPIM+ PPWDM >> WD = WD+ PPWD

> Press any key to continue

Tort Claims Statistics - CY92 (January 01, 1992 - December 31, 1992)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	660	528	109	7	0	12	84	10050	165	192	0	0	73

Variable Definition

Time Period

Num - Number of claims filed 01/01/92 =< D_Accept <= 12/31/92
 PP - Personal Property claims 01/01/92 =< D_Accept <= 12/31/92
 PI - Personal Injury claims 01/01/92 =< D_Accept <= 12/31/92
 PPPI - Both PP & PI claims 01/01/92 =< D_Accept <= 12/31/92
 WD - Wrongful Death claims 01/01/92 =< D_Accept <= 12/31/92
 Med - Medical claims 01/01/92 =< D_Accept <= 12/31/92
 Set - Settled/approved claims 01/01/92 =< D_Closed <= 12/31/92
 Amnt - Amount paid 01/01/92 =< D_Closed <= 12/31/92
 Pen - Pending/open claims ▶▶ Entire Database
 Den - Number of claims Denied 01/01/92 =< D_Closed <= 12/31/92
 OD - Number of claims OverDue ▶▶ Entire Database
 A/O - Avg number of days Overdue 01/01/92 =< D_Closed <= 12/31/92
 A/P - Avg number of days to Process .. 01/01/92 =< D_Closed <= 12/31/92
 ▶ Med = PIM+ WDM+ PPPIM+ PPWDM ▶ WD = WD+ PPWD

▶ Press any key to continue

Tort Claims Statistics - FY92 (October 01, 1991 - September 30, 1992)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	488	390	86	4	0	6	53	5779	165	91	0	0	64

Variable Definition

Time Period

Num - Number of claims filed 10/01/91 =< D_Accept <= 09/30/92
 PP - Personal Property claims 10/01/91 =< D_Accept <= 09/30/92
 PI - Personal Injury claims 10/01/91 =< D_Accept <= 09/30/92
 PPPI - Both PP & PI claims 10/01/91 =< D_Accept <= 09/30/92
 WD - Wrongful Death claims 10/01/91 =< D_Accept <= 09/30/92
 Med - Medical claims 10/01/91 =< D_Accept <= 09/30/92
 Set - Settled/approved claims 10/01/91 =< D_Closed <= 09/30/92
 Amnt - Amount paid 10/01/91 =< D_Closed <= 09/30/92
 Pen - Pending/open claims ▶ Entire Database
 Den - Number of claims Denied 10/01/91 =< D_Closed <= 09/30/92
 OD - Number of claims OverDue ▶ Entire Database
 A/O - Avg number of days Overdue 10/01/91 =< D_Closed <= 09/30/92
 A/P - Avg number of days to Process .. 10/01/91 =< D_Closed <= 09/30/92
 ▶ Med = PIM+ WDM+ PPPIM+ PPWDM ▶ WD = WD+ PPWD

▶ Press any key to continue

Tort Claims Statistics - FY93 (October 01, 1992 - September 30, 1993)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	190	155	24	3	0	6	36	4452	165	126	0	0	89

Variable Definition

Time Period

Num - Number of claims filed 10/01/92 =< D_Accept <= 09/30/93
 PP - Personal Property claims 10/01/92 =< D_Accept <= 09/30/93
 PI - Personal Injury claims 10/01/92 =< D_Accept <= 09/30/93
 PPPI - Both PP & PI claims 10/01/92 =< D_Accept <= 09/30/93
 WD - Wrongful Death claims 10/01/92 =< D_Accept <= 09/30/93
 Med - Medical claims 10/01/92 =< D_Accept <= 09/30/93
 Set - Settled/approved claims 10/01/92 =< D_Closed <= 09/30/93
 Amnt - Amount paid 10/01/92 =< D_Closed <= 09/30/93
 Pen - Pending/open claims ▶▶ Entire Database
 Den - Number of claims Denied 10/01/92 =< D_Closed <= 09/30/93
 OD - Number of claims OverDue ▶▶ Entire Database
 A/O - Avg number of days Overdue 10/01/92 =< D_Closed <= 09/30/93
 A/P - Avg number of days to Process .. 10/01/92 =< D_Closed <= 09/30/93
 ▶ Med = PIM+ WDM+ PPPIM+ PPWDM ▶ WD = WD+ PPWD

▶ Press any key to continue