

memorandum

DATE: January 24, 1996

REPLY TO
ATTN OF: David R. Essig, Regional Counsel, Northeast Region
Federal Bureau of Prisons, Philadelphia, Pa. 19106

SUBJECT: Quarterly Report - October 1, 1995 through December 31, 1995

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

Attached are the statistics requested for the quarterly report for the first quarter of FY 1996. I am also enclosing a diskette with a copy of this report.

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

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. Malik v. Wilkerson, No. 94-1606 (3d Cir. October 20, 1995)

In the above decision, the Third Circuit reversed a district court order granting a mandamus petition filed by Inmate Abdul-Jabbor Malik, 80768-054. The District Court had ordered expunction of three DHO findings from June 1993, two for assault on staff, and one for threatening staff.

The incidents occurred in May 1992 when Malik was a New York state inmate held at FCI Otisville facing federal prosecution. On May 4 and 5, 1992, Malik received five separate incident reports. After UDC hearings, but before the DHO hearings, Malik was returned to state authorities on May 8, 1992. In absentia DHO hearings were not held. Malik completed his state sentence and was released to his federal sentence on May 27, 1993. On June 3, 1993, Malik was received at his designated institution, FCI McKean. After in person DHO hearings on June 10, 1993, Malik was found guilty of three of the infractions. The other two incident reports were expunged.

In a February 28, 1994 decision, Judge Padova held that the failure to conduct the in absentia hearings (required by regulation), coupled with the failure to have a staff representative from FCI Otisville (not required by regulation), and the delay in the hearing (caused by Malik's return to the state), impacted Malik's ability to defend himself at the DHO hearings. The district court ordered the three incident reports expunged.

On October 20, 1995, the Third Circuit reversed. In a Not for Publication decision, the Court of Appeals held that, under Sandin v. Conner, 115 S.Ct. 2293 (1995), there were no constitutional violations in this case. The mandate has been issued from the Third Circuit and we are returning the DHO findings to be reinstated in the inmate's file.

2. Deutsch v. United States, 67 F.3d 1080 (3d Cir. 1995).

Inmate Melvin Deutsch, 97217-024, filed for in forma pauperis (IFP) status in conjunction with a Federal Tort Claims Act complaint in which he alleged that Bureau of Prisons staff took his pens worth \$4.20. The District Court granted IFP status, but dismissed the complaint as frivolous since it only sought a "trifle," and was not worth consideration by the court. Deutsch appealed. The Third Circuit affirmed. The Court of Appeals noted that IFP status results in the waiver of the filing fee of \$120. The Court of Appeals noted that a reasonable paying litigant would not have paid the court costs to bring an action for \$4.20. The Third Circuit was careful to note that the district court is required to assess each case on a case by case basis (i.e., don't automatically dismiss all FTCA complaints filed by persons seeking IFP status in which the damages sought are less than \$120.).

3. United States v. S...., Crim. No. ----- (E.D.N.Y.)

A sentenced inmate was sent to MCC New York on a writ of habeas corpus ad prosequendum. Intelligence reports show that there is an open contract on his life by the five organized crime families in New York. The Warden denied the inmate a meeting with his co-defendants because of fear for his safety. A motion was filed with the criminal trial judge to permit codefendant meetings. After a hearing on October 26, 1995, the trial judge ordered that the inmate be permitted to attend co-defendant meetings. The judge felt that such meetings were necessary for the inmate to prepare a defense at the trial. Dominique Raia represented the Bureau. The judge left the security arrangements to the MCC NY.

SETTLEMENTS AND AWARDS

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

This medical malpractice case was discussed in numerous prior quarterly reports. This FTCA case was 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 was seen by a contract optometrist (now retired) on two occasions in 1987 but Worthington was not referred to an ophthalmologist until December 1987. Exposure to United States was considerable. Case settled for \$190,000. The United States is to pay \$165,000; the contract optometrist is to pay \$25,000.

Enclosures

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 10/01/1995 TO 12/31/1995

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	81	28	9	41	3	60	540	81	3	1	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

NARRATIVE ANALYSIS

DEFINITIONS:

- LOC - LOCATION
- NUM - NUMBER OF TOTAL LAWSUITS FILED IN QUARTER
- 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)

NERC

Tort Claims First Quarter - FY96 (October 01, 1995 - December 31, 1995)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
MXR	1	1	0	0	0	0	0	0	0	0	0	0	12
NER	207	171	28	5	0	2	22	4573	322	76	0	0	122
SER	1	1	0	0	0	0	0	0	0	0	0	0	20
NCR	1	1	0	0	0	0	0	0	0	0	0	0	21
SCR	1	1	0	0	0	0	0	0	0	0	0	0	11
WXR	0	0	0	0	0	0	0	0	0	0	0	0	0
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	211	175	28	5	0	2	22	4573	322	76	0	****	37

► Press any key to continue

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 10/01/1995 TO 12/31/1995

1ST QTR

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	522	259	13	28	0	13	2	24	366	130	0
SER											
NCR											
SCR											
WXR											
TOT											

NARRATIVE ANALYSIS

DEFINITIONS

LOC - LOCATION

NUM - NUMBER OF TOTAL AD REMEDIES FILED

DHO - NUMBER OF DHO REMEDIES FILED

SPH - NUMBER OF SPECIAL HOUSING UNIT REMEDIES FILED

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

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WXR	0	0	0	0	0	0	0	0	0	0	0	0	0
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
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