

memorandum

Date: April 21, 1998

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

Subject: Quarterly Report - January 1, 1998 through March 31, 1998

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 second quarter of FY 1998.

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

A. SETTLEMENTS AND AWARDS

1. Kagan v. United States, CV 94-3663 (DNJ)

This wrongful death civil action originated as a Bivens action filed by the next of kin of inmate Philip I. Kagan, Reg. No. 14361-050, who died in September 1993 at FCI Schuylkill. The complaint alleges that the deceased was denied adequate medical treatment for a known heart condition. As a result, the deceased's health allegedly deteriorated until he lapsed into a coma and died of complications caused by cardiac and pulmonary failure. The District Court dismissed the action in August 1995. On appeal, the Third Circuit held that, although Plaintiff failed to state a claim under Bivens, he did state a cause of action under the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq. (FTCA). On remand, the case was converted to an FTCA case and settled for \$10,000.00. Settlement was based upon potential exposure to liability and a relatively small amount in a wrongful death case.

2. Markoff v. United States, Civil Action No. 96-2543 DMC

This Federal Torts Claim Act complaint was filed by former inmate Morton Markoff, 11116-050, who alleges that as a result of improper medical care while housed at the Federal Correctional Institution, Ft. Dix he suffered a permanent injury and resulting loss of function to his right ring finger and left elbow and arm. Plaintiff was a practicing medical doctor prior to his

incarceration. Settlement for \$45,000.00 was approved. There was some exposure based on a delay in medical treatment.

C. SIGNIFICANT CASES, TRIALS or HEARINGS:

1. United States v. Dong Kyu Kim, Crim. No. ---- (EDPA)

On January 23, 1998, Judge Dalzell held a sentencing hearing for defendant Dong Kyu Kim. The defendant requested a downward departure from the sentencing guidelines of 10-16 months, alleging, as an alien, the Bureau of Prisons would treat him worse than a non-alien defendant. I assisted the AUSA and discussed Bureau policy concerning designations of deportable aliens and explained the rationale underlying it. I also addressed the court's questions concerning split sentences under Sentencing Guideline 5C1.1. The court decided that defendant did not warrant a downward departure from the guidelines and sentenced him to a 5 month term, 36 month supervised release with the condition that the first 5 months be in home detention.

2. United States v. Luis Felipe, No. 97-1155, 97-1484 (2d Cir.)

On January 22, 1998, the Second Circuit heard oral argument concerning the authority of a district judge to impose restrictions on conditions of confinement for Luis Felipe, 14067-074, the leader of the Latin Kings. The district court held that 18 U.S.C. § 3582(d) provided the court with jurisdiction to limit the defendant's contact with the outside world. The district court also held it had inherent authority to impose such restrictions. The AUSA advised that the Court of Appeals focused primarily on the 3582(d) jurisdiction prong. The Court of Appeals took the case under advisement.

3. U.S. v. David Rosario, 96-CR-126 (JFK) (S.D.N.Y.)

On January 5, 1998, Kevin McDonald, Health Services Administrator, MCC New York, testified during the above-captioned criminal matter. His testimony focused mainly on certifying copies of previously subpoenaed medical records. Clinton Stroble assisted the AUSA in preparing the witness.

4. United States v. Camacho-Negron, (MDPA) --

On February 11, 1998, Tom Mueller, Attorney Advisor, FCC Allenwood, assisted at a committed fine hearing before Magistrate Judge Askey. At the conclusion of the hearing, the Magistrate found inmate Antonio Camacho-Negron, Reg. No. 03587-068, to be indigent and he was released on February 13, 1998.

5. United States v. Stiso, Crim No. ----- (S.D.N.Y.)

Attorney Patrick Stiso was indicted on charges of racketeering, conspiracy to distribute narcotics, and obstruction of justice. As a result of the indictment, the Wardens at MCC NY and MDC Brooklyn suspended attorney visiting privileges for Mr. Stiso. The attorney representing Mr. Stiso filed an appeal of the Wardens' decisions with the Regional Director. The Regional Director denied the appeal. On March 5, 1998, a status conference was held before Judge Chin, who was assigned to Mr. Stiso's prosecution. Mr. Stiso's criminal attorney presented arguments concerning his suspension of visiting privileges from MCC New York. Clinton Stroble, Attorney, MCC NY, attended the conference with AUSA Richard Sullivan, and argued the government's position. The court requested a brief addressing its jurisdiction to consider the issue.

7. United States v. Ginsberg, Crim. No. 95-634 (E.D.Pa.)

On March 4, 1998, Assistant Regional Counsel Joyce Horikawa and Quincy Heck, Regional Health Systems Administrator, assisted the AUSA at a sentencing hearing in the above case before Judge Brody. The defendant, Irwin Ginsberg, who was convicted of setting fire to a building to collect insurance money, requested downward departure from his sentencing guidelines based on his physical and emotional state. Defendant has a 15 year history of Type II diabetes and associated complications. He also has a history of hepatitis C, carpal tunnel syndrome, degenerative disk disease, hypertension, peptic ulcers, irritable bowel syndrome, chronic rhinitis, cardiac arrhythmia and depression. Mr. Heck testified about the medical facilities and operation of the medical departments in the various Bureau of Prisons institutions in this region. He testified that based upon his review of the defendant's medical records and the testimony of the medical experts, as well as his personal knowledge of the Bureau of Prisons, the Bureau was capable of handling this defendant and his particular medical needs. The sentence has not yet been imposed.

8. United States v. Mayhue, Crim. No. 96-548 (E.D.Pa.)

On March 10, 1998, Judge Joyner issued an order that Mark Mayhue, 51264-066 serve the remainder of his 9 month sentence under home detention. The inmate was designated to Lebanon County Jail in a work release program. He was not eligible under 18 U.S.C. § 3624(c) to enter home confinement until July 1998. On March 12, 1998, I contacted the Judge's law clerk and advised that the Bureau would violate the statute if it followed the court order. The Judge held a telephonic hearing on March 13, 1998. Joyce Horikawa and I participated in the hearing. The court stated it did not want to issue orders contrary to statute and rescinded the order.

9. Brown v. Morton et al., CV-95-2881 (E.D.N.Y.)

On Friday, March 13, 1998, at 11:15 a.m., a conference call was held with Judge Gold, the AUSA, FCI Schuylkill, inmate Orson Brown, 43993-053 and James Vogel, Paralegal, MDC Brooklyn. Judge Gold asked if the two page complaint the inmate recently filed was intended to be an amendment to the above-referenced matter or a new complaint. The inmate indicated that he filed this as a new case because his Bivens claims regarding medical care had been dismissed. Additional miscellaneous issues were discussed, including the deposition of the Plaintiff and status of discovery responses.

10. United States v. Rojas , Crim No. ---- (E.D.N.Y.)

On March 20, 1998, a hearing was held before Judge Weinstein regarding subpoenas, issued by an attorney for the defendant, demanding documents regarding inmates (not the defendant) at MDC Brooklyn and FCI Otisville. MDC Brooklyn attorney Azzmeiah Vazquez argued the Bureau's objections to the subpoena (burdensome, relevancy, privacy). The Court agreed and advised the defense attorney that the Court would not issue an order compelling the disclosure of this information.

11. United States v. McNaughton, 93 Crim. 147 (E.D.Pa.)

On March 30, 1998, I participated in an emergency telephone hearing before Judge Brody. In connection with an April 1, 1998 hearing on a motion to vacate his sentence, Richard McNaughton, 08042-073, was removed by the U.S. Marshal from the camp at Lewisburg on the morning of March 30 pursuant to a writ. His attorney requested an emergency hearing to ask the court to release the inmate on bail pending the hearing. Counsel expressed concern for the ability of the writ custodians to administer medication, etc. Counsel advised that the inmate received fine medical care at Lewisburg. The court asked the Bureau's position on the medical care and whether the inmate could be held at FCI Fairton. I advised inmates on writ are afforded a supply of medication. I also advised that the court could recommend FCI Fairton but I would need to check with the Warden to ensure there were no security concerns. The court determined that the inmate's presence was not necessary for the hearing and vacated the writ. The inmate was immediately returned to Lewisburg.

12. U.S. v. Hammer 4:Cr-96-239 (M.D.Pa.)

On April 13, 1998, a contempt of court hearing was held before District Judge Muir in Williamsport, PA. At issue was the failure by USP Allenwood mail room staff to comply with the court's order relating to the opening of "Special Mail" from the Clerk of Court and defense counsel. Five USP Allenwood staff

testified concerning the four pieces of mail which were opened contrary to the Court's order. It appears that confusion concerning whether the court order was still effective caused the inadvertent opening. On April 16, 1998, the court found there were no grounds to hold the Warden in contempt. The court modified the injunction to ensure compliance.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel
All Associate General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 01/01/1998 TO 03/31/1998

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	49	25	7	6	7	30	606	85	12	2	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

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)

NORTHEAST REGIONAL OFFICE
TORT CLAIM QUARTERLY REPORT

FROM 01/01/1998 TO 03/31/1998

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	3	2	1	0	0	0	0	0	0	0	0	0	0
NER	227	158	53	9	4	1	23	3861	278	115	0	0	121
Ser	4	4	0	0	0	0	0	0	1	0	0	0	10
Ncr	0	0	0	0	0	0	0	0	0	0	0	0	0
Scr	0	0	0	0	0	0	0	0	0	0	0	0	0
Wxr	0	0	0	0	0	0	0	0	0	0	0	0	86
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	234	164	54	9	4	1	23	3861	279	115	0	0	57

DEFINITIONS:

- LOC - LOCATION
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- PP - PERSONAL PROPERTY CLAIMS
- PI - PERSONAL INJURY CLAIMS
- PPPI - PERSONAL PROPERTY/PERSONAL INJURY CLAIMS
- WD - CLAIMS WITHDRAWN
- Med - CLAIMS ALLEGING MEDICAL NEGLIGENCE
- Set - CLAIMS SETTLED
- Amt - AMOUNT PAID
- Pen - CLAIMS PENDING
- Den - CLAIMS DENIED
- OD - CLAIMS OVERDUE
- A/O - AVERAGE DAYS OVERDUE
- A/P - AVERAGE DAYS TO PROCESS

~~NOVA AARMS - 01/01/98~~
NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 01/01/98 TO 03/31/98

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	455	172	14	41	0	27	4	39	362	162	0
SER											
NCR											
SCR											
WXR											
TOT											

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

memorandum

Northeast Region, Philadelphia, PA
FEDERAL BUREAU OF PRISONS

July 24, 1998

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

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Quarterly Report - April 1, 1998 through June 30, 1998

Attached are the statistics requested for the quarterly report for the third quarter of FY 1998.

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

A. SETTLEMENTS AND AWARDS

1. Estate of Robert Bates v. United States, Civil No. 97-0048, (E.D.Pa.) - Inmate died of a coronary at FCI Fairton. During discovery, new facts were revealed indicating that settlement was in the best interest of the Bureau of Prisons. This FTCA wrongful death originally sought \$250,000.00 in damages. The case settled for \$150,000.00.
2. Rogers v. MCC New York, et al., 96 Civ. 6811 (S.D.N.Y.) - Pro se former inmate filed suit against three physician assistants and one cook supervisor. Plaintiff claims he injured his eyes with a degreaser solution while cleaning the stove in food services, as part of his job. The parties agreed to settle as a claim under the Federal Torts Claims Act for \$2,500.00.
3. Custard v. United States, 96-1835 (M.D.Pa.) - USP Lewisburg inmate, with lower bunk bed slip based upon physical disabilities, allegedly slipped and fell while climbing out of upper bunk in SHU and sustained personal injury. Court approved stipulation for settlement in amount of \$1500.00.

4. Couser v. United States, 96-656 (W.D.N.Y.) -

Former ICC inmate at Lewisburg alleged his finger sustained frostbite because he was forced to march without gloves. Case settled for \$6000.

B. SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. U.S. v. Hammer 4:Cr-96-239 (M.D.Pa.)

On April 13, 1998, a contempt of court hearing was held before District Judge Muir in Williamsport, PA. At issue was the failure by USP Allenwood mail room staff to comply with the court's order relating to the opening of "Special Mail" from the Clerk of Court and defense counsel. Judge Muir held that there was insufficient reason to hold the Warden in contempt. The court issued some modifications to the injunction to insure that inmate David Hammer, Reg. No. 24507-077, receives all of his special mail unopened.

On June 22, 1998, inmate Hammer pled guilty to the murder charge. The death penalty phase of the sentencing is scheduled to conclude by the week of July 27, 1998.

2. U.S. v. Guzman, et al., S8 97 Cr. 786 (S.D.N.Y.)

Several hearings have been held before Judge Scheindlin concerning the placement of an inmate in administrative detention at MCC New York. Miquel Guzman, Reg. No. 43104-054, is considered the leader of the Power Rules criminal organization, alleged to have engaged in murder, extortion, robbery, assault, and other acts of violence and narcotics trafficking. The inmate was placed in administrative detention in February 1998, pending an investigation by the U.S. Attorney's office of an alleged conspiracy between Power Rules and the Maisonett organization to intimidate each others cooperating witnesses. This conspiracy may have resulted in the slashing of a cooperating Maisonette by a Power Rules defendant.

At the first hearing on April 20, 1998, the court was not satisfied with the reason for the AD placement. Dominique Raia assisted at this hearing. On April 28, 1998, an in camera hearing was held. The AUSA and MCC Attorney Clinton Struble explained why inmate Guzman should remain in an administrative detention, including information which suggests that the slashing is only one overt act in a much broader conspiracy. Judge

Scheindlin accepted the position that the scope of the investigation was larger than the slashing. In open court, the Judge then advised Guzman and his attorney about the scope of the pending investigation. Further, she advised that MCC had a legitimate security reason for continuing Guzman's administrative detention status.

On Monday, April 27, 1998, Judge Scheindlin issued an Order to Show Cause why MCC New York inmate Gregory Ferguson, Register No. 41832-054, (a co-defendant in the Power Rules case) should not be released from an administrative detention status. The inmate was placed in AD pending an incident report for a threat against a staff member. During a telephone conversation with his girlfriend, inmate Ferguson stated that he was going to punch the counselor in the face. The inmate was upset because the staff member removed the girlfriend from the visiting list. At the court hearing, Dominique Raia played the recorded conversation. Ms. Raia explained to the court that MCC takes all threats seriously and that staff had a duty to protect inmates and staff. Judge Scheindlin did not order inmate Ferguson released from administrative detention, however, she did order that the disciplinary process be expedited. The court also wanted a letter from MCC which explained why the girlfriend's name was removed from the visiting list. The letter was provided by Ms. Raia.

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

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

4. People of the State of New York v. James C. Allen

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

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

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

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel
All Associate General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 04/01/1998 TO 06/30/1998

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	56	34	8	8	4		613	36			0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

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TORT CLAIM QUARTERLY REPORT

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NER	227	158	53	9	4	1	23	3861	278	115	0	0	121
Ser	4	4	0	0	0	0	0	0	1	0	0	0	10
Ncr	0	0	0	0	0	0	0	0	0	0	0	0	0
Scr	0	0	0	0	0	0	0	0	0	0	0	0	0
Wxr	0	0	0	0	0	0	0	0	0	0	0	0	86
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	234	164	54	9	4	1	23	3861	279	115	0	0	57

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- Den - CLAIMS DENIED
- OD - CLAIMS OVERDUE
- A/O - AVERAGE DAYS OVERDUE
- A/P - AVERAGE DAYS TO PROCESS

NORTHEAST REGIONAL OFFICE
NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 04/01/98 TO 06/30/98

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
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SER											
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WXR											
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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

October 20, 1998

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

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Quarterly Report July 1, 1998 through September 30, 1998

Attached are the statistics requested for the quarterly report
for the fourth quarter of FY 1998.

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

A. SETTLEMENTS AND AWARDS

1. Dorothy Schrader v. Reno, et al., Appeal No. 97-7610 (3d Cir);
No. 4:CV-96-1467 (M.D.Pa.)

On September 9, 1998, I participated in a mediation conference to
try to resolve the above-referenced appeal. In 1996, the
plaintiff (former employee Dorothy Schrader) filed a complaint
alleging sex discrimination under Title VII, 42 U.S.C. § 2000(e);
and a number of other statutory and constitutional grounds. The
district court granted summary judgment in our favor. Plaintiff
filed a Notice of Appeal to the Third Circuit challenging only
the resolution of the Title VII claim. The Third Circuit
requested the parties to consider participation in Alternative
Dispute Resolution (ADR). We decided to pursue ADR since there
was the possibility of a reversal on appeal and since the
termination letter improperly referred to a discharge for medical
reasons notwithstanding all medical evaluations confirmed fitness
for duty. The case was settled for \$100,000.

2. Dziamba v. United States, 97-395 (D.N.J.) -- FTCA case in which inmate alleged staff failed to protect him from sexual assault at FCI Fairton. Evidence pointed to exposure because of pacing on inmate in SHU with an inmate he needed to be separated from. After some considerable pressure from the court, case settled on eve of trial for \$500,000.
3. Johnstone v. United States 95-5714 (E.D.Pa.) - Former FMC Ft. Worth inmate, who suffered penile implant damage while on a work assignment, filed an Inmate Accident Compensation claim after exhausting his internal appeals. After IAC review of new information, case was settled for \$20,854.00
4. Fears v. United States - 97-23 (W.D.Pa.) - FCI McKean inmate Shawn Fears, 34183-060, filed a FTCA complaint requesting \$2496.00 for the alleged loss of personal property. Staff had packed the inmate's property when he was placed in SHU. The property was later destroyed during an institution disturbance. The district court denied our motion for summary judgment in which we raised the discretionary function defense. Case settled for \$500.
5. Custard v. Essig, et. al., 4:CV-96-1835 (M.D.Pa.) - USP Lewisburg inmate Bob Custard, 07539-055, filed FTCA action requesting damages for injuries allegedly incurred when he slipped from an upper bunk and fell into an exposed steam pipe in SHU. Inmate had a lower bunk slip. Case settled for \$1800.

B. NEW CASES:

1. McClurg v. Harding, 98-605 (D. Conn)
Holder v. Harding, 98-656 (D. Conn)
Codianni-Robles v. Harding, 98- (D.Conn.)

FCI Danbury inmates Penelope McClurg, 21528-018, Tinia Holder, 09474-424, and Beatrice Codianni-Robles, 11866-014 filed separate, similar petitions requesting an expedited hearing and temporary restraining order against the practice of cross-gender pat searches at FCI Danbury. All three inmates have a history of being sexually abused and are assigned to the "Bridge Unit", which is a housing unit for women who have suffered traumatic experiences, including sexual assault/abuse. Counsel has been appointed to represent both inmates. Under informal pressure from the court, the Warden agreed to exempt McClurg and Holder from routine cross-gender pat searches until a full hearing on the merits. McClurg transferred to a community corrections

center and her case was dismissed as moot. Codianni-Robles was recently transferred to FMC Carswell for medical care and the status of her involvement in the cases is still pending. A hearing of the TRO in Holder is scheduled for October 20, 1998. A hearing on the merits of the petition in Holder is currently scheduled for November 30 and December 1, 1998.

2. Nyhus v. Reno, et al., C.A. No. 97-324E (W.D.Pa.)
Craviero v. Reno, et al., C.A. No. 97-31E (W.D.Pa.)

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

3. Fairweather v. U.S. Dept of Justice, 4:98-CV-1432 (M.D.Pa.) - USP Lewisburg Correctional officer challenges the application of the "misdemeanor domestic crime of violence" to his prior offense. Assigned to Lori Cunningham. Parties agreed to dismiss case without prejudice based on recent memorandum from Assistant Director, HRD, suspending removal.

C. TRIALS and HEARINGS:

1. United States v. Hammer, M.D. PA

On July 24, 1998, the jury returned a death penalty verdict against inmate David Paul Hammer, 24507-077 for the murder of another inmate at USP Allenwood. Several hearings were held. The inmate fired his attorneys and moved for immediate imposition of the death penalty. Judge Muir issued an order for a competency examination. The court found Hammer competent and final sentencing is scheduled for November 4, 1998.

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

On June 30, 1998, MCC New York received a memorandum from an AUSA indicating a credible source informed him that the life of inmate James Castaldo, 16032-050, may be in danger. Castaldo was removed from general population and placed in administrative

detention pending a threat assessment. The inmate objected to the criminal trial judge. Judge Keenan requested a written explanation by 9:30 a.m. on July 2, 1998 and scheduled a hearing for 10:30 a.m. At the hearing, the Court determined the issue was not ripe since the threat assessment had not yet been completed. After the assessment was completed, the threat was found to be too vague. The inmate was released to general population on July 13, 1998. Clinton Stroble represented the MCC NY.

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

On July 27-29, 1998 the District Judge Peter K. Leisure held three hearings to address two allegations by inmate John Muyet, 38027-054: (1) that he did not have access to the Law Library while detained in the SHU at MCC NY; and (2) that a letter from his attorney concerning sentencing had been confiscated by staff at the MCC and never returned. After the first hearing, the court was satisfied with our explanation concerning access to the law library. The court requested more information about the inmate's access to his legal materials and the allegation that this letter was in legal materials not returned to the inmate.

The second hearing was held the next day. Staff testified that inmate Muyet had available all of his legal material from his former housing unit (one bin in his SHU cell and opportunity to exchange item for item with the other materials). Judge Leisure was still concerned that staff could not definitively say inmate Muyet did not have other legal materials somewhere in the MCC. Judge Leisure continued the sentencing hearing and requested that AUSA provide an update the next day on the efforts to locate the missing legal materials.

MCC NY records show that inmate Muyet had four boxes of legal material upon admission to MCC NY and three containers of legal material while in SHU. It was explained to the Judge that the four boxes worth of legal material were most likely transferred into the three containers as no other legal material can be located at MCC. Clinton Stroble represented the MCC NY.

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

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

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

On September 4, 1998, defendant Idris Enlow, 47528-066, had a resentencing hearing before Judge Brody. A question arose concerning the interaction of the federal sentence with a state parole violation warrant. Prior to the hearing, the court conveyed her intent to have the defendant be in primary federal custody. The state agreed to withdraw the state violation warrant and to reissue it as a detainer. I represented at the hearing that the Federal Bureau of Prisons would accept primary jurisdiction. I also addressed some issues concerning sentence computation. The court was satisfied and sentenced the defendant to 90 months.

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 07/01/1998 TO 09/30/1998

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	43	21	3	13	6	21	616	53	7	4	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

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)

NORTHEAST REGIONAL OFFICE
TORT CLAIM QUARTERLY REPORT

FROM 07/01/1998 TO 09/30/1998

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	0	0	0	0	0	0	0	0	0	0	0	0	0
NER	156	115	5	2	0	34	28	6151	265	136	0	0	144
Ser	2	1	1	0	0	0	0	0	0	0	0	0	4
Ncr	1	1	0	0	0	0	0	0	0	0	0	0	22
Scr	0	0	0	0	0	0	0	0	0	0	0	0	0
Wxr	2	0	0	0	0	2	0	0	0	0	0	0	12
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	161	117	6	2	0	36	28	6151	265	136	0	0	46

DEFINITIONS:

LOC - LOCATION
NUM - NUMBER FILED IN QUARTER
PP - PERSONAL PROPERTY CLAIMS
PI - PERSONAL INJURY CLAIMS
PPPI - PERSONAL PROPERTY/PERSONAL INJURY CLAIMS
WD - CLAIMS WITHDRAWN
Med - CLAIMS ALLEGING MEDICAL NEGLIGENCE
Set - CLAIMS SETTLED
Amt - AMOUNT PAID
Pen - CLAIMS PENDING
Den - CLAIMS DENIED
OD - CLAIMS OVERDUE
A/O - AVERAGE DAYS OVERDUE
A/P - AVERAGE DAYS TO PROCESS

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 07/01/98 TO 09/30/98

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	451	206	14	26	0	24	1	16	301	108	0
SER											
NCR											
SCR											
WXR											
TOT											

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

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

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

January 25, 1999

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

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Quarterly Report October 1, 1998 through December 31,
1998

Attached are the statistics requested for the quarterly report
for the first quarter of FY 1999.

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

A. SETTLEMENTS AND AWARDS

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

2. Cuoco v. United States, et. al., 93 Civ. 2806 (S.D.N.Y.) - In
this Bivens/FTCA case, inmate Cuoco alleged that he suffered from
the salmonella poisoning that occurred at FCI Otisville in
October 1991. Prior to trial, experts agreed that the Plaintiff
received medical care consistent with salmonella poisoning for a
period of 8-10 days. Case settled under the FTCA for \$1,500 on
the basis of settlements in similar salmonella cases.

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

B. NEW CASES:

1. Sovulj v. U.S., 98-5550(EDPA) - Widow of deceased inmate Nediljko Sovulj, Reg. No. 02556-054, requests five million dollars in compensation. She alleges negligent medical care at FCI Schuylkill resulted in her husband's death of cancer a year after his deportation to Croatia. BOP medical records do not indicate any sign of significant medical complaints by the deceased while in the custody of the BOP.

2. Estate of Randall Scott Anderson v. United States, et.al., 3:98-CV-1833(MDPA) - Parents of inmate Randall Scott Anderson, Reg. No.09831-424, murdered at USP Lewisburg filed this complaint alleging FTCA, Bivens and FOIA causes of action.

3. Peddle v. Sawyer, et.al., 98-2364(WWE)D. Conn. - Inmate Sharon Peddle, Reg. No. 07295-067, with the assistance of the Yale Legal Services Organization, filed this Bivens action alleging that staff failed to protect her from a staff member who sexually abused her.

C. TRIALS and HEARINGS:

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

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

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

4. Holder v. Harding, 98-656 (D. Conn); Codianni-Robles v. Harding, 98-1481(D.Conn) - Two female inmates have challenged the ability of male staff to conduct routine pat searches. A hearing on the merits of issuing a permanent injunction is scheduled for March 1999. In the interim, Inmate Tinia Holder, 09474- 424, requested a TRO alleging that a number of actions taken by staff amounted to retaliation for filing the lawsuit. The court held a hearing on October 20 and 28, 1998. On November 10, 1998, the Court issued an order prohibiting the assignment of a particular officer (who the Court found had intentionally violated the parties agreement exempting the Petitioner from routine cross-gender pat searches) from any correctional post that may put him in contact with the petitioner and formalizing the previously agreed upon exemption. On November 12, inmate Holder alleged that a male officer pat searched her on November 11, 1998. The officer denied this allegation. An emergency hearing was held on November 13 and 17, 1998. On November 24, 1998, the Court issued an order denying the Petitioner's request (without making a factual finding) and ordered that the Warden provide all staff notice of the Court's November 9, 1998 within 72 hours. On December 3, 1998, another hearing was held after the inmate alleged that she was once again cross-gender pat searched on November 29, 1998. On January 11, 1999, the Court denied the Petitioner's motion for contempt, holding in part, that the Petitioner failed to establish her burden of proving by clear and convincing evidence that the Court's prior order had been violated. Mike Tafelski has been assisting the AUSA at the hearings.

NOTE: Two more petitions have been filed by FCI Danbury inmates containing, in part, the same allegation. Hicks v. Harding, 3:98-CV-1646(RNC) (DFM) and Lowe v. Harding, 3:98-CV-1708(WWE) (HBF).

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

6. United States v. Bin Laden, S2-98 Cr. 1023 (S.D.N.Y.) - On November 16 and November 17, 1998, Judge Sand of the Southern District of New York held hearings concerning allegations and complaints made by pre-trial inmates being held at MCC NY in connection with the embassy bombings in Africa (Mohamed Rasheed Al-Owhali, 42371-054; Mohammed Sadiq Odeh, 42375-054; Wadih Elias El-Hage, 42393-054). The Judge, the AUSA, and defense counsel, toured the area where the inmates are housed. Judge Sand denied the inmates' complaint, concluding that based upon the totality of the circumstances, the housing conditions are not only adequate, but even better than the rest of the SHU inmates.

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

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

9. Menillo v. Warden, No. 98-7340 (3d Cir. January 11, 1999) - On December 10, 1998, I presented oral argument before the Third Circuit in this appeal of a habeas corpus case. The inmate was sentenced on both state and federal charges. The inmate was seeking a ruling that the federal government, not the state, was the primary custodian, which would have caused him to receive about two years of prior custody credit. The district court denied the petition. In a January 11, 1999 "not precedential" opinion, the Third Circuit affirmed the denial of habeas relief and held the record supported the Bureau's determination that the inmate was in the primary jurisdiction of the state.

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

December 29, 1998, the district court held that the evidence supported a finding that the food service supervisor was a law enforcement officer for purposes of the sentencing guidelines. I expect a second appeal.

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

cc: Regional Director
Senior Deputy Regional Director
Deputy General Counsel

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 10/01/1998 TO 12/31/1998

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	54	31	4	14	5	29	634	37	8	3	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

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)

NORTHEAST REGIONAL OFFICE
TORT CLAIM QUARTERLY REPORT

FROM 10/01/1998 TO 12/31/1998

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	1	1	0	0	0	0	0	0	0	0	0	0	1
NER	181	120	8	0	0	52	30	6992	244	120	0	0	124
Ser	1	1	0	0	0	0	0	0	0	0	0	0	6
Ncr	0	0	0	0	0	0	0	0	0	0	0	0	0
Scr	0	0	0	0	0	0	0	0	0	0	0	0	0
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	183	122	8	0	0	52	30	6992	244	120	0	0	44

DEFINITIONS:

- LOC - LOCATION
- NUM - NUMBER FILED IN QUARTER
- PP - PERSONAL PROPERTY CLAIMS
- PI - PERSONAL INJURY CLAIMS
- PPPI - PERSONAL PROPERTY/PERSONAL INJURY CLAIMS
- WD - CLAIMS WITHDRAWN
- Med - CLAIMS ALLEGING MEDICAL NEGLIGENCE
- Set - CLAIMS SETTLED
- Amt - AMOUNT PAID
- Pen - CLAIMS PENDING
- Den - CLAIMS DENIED
- OD - CLAIMS OVERDUE
- A/O - AVERAGE DAYS OVERDUE
- A/P - AVERAGE DAYS TO PROCESS

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 10/01/98 TO 12/31/98

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	533	293	9	25	0	8	2	25	340	167	0
SER											
NCR											
SCR											
WXR											
TOT											

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