

memorandum

DATE: January 10, 1996
REPLY TO: *M.D. Hood*
ATTN OF: Michael D. Hood, Regional Counsel

Dist. 40

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

TO: Wallace H. Cheney, Assistant Director/General Counsel
Central Office

Attention: Ms. Nancy Redding, Executive Assistant

Attached is our quarterly report for the above-noted months.

Attachments

LITIGATION NARRATIVES
OCTOBER 1, 1995 - DECEMBER 31, 1995

Jackson, et al. v. Bush, et al.; Cause No. 9503273; District of Travis County, Texas - Case filed in state court by Texas state inmates, alleging that TDCJ new non-smoking policy violates 8th Amendment. Plaintiffs attempted to bring the Attorney General and DOJ into the case by alleging that they failed in their oversight duties as allegedly imposed by the decrees in Ruiz v. Estelle. Case was dismissed by state court as to all defendants.

Tran v. Hawk - Appeal No. 94-10742 (5th Cir.); This Bivens case was dismissed by Judge McBryde, after the court-appointed "expert witness" concluded (in a report we were not allowed to see) that there was no evidence to support the claim. The plaintiff appealed to the Fifth Circuit, and the appeal has been dismissed.

Arturo Gardea v. United States - 95-50310 (5th Cir.) (Appeal from WD/TX, EP-93-CV-320) - Plaintiff/Appellant was injured while working on remodeling of FPC, El Paso, and filed this tort action. District Court granted our motion for summary judgment because plaintiff was not an employee of the government, but rather was an employee of Rudy G. Construction Co., with whom the government had contracted to the job. The 5th Circuit affirmed the decision, holding the government was not liable because of the independent contractor exception to the FTCA.

McAlpine v. Thompson - 94-1406-L (WD/OK) - This is the case in which a Native American inmate seeks access to peyote for use in his religious observances. The Magistrate Judge originally issued a Report and Recommendation in late 1994, recommending that the case be dismissed. The District Judge declined to enter judgment, referring the case back to the Magistrate for further factual development. The Magistrate Judge has now issued a lengthy Report and Recommendation, recommending that summary judgment be entered in our favor on the ground that there is no lesser restrictive alternative than a complete ban on peyote in the correctional setting. We are still awaiting the Judge's ruling.

Rounsavall v. USA - B-95-163 (SD/TX) - In this new FTCA case, former inmate Mary Rounsavall has filed suit based on alleged rape by a former correctional officer at FPC Bryan. We denied the administrative claim based on scope of employment considerations, and will raise the same defense in the litigation. The former correctional officer had pled guilty to a lesser charge in connection with this assault.

CASES WITH HEARINGS OR TRIALS

V. L. Underhill v. USA; 1:95-CV-160 (ND/TX); Inmate filed Request for TRO/Writ of Mandamus to keep staff from reading typewriter ribbons from typewriters in law library. Staff read ribbons in an isolated situation while investigating a written threat to staff that was successfully found on a law library typewriter ribbon. The inmate who made the threat (not plaintiff Underhill) was successfully traced through the typewriter and ribbon used to make the threat. It is not the practice of the institution to systematically read typewriter ribbons. In this case where security of the institution was an issue, the ribbons were read according to rules/regulations of the BOP. The TRO hearing was held on October 5, 1995, and the TRO was denied.

Anthony Elizondo v. U.S., 5:95CV07 (ED/TX) - Mediation conducted December 19, 1995 in Texarkana. Inmate did not show. At the mediation, we informed the Judge of our intention to file a Motion to dismiss this FTCA case based on Demko.

Ayala v. Reeves County, et al., P-95-CA-29 (WD/TX) - Trial of this matter was held the week of December 11, 1995, in Pecos, Texas. The case involved allegations by inmates at the Reeves County Law Enforcement Center (a contract facility) that they were assaulted by staff at the Reeves County Jail, when they were transferred to the Jail in 1993 after a disturbance at the Law Enforcement Center. The suit sought damages from Reeves County, a number of Reeves County employees (in their individual capacities), the U.S. (under an FTCA theory), and Charles Turnbo (under a Bivens theory). The case as to Mr. Turnbo was dismissed at the close of the plaintiffs' case. The FTCA claim against the U.S. was also resolved in favor of the U.S. In addition, the jury found that no assaults occurred, and ruled in favor of the County defendants as well.

Peck v. Fernandez, et al., 1:93-CV-152-C (ND/TX) - An evidentiary hearing was held on December 21, in the Abilene Division. The case involved Bivens allegations against three employees. The inmate (now released) complained that he had been improperly placed in Administrative Detention. A number of defendants had previously been dismissed on various grounds, and although we argued Sandin v. Conner, the Judge refused to dismiss as to the remaining three defendants. The plaintiff failed to appear for the hearing, and the Court has entered an Order of Dismissal.

MEDICAL MALPRACTICE LITIGATION

Woods v. USA, 495-CV-658-Y (ND/TX) - Claiming malpractice in treatment of his diabetic retinopathy.

Kurland v. Gibson, et al., A-95-CA-593SS (WD/TX) - Plaintiff sues the Warden, Health Services Administrator, and Chief Medical Officer for willful failure to obtain treatment for his supposed back and leg injuries sustained in a purported fall.

Willie Volsan v. Warden, FCI McKean, et al., 4-95-CV-817-Y (ND/TX) - Alleges attempted murder due to eating tainted soup at McKean and inadequate medical care at FMC, Fort Worth.

Joel D. Dreer v. G. Killinger, Warden; 4:95-CV-763-E (ND/TX); Inmate is requesting injunctive relief prohibiting BOP from ordering medications, procedures, examinations or consultations without explaining to petitioner the procedures and choices prior to ordering such.

SIGNIFICANT TORT CLAIM

T-SCR-95-371; Michael James, Reg. No. 06178-059, FCI Oakdale, an Native American Indian alleges on August 4, 1994, staff confiscated 2 headbands, 1 blue and 1 red. Claims the headbands are sacred and sent in to him from home. Claims \$7.00 property damage and \$7,770.00 personal injury.

LITIGATION

1ST QTR SCRO

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR											
SCR	44	23	6	12	3	25	293	8	* 5	0	0
WXR											
CO											
TOT											

NARRATIVE ANALYSIS

NARRATIVE ATTACHED ON SEPARATE PAPER

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
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- ANS - NUMBER OF LITIGATION REPORTS COMPLETED
- PEN - PENDING
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- 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)

* ONE CASE WAS REPORTED SEVERAL TIMES IN PREVIOUS MONTHLY REPORTS DUE TO RESCHEDULING OF THE HEARING.

1st QTR SCRT

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

oc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
SCR	160	115	34	9	2	0	12	2044	185	65	0	15	116

Variable Definition

Time Period

- Num - Number of claims filed 10/01/95 =< D_Accept <= 12/31/95
- PP - Personal Property claims 10/01/95 =< D_Accept <= 12/31/95
- PI - Personal Injury claims 10/01/95 =< D_Accept <= 12/31/95
- PPPI - Both PP & PI claims 10/01/95 =< D_Accept <= 12/31/95
- WD - Wrongful Death claims 10/01/95 =< D_Accept <= 12/31/95
- Med - Medical claims 10/01/95 =< D_Accept <= 12/31/95
- Set - Settled/approved claims 10/01/95 =< D_Closed <= 12/31/95
- Amnt - Amount paid 10/01/95 =< D_Closed <= 12/31/95
- Pen - Pending/open claims ▶▶ Entire Database ◀◀
- Den - Number of claims Denied 10/01/95 =< D_Closed <= 12/31/95
- OD - Number of claims OverDue ▶▶ Entire Database ◀◀
- A/O - Avg number of days Overdue 10/01/95 =< D_Closed <= 12/31/95
- A/P - Avg number of days to Process .. 10/01/95 =< D_Closed <= 12/31/95
- ▶ Med = PIM+ WDM+ PPPIM+ PPWDM ▶ WD = WD+ PPWD

▶ Press any key to continue ◀

FOI/PA REQUESTS

1ST QTR SCRO

LOC	NUM	PROC	PEND	OD	A/OD	A/P	CA
MXR							
NER							
SER							
NCR							
SCR	120	59	145	0	0	6 mos.	0
WXR							
CO							
TOT							

NARRATIVE ANALYSIS

DEFINITIONS

LOC - LOCATION

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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

BUREAU OF PRISONS - SOUTH CENTRAL REGION

FILE

UNITED STATES GOVERNMENT

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FISCAL YEAR 1996

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