

**FEDERAL BUREAU OF PRISONS
WESTERN REGIONAL OFFICE**

**OFFICE OF THE REGIONAL COUNSEL
3RD QUARTER REPORT**

April 1, 1993 - June 30, 1993

**TO: Wallace H. Cheney
General Counsel**

**FROM: Douglas Curless
Regional Counsel**

DATE: July 29, 1993

LITIGATION MATTERS:

Supreme Court activity: None.

9th Circuit activity:

Hale v. ARCOR CA9 No. 88-15785, 89-15162 en banc opinion May 4, 1993.

The en banc 9th Circuit reversed a panel decision favorable to inmates. The panel in a 2-1 opinion indicated that for some work assignments inmates must be considered "employees" under the Fair Labor Standards Act (FLSA) and, accordingly, be paid minimum wage. The majority expressly stated it could not make a blanket decision that inmates were never employees. However, in this case involving Arizona DOC inmates, the Court found the "employment" relationship with inmates did not stem from any remunerative relationship or bargained-for exchange of labor for consideration, but from incarceration itself [quoting Vanskike v. Peters 974 F.2d 806 (7th Cir. 1992); cert. denied, 113 S.Ct. 1303 (1993)]. The 9th Circuit held the labor provided to ARCOR by Arizona DOC inmates working for programs structured pursuant to the state's requirement that prisoners work at hard labor is labor belonging to the institution and does not entitle inmates to minimum wage.

Lahey v. Floyd CA9 No. 92-55511 April 27, 1993.

A 9th Circuit panel has given us some further direction regarding Mills v. Taylor and jail time credit (JTC) under the sentencing guidelines and 18 USC § 3585 (b). The panel indicated third party custody as a condition of pretrial bond release is not sufficient restraint of liberty to qualify for JTC pursuant to 18 USC § 3585 (b). Inmate was released to the custody of his brother and had to be at his brother's residence from 10:00 p.m. until 6:00 a.m. and could not be away from the residence for more than 24 hours. Later his bond conditions were changed so he could stay at his own house.

The panel indicated release on bond under these conditions did not approach jail type conditions.

U.S. District Court activity:

U.S. v. Carmichael CR 92-335 HRF D. Oregon.

Inmate walked away from FPC Sheridan. Was recaptured within 2 weeks. Trial held April 26, 1993. Inmate found guilty on April 27, 1993. Mary Sullivan monitoring.

Wilmer v. Meyers C 92-1145 FMS N.D. Cal (San Francisco).

Bivens case against staff at FCI Dublin. Inmate Wilmer refused to be strip searched before placement in SHU pending investigation. Wilmer overpowered the two female Correctional Officers who were attempting the strip search. The Lt. and another male correctional officer had to restrain Wilmer while female CO's wrapped her in a

sheet and conducted a strip search. Inmate demanding \$750,000 in damages. Trial set for September 20, 1993. AUSA Paul Solon and Jenifer Grundy handling.

U.S. v. Diane Nevell CR 92 653 JMR D. AZ (PHX)
Wife of inmate charged with introduction of contraband (drugs in the visiting room hidden in infant's clothing). Convicted by jury on 5/6/93. Jane Haschmeyer monitoring.

Alexander v. Perrill CIV 87-582-TUC-RMB D. AZ (TUC)
Alexander is a former inmate who prevailed in a habeas action convincing the District Court he had not received enough foreign jail time credit. The Court granted his habeas request and ordered immediate release. Appeal was not sought because of the time lag in getting appeal authority from the Department and delay in getting cases argued and decided in the 9th Circuit. Inmate filed a Bivens suit against BOP staff. Inmate contends his sentence recalculation resulted in his late release from custody. Credit had been erroneously awarded by an ISM at another institution. To further complicate matters the ISM at this institution is now deceased.

BOP and the U.S. Attorney's Office for District of Arizona filed a motion for summary judgement and qualified immunity for all defendants. All defendants were dismissed with the exception of Warden Bill Perrill and ISM Luis Rivera. In a 2-1 decision the 9th Circuit denied our appeal for qualified immunity for the Warden and ISM for their alleged lack of response to the inmates claims for foreign jail credit. Only Central Office can grant foreign JTC in conjunction with DOJ Office of International Affairs. Neither the Warden or ISM has authority to award foreign jail credit.

The case was remanded to USDC in Tucson. Plaintiff seeks \$625,000 in damages. Discovery has been concluded. AUSA offered to settle with plaintiff for \$30,000 (we were not consulted). DOJ would not authorize a monetary settlement in a Bivens case. Pretrial conference set for August 4, 1993. We anticipate trial this fall. AUSA Gene Bracamonte, paralegal Tom Byron, and Valerie Stewart handling.

United States v. Dale DeNoyer CR-93-306 JSL C.D. Cal.
USP Lompoc inmate prosecuted for manufacturing a weapon in UNICOR. AUSA Julie Ryan prosecuted in the Central District of California. One day trial resulted in guilty verdict. Sentencing set in October 1993. Matt Carney monitoring.

U.S. v. Johnathan George S.D. Cal (San Diego)
MCC SD pretrial detainee awaiting trial on federal felon in possession of a firearm charges was writted from custody by San Diego D.A. for trial on minor state charges. After appearing in state Superior Court on June 2, 1992 inmate assaulted a Deputy

Sheriff, took her revolver, and escaped. George stopped a car, shot and killed the driver, and escaped. He was recaptured on October 5, 1992.

George has 3 federal charges pending. Felon in possession of a firearm (original federal charge), escape from federal custody (June 2, 1992), and felon in possession of a firearm (recapture October 5, 1992). George was tried and convicted of all three charges in June. Sentencing is set for September. George faces 3 state charges from the events of June 2, 1992. Assaulting a law enforcement officer, escape, and capital murder. State trial for assault/escape/murder is continued to February 1994.

Family of murder victim has filed a \$2,000,000 FTCA claim against BOP, USMS, and San Diego Sheriffs Office for negligence resulting in escape and murder. Andrea Dahlsten handling tort claim/monitoring criminal cases.

U.S. v. Raymond Paige/George Davis CR 92-760 S.D.CA (San Diego) Inmates at MCC San Diego were charged with introducing drugs into MCC San Diego. All inmate defendants pled guilty on 5/7/93. Andrea Dahlsten monitoring.

U.S. v. Deloney CR 92-164 RGS D. AZ (PHX). Staff member pled guilty to accepting a bribe to introduce contraband into FCI PHX. Jane Haschmeyer monitoring.

Vigil, et.al. v. MCC San Diego et.al. BOP was served with a Bivens complaint and summons on July 1, 1993. Two deputy U.S. Marshals are seeking \$100,000 each (\$50,000 compensatory/\$50,000 punitives) for being unlawfully detained by staff at MCC San Diego. The deputies returned a mentally ill, suicidal inmate to MCC after a suicide attempt at MCC San Diego. He had been confined in an area hospital. Upon his return the inmate was obviously psychotic and had indicated he had attempted suicide on the way to MCC. The institution was under orders not to accept inmates in this condition. The Marshals attempted to drop him off and staff refused to accept the inmate. A court order was obtained after approximately 1 hour and the Marshals left the institution. Andrea Dahlsten handling.

EEO/FOIA Cases:

Leonardo Stewart v. Quinlan, CIV 91-707 RMB (D. AZ-TUC) Racial discrimination suit settled after going through EEO administrative process. EEO recommended \$150,000 and reinstatement to position. AUSA settled for \$79,615.77 and no reinstatement (for all claims). Stipulated Agreement entered 4/12/93 with payment within 30 days for Final Order of Dismissal. Funds came from DOJ judgment fund.

People of California v. Emdy

Los Angeles D.A. and defense counsel both have requested inmates Central file via FOI request. Emdy murdered his brother for informing on a third brother (while incarcerated with the state). Emdy the defendant and Emdy the victim did time together at USP Lompoc. Central files must be produced by trial date of June 6, 1993.

Sellers update: We have received numerous inmate requests to correct "inaccurate" information contained in PSI's in light of the OP's Memo issued by Central Office. Alan Ellis, Esq. a self proclaimed post conviction relief expert has widely dispersed a newsletter indicating BOP must clear up inaccurate information contained in PSI's. We are responding to inmates that PSI reports are records generated and maintained by the Courts and mandated by FRCrimP #32. The sentencing Court is the record custodian. BOP receives a copy of the record. If the inmate wants to change the record, he/she needs to seek that change with the Court or USPO.

We currently face one lawsuit filed by an FCI SHE inmate against Kathy Hawk, Pat Kane, Wally Cheney, and Doug Curless over information contained in a Post Sentence Report (filed in the District of Columbia).

UNICOR and Environmental Issues:

On August 17, 1993 California EPA has called a meeting of Potentially Responsible Parties (PRP's) to discuss environmental cleanup of the business site of Omega Chemical Company in Southern California. FPC Boron has been listed as a PRP because Omega received spent solvents from Unicolor operations at FPC Boron.

Occupational Safety and Health Administration (OSHA) has increased its inspection activity this past quarter. They have conducted inspections at 7 institutions in WXR. The primary focus of these inspections is UNICOR. OSHA has indicated fines will be levied against institutions that don't correct OSHA deficiencies.

MATTERS OF INTEREST:

A recent trend in the District Courts in the Western Region finds Judges running 924(c) gun counts concurrent with other sentenced counts, contrary to statute. We have been contacting USPO's and AUSA's to notify them of our problem in computing the sentences. They indicate they are not willing to appeal.

TRAINING AND EDUCATION

April 13-15 Valerie Stewart attended the AGAI Environmental Law Seminar in San Francisco.

April 19-May 7 Janelle Brock attended FLETC for BOP basic training.

April 22 Tim Roberts was guest speaker at Pepperdine School of Law on the topic of sentencing issues.

May 24-28 Janelle Brock TDY to FCI TI; June 1-4 TDY to MDC LA.

May 25, 1993 Legal, DHA/DHO, CCM's and Correctional Services toured Pharm Chem Labs in Menlo Park, CA.

June 8-10, 1993 AGAI/BOP training at MSTC Aurora, Co. Presenters: Doug Curless, Valerie Stewart. Attendees: Tim Roberts and Mary Sullivan.

June 22-24 Valerie Stewart and intern Reg Webster attended EPA's federal facilities compliance conference in San Francisco.

Staff News:

Janelle Brock has been selected as an Attorney/Advisor for the LCI branch in Central Office. Her reporting date is October 12, 1993.

An Tran has been selected as the DOJ honors program attorney for Western Region. Her reporting date is August 22, 1993.

Institutions

USP Lompoc: Attorney/Advisor Matt Carney arrived at USP Lompoc on April 24, 1993.

MDC Los Angeles: Ed Ross rejoins legal. Ed has held posts as acting Deputy HSA and Acting Unit Manager for the past 9 months.

WESTERN REGIONAL OFFICE
 QUARTERLY REPORT
 TORT CLAIMS

April 1, 1993 through June 30, 1993
 3RD QUARTER - FY93

INST	RCVD	PROP	INJURY	APPR	AMOUNT	DEN	PENDING	OD
BRN	5	2	3	2	143.00	2	11	5
LOF	6	2	4	3	166.80	3	20	7
LOM	36	29	7	24	1,874.64	20	97	42
LOS	10	8	2	5	2,900.87	1	31	10
NEL	2	1	1	none	none	none	8	5
PHX	2	1	1	4	295.26	2	36	14
PLE	11	10	1	5	841.96	4	27	16
SAF	5	5	none	2	65.95	1	14	5
SDC	17	14	3	1	84.53	5	34	11
SHE	19	16	3	4	2,674.25	5	33	13
TRM	14	9	5	8	969.65	23	34	14
TCN	8	7	1	6	604.21	3	20	10
WXR	3	2	1	none	none	1	5	2
TOTAL	138	106	32	64	10,621.12	70	370	154



memorandum

North Central Regional Office Kansas City, MO 64153

DATE: July 7, 1993

REPLY TO

ATTN OF: John R. Shaw, Regional Counsel

SUBJECT: MONTHLY REPORT/QUARTERLY REPORT

TO: Wallace H. Cheney, Assistant Director
General Counsel and Review

PENDING TRIALS/HEARINGS

Duarte v. U.S.A., Civil Number 92-509-WDS, FILS, USP Marion. In this action the inmate alleged the loss of personal property in his placement in administrative detention at USP Leavenworth and his subsequent transfer to USP Marion. Claimant asserted a loss in the amount of \$884.30. Our review of the administrative claim and subsequent suit disclosed a possible loss of a few minor items of personal property. Accordingly, the inmate was offered \$54.00 in settlement of his claim, but refused the offer.

A bench trial is scheduled for Friday, July 9, 1993, at the USP Marion Courtroom.

There were no other reports of pending trials or hearings received from the institutions within this region.

DECISIONS/SETTLEMENTS/CASES OF INTEREST

Gladson v. U.S. Penitentiary, 92-3505, D. Kansas, USP Leavenworth. Plaintiff alleges that defendants have improperly withheld records which he requested pursuant to the Freedom of Information and Privacy Acts. Specifically, he claims that certain medical records were never released to him. Institution staff were never informed of the inmate's request for medical records and, upon notice of the inmate's request, provided him access to the releasable portion of his medical file.

On June 2, 1993, the Court dismissed this action on the basis the inmate failed to pursue his administrative remedies and mootness when he was provided access to releasable medical files.

Sellars v. Carlson, 80-4038, Southern District of Illinois, USP Marion. This action relates to the inmate's complaint of ineffective medical treatment for his diabetic condition. The case was appealed following a dismissal and subsequently reopened. The court has appointed counsel for the inmate and is considering whether to allow discovery. At this point we have heard nothing regarding discovery in this case. We note that, while inmate Sellars was pro se, he was allowed extensive discovery.

Bellecourt v. USA, 92-1818MN and 92-2002MN, 8th Cir. Court of Appeals, FMC Rochester. Plaintiff appealed the District Court's dismissal of his medical malpractice action. The basis of Plaintiff's appeal is whether a grossly negligent misdiagnosis is a form of deliberate indifference prohibited by the Eighth Amendment of the United States Constitution, even where a physician states a personal belief that he has followed a reasonable course of treatment. Dr. Wynn, a defendant, was a government contractor. He cross-appealed the trial court's conclusion that he was an independent contractor rather than an employee.

The Court of Appeals affirmed the trial court finding (1) the plaintiff has not proven presentment of an administrative claim, (2) the contract physician was not deliberately indifferent, and (3) the trial court properly dismissed the pendant state action for medical malpractice because the plaintiff failed to file a timely notice of expert review. Dr. Wynn's cross-appeal was dismissed as moot

FTCA ADMINISTRATIVE CLAIMS

The FTCA administrative claim concerning the alleged wrongful death of Eddie Bishop Jones is pending response. We continue to research this matter and collect further information regarding the law and factual issues in this claim. Our focus at this point is in determining whether the claimant, Mrs. Jones, is actually the mother of the deceased inmate and whether she was timely (for purposes of the FTCA claim) appointed the legal representative of the estate.

STAFF TRAVEL AND LEAVE

Daryl	JULY 1,2, & 6	Annual Leave
Paul	JULY 1,2, & 6	Annual Leave
Sonya	JULY 1 & 2	Annual Leave
Gary	JULY 15, 16, 19, 20, & 21	Annual Leave
AMY	July 2	Annual Leave

LITIGATION

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR	72	22	12	24	14		573	40	0	0	0
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)

TORT CLAIMS

LOC	NUM	PROP	PI	APPR	AMT	DEN	PEND	OD	A/O	A/P
MXR										
NER										
SER										
NCR	168	123	45	16	326.7	28	145	2	0	31
SCR										
WXR										
TOT										

NARRATIVE ANALYSIS

DEFINITIONS

- LOC - LOCATION
- NUM - NUMBER FILED IN QUARTER
- PROP - PROPERTY CLAIM
- PI - PERSONAL INJURY CLAIM
- APPR - APPROVED
- AMT - TOTAL AMOUNT APPROVED
- DEN - DENIED
- PEND - PENDING
- OD - NUMBER OVERDUE
- A/O - AVERAGE NUMBER OF DAYS OVERDUE
- A/P - AVERAGE LENGTH OF TIME TO PROCESS

PI includes 3 WD & 3 PROP

UNITED STATES GOVERNMENT

memorandum

DATE: July 30, 1993
REPLY TO: David R. Essig, Regional Counsel, NER, BOP
ATTN OF:
SUBJECT: Quarterly Report - April 1, 1993 through June 30, 1993
TO: Wallace H. Cheney, General Counsel & Asst. Director, BOP

Attached are the statistics requested for the quarterly report for the third quarter of FY 1993. I am also enclosing a diskette with a copy of this report.

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

SIGNIFICANT DECISIONS, HEARINGS OR TRIALS

1. Bourgeois v. United States, 3:CV-91-197 (M.D.Pa.)

Inmate Louis Bourgeois, 39165-066, at USP Lewisburg brought this Federal Tort Claim Act complaint requesting damages for a slip and fall down steps in September 1990. Inmate alleged that he slipped on apple scraps and banana peels left on an outside stairway at USP Lewisburg. Trial was held from April 14-20, 1993 before U.S. Magistrate Judge Blewitt. USP Lewisburg Attorney Hope Moro assisted AUSA at trial. The court has not issued a decision following the trial.

2. Worthington v. Bureau of Prisons, Civil No. 89-7048 (S.D.N.Y.)

This case was discussed in our last two quarterly reports. 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). Our medical expert does not think that the blindness in the eye was caused by his medical treatment in the BOP. However, our expert feels 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. Four settlement conferences were held and Hank Sadowski was present in the last three (January 21, May 26, & June 2, 1993). No settlement was reached and the case is

-2-

3. United States v. Salameh, S3 93 CR 0180 (S.D.N.Y. June 10, 1993).

Three of the pretrial detainees indicted for the bombing of the World Trade Center in New York filed motions before the criminal trial judge (Judge Duffy) challenging aspects of pretrial custody at MCC New York. The detainees challenged their continued placement in administrative detention, and the following conditions of confinement: exercise, clothing, bedding, social phone calls, access to counsel, and inability to worship with fellow Moslems. In a 19 page ruling, Judge Duffy denied the motion, finding reasonable the Warden's security concern of potential retaliation from other inmates. The court also rejected allegations concerning the conditions of confinement.

SETTLEMENTS OR AWARDS

1. Cardiff Circle Ass'n v. United States, 92 CV 4323 (D.N.J.)

This Federal Tort Claims Act complaint was filed as a result of the accidental fire damage to property by FCI Fairton SORT team. On April 15, 1992, the FCI Fairton SORT team were conducting tactical exercises on Plaintiff's property without his permission. Plaintiff had given permission to local police to use his property for training exercises. The local police told the FCI Fairton SORT team they could use the property. The SORT team tossed two smoke grenades into a building. These grenades caused the entire building to catch fire. The fire was extinguished, but the building was destroyed. A warning on the smoke grenades stated that the device was for outdoor use only and that it can cause fires. Plaintiff did not accept a \$10,000.00 settlement offer of his administrative tort claim. We had admitted liability in the litigation. The only remaining issue was the amount of damages. Plaintiff had sought \$63,500.00. Case settled for \$25,000.00.

2. Sheptin v. United States, et al., 93-CV-34 (W.D.Pa)

Inmate Louis Sheptin, Register No. 90355-024, presently housed at USP Leavenworth, filed a combined Bivens and FTCA action alleging medical malpractice and deliberative indifference to medical needs at FCI McKean from February 19, 1992 through February 23, 1992.

-3-

Sheptin Case (Cont.)

On February 19, 1992, Sheptin was returned to FCI McKean after being removed on a writ ad test. HSA Heath performed the medical screening on Sheptin, but failed to fill out the required screening form. Heath said he gave his notes to Physician's Assistant Calvo. Sheptin alleged he told Heath, Calvo, and other medical staff on rounds in the Special Housing Unit repeatedly that he was on medication (Dilantin) for a seizure disorder and that he needed his medication. (Medical records support his need for this medication.) Calvo confirmed that Sheptin requested his medication but Calvo said he could not find the medical file. The medical file for Sheptin was in the "writ hold" section of the medical records area. On February 23, 1992, Sheptin had a grand mal seizure and was taken to an outside hospital. Sheptin alleged that as a result of this seizure, he fell and injured his head and shoulder. Later examinations (including x-rays) showed no evidence of permanent injury. Internal investigation concluded that medical staff were negligent in not obtaining the medical file and in not providing Sheptin his medication.

Sheptin agreed to accept \$3500.00 in full settlement of this litigation (FTCA and Bivens). A special assessment of \$500 will be offset from this amount.

3. Smith v. Lam, 92 Civ. 1876 (S.D.N.Y.)

John Smith, a Witsec inmate at FCI Otisville, filed this Bivens action alleging staff member Lam was deliberately indifferent to his safety at work. On January 11, 1991, Inmate Smith sewed through his finger while working at a sewing machine in the UNICOR Glove factory in the Witsec Unit. Smith alleged that the sewing machine did not have a safety guard around the needle. At the time of the injury, Lam was the UNICOR foreman responsible for the sewing machines. Smith alleged that Lam knew that the sewing machine Smith was using should have had a safety guard but did not. Smith alleged that, prior to the injury, he asked Lam for a safety guard for his sewing machine and Lam told him guards were not needed. The major constitutional claim was that Lam was deliberately indifferent to Smith's safety needs.

Lam executed a June 9, 1992 declaration, in which he claimed that when the new sewing machines arrived at FCI Otisville, he personally placed the safety guards on the machines. Lam implied that the inmates removed the safety guards to speed performance

-4-

Lam Case (Cont.)

on the machines. Lam said he was not aware that the safety guards were not on the machine Smith was working on. Lam denied that Smith asked him for a safety guard prior to the accident. Lam also responded to a host of other allegations made by Smith in the complaint. When the AUSA requested a meeting with Lam to go over the case, Lam admitted to the paralegal at FCI Otisville that he lied in his declaration.

The key material misstatements were the following: (1) Lam admitted that he knew that the safety guards were not installed upon the machine Smith was working on, and (2) he also admitted that he did not install safety guards on the machines when received at FCI Otisville. He further admitted a variety of minor details were false.

The United States continued to represent Lam because important interests had to be protected in this litigation. Information concerning the Witsec inmate had to be kept secure and there was potential for bad precedent on work related issues. Lam was advised that representation would continue but that settlement would be explored. After the AUSA deposed the inmate, the inmate agreed to settle the case for \$100.00. Lam was advised that if he agreed to the settlement that the money would be his personal obligation. Lam was also advised that he could request indemnification, but there was no assurance that it would be approved. Lam agreed to the settlement and the case was dismissed on June 29, 1993.

4. Salami v. Brennan, Civil No. 93-0459 (M.D.PA.)

Federal Tort Claims Act case filed by inmate Oscar A. Salami, Register No. 36430-053, for lost property. Salami alleged that his pair of sneakers were stolen in March 1992 at USP Lewisburg. He later found the sneakers in possession of another inmate and got into an argument. Staff intervened and the sneakers were confiscated as possible contraband. The other inmate could not verify ownership and staff were prepared to give Salami the sneakers. The sneakers could not be located. Case settled for one pair of sneakers.

-5-

PENDING PROBLEMATIC LITIGATION

1. U.S. v. Hillstrom, No. 92-7237 (3d Cir. March 12, 1993).

The Third Circuit remanded this sentencing guideline case for additional information concerning the nature of Federal Prisons Camp - Allenwood. At issue is which sentencing guideline should apply to an escape from FPC Allenwood: the guideline applicable to walkaways from a community corrections center or the guideline applicable to escape from a secure facility. The Third Circuit instructed the district court to consider whether FPC Allenwood is sufficiently similar to a CCC in its purpose and in its security and safety considerations. The resentencing hearing in this case has been postponed. A separate Allenwood escape case resulted in a sentencing hearing on April 29, 1993 before Judge Muir in Middle District of Pennsylvania. Executive Assistant Peter Weld testified concerning the distinctions between FPC Allenwood and CCCs. Judge Muir issued an opinion in United States v. Petro, 4:CR-92-242 (M.D. Pa. May 10, 1993), which found that FPC Allenwood was not a facility similar to a CCC. The Defense Attorney is taking an aggressive approach in the Hillstrom resentencing. I expect CCM Ed Hughes (to testify about CCCs) and Peter Weld (to testify about FPC Allenwood) will be called as witnesses in the rescheduled Hillstrom resentencing before Judge McClure.

Enclosures: Statistical Reports

NORTHEAST REGIONAL OFFICE
LITIGATION QUARTERLY REPORT

FROM 04/01/93 TO 06/30/93

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MGR											
NER	59	15	7	30	7	57	267	46	3	4	0
SER											
NCR											
SCR											
WXR											
CO											
TOT											

NARRATIVE ANALYSIS

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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)

NORTHEAST REGIONAL OFFICE
ADMINISTRATIVE REMEDIES QUARTERLY REPORT

FROM 04-01-1993 TO 06-30-1993

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
HXR											
NER	292	107	10	19	0	15	6	21	217	57	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

Tort Claims Third Quarter - FY93 (April 01, 1993 - June 30, 1993)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
NER	154	123	24	4	0	3	27	5469	222	40	0	0	94

Variable Definition

Time Period

Num	- Number of claims filed	04/01/93	=<	D_Accept	<=	06/30/93
PP	- Personal Property claims	04/01/93	=<	D_Accept	<=	06/30/93
PI	- Personal Injury claims	04/01/93	=<	D_Accept	<=	06/30/93
PPPI	- Both PP & PI claims	04/01/93	=<	D_Accept	<=	06/30/93
WD	- Wrongful Death claims	04/01/93	=<	D_Accept	<=	06/30/93
Med	- Medical claims	04/01/93	=<	D_Accept	<=	06/30/93
Set	- Settled/approved claims	04/01/93	=<	D_Closed	<=	06/30/93
Amnt	- Amount paid	04/01/93	=<	D_Closed	<=	06/30/93
Pen	- Pending/open claims		>>	Entire Database		
Den	- Number of claims Denied	04/01/93	=<	D_Closed	<=	06/30/93
OD	- Number of claims OverDue		>>	Entire Database		
A/O	- Avg number of days Overdue	04/01/93	=<	D_Closed	<=	06/30/93
A/P	- Avg number of days to Process ..	04/01/93	=<	D_Closed	<=	06/30/93
> Med	= PIM+ WDM+ PPPIM+ PPWDM					> WD = WD+ PPWD

> Press any key to continue

LITIGATION - 1993 SECOND QUARTER REPORT

	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR	40	21	6	11	2	35	132	117	4	3	0
NER	67	23	5	26	8	59	254	28	3	3	\$48
SER	45	20	2	15	8	45	N/A	41	0	0	0
NCR	68	33	9	25	1	N/A	572	46	0	0	0
SCR	45	19	5	20	1	32	254	21	9	0	\$34,901
WXR	55	23	7	19	5	52	579	30	9	4	\$22,100
CO	10	3	0	5	2	7	108	22	0	0	0
TOT	330	142	34	121	27	230	1899	305	25	10	\$57,049

DEFINITIONS

N/A - Not Available - no method for tracking this information
 LOC - Location
 NUM - Total Number of Lawsuits Filed in Quarter
 HC - Number of Habeas Corpus Actions Filed in Quarter
 FTC - Number of FTCA Actions Filed in Quarter
 BIV - Number of Bivens Actions Filed in Quarter
 OTH - Other Actions Filed in Quarter
 - Number of Litigations Reports Completed
 - Number of Actions Pending
 CLD - Number of Actions Closed
 H/T - Number of Hearings or Trials (Narrative Analysis Follows)
 SET - Number of Settlements (Narrative Analysis Follows)
 AWD - Amount of Awards

LITIGATION ANALYSIS

The number of lawsuits filed in the second quarter was slightly less than in the first quarter, with 354 filed in the first quarter and 330 filed in the second quarter. The amount of monetary damages awarded this quarter was significantly less than in the first quarter, with \$253,650 in the first quarter and \$57,049 in this quarter.

1993 QUARTERLY LITIGATION REPORT

SECOND QUARTER

I. HEARINGS OR TRIALS

MID-ATLANTIC REGION

Peterson v. Bogan, Eastern District of Michigan

The plaintiff, and inmate at Milan, filed a Bivens case because the Warden denied the inmate's request to marry a former contract teacher. On February 8, 1993 a summary judgment hearing was held and the court ruled that the Warden acted within his discretion in denying the marriage. No precedent existed for the plaintiff's claim. The court found that the Warden was entitled to qualified immunity and dismissed the case.

Bryant v. Muth, U.S. Court of Appeals for the Fourth Circuit

The Bureau appealed a court's ruling that a violation of the inmate's constitutional right of access to the courts may have occurred when staff refused to return legal research which Bryant had recorded on contraband computer diskettes in violation of BOP regulations. The District Court denied qualified immunity for the Bureau employees. On March 30, 1993 the Fourth Circuit heard oral arguments on whether BOP employees are entitled to qualified immunity. The government argued that because the employees followed valid Bureau regulations they were entitled to qualified immunity. A decision is expected this summer.

Shuell v. Dept. of Justice, Eastern District of Michigan

An inmate with a consecutive state life sentence, attempted to block his release from FCI Milan. The inmate sought to extend his federal incarceration by several years by waiving statutory good time credits. In addition, the inmate's attorney was granted an ex parte temporary restraining order. In a hearing held on February 8, 1993, the government successfully argued that the inmate had no liberty interest or other right to be housed or confined by the federal government, and when his federal sentence was determined to be satisfied, he had no right to remain incarcerated. He was placed in the custody of the State of Michigan. The inmate's attorney has appealed to the Sixth Circuit.

United States v. Mercado, Eastern District of Kentucky

Dr. Mercado was accused of accepting a bribe from an FCI Ashland inmate in exchange for expediting the inmate's medical care. The

defendant argued that he thought the money was given as a loan and on March 1, 1993, a federal jury returned a verdict of not guilty.

NORTH CENTRAL REGION

There were no reports of pending trials or hearings received from the institutions within this region.

NORTHEAST REGION

United States v. Smith, Eastern District of New York

In July, 1992 the court sentenced Smith to a three year sentence consecutive with his state term. The court recommended that the defendant be allowed to serve his federal sentence first before being turned over to state custody to complete his pending state sentence. At a hearing, the Bureau argued that it could not comply with the order because the state sentence would continue to run. The court granted the Bureau's motion and ordered Smith returned to state custody. The court held that any consecutive federal sentences do not commence until the prisoner completes service of his state sentence and is delivered to federal custody.

SOUTH CENTRAL REGION

Young v. Meese, Northern District of Florida

A former employee challenged his firing for inappropriate conduct toward another staff member and alleges that his dismissal was based on racial motivations. The trial began on April 6, 1993 and has been completed. A decision has not yet been rendered.

SOUTHEAST REGION

Foley v. Caulfield, et al., Northern District of Florida

In 1990, an inmate whose sentence was nonparolable was improperly released on parole and was returned to custody in 1991. The plaintiff claimed that he should be released from prison because returning him to custody after the erroneous release violated his due process rights. On April 7, 1992, in a motions hearing, the court held that the inmate was not required to exhaust his administrative remedies to obtain relief and ordered the BOP to release him.

Glass v. United States, Northern District of Florida

An inmate at FPC Pensacola requested that the time he spent in St. Petersburg Community Treatment Center in 1991 be credited to his sentence as time served. On January 14, 1993, the court dismissed the case on the merits, holding that pre-sentence and post-sentence inmates are not similarly situated and, therefore, treating them differently does not constitute an equal protection violation.

WESTERN REGION

Martin and San Francisco Chronicle v. Rison et al., U.S. Supreme Court

On March 22, 1993 the Supreme Court denied petition for certiorari filed by Dannie Martin and the San Francisco Chronicle.

United States v. Santiago Central District of California.

An inmate from USP Lompoc was charged with the murder of another inmate. Santiago was tried and convicted of murder on January 12, 1993.

United States v. Deloney, District of Arizona

A staff member was charged with introducing six ounces of marijuana and one ounce of cocaine into FCI Phoenix. A three day trial concluded on March 11, 1993. The staff member pled guilty to a five year bribery felony. The staff member also agreed to debrief and take a polygraph about other staff members who might be introducing contraband to the institution. Sentencing is tentatively set for May, 1993.

United States v. Benson, Central District of California

The government attempted to prosecute an FCI Terminal Island staff member for introducing contraband to the institution. At a hearing, the district court suppressed the confession of the staff member on the grounds that his request for a union representative was tantamount to invoking Miranda protection. The U.S. Attorney dismissed the indictment.

II. SETTLEMENTS AND AWARDS

MID-ATLANTIC REGION

Young v. United States, Eastern District of Kentucky

Decedent, a former FMC Lexington inmate sued under the Federal Tort Claims Act (FTCA) and under Bivens for damages, and alleged that because the BOP failed to perform mandatory physical examinations, her endometrial or uterine cancer was not diagnosed until the disease was terminal. The Bivens defendants were dismissed. Plaintiff died several months after a compassionate release from the BOP. The case was settled with the estate for \$70,000 which included reimbursement of Medicare costs (\$10,000) and attorney's fees.

Meade v. United States, Eastern District of Kentucky

In this FTCA case, inmate Meade alleged that a PA gave her improper contact lens solution, and when problems developed, she was refused medical treatment. Ms. Meade now requires a cornea transplant. During discovery it was realized that the case could not be defended. After consultation with the Warden, the Office of General Counsel and the Medical Director, the case was settled for \$35,000.

NORTHEAST REGION

Santos v. United States, et al., Southern District of New York

This case is a combination FTCA and Bivens case brought by former inmate Ana Santos. The Bivens case names as defendants: Doug Lansing, Former Warden, MCC New York; a former correctional officer (who was denied representation by U.S. Attorney); and a former physician's assistant. Santos alleged that the correctional officer raped her in July, 1987 and that she requested an abortion from the PA in September, 1987. The 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, the court denied our motion to dismiss Doug Lansing from the Bivens action. The court held that the complaint alleged a cause of action against Lansing for failing to train staff at MCC New York, failing 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 court denied the motion to reconsider. The case was settled for \$100,000.

Payton v. United States, Middle District of Pennsylvania

FTCA case filed by inmate for loss of property on a transfer. There was evidence that he had the jewelry in his possession. The case was settled for \$125 to spare litigation costs.

Oliveira v. United States, Middle District of Pennsylvania

FTCA complaint filed by inmate for the loss of 167 postage stamps allegedly lost on a transfer. Judgment was entered against the Bureau for \$48.43, which is the value of the stamps.

Young v. Quinlan, Middle District of Pennsylvania

This Bivens case was remanded to the district court by the Third Circuit. The two claims remanded were (1) the failure to protect Young from sexual assaults in the Special Housing Unit at USP Lewisburg, and (2) deliberate indifference to Young's needs while in a dry cell at USP Lewisburg. These incidents allegedly occurred in June, 1988. The case was settled on the basis of the FTCA count for \$8,000. This amount was based on anticipated costs and inconvenience to the BOP for continued discovery and trial.

SOUTH CENTRAL REGION

Manual v. Thornburgh, Western District of Texas

After a trial in February, the district court found that Manual had been subjected to sex discrimination by male lieutenants at FCI Bastrop during 1984 and 1985. This action will not be appealed. Ms. Manual was awarded \$12,610.27, as back pay, \$22,290.50 in attorney's fees, plus expenses, costs of court, and post-judgment interest in the amount of 3.45% per annum. In addition, Ms. Manual was granted reinstatement effective December 17, 1992. Ms. Manual was reinstated at FCI Bastrop, but has since resigned.

WESTERN REGION

Stewart v. Bureau of Prisons, District of Arizona

Former correctional officer sued alleging racial discrimination by staff at FCI Tucson in 1987. Administrative procedures have been exhausted and the claim was upheld. The Bureau was ordered to reinstate Stewart with back pay totalling \$150,000 and promote

him to GS-8. BOP commenced litigation proceedings and the case was settled in March for \$79,000 without reinstatement.

LITIGATION - 1993 FIRST QUARTER REPORT

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR	40	20	4	10	6	40	209	108	2	2	22,000
NER	68	28	9	20	11	58	215	175	2	3	75,650
SER	58	21	3	27	7	58	N/A	64	0	0	0
NCR	55	24	3	27	1	65	514	47	2	0	0
SCR	57	26	8	22	1	60	230	66	7	0	0
WXR	65	25	3	21	9	65	551	13	0	1	156,000
CO	11	5	0	5	0	18	31	16	0	0	0
TOT	354	149	30	132	35	234	1750	489	13	6	253,650

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- 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 (Narrative analysis follows)
- SET - Number of Settlements (Narrative analysis follows)
- AWD - Amount of Awards

LITIGATION ANALYSIS

The number of lawsuits filed in the first quarter remained relatively the same as in the fourth quarter, with 352 filed in the fourth quarter and 354 filed this quarter. The amount of monetary damages awarded was \$253,650.00.

WESTERN REGION

Garcia v. U.S.A., District of Arizona

This case involves a wrongful death action for \$2,000,500. The plaintiff is the deceased inmate's mother. The inmate died at FCI Phoenix in March 1991. The Assistant U.S. Attorney has retained several medical experts, who differ with the BOP after-action report regarding the procedures followed by the on-duty Physician Assistant. However, the medical experts for the plaintiff have not yet focused on this aspect of the case. The matter may result in a substantial settlement or damages award.

Alexander v. Perrill, District of Arizona

The plaintiff in this case is a former inmate who has sued successfully in the Ninth Circuit, establishing personal liability against Inmate Systems Manager L. Rivera and Warden Perrill for their alleged lack of response to his claims. The plaintiff had claimed that the BOP had wrongfully taken away jail credit previously awarded by another institution, which resulted in his re-incarceration. The Central Office and OEO/OIA determine the amount of foreign jail credit that is awarded an inmate, the institution has no authority in the matter. The underlying case is still in litigation in district court. The plaintiff seeks \$625,000 in damages.

Coupar v. Bureau of Prisons, Department of Labor

This case is the third in a series of lawsuits filed by inmate Douglas Coupar pursuant to the whistle blower provisions of the Department of Labor, 29 C.F.R. Part 24.

Hubbs v. U.S.A., et. al, Pratt v. U.S.A., et. al, District of Oregon

These FTCA cases arise from a van accident that killed inmate Pratt and injured Hubbs, the driver of a third vehicle. Because no settlement was reached during the administrative proceedings, this lawsuit was filed. The amount in controversy exceeds \$5 million.

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U.S. Department of Justice
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FACSIMILE TRANSMISSION RECORD

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(Excluding Cover Sheet)

TO: Wallace H. Cheney
General Counsel

FROM: Douglas W. Curless
Regional Counsel, WRO

REMARKS: Quarterly Report 10/1 - 12/31, 1992
Litigation statistics will be sent
as soon as we have them completed.

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