

05/10/1993 10:13:50 =====

INS/SOLER:

NEW 18
PENDING 143 162 165

LITIGATION MATTERS:

9TH CIRCUIT COURT OF APPEALS

JORDAN ET. AL. V. GARDNER ET. AL. CA9 NO.'S 90-35307; 90-35552
EN BANC OPINION FEBRUARY 25, 1993.

THE 5 FEDERAL INSTITUTIONS IN WXR CURRENTLY HOUSING FEMALE PRETRIALERS AND SENTENCED OFFENDERS (FCI PLE, MDC LA, MCC SD, FPC PHX, AND FCI TCN) HAVE SUSPENDED CROSS GENDER PAT SEARCHES TEMPORARILY UNTIL FURTHER NOTICE FROM CENTRAL OFFICE AND WXR.

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 SEC. 3585 (B). THE PANEL INDICATED THIRD PARTY CUSTODY AS A CONDITION OF PRETRIAL BOND RELEASE IS NOT SUFFICIENT RESTRAINT ON LIBERTY TO QUALIFY FOR JTC. INMATE WAS RELEASED TO THE CUSTODY OF HIS BROTHER AND HAD TO

05/10/1993 10:14:03 =====

BE AT HIS BROTHERS 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 IMPRISONMENT.

FRALEY V. BUREAU OF PRISONS, ET AL,. CA9 NO. 93-35066 (CV 92-348 CI EWA)
FRALEY SUED IN DISTRICT COURT TO RECEIVE "PRIOR CUSTODY CREDIT" FOR TIME SPENT IN HOME DETENTION AND ON ELECTRONIC MONITORING. INMATE FILED A MOTION TO SUBMIT THE CASE BASED ON THE DISTRICT COURT RECORD. WE HOPE LAHEY ABOVE, WILL ASSIST OUR POSITION AND NARROW THE 9TH CIRCUIT'S INTERPRETATION OF JTC UNDER THE SENTENCING GUIDELINES.

U.S. DISTRICT COURTS TRIALS/COURT HEARINGS

U.S. V. NUNEZ, CR 87-103 AAM E.D. WASHINGTON (YAKIMA).

INMATE IMPRISONED UNDER 2 OLD LAW SENTENCES PETITIONED THE DISTRICT COURT FOR RELIEF UNDER OLD FRCRIMP #35 FOR REDUCTION OF SENTENCE. THE DISTRICT COURT GRANTED THE MOTION AND ORDERED IMMEDIATE RELEASE OF INMATE. INMATE HAD A DETAINER LODGED BY THE PAROLE COMMISSION FOR A VIOLATION ON A PRIOR SENTENCE. THE COURT SET A HEARING FOR MAY 3, 1993, TO DETERMINE WHY THE COURT'S ORDER HAS NOT BEEN FOLLOWED. MARY SULLIVAN AND ISM SCOTT BOATWRIGHT COVERED. THE DISTRICT COURT FELT THAT BY COMMUTING THE SECOND

05/10/1993 10:14:12 =====

SENTENCE THE COURT HAD AUTHORITY TO VACATE THE OTHER SENTENCE AND ORDER IMMEDIATE RELEASE OF THE INMATE FROM THE COURTROOM. USPC WAS ADVISED AND IS CONSIDERING APPEAL.

U.S. V. CARMICHAEL, CR 92-335 HRF D. OREGON.

INMATE WALKED AWAY FROM FPC SHERIDAN. WAS RECAPTURED WITHIN 2 WEEKS. TRAIL HELD APRIL 26, 1993. INMATE FOUND GUILTY ON APRIL 27, 1993. SENTENCING DATE NOT SET YET. MARY SULLIVAN ACCOMPANIED STAFF WITNESSES.

WILMER V. MEYERS, C 92-1145, FMS N.D. CAL (SAN FRANCISCO). SETTLEMENT CONFERENCE MAY 4, 1993 IN BIVENS CASE AGAINST STAFF AT FCI DUBLIN. INMATE WILMER REFUSED TO BE STRIP SEARCHED BEFORE ENTERING SHU. 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 1993. AUSA PAUL SOLON AND DOUG CURLESS COVERING.

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). TRIAL BEGINS 5/4/93. HENTHORN REQUESTS COMPLETED 4/23/93. NUMEROUS STAFF APPEARING AS WIT-

05/10/1993 10:14:24 =====

NESSES. TOM BYRON COVERING.

U.S. V. RAYMOND PAIGE/GEORGE DAVIS, CR 92-760, S.D.CA (SAN DIEGO) DRUG CHARGES AGAINST INMATES AT FCI PHX. PRETRIAL HEARING ON 4/26/93 FOR PRODUCTION OF BOP RECORDS TO DEFENSE. TRIAL SCHEDULED FOR 5/4/93.

SETTLEMENTS

LEONARDO STEWART V. QUINLAN, CIV 91-707 RMB (D. AZ-TCN) RACIAL DISCRIMINATION SUIT SETTLED AFTER GOING THROUGH EEO ADMINISTRATIVE PROCESS. EEO RECOMMENDED \$150,000 AND REINSTATEMENT TO POSITION. AUSA SETTLED FOR \$79,000 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.

MATTERS OF INTEREST:

ON 4/9/93 VALERIE STEWART AND REGIONAL ISM PEGGY KINMAN MET WITH THE CLERK OF THE COURT AND USM FOR CENTRAL DISTRICT OF CALIFORNIA REGARDING THE CLERK'S OFFICE NEW POLICY NOT TO AUTHENTICATE COURT ORDERS FROM THAT DISTRICT. ISM PS 5800.07 CH8, SEC. 801-04 AND CH.3, SEC. 303 REQUIRE ISM STAFF TO VERIFY ALL ORDERS RECEIVED. TERMINATION OF THIS SERVICE WAS DONE BY THE CLERK IN RESPONSE TO STAFF CUTBACKS. A COMPROMISE SOLUTION WAS

05/10/1993 10:14:35 =====

ARRIVED AT WHICH ALLOWS BOP ACCESS TO THE CLERKS OFFICE THROUGH THE REGIONAL ISM.

ON MAY 25, 1993, 10:00 A.M. LEGAL, DHA/DHO, CCM'S AND CORRECTIONAL SERVICES WILL BE TOURING PHARM CHEM LABS IN MENLO PARK, CA. WITH DR. JULIE WHITNEY, THE BOP LIAISON.

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.

ETHICS TRAINING:

COMPLETED. GREAT JOB JENIFER GRUNDY AND TIM ROBERTS!!!

PERSONNEL MATTERS:

WRO
DOUG CURLESS - WILMER SETTLEMENT CONFERENCE SAN FRANCISCO MAY 4
(MORNING). ANNUAL LEAVE MAY 14 AND MAY 21
VALERIE STEWART - FPC NELLIS STAFF ASSIST MAY 5-7.

10/1993 10:14:56 =====

JENIFER GRUNDY - ADMIN. LEAVE MAY 26-JUNE2
4/13-15 ATTEND AGAI ENVIRONMENTAL LAW COURSE
FOIA/PRIVACY ACT CLASS SAN FRANCISCO MAY 18-20.
ANNUAL LEAVE MAY 7
JANELLE BROCK - FLETC 4/19-5/7
GLORIA POUPAR - ANNUAL LEAVE MAY 7
LIDA PAETZKE - FOIA/PRIVACY ACT CLASS SAN FRANCISCO MAY 18-20

INSTITUTION STAFF:

BRN/ PAM RILEY-MORGAN STAFF ASSIST W/VALERIE STEWART FPC NELLIS MAY 5-7
MDC LOS/ TIM ROBERTS ANNUAL LEAVE MAY 17-28
USDC APPEARANCES IN U.S. V. MICHAEL KEYS AND U.S.
V. JORGE DIAZ-MONTANO.
4/22 GUEST SPEAKER AT PEPPERDINE SCHOOL OF LAW,
SENTENCING ISSUES.
USAO CD CAL CRIM DIV MEETING 4/30/93.
MDC LOS/ ED ROSS ED IS ACTING UNIT MANAGER
USP LOM/ MATT CARNEY MATT IS ON BOARD AT USP. WELCOME TO WXR MATT!

06/09/1993 07:49:52 =====

UNITED STATES GOV. MEMORANDUM
 FEDERAL BUREAU OF PRISONS
 WESTERN REGIONAL OFFICE
 DUBLIN, CALIFORNIA

DATE: 06/04/93

REPLY TO DOUGLAS CURLESS
 ATTN OF: REGIONAL COUNSEL

SUBJECT: MONTHLY REPORT (MAY 1 - MAY 31, 1993)

TO: WALLACE H. CHENEY
 GENERAL COUNSEL

STATISTICS:

TORT CLAIMS:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RCVD	30	7	55	59	46							
CLOSED	26	18	119	28	23							
PENDING	433	422	354	387	408							
OVERDUE	210	198	156	172	156							

TORT CLAIM INVESTIGATION STATUS: AS OF 04/30/1993
 BRN LOM LOF LOC LOS NEL PHX PLE SAF SDC SHE TRM TCN

06/09/1993 07:49:55 =====

PENDING OVER 60 DAYS	0	17	0	0	4	0	4	16	1	5	12	20	6
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FOI/PA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RCVD	11	36	43	43	52							
CLOSED	27	16	17	23	39							
PENDING	131	151	181	201	214							
OVERDUE	42	43	56	57	60							

ADMIN. REM.:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RCVD	114	77	92	69	123							

LITIGATION:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN	565	562	579	596	607							
NEW	14	9	21	26	16							
HC	8	5	6	8	4							
FTCA	3	1	3	4	1							
BIVENS	3	2	9	11	8							
OTHER	1	1	3	3	3							
TRANSFERS			1	0	1							
CLOSED	24	12	4	9	4							

06/09/1993 07:49:58 =====

INS/SOLER:				
NEW	12			
PENDING	143	162	165	

LITIGATION MATTERS:

9TH CIRCUIT COURT OF APPEALS

JORDAN ET. AL. V. GARDNER ET. AL. CA9 NO.'S 90-35307; 90-35552
EN BANC OPINION FEBRUARY 25, 1993.

THE 5 FEDERAL INSTITUTIONS IN WXR CURRENTLY HOUSING FEMALE PRETRIALERS AND SENTENCED OFFENDERS (FCI PLE, MDC LA, MCC SD, FPC PHX, AND FCI TCN) HAVE SUSPENDED CROSS GENDER PAT SEARCHES TEMPORARILY UNTIL FURTHER NOTICE FROM CENTRAL OFFICE AND DOJ.

HALE V. ARCOR CA9 NO. 88-15785, 89-15162 EN BANC OPINION MAY 4, 1993.
THE 9TH CIRCUIT ACTUALLY REVERSED A PANEL DECISION FAVORABLE TO INMATES!!!
THE PANEL BELOW 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

06/09/1993 07:50:01 =====

EMPLOYEES. HOWEVER, IN THIS SITUATION INVOLVING ARIZONA DOC INMATES, THE COURT FOUND THE CONTROL OVER THE INMATES DOES 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.

U.S. DISTRICT COURTS TRIALS/COURT HEARINGS

U.S. V. JOHNATHAN GEORGE S.D. CAL (SAN DIEGO)
MCC SDC PRETRIAL DETAINEE AWAITING TRIAL ON FEDERAL FELON IN POSSESSION OF A FIREARM CHARGES WAS WRITTEN 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),

06/09/1993 07:50:04 =====

AND FELON IN POSSESSION OF A FIREARM (RECAPTURE OCTOBER 5, 1992). GEORGE FACES 3 STATE CHARGES FROM THE EVENTS OF JUNE 2, 1992. ASSAULTING A LAW OFFICER, ESCAPE, AND CAPITAL MURDER. TRIAL SCHEDULE: FEDERAL ESCAPE MAY 20 (BENCH TRIAL); ORIGINAL FELON IN POSSESSION CHARGE JUNE 8 (JURY TRIAL); 2D FELON IN POSSESSION CHARGE NOT SCHEDULED. STATE TRIAL FOR ASSAULT/ ESCAPE/MURDER IS SCHEDULED FOR JUNE 2, 1993.

FAMILY OF MURDER VICTIM HAS FILED A \$2,000,000 FTCA CLAIM AGAINST BOP, USMS, AND SAN DIEGO SHERIFFS OFFICE. ANDREA DAHLSTEN MONITORING.

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). WIFE CONVICTED ON 5/5/93. SENTENCING SET FOR JULY 27. TOM BYRON COVERING.

U.S. V. RAYMOND PAIGE/GEORGE DAVIS. CR 92-760 (S.D.CA) (SAN DIEGO).
DRUG CHARGES AGAINST INMATES AT FCI PHX. ALL INMATE DEFENDANTS PLED

GUILTY ON 5/7/93. SENTENCING SET FOR JUNE 25. ANDREA DAHLSTEN COVERING.

U.S. V. DELONEY. CR 92-164 RGS (D.AZ) (PHX)

5/09/1993 07:50:07 =====

STAFF MEMBER PLED GUILTY TO ACCEPTING A BRIBE TO INTRODUCE CONTRABAND INTO FCI PHX. SENTENCING SET FOR JUNE 28. JANE HASCHEMEYER COVERING.

SISNEROS V. HARRISON. CIV 92-Z-1013 (D.CO). BIVENS/FTCA CASE. INMATE CLAIMS SHE WAS SEXUALLY ASSAULTED BY STAFF MEMBER. MAGISTRATE JUDGE HAS RECOMMENDED DISMISSAL OF BIVENS CLAIM. FTCA CASE GOING FORWARD. SETTLEMENT CONFERENCE SET FOR JUNE 23

FOIA/PA

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. TWO OF THE EMDY BROTHERS DID TIME TOGETHER AT USP LOMPOC. CENTRAL FILES MUST BE PRODUCED BY TRIAL DATE OF JUNE 7, 1993.

SETTLEMENTS

STEWART V. QUINLAN. D. AZ. EEO COMPLAINT BY FORMER CO SETTLED FOR \$79,615.77. ORDER DISMISSING CASE ENTERED 5/13/93.

PROPOSED: STRICK V. U.S.A. PLAINTIFF HAS OFFERED TO SETTLE FOR \$16,000. THIS CASE INVOLVES INMATES CONTRACTING SHIGELLA AT FCI TRM IN 1990.

5/09/1993 07:50:10 =====

MATTERS OF INTEREST

ON MAY 25, 1993, 10:00AM, LEGAL, DHA/DHO, CCM'S AND CORRECTIONAL SERVICES TOURED PHARM CHEM LABS IN MENLO PARK, CA. WITH THE BOP UA/CONTRACT LIAISON.

SELLERS UPDATE: INMATE REQUESTS TO CORRECT "INACCURATE" INFORMATION CONTAINED IN PSI'S ARE FLOODING FCI SHE. WE NEED TO SEE IF WE CAN SET UP A STREAMLINED PROCEDURE TO VERIFY PSI INFORMATION WITH THE U.S. PROBATION OFFICER. IF SUCH A SYSTEM CAN BE SET UP WE CAN ARGUE 1. THE INMATE HAD THE OPPORTUNITY TO CHALLENGE THE INFORMATION IN THE PSI PRIOR TO SENTENCING AND DURING THE ALLOCUTION PHASE OF THE SENTENCING. 2. THE INMATE ALWAYS HAS THE OPPORTUNITY TO CHALLENGE HIS SENTENCE VIA 2255 OR 2241 HABEAS. 3. WE DID VERIFY THE INFORMATION WITH THE USPO INVOLVED WITH THE CASE.

PERSONNEL MATTERS:

WRO

DOUG CURLESS - NLTC GRADUATION 6/7/93. AGAI/PRISONER LITIGATION TRAINING CONFERENCE 6/7-11. ANNUAL LEAVE 6/14-15; 6/30-7/2.
VALERIE STEWART - ADMIN. LEAVE 5/26-62. AGAI/PRISONER LITIGATION

5/09/1993 07:50:13 =====

JENIFER GRUNDY - TRAINING CONFERENCE 6/7-6/10
ACTING REGIONAL COUNSEL 6/7-6/11. TDY LOMPOC 6/21-25.

JANELLE BROCK - TDY FCI TRM 5/24-28; MDC LA 6/1-4.

INSTITUTION STAFF:

FCI SHE/ MARY SULLIVAN AGAI/PRISONER LITIGATION TRAINING CONFERENCE 6/7-10

MDC LOS/ TIM ROBERTS AGAI/PRISONER LITIGATION TRAINING CONFERENCE 6/7-10