

memorandum

North Central Regional Office Kansas City, MO 64153

DATE: June 2, 1992

REPLY TO

ATTN OF: John R. Shaw, Regional Counsel

SUBJECT: MONTHLY REPORT - MAY '92

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

FEDERAL TORT CLAIMS ACT/EMPLOYEE CLAIMS

Received	35
Personal Property	28
Personal Injury	07
Wrongful Death	00
Closed	20
Overdue at End of Month	41
Pending at End of Month	204
Paid in Month	00
TOTAL PAID:	\$ 000.00

The total paid figure represents claims reported in previous months and updated to the current month when offers of settlement were accepted or paid.

There were 4 medical treatment related claims to report for this period.

LITIGATION

New Actions Received	16
- Habeas	05
- Personal Liability	09
- Tort	02
- Injunctive/Other	00
Closed	00
Pending (Since 1-1-88)	478

LITIGATION

PENDING TRIALS/HEARINGS

Dunn v. U.S.A., Civil Number 90-3516, FILS, FTCA. In this action the plaintiff alleges that in the winter of 1989 staff failed to clean the outside recreation area of ice causing him to slip and fall and injure his leg. Trial is set for June 4, 1992 at the USP Marion court room.

Campbell v. U.S.A., Civil Number 90-3569, FILS, FTCA. The Plaintiff alleges that subsequent to his transfer to USP Marion from a state facility his television was packed and remailed by Marion staff in a negligent manner causing the television to be damaged in transit.

There is no question the television was in good working condition at USP Marion. In doubt is the manner in which it was packed and the treatment the package received while in the possession of the U.S. Postal Service.

The Assistant U.S. Attorney will settle this action from the U.S. Attorney's general fund.

McKoy v. Brennan, Civil Number 90-C-622-S, FWIW, Personal Liability. This action addresses the question of our obligations, if any, to provide an inmate access to state law materials or to otherwise provide some form of assistance to federal inmates in state law cases. This case is set for trial on June 15, 1992. A motion for summary judgment is also pending.

CASES OF INTEREST

MCC CHICAGO

Flisk v. Warden True, Civil Number 92-C-1203, FILN, Personal Liability/Habeas. In this action the inmate complained that Warden True inappropriately shortened the length of his time in a CTC thereby violating due process rights.

The Court held that in order to state a claim for violation of a procedural due process right, the Plaintiff must show that he has been deprived of a property or liberty interest. The Court found that our policy in the matter of transfers and CTC placement were discretionary in nature and did not create a liberty or property interest; therefore, the inmate had no due process entitlement in transfer to a community treatment center.

Dismissed April 10, 1992.

USP LEAVENWORTH

Smith v. Matthews, Civil Number 88-3265-R, Personal Liability. The Plaintiff alleges a constitutional violation when the unit team of inmate Tony Smith removed her from the visiting list of the inmate.

The basis for this action was information received by staff that inmate Smith's wife was to bring narcotics into the facility. Although a strip search revealed no drugs, the unit team removed Ms. Smith from the inmate's visiting list.

The Court held that there is no absolute right to visitation in the prison setting and that prison visiting is subject to prison regulations and such regulations are valid if they are reasonably related to legitimate pedagogical objectives.

In this action, the court concluded that no liberty interests existed and that Plaintiff had no due process entitlement to visiting a prison inmate. Additionally, staff were within their discretion to order a search of a visitor for contraband on the basis of reliable confidential information.

Dismissed May 18, 1992.

FCI ENGLEWOOD/OXFORD

Green v. Brennan, Civil Number 91-N-1843, FCO, Personal Liability. Plaintiff alleged that policies at the FCI Oxford regarding inmate correspondence are unconstitutional. Further, that he received certain disciplinary reports and that he was denied a transfer to FCI Englewood in retaliation for filing law suits.

The Court found the complaint defective for a number of reasons including, improper venue, improper defendants, the inapplicability of respondeat superior, and that all defendants acted within the constraints of the applicable policy and therefore enjoyed qualified immunity.

Dismissed March 4, 1992.

STAFF TRAVEL AND LEAVE

Daryl	June 1-5	FCC Colorado
	June 7-13	Harvard Law School
Mike	June 15-19	House Hunting Trip
Gary	June 3	Annual Leave
Jackie	June 11-12	Annual Leave

copy/109

UNITED STATES GOVERNMENT

memorandum

DATE: July 3, 1992

REPLY TO
ATTN OF:

John R. Shaw, Regional Counsel

SUBJECT:

North Central Region
MONTHLY REPORT

JUNE '92

TO:

Wallace H. Cheney, Assistant Director
General Counsel and Review

FEDERAL TORT CLAIMS ACT/EMPLOYEE CLAIMS

Received	52
Personal Property	31
Personal Injury	21
Wrongful Death	00
Closed	74
Overdue at End of Month	23
Pending at End of Month	189
Paid in Month	22
TOTAL PAID:	\$ 2,443.28

The total paid figure represents claims reported in previous months and updated to the current month when offers of settlement were accepted or paid.

There was one (1) medical treatment related claim to report for this period.

LITIGATION

New Actions Received	30
- Habeas	10
- Personal Liability	13
- Tort	06
- Injunctive/Other	01
Closed	08
Pending (Since 1-1-88)	494

LITIGATION

PENDING TRIALS/HEARINGS

No reports of pending litigation for the month of July were received from facilities within this region.

CASES OF INTEREST

USP MARION:

Ferries v. Fenton, et al., Civil Number 80-4240, FILS, Personal Liability. In this action the plaintiff alleged defendants violated his First, Fifth, Eighth and Ninth Amendments rights. The complaint appears to allege that the Warden personally had the plaintiff locked in segregation in order to have adverse disciplinary reports in his file, which in turn would lead to his parole rejection by the Parole Commission.

On May 29, 1992, the district Judge dismissed the action with prejudice for plaintiff's failure to comply with the Court's Order directing the plaintiff to make himself available for deposition no later than April 1, 1992. The record indicated that the plaintiff, who was represented by counsel, had more than four months to make himself available for deposition and on at least six occasions failed to appear for deposition as scheduled. The Court found the explanations for plaintiff's failure to appear as directed insufficient to excuse his disregard for the Court's clear and unequivocal Order.

Greene v United States of America, Civil No. 87-3901-PMF, FILS, FTCA. In this action the plaintiff claims the staff did not adequately protect him from the attacks of fellow inmates on two separate occasions. The first alleged attack took place in April of 1989, when an officer let an inmate into the law library, where the plaintiff was located, and the inmate proceeded to physically attack the plaintiff. The second alleged incident took place in November of 1989, when an inmate obtained a bucket of hot water from the shower and threw it on the plaintiff.

On June 6, 1992, judgment was ordered in favor of the defendant, concluding that plaintiff failed to prove breach of duty and actual injury. Staff had absolutely no reason to anticipate the two attacks which were done by different inmates. There was no history of trouble between the plaintiff and the other inmates involved in the incidents. In addition, plaintiff was seen by medical staff following each of the incidents and found no significant injuries which could be attributed to the events.

Dune v. United States of America, Civil No. 90-3516-WDS, FILS, FTCA. In this action the plaintiff alleges that he slipped and fell on ice and snow in a recreation cage on three separate occasions during December 1989.

An evidentiary hearing was conducted at the penitentiary on June 4, 1992. On two of the occasions the plaintiff alleges to have fallen, he failed to prove two necessary elements, staff negligence and/or breach of duty and actual damage or injury. It was determined staff used ordinary care when cleaning the cages so that inmates could use them for recreation and that staff warned inmates that certain areas might still be slick. Additionally, plaintiff was seen by medical staff on both occasions and found to have suffered no injuries, nor sustained any loss.

On the other occasion plaintiff failed to prove that he had even participated in outdoor recreation on the day in question. The credible evidence established that plaintiff did not recreate as he claimed. Segregation logs were used as evidence.

As result of this hearing, judgment was entered in favor of the defendant on June 15, 1992.

USP LEAVENWORTH

Grant v. Matthews, et al., Civil No. 89-3194-R, FKS, Personal Liability. In this action, the plaintiff brought a civil rights action in May 1989, alleging violation of his First and Eighth Amendment rights by the defendants. Plaintiff was seeking damages in the amount of \$270,000.00. Defendants asserted that they were immune from suit based on qualified immunity.

The incident of which the plaintiff complains took place in March of 1989. Plaintiff was assigned to Food Service and informed his supervisor that he could not serve food that day because there was meat on the menu. Taking this into consideration, the supervisor gave the inmate plastic gloves and directed him to serve the gravy, peas and soup. Plaintiff once again refused, on the grounds that there was meat in the soup. The supervisor repeated the order and plaintiff refused to comply; thus, he received an incident report and was placed in administrative segregation.

An investigation was conducted and a disciplinary hearing was held. Plaintiff claimed to be of the Rastafarian faith. Evidence at the hearing included a statement by the institution's Chaplain that the Rastafarian faith did not prohibit serving meat to another. The DHO concluded the plaintiff was guilty and imposed sanctions.

After a review of the record and case law, the court agreed that defendants were entitled to qualified immunity. Plaintiffs's supervisor took steps to remove him from

his assignment upon the inmate's initial complaint and issued plastic gloves to eliminate actual contact with the food. The disciplinary board verified the tenets of the Rastafarian faith by consulting with practicing Rastafarian outside the penitentiary, sanctions imposed on the plaintiff were done only after investigation and determination that the plaintiff's belief was not based on religious teachings but on personal preference. Employees acted in compliance with BOP policy and BOP policy did not require it's institutions to defer to such personal preferences.

Action was dismissed and all relief denied on June 12, 1992.

Bagguley v. Matthews, et al., Civil No. 88-3486-R, FKS, Personal Liability. In this action plaintiff is alleging due process violations and is seeking damages as well as declaratory relief. Plaintiff has based his claim on the Warden's refusal to request a waiver of his committed fine, thus keeping the plaintiff from qualifying for a transfer to the country of his citizenship for completion of his sentence.

Upon the courts review of the records, applicable regulations and case law, it was determined that the defendants had not violated the plaintiff's due process rights. Plaintiff's request for transfer was denied by the Office of Internal Affairs on August 30, 1988. Bagguley unsuccessfully challenged the denial for transfer, Bagguley v. Bush, 953 F.2d 660 (D.C. Cir. 1991), cert. denied, 112 S.Ct. 1698 (1992). Furthermore, there was nothing in the regulations which could be reasonably construed as establishing specific directives or mandating a particular outcome when specified circumstances occur. The Warden had no duty to seek permission from the sentencing court to pursue transfer when plaintiff had not satisfied his committed fine or to otherwise assist plaintiff in efforts to obtain a waiver of the fine; the decision to do so is discretionary.

The Court rejects plaintiff's claim of a deprivation of his constitutional rights and case was dismissed and all relief denied on June 3, 1992.

FCI OXFORD

McKoy v. Brennan, et al., Civil No. 90-C-622-S, FWIW, Personal Liability. In this action filed in September of 1990, plaintiff alleges that he was denied his constitutional right of access to the courts based on his allegations that the defendants denied him access to the Wisconsin Statutes.

In April of 1992, defendants filed a motion for summary judgment pursuant to Rule 56 of the Fed. R. Civ. Proc. Upon review of the following facts, defendant's motion for summary judgment was granted on June 10, 1992.

On May 28, 1990, plaintiff requested two books from the Wisconsin Statutes. On June 1, 1990 he was told by one of the defendants that the books were unavailable because they were on reserve for use by inmates enrolled in a college political science course. On August 13, 1990, the plaintiff submitted a complaint to another of the defendants concerning the denial of his request for the Wisconsin Statutes. This defendant advised the plaintiff that the books were not part of the FCI law library and referred him to the Legal Assistance to Institutionalized Persons Program (LAIP).

The Court concluded that a prison has no duty to provide state law library material if an inmate chooses not to accept adequate alternative services, Corigain v. Miller, 708 F.2d 1241, 1250 (7th Cir. 1983). It was undisputed that there was an adequate alternative resource (LAIP) available to the plaintiff which he failed to utilize. Plaintiff would also have to demonstrate that he was prejudiced in a state legal action by the defendant's actions, in order to prevail on a claim of denied access to the courts. Hossman v. Spradlin, 812 F.2d 1019 (7th Cir. 1987). There was no evidence that he was prejudiced in any way. Accordingly, the Court found that the defendants did not violate plaintiff's constitutional right of access to the courts.

FPC DULUTH

Abodeely et al. v. United States v. St. Luke's Hospital, Civil No. 5-89-122, FMN, FTCA. Plaintiffs in this action were alleging negligence on the part of medical staff in performing reasonable and necessary examinations, diagnosis, treatment and delayed transportation to the hospital resulting in permanent injury to his heart. He was seeking \$750,00.00 in damages and his wife was seeking \$100,000.00 in damages. None of the medical personnel included in this action were employees of the government. They were employed by St. Luke's Hospital which is a contractor of the government.

A compromise and settlement was reached by all parties in June 1992. The United States agreed to pay the plaintiffs twenty-two thousand five hundred dollars (\$22,500.00) in full settlement of any and all claims of injury, death or property damage arising from the same subject matter as the above action.

STAFF TRAVEL AND LEAVE

Daryl	July 6-10	DHO Training
Mike	July 10	Last Day at NCRO
Gary	July 3,27,28,29,30,31	Annual Leave
Jackie	July 22,23,24	Annual Leave

LITIGATION April, May, June 1992

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR	73	24	13	34	02		494	18	4		
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 April, May, June 1992

LOC	NUM	PROP	PI	APPR	AMT	DEN	PEND	OD	A/O	A/P
MXR										
NER										
SER										
NCR	123	87	36	22	144328	101	189	23		
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



**U.S. Department of Justice
Federal Bureau of Prisons
North Central Regional Office**

*Tower II, 8th Floor
400 State Street
Kansas City, KS 66101-2421*

August 9, 1999

**MEMORANDUM FOR CHRISTOPHER ERLEWINE,
ASSISTANT DIRECTOR/GENERAL COUNSEL
GENERAL COUNSEL AND REVIEW DIVISION**

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: Monthly Report (July, 1999)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
NCR	32	17	3	6	6	19	524	27	10	0	0.00

Total cases for Calendar Year 319

**NUM - Number of total lawsuits filed in the month
HC - Number of habeas corpus actions filed in the reporting period
FTC - Number of FTCA actions filed
BIV - Number of Bivens actions filed
OTH - Number of other actions filed, e.g., mental health, mandamus
ANS - Number of litigation reports completed**

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PEN - Number of cases pending
CLD - Number of cases closed
H/T - Number of hearings or trials (include in narrative)
SET - Number of settlements (include in narrative)
AWD - Number of Awards (include in narrative)
ADMINISTRATIVE CLAIMS:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
67	70	99	88	77	97	68					

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
188	208	228	215	207	230	192					

Total for Calendar Year 1468

FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	PRIVACY ACT	FOIA
ACTUAL ON-HAND	34	4
ACTUAL RECEIVED	35	3
ACTUAL PROCESSED	49	10
ACTUAL BACKLOG	9	0

Total for Calendar Year 486

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

ADVERSE DECISIONS

Robinson v. J.W.Booker, Atchison. v. J. W. Booker, Broderick v. J. W. Booker, Gentle v. Booker, and Thompson v. Booker. USP Leavenworth, District of Kansas
 U.S. District Court Judge, Richard D. Rogers recently decided that the BOP cannot use court-imposed sentence enhancements to deny inmates early release eligibility under 18 U.S.C. § 3621 (e)(2)(B). The court ordered the BOP to reconsider the inmates for early release. This case

for lack of prosecution.

PENDING CASES OF INTEREST

Collins v. LaVallee, USP Florence, District of Colorado

Defendants' motion to dismiss/summary judgment denied due to difference of material fact. USAO filed motion for extension of time in which to answer due to possibility that DOJ will take over case. The Government has withdrawn representation authority for three of the four named defendants. DOJ also withdrew on the fourth defendant, however, procured private counsel at government expense for that defendant. This case involves alleged improper use of force against the plaintiff. Investigation continues.

Chong-Won Tai v. U.S., et al., FCI Pekin, N.D. Illinois

FTCA action filed in the Northern District of Illinois stemming from a bus accident in May of 1996. Representation requests are being completed for the individual defendants so that a motion to remove them from the case can be filed.

Massey and Otten v. Helman, et al., FCI Pekin, C.D. Illinois

Appeal of class action medical case. Case has been set for oral argument before the Seventh Circuit on Wednesday, September 8, 1999 at 9:30 a.m..

Clark v. Keohane, et al., USMCFP Springfield, W.D. Missouri

Plaintiff alleged that he suffered from chronic myelogenous leukemia and that he required an autologous bone marrow transplant in order to survive.

David Crocker, et al. v. T. Durkin, et al., USP Leavenworth, District of Kansas

In this Bivens-styled action, the four plaintiffs allege that defendants actions were unjust and arbitrary in connection with decisions made concerning religious issues involving the Nation of Islam.

Turner v. USA, USP Florence, District of Colorado

Failure to protect case arising from inmate assault at USP. Government's Motion to dismiss denied last month. Draft answer provided to USAO. We have encountered unusual difficulties in the defense of this matter. One of the involved staff has recently pleaded guilty to violation of civil rights.

Sousa v. U.S.A., et al., USMCFP Springfield, W.D. Missouri

Plaintiff alleged that medical professionals mistakenly diagnosed his medical condition and

removed his right lung pursuant to an unnecessary medical procedure.

Boyce v. Cooksey, ADX Florence and NCRO, District of Kansas

Christopher Boyce, convicted spy, prison escapee, and bank robber, has sued Mr. Hershberger and Mr. Cooksey after being designated to ADX Florence. He was placed in the ADX for both safety and security reasons. The BOP has filed a motion for summary judgment and opposing counsel continues to find reasons to file additional or supplemental responses. The latest supplement seeks to move Boyce because a management variable was not approved for Boyce in a timely manner.

Barnett v. Knowles, USP Florence, District of Colorado

Bivens action alleging a defendant spoke to an inmate improperly and that staff member was subsequently disciplined. Plaintiff asserts he was retaliated against by the other defendants and that this retaliation took the form of assault. Plaintiff filed a response to the defendants' motion to dismiss. Previously granted representation for certain of the defendants is being reconsidered by DOJ.

Bracciodieta v. Holt, USP Florence, District of Colorado

TRO hearing held on July 22, via video-conferencing. Plaintiff requested to not be celled with two other inmates, be given protective custody status and be transferred. Adverse R and R issued on August 3, 1999, in which the Magistrate Judge found that the plaintiff had met the burden of proof for the issuance of injunctive order. Magistrate recommended that the plaintiff be housed alone until his transfer. Objections to the recommendation to be filed.

RELIGIOUS FREEDOM RESTORATION ACT CASES

Kikumura v. Hurley, FCI Florence, District of Colorado

RFRA case involving denial of pastoral visit at ADX. DOJ paying for outside counsel. Outside counsel filed motion to dismiss claims and status conference was held. Court allowed plaintiff until July 1 to file response to Motion to Dismiss. DOJ appeared on behalf of the defendants in their official capacities, arguing that even under the RFRA standard, the actions of the defendants were appropriate.

HEARINGS AND TRIALS

USA v. Reyes-Lopez, FCI Waseca, District of Minnesota

Inmate on inmate assault prosecution. While there was clear evidence that the defendant stuck the victim with an iron, the jury returned a not guilty verdict after only two hours. Interviews of jurors revealed that they believed the defendant acted in self-defense even though the victim was sleeping at the time of the attack. Matt Tveite provided assistance at trial.

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USA v. McElhiney, USP Leavenworth, District of Kansas

Drug conspiracy prosecution of Aryan Brotherhood inmates. Jury deadlocked at 10-2 with only two jurors finding the inmate not guilty. Mary Ellen Doucette and Rick Winter provided substantial assistance to the U.S. Attorney's Office in this matter. Additionally, Paul Pepper and Jenifer Grundy spent plenty of time coordinating witness interviews. A new trial will take place in September 1999.

UPCOMING HEARINGS OR TRIALS

Okai v. Verfurth, et al., FCI Greenville, S.D. Illinois

This Bivens action alleging excessive use of force during the aftermath of the 1995 disturbance is set for jury trial on Thursday, August 26, 1999. District Court Judge Murphy has ordered eleven inmates from several BOP institutions to be transferred to the Southern District of Illinois to testify on Okai's behalf.

United States v. David Michael Sahakian, United States v. Joseph L. Tokash, United States v. Rodney Allen Dent, United States v. Scott Lee Martin, United States v. Mitchell E. Kolb, United States v. John Derel Usher, USP Marion, Southern District of Illinois.

An initial appearance and arraignment was held in the above cases on July 7, 1999. The above named inmates are charged with possession of a prohibited object in violation of 18 U.S.C. § 1791(a)(2). Jury trial is set for 9:00 AM, September 13, 1999 before Chief U.S. District Judge J. Phil Gilbert in Benton, IL.

CRIMINAL MATTERS

USA v. Washington, FCI Pekin, C.D. Illinois

Inmate indicted under Title 18 U.S.C. § 1791(a)(2). Initial arraignment set for August 19, 1999.

United States v. David Armstrong, USP Florence, District of Colorado

On July 13, 1999, a former correctional officer pleaded guilty to a one count information charging him with conspiracy to violate the civil rights of inmates in violation of 18 USC § 241. Sentencing range between 51 and 63 months. Sentencing set for mid-September, however, we anticipate it will be continued. This case has received some media coverage and impacted the defense of several on-going civil cases.

is in line with previous decisions being appealed to the Tenth Circuit in Scroger, Ward, and Guido. An appeal brief was filed for these cases this month.

Grove v. Bureau of Prisons, FPC Duluth, District of Minnesota

U.S. District Court Judge James Rosenbaum held that the BOP was required to apply the old Crimes of Violence program statement to an inmate who had not even entered the residential drug treatment program at the time of filing. The judge held that the inmate had expressed sufficient intent to enter the program and should thus benefit from the rules in place at the time he filed his lawsuit. NCRO Legal is requesting appeal authorization through OGC.

Anderson v. Tenenbaum, RCH Rochester, District of Minnesota

U.S. District Court Judge Ann Montgomery held that the provisions of 28 C.F.R. § 549.43 were constitutionally inadequate because they did not satisfy due process. She found that FMC Rochester staff must now allow for an administrative hearing before an impartial medical decision maker when a person committed to the custody of the Attorney General has been administered psychotropic medication for a period exceeding twelve months. These hearing will take place in addition to the monthly monitoring program that exists in current BOP policy. NCRO Legal is not seeking an appeal of this ruling.

SETTLEMENTS OR JUDGMENTS

Stapleton v. O'Brien, FCI Oxford, Seventh Circuit

Stapleton was denied early release pursuant to § 3621(e)(2)(B) because a prior state conviction for Reckless Endangerment was found to be an "aggravated assault." While the BOP prevailed at the district court level, upon further review it was discovered that at the time of the inmate's conviction the state had an "aggravated battery" statute in place. Under the latest protocol for reviewing prior convictions from OGC, if a state has an aggravated battery or assault statute and the inmate was convicted of some other crime, he should not be found to have a prior aggravated assault. As a result of these circumstances the inmate was made eligible for early release.

DECISIONS OF INTEREST

Blanche Dyer v. U.S.A., MCC Chicago, N.D. Illinois

An inmate who was at MCC Chicago for two weeks in 1989 filed a tort claim with the U.S. Marshals Service regarding her medical treatment as a pre-trial inmate. U.S. District Court in Iowa granted summary judgment for the government, but the Eighth Circuit reversed and remanded to the U.S. District Court for the N.D. Illinois. District Court Judge dismissed case

cc. JDZ
MGP
MRA
HWP

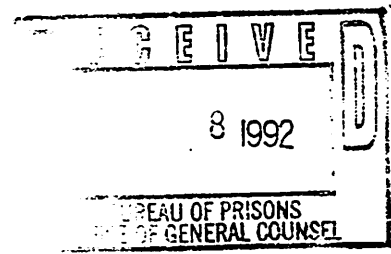
memorandum

8/92

DATE: September 1, 1992

REPLY TO
ATTN OF: *for David Hoak*
John R. Shaw, Regional Counsel
North Central Region
SUBJECT: MONTHLY REPORT - AUGUST

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



FEDERAL TORT CLAIMS ACT/EMPLOYEE CLAIMS

Received	58
Personal Property	39
Personal Injury	19
Wrongful Death	00
Closed	36
Overdue at End of Month	36
Pending at End of Month	223
Paid in Month	03
TOTAL PAID:	\$ 100.29

The total paid figure represents claims reported in previous months and updated to the current month when offer of settlement were accepted or paid.

There were six (6) medical treatment related claim to report for this period.

LITIGATION

New Actions Received	19
- Habeas	08
- Personal Liability	07
- Tort	03
- Injunctive/Other	01
Closed	12
Pending	506

PENDING TRIALS/HEARINGS

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

DECISIONS/SETTLEMENTS/CASES OF INTEREST

FPC DULUTH

Henderson v. Baird, et al., Civil Number 5-91-137, FMN. On June 3, 1992, the Magistrate Judge concluded the prison Institution Discipline Committee (IDC) proceeding, regarding the plaintiff, violated substantive due process in that there was no evidence to establish a serious injury or attempt to cause serious injury, and that a triable issue precluding summary judgment was created by plaintiff's claim that his procedural due process right created by Wolff v. McDonnell were violated when staff refused to allow him to call witnesses at the IDC hearing.

The AUSA filed a brief in opposition to the Magistrate's Report and Recommendation, in which he gave an excellent argument on the appropriate deference that should be afforded to prison officials in carrying out 18 USC § 4042 (discipline of charged or convicted persons).

USP MARION

Greene v. United States of America, Civil Number 89-3299-PMF, ILSD, Tort. Plaintiff alleged that staff were negligence in securing, inventorying and storing his personal property. Due to this negligence items were missing from the plaintiff's personal property and other items had sustained damaged. The court awarded damages against the defendants in the amount of thirteen dollars and 05/100 (\$13.05).

STAFF TRAVEL AND LEAVE

John	SEPTEMBER 01-11	Romania
	SEPTEMBER 14-18	New Attorney Training
Gary	SEPTEMBER 04	Annual Leave
Sonya	SEPTEMBER 14-18	New Attorney Training