

Docket as of August 20, 2003 2:44 pm

Web PACER (v2.4)

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**U.S. District Court**  
**U.S. District Court of Montana (Helena)**  
**CIVIL DOCKET FOR CASE #: 94-CV-90**  
**USA v. MT ST, et al**

Filed: 12/01/94  
Assigned to: Judge Charles C. Lovell  
Jury demand: Plaintiff  
Demand: \$0,000  
Nature of Suit: 440  
Lead Docket: None  
Jurisdiction: US Plaintiff  
Dkt# in other court: None  
Cause: 42:1983 Civil Rights Act

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USA, Attorney General of the  
United States of America  
    plaintiff

Sherry S. Matteucci  
[COR LD NTC]  
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Timothy R. Payne  
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[COR NTC]  
U.S. DEPARTMENT OF JUSTICE -  
CIVIL RIGHTS DIVISION  
Box 66400  
Washington, DC 20035-6400

v.

STATE OF MONTANA  
    defendant

P. Keith Keller  
[COR LD NTC]

KELLER REYNOLDS DRAKE JOHNSON &  
GILLESPIE  
50 S Last Chance Gulch  
3rd Floor  
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406-442-0230  
FTS 449-2256

David L. Ohler  
[COR LD NTC]  
MONTANA DEPARTMENT OF  
CORRECTIONS  
Box 201301  
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406-444-5682

Kimberly A. Kradolfer  
[COR NTC]  
MONTANA DEPARTMENT OF JUSTICE  
PO Box 201440  
Helena, MT 59620-1440  
406-444-2026  
FTS 444-4303

MARC RACICOT, in his official  
capacity as Governor of the  
State of Montana  
defendant

P. Keith Keller  
(See above)  
[COR LD NTC]

David L. Ohler  
(See above)  
[COR LD NTC]

Kimberly A. Kradolfer  
(See above)  
[COR NTC]

STATE OF MONTANA, DEPARTMENT  
OF CORRECTIONS  
defendant

P. Keith Keller  
(See above)  
[COR LD NTC]

David L. Ohler  
(See above)  
[COR LD NTC]

Kimberly A. Kradolfer  
(See above)  
[COR NTC]

RICK DAY, in his official  
capacity as Director, Montana  
Department of Corrections and  
Human Services  
defendant

P. Keith Keller  
(See above)  
[COR LD NTC]

David L. Ohler  
(See above)  
[COR LD NTC]

Kimberly A. Kradolfer

(See above)  
[COR NTC]

ADMIN, DEPT, Administrator of  
the Corrections Division of  
the MT Dept of Corrections and  
Human Services, in his  
official capacity  
defendant

P. Keith Keller  
(See above)  
[COR LD NTC]

David L. Ohler  
(See above)  
[COR LD NTC]

Kimberly A. Kradolfer  
(See above)  
[COR NTC]

MIKE MAHONEY, in his official  
capacity as Deputy Warden,  
Montana State Prison, and the  
Dept of Corrections and Human  
Services  
defendant

P. Keith Keller  
(See above)  
[COR LD NTC]

David L. Ohler  
(See above)  
[COR LD NTC]

Kimberly A. Kradolfer  
(See above)  
[COR NTC]

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## DOCKET PROCEEDINGS

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DATE	#	DOCKET ENTRY
12/1/94	1	COMPLAINT - Original (Summons(es) issued) (dmz) [Entry date 12/06/94]
12/12/94	2	RETURN OF SERVICE EXECUTED upon defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept on 12/7/94 (dmz) [Entry date 12/19/94]
12/22/94	3	ANSWER by defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept to [1-1] (dmz) [Entry date 12/30/94]
12/29/94	4	ORDER by Judge Charles C. Lovell ; PPTC set for 10:00

2/9/95, Hlna - cnsl for parties to file PPT stmt by 1/25/95, to include brief factual outline of case & address issues set forth in Local Rules, cnsl to file prediscovery disclosure stmt by 2/1/95, failure to comply will result in imposition of sanctions (cc: Keller, Matteucci, Ohler, Payne, Weinstein, CCL, TC, Tina, USM, AUSA-Hlna) (dmz) [Entry date 12/30/94]

1/6/95 5 AMENDED ANSWER [3-1] by defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept (dmz) [Entry date 01/13/95]

1/12/95 -- LODGED, OBJECTIONS TO MAG PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECOMMENDED ORDER (in excess of 20 pgs) (baf) [Entry date 01/18/96]

1/25/95 6 PRELIMINARY PRETRIAL STATEMENT of facts by defendant (dmz) [Entry date 01/26/95]

1/25/95 7 PREDISCOVERY DISCLOSURE STATEMENT of facts by defendant (dmz) [Entry date 01/26/95]

1/25/95 8 PRELIMINARY PRETRIAL STATEMENT of facts by plaintiff (dmz) [Entry date 01/26/95]

2/2/95 9 PREDISCOVERY DISCLOSURE STATEMENT of facts by plaintiff USA (dmz) [Entry date 02/06/95]

2/9/95 10 MINUTES: for preliminary pretrial conference before Judge Charles C. Lovell; C/R: Tina Brilz. Sherry Matteucci, Timothy R. Payne, Laurie Weinstein & Scott Wurster pr for Plf. Keith Keller, Dave Ohler, Bill Gianoulis pr for Dft. Crt asks re settlmt discussns. Ms. Matteucci says not fruitful and asks for expedited trial. Dft Keller asks for further discov. Plf argues agnst further discov. Much discussion had by both sides re protective custody issue and whether there is need for immediate action on this. Plf feels there may be the need for this and motn for prelim inj may be filed. Discussn had re if protective custody issue is severed, when cnsl could be ready for trial. Plf ready now, dft asks 6 mos. Options for dealing with this and the related case are discussed. Crt suggests a 30-day period for preliminary discovery by dft. on the issues only of jurisdiction and affirmative defenses. This to close on 3/10/95. Motns re dft dfns on 3/11/95. Then govt motn to strike affirm dfns and dft motn for S.J. Dft to have 10 days to respond & 5 days for govt rply brf. All discov to be complete by 7/3/95. Motn ddline 7/17/95; status rpt to crt 5/8/95; atty conf to be held wk of 10/16/95. FPTO to be lodged 10/30/95. Sttlmt date is 10/23/95. Trial could be either 12/4/95 or 1/8/96, depending on length of trial. Cnsl agree 1/8 trial date is better. Since discov closure is 7/3/95 and trial not til 1/8, approx 6 mos goes by and govt asks for supplement discovery on some issues closer to trial date. Dft agrees but wants cutoff date of perhaps October. Crt asks cnsl to file briefs re expert witns and perhaps refining dates if they might agree on dates. Govt asks that general discov not begin til motns are decided on

jurisdictional issue - say 30 days. Crt says dates will be adjusted and will issue an order. Adj. (baf)

- 2/9/95 11 STENO NOTES of proceedings before Judge Charles C. Lovell ( Court Reporter: Tina Brilz) Hearing date: 2/9/95 status report minutes [10-2] PRELIMINARY PRETRIAL CONF. (baf)
- 2/10/95 12 ORDER by Judge Charles C. Lovell, Cnsl shall adhere to following sched: first wave of discovery limited to subjects of crt's jurisdiction and Dfts' affirmative defenses, which shall be concluded by 3/10/95. No other disc in other subject matter areas shall be had without crt's permission until crt rules on mots. Gov't shall file its mot to strike affirmative defenses with brief on or before 3/17/95, dfts shall have 10 days to file ans brf, pltf reply w/in 5 days. Dfts shall file their mot for summary judgment as to crt's jurisdiction with opening brf on or before 3/17/95. Brfg shall follow Rule 220-1. Parties shall comly with requirements for summary judgment brfg imposed by Rule 220-4. After these preliminary mot have been ruled upon, a second wave of unlimited disc may commence unless precluded by crt's order. If prior to opining of unlimited disc, a party has a particular need for disc relating to request for preliminary injunction, that party shall apply to crt for leave to proceed with necessary disc. ; Parties shall jointly submit a proposed order setting ached for disclosure of exparts and exchange rpts on or before 2/24/95 ; All discovery shall be completed by 7/3/95. All mots shall be filed on or before 7/17/95. Brfg shall be accordance with Rule 220.1. All ans to written disc shall be made by 7/3/95. cnsl for each party shall file written status rpt on or before 5/8/95. Cnsl for pltf shall convene attys' conf during wk of 10/16/95 for purpose of completing final Pretrial Order. Final Pretrial Order shall be lodged on or bef 10/30/95. Settlement Date is 10/23/95. Final Pretrial Conf shall be held on 11/30/95 at 1:30 pm at Helena. Trial brf be submitted by 11/16/95. Non-Jury trial set for 9:30 1/8/96 at Helena as case No. 1. Trial setting is subject to court's criminal calendar, which must be set in accordance with Speedy Trial Act. Cont of any deadline does not automatically extend any unspecified deadlines. cc: CCL, Clk, USM, Crt Rpr, Payne, Keller (gar) [Entry date 02/13/95]
- 2/14/95 13 ORDER by Judge Charles C. Lovell - 1st wave of disc limited to subjects of crt's juris & defts' affirmative defenses to be concluded by 3/10/95, no other disc in other subject matter areas w/out crt's permission, until the crt rules on the mtns discussed in next 2 paras: govt to file mtn to strike affirmative defenses, tog w/brief by 3/17/95, defts to file mtn for sj by 3/17/95 - then 2nd wave of disc may commence - cnsl for each party to file status rpt by 6/15/95, all disc completed by 8/15/95, all ans to written disc by 8/15/95, pltf expert witness list by 8/15/95, all mtns except mtns in limine by 9/1/95, deft to disclose expert witness list by 9/15/95, cnsl for pltf to convene atty conf during week of 10/30/95; pretrial order ddl set for 11/10/95, sett date is 11/6/95, parties to complete

all suppl expert tours and disc by 11/27/95, FPTC set for 11/30/95, 1:30 pm, each party to submit trial brief by 11/17/95, exhibits no later than 11/17/95, mtns in limine w/opening brief to be filed by 12/8/95, set for trial w/out jury for 1/8/96, 9:30 am (cc: all counsel) (dmz) [Entry date 02/15/95]

- 2/17/95 14 PROOF/NOTICE OF SERVICE by defendant of 1st requests for admissions & interrogs (dmz) [Entry date 02/27/95]
- 3/2/95 15 MOTION by plaintiff USA for preliminary injunction, and for permanent injunction w/c/s (gar) [Entry date 03/06/95]
- 3/2/95 -- REMARK Bound exhibits to Motion #15 in expand. folder with exhibit "F" sealed purs to to Crt Order also in folder. (gar) [Entry date 03/06/95]
- 3/2/95 16 MEMORANDUM/BRIEF by plaintiff USA in support of motion for preliminary injunction [15-1], of motion for permanent injunction [15-2] w/c/s (gar) [Entry date 03/06/95]
- 3/2/95 17 MOTION by plaintiff USA to Hold Exhibit "F" of Motion for Prel & Perm Inj Under Seal w/c/s (gar) [Entry date 03/06/95]
- 3/3/95 18 ORDER by Judge Charles C. Lovell granting motion to Hold Exhibit "F" of Motion for Prel & Perm Inj Under Seal [17-1] Exhibit F accompanying US Mot for Prel and Perm Inj and which indentifies specific inmates who may be at risk of harm from other inmates, shall remain under seal. cc: Payne, Keller, Ohler, Matteucci (gar) [Entry date 03/06/95]
- 3/7/95 19 PROOF/NOTICE OF SERVICE by defendant of resp to 1st req for admissions (dmz) [Entry date 03/09/95]
- 3/7/95 20 ORDER by Judge Charles C. Lovell - Plff's request for lv to conduct lmtd discovery to suppt Plf's motn for prelim inj. is GRANTED. Further Ord such discov to be limited to 1) upon rsnbl notc to dfts, a 2-3 day on-site tour of MT State Prison during the wk of 3/13/95, utilizing an expert in corrections and including access to MSP facilities and grounds, relevant MSP documts including inmate records, and interviews of MSP officials and staff; 2) private inmate interviews of MSP inmates by Plf's attys and/or expert; and 3) submission of interrogatories and requests for admissions to Dfts on matters related to issue of protective custody. cc: called and cpy to Payne, Weinstein, Reynolds, CCL; faxed cpy to Payne (baf) [Entry date 03/09/95]
- 3/17/95 21 MOTION by plaintiff USA to strike Affirmative Defenses, and for partial summary judgment w/c/s (gar) [Entry date 03/23/95]
- 3/17/95 22 MEMORANDUM/BRIEF by plaintiff in support of motion to strike Affirmative Defenses [21-1], of motion for partial summary judgment [21-2] w/c/s (gar) [Entry date 03/23/95]
- 3/17/95 -- PROPOSED order submitted by plaintiff USA, re Mot to Strike and for Partial Sum Jdgmt (gar) [Entry date 03/23/95]

3/17/95 24 MEMORANDUM/BRIEF by defendants in support of motion for summary judgment [23-1] w/c/s (gar) [Entry date 03/23/95]

3/17/95 26 MOTION by defendants for leave to file documents w/c/s (gar) [Entry date 03/23/95]

3/17/95 24 RESPONSE by defendants to motion for preliminary injunction [15-1], to motion for permanent injunction [15-2] (kjh) [Entry date 04/10/95]

3/20/95 23 MOTION by defendant for summary judgment w/c/s (gar) [Entry date 03/23/95]

3/20/95 25 STATEMENT of uncontroverted facts by defendants w/c/s (gar) [Entry date 03/23/95]

3/22/95 27 ORDER by Judge Charles C. Lovell referring to Mag Judge Leif B. Erickson the motion for preliminary injunction [15-1], and the motion for permanent injunction [15-2] Case referred to Mag Leif B. Erickson for proposed findings and recs for disp of motions. cc: CCL, LBE, Ohler, Keller, Payne (gar) [Entry date 03/23/95]

3/23/95 -- FILE DELIVERED to Clerk, Missoula for Judge Erickson (gar)

3/27/95 28 RESPONSE by defendants to motion to strike Affirmative Defenses [21-1], to motion for partial summary judgment [21-2] (kjh) [Entry date 03/31/95]

3/31/95 29 RESPONSE by plaintiff USA to motion for summary judgment [23-1] (kjh) [Entry date 04/10/95]

3/31/95 29 REPLY by plaintiff USA to response to motion for preliminary injunction [15-1] file delivered to: LBE (kjh) [Entry date 04/10/95]

4/7/95 30 ORDER by Judge Charles C. Lovell granting motion for leave to file documents [26-1] (cc: all counsel) (kjh) [Entry date 04/13/95]

4/11/95 31 REPLY by defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept to response to motion for summary judgment [23-1] (kjh) [Entry date 04/14/95]

4/26/95 32 ORDER by Judge Charles C. Lovell referring to Mag Judge Leif B. Erickson the motion for summary judgment [23-1], motion to strike Affirmative Defenses [21-1], motion for partial summary judgment [21-2] for prop F&R (cc: Keller, Ohler, Weinstein, Payne) (dmz) [Entry date 04/27/95]

5/1/95 33 ORDER by Mag Judge Leif B. Erickson setting hearing on motion for summary judgment [23-1] 9:30 5/23/95 setting hearing on motion response [24-1] 9:30 5/24/95 in Missoula. (cc: all counsel) (baw)

5/4/95 34 MOTION by defendant MT ST, defendant Marc Racicot,

defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept to continue portion of hearing set for 5/24/95 (baw) [Entry date 05/05/95]

5/5/95 -- PROPOSED order modifying hearing sched. submitted by defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept (baw)

5/5/95 -- REMARK-Copy of motion and order delivered to LBE. (baw)

5/9/95 36 RESPONSE by plaintiff USA to Defendants' Motion to Continue Portion of Hearing (kjh) [Entry date 05/11/95]

5/10/95 35 ORDER by Mag Judge Leif B. Erickson granting motion to continue portion of hearing set for 5/24/95 [34-1] ; in-court hearing set for 9:30 5/24/95 in Missoula to be continued until 6/8/95 at the conclusion of the proceedings. (cc: all counsel) (baw) [Edit date 05/15/95]

5/10/95 -- FILE DELIVERED to Law Clerk for LBE for motions (baw)

5/10/95 37 REPLY by defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept to response to motion to continue portion of hearing; file delivered to: LBE/Law Clerk (baw) [Entry date 05/11/95]

5/11/95 38 FINDINGS AND RECOMMENDATION by Mag Judge Leif B. Erickson concerning motion for summary judgment [23-1], motion to strike Affirmative Defenses [21-1], motion for partial summary judgment [21-2] - regarding standing & validity of A.G.'s statutory certification only. Objections to F/R due date: May 26, 1995. (cc: all counsel) (mgs) [Entry date 05/12/95]

5/15/95 39 MOTION by plaintiff USA to renew March 7, 1995 Discovery Order (mgs)

5/15/95 40 ORDER by Mag Judge Leif B. Erickson granting motion to renew March 7, 1995 Discovery Order [39-1] until onset of the hrg 5/24/95; that USA permitted to conduct further discovery in prep for 5/24/95 proceedings, consistent w/order of 3/7/95. (cc: all counsel - cpy FAX'd to atty Payne) (mgs)

5/15/95 41 MOTION/petition by plaintiff USA for writ of habeas corpus ad testificandum to USM & MSP to produce certain named inmates for hearing 5/24/95. (mgs)

5/15/95 42 ORDER by Mag Judge Leif B. Erickson granting motion for writ of habeas corpus ad testificandum [41-1], and setting May 24, 1995 hearing for 9:00 a.m. @ Powell County Courthouse in Deer Lodge, MT. (cc: all counsel, Clk-Powell Cty, USM, RPR) (mgs)

5/15/95 -- WRIT of habeas corpus ad testificandum issued to USM & Warden Mike Mahoney to produce inmates William Arnot,



William Bigby, Fred Blake, Kelly Davey, Jerry Gillum, Keith Krause, Reno McLaughlin, Glen Nelson, Tim Owens, Vance Pope, James Staedt & Floyd Wing, Jr. at hrg in Deer Lodge May 24, 1995 @ 9:00 a.m. Orig w/3 cpys & cert+3 cpys of Order snt to USM, Blgs w/Form USM-285 for svc. (mgs)

- 5/16/95 43 MOTION by defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept to change place of hearing, and to deny petition for writ of habeas corpus testificadum (baw) [Entry date 05/19/95]
- 5/17/95 44 RESPONSE by plaintiff USA to motion to change place of hearing [43-1], to motion to deny petition for writ of habeas corpus testificadum [43-2] (baw) [Entry date 05/19/95]
- 5/19/95 -- BLUE FILES DELIVERED to LBE for motion for SJ/mo to strike for Tuesday's hearing. (baw)
- 5/22/95 45 ORDER by Mag Judge Leif B. Erickson granting motion to change place of hearing [43-1], denying motion to deny petition for writ of habeas corpus testificadum [43-2] (cc: all counsel) (kjh)
- 5/22/95 46 PETITION FOR WRIT OF HABEAS CORPUS ad testificandum (kjh) [Entry date 05/23/95]
- 5/22/95 47 STATEMENT OF GENUINE ISSUES by plaintiff USA in response to [21-2] (kjh) [Entry date 05/23/95]
- 5/22/95 -- SUBPOENA issued at request of plaintiff, as to Kenneth Kirby. Original handed to atty for pltf for svc, by clerk, Butte (kjh) [Entry date 05/23/95]
- 5/23/95 -- PROPOSED Order for Writ of HC submitted by plaintiff USA (kjh)
- 5/23/95 48 RETURN OF SERVICE (USM 285) of Writs of HC ad testificandum issued 5/15/95 (kjh)
- 5/23/95 49 ORDER by Mag Judge Leif B. Erickson granting habeas corpus petition [46-1] (cc: all counsel) (kjh)
- 5/23/95 -- Issued WRIT of Habeas Corpus ad testificandum for Joseph Snider, William Henderson, Patrick Gibson and Charles Gravely. Copy handed to pltf cnsl and FAX'd to USMS, Blgs w/USM 285. Original writ w/3 copies, 1 cert & 3 copies of Order and USM 285 mailed to USMS, Blgs. (kjh)
- 5/23/95 50 MINUTES before Mag Judge Leif B. Erickson : Attys Timothy Payne and Laurie Weinstein present for plaintiff and David Ohler and P. Keith Keller present for defendants. Atty Payne raises issue re hearing on Motion for Preliminary and Permanent Injunction set for 5/24/95 regarding testimony of protective custody inmates and moves that the hearing be closed to the media, that the transcript be sealed, and that the correctional officers present in court be ordered not to discuss testimony given by the inmates. Atty Keller

does not oppose closing hearing to media and sealing transcript, but feels that correctional officers should be allowed by relate testimony to prison authorities . Crt considers said motions to be motions in limine and grants same, closing the hearing to the media, sealing the transcript, and prohibiting correctional officers from discussing testimony of inmates. Counsel may relate said testimony to prison authorities if necessary; Argument heard on defendants' motion for summary judgment [23-1] and plaintiff's motion to strike [21-1] and for partial summary judgment [21-2] and the motions were taken under advisement. C/R: Julie Lake (kjh)

5/24/95 51 MINUTES: Evidentiary hearing on plaintiff's Motion for Preliminary and Permanent Injunction began 5/24/95 at Powell County Courthouse, before Mag Judge Leif B. Erickson, Cnsl Timothy Payne, Christopher Cheng and Laurie Weinstein present for plaintiff and cnsl David Ohler and P. Keith Kelle, and Bureau Warden Michael Mahoney present for defendants. Govt oral motion for admission of atty Cheng PHV, granted. Govt motion to exclude witnesses and public from courtroom granted, and govt motion that transcript of this proceeding be filed under seal and that inmate witnesses be identified in transcript by numbers rather than by name granted. E. Eugene Miller s/e for govt. Gove exhibit 1 adm w/o objections and exhibits 2 and 3 refused. Dft mtn/strike portion of testimony of Mr. Miller denied. Exhibits 4-6 adm w/o obj. Inmates No.1, 2 and 3 s/e for govt. Exhibits 7 thru 14 adm w/o obj. Govt mtn that court order that inmate No. 3 continue to be held in protective custody pending resolution of this matter and not be transferred to low side denied. Govt mtn that said witness be allowed access to phone contact with US Atty office granted. Further hearing continued to 5/25/95 at 12:00 noon, Powell County Courthouse. C/R: Greg Frank (kjh) [Entry date 06/08/95]

5/25/95 52 MINUTES: Evidentiary Hearing on plaintiff's Motion for Preliminary and Permanent Injunction continued, before Mag Judge Leif B. Erickson, cnsl Payne, Cheng and Weinstein present for plaintiff and cnsl Ohler and Keller and Bureau Warden Michael Mahoney present for defendant. Prior to continuation of testimony, crt expressed concern regarding possible pattern of conduct by prison officials which may have intimidating affect on inmates, i.e., transportation officer allegedly dropping penknife on floor during preparation for transport to court on 5/24, and inmate witness being informed prior to coming to court of his being reclassified from protective custody to the low side. Atty Keller advises that he personally investigated these matters and informs the court that the article dropped by the transportation officer was fingernail clippers rather than a penknife and that the inmate reclassification issue was routine 30 day reclassification evaluation. Prison officials agree to leave said inmate in protective custody at least until the next 30 day evaluation. Govt oral motion for time to prepare and file supplemental documents regarding SJ mtns argued on 5/23 opposed. Crt orders

written motion and brf be filed and matter will be dealt with when briefing is completed. Proposed Protective Order presented regarding restrictions on use of transcript and dissemination of information about inmate witnesses and content of testimony, etc. discussed. Atty Keller to redraft. Inmate witnesses No. 4 thru 10 s/e for govt. Exhibits 15 & 18 adm over obj and 16 and 17 adm w/o obj. Further Hearing continued to 5/26/95 at 9:30 a.m., Powell County Courthouse. C/R: Greg Frank (kjh)  
[Entry date 06/08/95]

- 5/26/95 53 MINUTES: before Mag Judge Leif B. Erickson. Evidentiary Hearing on plaintiff's Motion for Preliminary and Permanent Injunction continued, cnsl Payne, Cheng, and Weinstein present for plaintiff and cnsl Ohler and Keller and Bureau Warden Mike Mahoney present for defendant. Atty Payne requesta that govt be provided with list of cases in which State's expert has testified in last 4 yrs, list of publications authored by said expert and list of docs reviewed and persons interviewed in preparing his rpt and the dates expert toured the prison. Atty Keller advises state can provide list of cases, publications and dates of tour and will attempt to supply list of documents reviewed and persons interviewed. Govt exhibits 19-1 thru 19-3 adm over obj; 19-4 thru 19-6 and 20 thru 22 and 23-1 thru 23-5 adm w/o obj; exhibit 24 reserved; Govt rests. Michael J. Micu, Kenneth Neubauer, Walter Cuchine, Leslie Lyle Frank, Jr. and Michael Mahoney s/e for dft. Further hearing continued to 6/8/95 @ 9:00 a.m., Missoula. C/R: Tammy Stuckey (kjh) [Entry date 06/13/95]
- 5/26/95 54 PROTECTIVE ORDER by Mag Judge Leif B. Erickson: that court proceedings of 5/24,25 and 26 be closed to public and media; that transcripts of said hearing be sealed and available only to counsel for the parties, the parties, their managers and experts, and that the transcripts not contain the names of inmate witnesses, only a number corresponding to a number assigned to that witness reflecting his order of appearance; and that all MSP officers present at proceedings are enjoined from discussing the appearance of inmate witnesses and the content and nature of their testimony with anyone. (cc: all counsel) (kjh) [Entry date 06/13/95]
- 5/26/95 55 OBJECTIONS by defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept to [38-1] (kjh)  
[Entry date 06/13/95]
- 6/1/95 56 RETURN OF SERVICE by plaintiff USA of Writ of Habeas Corpus issued 5/23/95 (kjh) [Entry date 06/13/95]
- 6/7/95 57 MOTION by plaintiff USA to limit testimony of dfts' expert (kjh) [Entry date 06/14/95] [Edit date 06/15/95]
- 6/7/95 58 MEMORANDUM/BRIEF by plaintiff USA in support of motion to limit testimony of dfts' expert [57-1] (kjh)  
[Entry date 06/14/95]

6/7/95 -- PROPOSED Order granting Motion to Limit Testimony of dfts' expert, submitted by plaintiff USA (kjh)  
[Entry date 06/14/95]

6/8/95 59 MINUTES: Hearing on pltf's Motion for Preliminary and Permanent Injunction continued, before Mag Judge Leif B. Erickson; cnsl Tim Payne present for pltf and David Ohler and Keith Keller present for dfts. Bureau Warden Mike Mahoney also present. Pltf's motion to limit testimony of dfts' expert argued and denied [57-1]. Gary W. DeLand s/e for dft and dft rests. Cnsl to submit proposed findings of fact and conclusions of law by 6/22/95. Matter will then be deemed submitted. C/R: Daina Hodges Hodges (kjh)  
[Entry date 06/14/95]

6/14/95 -- FILE DELIVERED to Helena from Missoula at request of MB (kjh)

6/15/95 60 STATUS REPORT by defendant - no probs in discovery process & no sett negs to date (dmz)

6/15/95 61 STATUS REPORT by plaintiff - the only disc prob involves defts' potential obj based on privacy rights or other bases to the US access to inmate & personnel records, presently US believes this may be resolved partially w/defts, US will attempt to resolve all disc disputes w/defts as they arise, no sett negs (dmz)

6/15/95 62 MOTION by plaintiff for order to lift stay on discovery (dmz)

6/15/95 63 MEMORANDUM/BRIEF by plaintiff in support of motion for order to lift stay on discovery [62-1] (dmz)

6/15/95 -- PROPOSED order submitted by plaintiff (dmz)

6/15/95 65 MOTION by plaintiff for order denying defts' mtn for sj (dmz)  
[Entry date 06/20/95]

6/15/95 66 MEMORANDUM/BRIEF by plaintiff in support of motion for order denying defts' mtn for sj [65-1] (dmz)  
[Entry date 06/20/95]

6/15/95 -- PROPOSED order submitted by plaintiff (dmz)  
[Entry date 06/20/95]

6/20/95 64 TRANSCRIPT filed of Proceedings May 23-26 and June 8, 1994; Court Reporter-Tammy Stuckey. (baw)

6/20/95 -- REMARK LBE keeping doc 64(trans of May 23-26 and June 8, 1994, hearing held in Msla and Deer Lodge (gar)  
[Entry date 06/26/95]

6/21/95 67 MOTION by plaintiff to extend time to file Findings of Fact and Conclusions of Law w/c/s (gar)  
[Entry date 07/06/95]

6/21/95 68 MEMORANDUM/BRIEF by plaintiff in support of motion to extend time to file Findings of Fact and Conclusions of Law [67-1] w/c/s (gar) [Entry date 07/06/95]

6/21/95 69 ORDER by Mag Judge Leif B. Erickson granting motion to extend time to file Findings of Fact and Conclusions of Law [67-1] ; Deadline for submission of proposed findings is 7/5/95 (cc: all counsel) gar for mgs (gar) [Entry date 07/06/95]

6/21/95 70 RESPONSE by defendant to motion for order denying defts' mtn for sj [65-1], to motion for order to lift stay on discovery [62-1] w/c/s (gar) [Entry date 07/06/95]

6/21/95 71 RESPONSE by defendant to motion for order to lift stay on discovery [62-1] w/c/s (gar) [Entry date 07/06/95]

6/27/95 72 ORDER by Judge Charles C. Lovell, Subsection of Dfts' Motion for Summary Judgment regarding standing and validity of AG's statutory certification if denied. Subsection of Pltf's Motion to Strike regarding Dfts' Fourth and Affirmative Defense and for Partial Summary Judgment regarding standing and validity of AG's statutory certification is granted. cc: CCL, LBE, Keller, Ohler, Payne (gar) [Entry date 07/06/95]

7/5/95 73 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by defendant w/c/s (gar) [Entry date 07/06/95]

7/6/95 -- FILE DELIVERED to Clerk, Missoula for Judge Erickson consisting of 3 vols (gar)

7/6/95 74 PROPOSED FINDINGS of fact and conclusions of law by plaintiff USA in support of motion for preliminary and permanent injunction. (baw) [Entry date 07/11/95]

7/11/95 -- FILE DELIVERED to LBE (baw)

9/5/95 75 ORDER by Judge Charles C. Lovell granting motion for order to lift stay on discovery [62-1] ; parties shall submit joint proposed amended sched order for crts appvl on or bef 9/22/95 and referring to Mag Judge Leif B. Erickson the motion for order denying defts' mtn for sj [65-1] (cc: CCL, LBE, Payne, Keller, Ohler (gar)

9/5/95 -- FILE DELIVERED to Clerk, Missoula for Judge Erickson consisting of 3 volumes (gar)

9/21/95 76 PROPOSED SCHED ORDER submitted by Dfts purs to Court's Order w/c/s (gar) [Entry date 09/29/95]

9/28/95 77 ORDER by Judge Charles C. Lovell, All disc be completed by 3/31/96; ; all motions except mots in limine be filed on or before 4/15/96 ; all ans to written disc be made by 3/31/96; written status reports be filed on or before 1/15/96; Pltfs shall provide expert witness disclosures on 1/15/96; Dfts shall provide expert witness disclosures on 2/15/96; Pltfs will provide any rebutal expert disclosures by 3/15/96. Notwithstanding the discovery completion deadline, expert tours may be conducted after disc deadline and within a reasonable amt of time before trial so that experts can testify to then current conditions at time of trial. All parties will supplement expert discl following

any expert tours between time of disclosure and trial. It is anticipated that prties will conduct expert tours in March and supplement tours in May or June and disclosures will be completed by 6/30/96. Parties will exchange exhibits by 6/30/96. Final pretrial conf will be held 7/16/96 and mots in limine filed that date. The trial will be set by Court after 7/22/96. Trial brfs be submitted by 6/30/96; exhibits be submitted no later than 6/30/96. cc: Ohler, Keller, Payne (gar) [Entry date 09/29/95]

- 9/29/95 78 FINDINGS AND RECOMMENDATION by Mag Judge Leif B. Erickson recommending that the remaining portions of defendants' motion for summary judgment [23-1] be denied, except for that part of said motion which addresses inmates in need of protection (said issue is reserved and will be the subject of separate findings and recommendation); recommending that the remaining portions of plaintiff's motion to strike Affirmative Defenses [21-1] and motion for partial summary judgment [21-2] be granted. Objections to F/R due date: 10/19/95 (cc: all counsel) (kjh) [Entry date 09/30/95]
- 10/2/95 79 ORDER by Judge Charles C. Lovell pltf's atty to convene atty conf during week of 7/15/96; FPTO ddl set for 7/30/96, final pretrial conference set for 10:30 8/16/96, Hlna; trial set for 9:30 9/16/96, Hlna; settlement ddl set for 7/22/96 pties to attend status conf set for 1/12/96, 10:30 am, Hlna, 2nd status conf set for 4/12/96, 10:30 am, Hlna, prop voir dire & jury inst due 8/5/96, (cc: Ohler, Payne, Keller, AUSA-Hlna,Blgs, Tina, USM, PRO, CCL) (dmz)
- 10/18/95 80 OBJECTIONS by defendant to Findings and Recommendation (dmz) [Entry date 11/14/95]
- 10/18/95 81 MOTION by plaintiff for temporary restraining order to restrain defts from transferring MSP inmate Henderson (dmz) [Entry date 11/14/95]
- 10/18/95 82 MEMORANDUM/BRIEF by plaintiff in support of motion for temporary restraining order to restrain defts from transferring MSP inmate Henderson [81-1] (dmz) [Entry date 11/14/95]
- 10/19/95 83 RESPONSE by defendant to motion for temporary restraining order to restrain defts from transferring MSP inmate Henderson [81-1] (dmz) [Entry date 11/14/95]
- 10/20/95 -- FILES 1 & 2 DELIVERED to Helena Div. Ofc (mgs) [Entry date 10/24/95]
- 10/20/95 84 ORDER by Judge Charles C. Lovell setting hearing on motion for temporary restraining order to restrain defts from transferring MSP inmate Henderson [81-1] 1:30 11/9/95 (cc: Weinstein, Keller, Ohler, Payne, USM, Tina, AUSA, CCL, TC) - note from MKB that she had called both parties' cnsl (dmz) [Entry date 11/14/95]
- 10/24/95 -- FILE #3 DELIVERED to Helena Div. Ofc (mgs)

11/7/95 85 REPLY by plaintiff to response to motion for temporary restraining order to restrain defts from transferring MSP inmate Henderson [81-1] (dmz) [Entry date 11/14/95]

11/7/95 86 MOTION by plaintiff to produce various inmate records requiring pltf to maintain confidentiality of inmate records or other docs produced which identify MSP inmates by name (dmz) [Entry date 11/14/95]

11/7/95 86 MOTION by plaintiff for protective order re: production of documents (dmz) [Entry date 11/14/95]

11/7/95 87 MOTION by plaintiff to extend 11/9/95 hrg date (dmz) [Entry date 11/14/95]

11/7/95 88 NOTICE by plaintiff of taking deposition of Ken Neubauer, Candace Neubauer, Jerry Isaacson, Mike Mahoney on 11/9/95 at Deer Lodge, MT (dmz) [Entry date 11/14/95]

11/7/95 89 ORDER by Judge Charles C. Lovell granting motion to extend 11/9/95 hrg date [87-1] crt will shortly issue another order setting this matter for hrg (cc: Keller (called Brenda), Ohler (left message), Payne (left message), USM, AUSA, Tina, CCL, TC) (dmz) [Entry date 11/14/95]

11/7/95 90 ORDER by Judge Charles C. Lovell granting motion for protective order re: production of documents [86-1], granting motion to produce various inmate records requiring pltf to maintain confidentiality of inmate records or other docs produced which identify MSP inmates by name [86-1] (cc: called & FAXed to Keller, Ohler, Gallinger, copies to all parties including Payne) (dmz) [Entry date 11/14/95]

11/15/95 97 TRANSCRIPT filed of proceedings taken 5/23/95 at Msla, sealed by order dated 5/24/95, docket item #54 - kept in expando folder (dmz) [Entry date 12/15/95] [Edit date 12/15/95]

11/27/95 91 ORDER by Judge Charles C. Lovell ; preliminary injunction hearing set for 11:00 12/15/95, Hlna (cc: Ohler, Keller, Payne, USM, AUSA, CCL, Tina, TC) (dmz) [Entry date 11/28/95]

11/29/95 92 ORDER by Judge Charles C. Lovell ; in-court hearing set for 1:30 12/15/95, Hlna, instead of 11:00 am (cc: Payne, Wellenstein, Keller, Ohler, CCL, TC) (dmz)

12/7/95 93 ATTORNEY APPEARANCE for plaintiff by William G. Maddox (dmz) [Entry date 12/14/95]

12/7/95 94 PETITION FOR WRIT OF HABEAS CORPUS ad testificandum (dmz) [Entry date 12/14/95]

12/7/95 95 ORDER by Judge Charles C. Lovell granting habeas corpus petition [94-1] - to produce William Henderson and Scott Muir on 12/15/95, 1:30 pm, Hlna - writ issued and delivered to USM - see copy attached (cc: AUSA, Maddox, Ohler, Keller) (dmz) [Entry date 12/14/95]

12/13/95 96 FINDINGS AND RECOMMENDATION by Mag Judge Leif B. Erickson concerning Dft St of MT motion for summary judgment [23-1], and USA's motion for permanent injunction [15-2] (cc: all counsel) (baf) [Entry date 12/14/95] [Edit date 12/15/95]

12/14/95 97 MINUTES: before Judge Charles C. Lovell C/R: Tina Brilz TELEPHONE CONFERENCE CALL (Cnsl calling from prison) On line were David Ohler, Timothy Payne, Keith Keller, Bill Maddox. Calling in re the hearing set tomorrow. Cnsl expect the testim to take a full day. Cnsl ask continuance & suggest 1/8/96. Crt can't do this that date. After discussion, crt vacates 12/15/95 hrg and resets same 1/16/95 9:00 a.m. Hlna. Plf has some deposition testimony it could provide to crt in advance. Depos. should be submitted according to the rules. Keller indicates there are 6 or 7 live witns and think they could get them in in then. Cnsl Payne has 3 witns, but may be able to cut this back to 1 or 2. Both sides to file proposed findings of fact and conclusions based on anticipated testimony. To be filed simultaneously on 1/12/96. Adj. (baf) [Entry date 12/15/95] [Edit date 12/15/95]

12/14/95 98 STENO NOTES of proceedings before Judge Charles C. Lovell ( Court Reporter: Tina Brilz) Hearing date: 12/14/95 status report minutes [98-1] (baf) [Entry date 12/15/95] [Edit date 12/15/95]

12/15/95 99 ORDER by Judge Charles C. Lovell Hrg on prelim inj set for 12/15/95 is vacated and is now reset for 9:00 1/16/96 at Helena, Mt, for Admin, Dept, for Mike Mahoney, for Rick Day, for MT ST Dept Corr, for Marc Racicot, for MT ST. Status hearing previously set for 1/12/96 is vacated and reset for 1/16/95 for Admin, Dept, for Mike Mahoney, for Rick Day, MT ST Dept Corr, for Marc Racicot, for MT ST (cc: Keller, Ohler, Weinstein, Payne, CCL, CLK, USM, RPR) (baf) [Edit date 12/15/95]

12/18/95 100 USM 285 RETURN OF SERVICE of Writ of Habeas Corpus, ad test. EXECUTED on 12/11/95 to William Henderson and Scott Muir (baf) [Entry date 12/20/95]

12/22/95 101 MOTION by defendants to extend time to object to Findings and Recs of US Mag filed 12/13/95 w/c/s (gar) [Entry date 12/27/95]

12/22/95 102 ORDER by Judge Charles C. Lovell granting motion to extend time to object to Findings and Recs of US Mag filed 12/13/95 [101-1] ; Dfts have to and until 1/12/96 to file objections to findings and recs (cc: Payne, Keller, Ohler) (gar) [Entry date 12/27/95]

1/9/96 103 ORDER by Judge Charles C. Lovell ; status hearing set for 10:00 1/16/96 changed to telephone conf (cc: all counsel, AUSA, Tina, USM, CCL, TC) (dmz) [Entry date 01/10/96] [Edit date 01/23/96]

1/12/96 104 STATUS REPORT by defendant re discovery, expert witnesses, anticipated problems, etc. w/c/s (baf)



[Entry date 01/18/96] [Edit date 01/23/96]

1/12/96 105 AFFIDAVIT of Mike Mahoney (baf) [Entry date 01/18/96]  
[Edit date 01/23/96]

1/12/96 106 AFFIDAVIT of Ted Clack (baf) [Entry date 01/18/96]  
[Edit date 01/23/96]

1/12/96 107 MOTION by defendants for hearing and consideration of  
add'l evidence. w/c/s (baf) [Entry date 01/18/96]  
[Edit date 01/23/96]

1/12/96 108 AFFIDAVIT of Bill Pohjola (baf) [Entry date 01/18/96]  
[Edit date 01/23/96]

1/12/96 109 MOTION by defendant for leave to file brief in excess of 20  
pgs. w/c/s (baf) [Entry date 01/18/96]  
[Edit date 01/23/96]

1/16/96 110 MINUTES: before Judge Charles C. Lovell C/R: Tina Brilz.  
Conference Call. Tim Payne with Bill Maddox on line for  
USA. Keith Keller on line for dft. Crt indicates it  
doesn't have plf's memo required to be filed by 1/15/96.  
Plfs have been on furlough and is 1st day back - didn't  
know. Payne says expert tours have been done re discovery in  
various areas. Wants to submit expert witns disclosures on  
all areas except medical care. He asks extension for 30  
days re medical care disclosure. Dft agrees but wants 30  
days to respond. Plf says trial date as is is OK. May need  
extension for depositions. Crt indicates discov ddline is  
3/31/96 and Motns now due 4/15/96. Could be changed if nec.  
Payne asks 30 days extension on areas outside medical care.  
Asks 60-90 days extensn on medical care. Dft agrees to this.  
Dft asks 30 days thereafter and plf agrees. Crt indicates  
this is rsnble and can be done. Crt asks cnsl to stay with  
trial date as set. Payne says Jan 27 could bring on another  
furlough and travel budget problems if no federal budget is  
approved by then. Payne refers to protective custody  
findings. The state filed some motions 1/12/96 and USA will  
file responses. Payne discusses settlmt discussions. USA may  
have a prospective offer. Payne is hoping pties can meet to  
narrow the issues or make some agreements for settlmt. Crt  
could later consider settlmt conf. Written order to follow  
with dates for extensions. Cnsl to keep crt informed if  
changes occur. Adj. (baf) [Entry date 01/18/96]  
[Edit date 01/23/96]

1/16/96 111 STENO NOTES of proceedings before Judge Charles C. Lovell ( Court Reporter: Tina Brilz) Hearing date: 1/16/96 minutes  
of confns call. [109-1] (baf) [Entry date 01/18/96]  
[Edit date 01/23/96]

1/17/96 -- REMARK - vol # 4 begins with docket item #112 (dmz)  
[Entry date 01/24/96]

1/19/96 114 ORDER by Judge Charles C. Lovell - Purs to rqst plf  
submitted at 1/16/96 status conf w/o obj frm dfts, ORDERED  
crt's scheduling order filed 9/28/95 is amended as follows:  
Plf to provide non-medical expert witness disclosures by

2/15/96. Dfts to provide non-medical expert witns disclosures by 3/15/96. Plf to provide rebuttal expert witns disclosures by 4/15/96. All pties to supplement expert disclosures following any expert tours between the time of the disclosure and trial. Plf to provide expert witns disclosures regarding medical care by 3/15/96. Dfts to provide expert witns disclosures re med. care by 4/15/96. Plf to provide rebuttal expt witns disclosures re med. care by 4/29/96. All discovery to be completed by 5/1/96. All motns except motns in limine to be filed by 5/6/96. (cc: Maddox, etc. Keller, Ohler, CCL) (baf) [Entry date 01/26/96]

1/23/96 112 MOTION by plaintiff to extend time to file status report (dmz) [Entry date 01/24/96] [Edit date 01/24/96]

1/23/96 113 MEMORANDUM/BRIEF by plaintiff in support of motion to extend time to file status report [112-1] (dmz) [Entry date 01/24/96] [Edit date 01/24/96]

1/23/96 -- PROPOSED order & status rpt submitted by plaintiff (dmz) [Entry date 01/24/96]

1/23/96 116 AFFIDAVIT of Mike Mahoney (dmz) [Entry date 02/06/96]

1/25/96 115 AFFIDAVIT of Bill Pohjola (dmz) [Entry date 02/06/96]

1/31/96 118 RESPONSE by plaintiff to motion for hearing [107-1] (dmz) [Entry date 02/06/96]

2/1/96 120 STATUS REPORT by plaintiff - disc deadlines may have to be extended, pltf intends to submit a proposal to resolve as many issues as possible outside area of protective custody hrg (dmz) [Entry date 02/06/96] [Edit date 02/06/96]

2/1/96 119 ORDER by Judge Charles C. Lovell granting pltf's motion to extend time to file status report [112-1] deadline extended to 1/23/96 (cc: Payne, Ohler, Keller) (dmz) [Entry date 02/06/96]

2/2/96 121 MOTION by plaintiff USA to extend time to file rsnse to dfts' obj to findings, and to submit brief in excess of 20 pages w/c/s (gar) [Entry date 02/09/96]

2/2/96 122 ORDER by Judge Charles C. Lovell granting motion to extend time to file rsnse to dfts' obj to findings [121-1], granting motion to submit brief in excess of 20 pages [121-2]. Deadline for filing Response is extended from 1/31/96 to 2/2/96 and US is permitted to file said response in excess of 20 pages. cc: Payne, Keller, Weinstein (gar) [Entry date 02/09/96]

2/2/96 123 RESPONSE by plaintiff USA in opposition to dfts' objections to Findings and Recommendation [96-1] (gar) [Entry date 02/09/96]

2/8/96 124 NOTICE by plaintiff of withdrawal of document [81-1] (dmz) [Edit date 02/09/96]

2/12/96 125 RESPONSE by defendant to [96-1] (dmz) [Entry date 02/15/96]

3/13/96 126 THIRD REQUEST FOR PRODUCTION (MOTION by plaintiff USA to produce) and REQUEST FOR ENTRY UPON LAND w/c/s (gar) [Entry date 03/15/96]

3/14/96 127 ORDER by Judge Charles C. Lovell. Appearing that status conference at this time would be premature in view of pending mots, status conf set for 4/12/96 is vacated. cc: CCL, Clk, USM, Crt Rpr, Ohler, Payne, Keller (gar) [Entry date 03/15/96]

3/14/96 128 MOTION by plaintiff to extend time to file medical care expert reports and conduct general discovery (dmz) [Entry date 03/21/96]

3/15/96 129 WITNESS list submitted by defendant (dmz) [Entry date 03/21/96]

3/20/96 130 ORDER by Judge Charles C. Lovell granting pltf's motion to extend time to file medical care expert reports and conduct general discovery [128-1] - USA to have until 4/22/96, defts to have until 5/22/96, USA has until 7/1/96 to submit discovery (cc: Keller, Ohler, Payne)(dmz) [Entry date 03/21/96]

4/15/96 131 MOTION by plaintiff for expedited ruling on mtn to compel deft to produce certain documents (dmz) [Entry date 05/07/96]

4/15/96 132 MOTION by plaintiff to compel deft to produce documents (dmz) [Entry date 05/07/96]

4/15/96 133 MEMORANDUM/BRIEF by plaintiff in support of motion to compel deft to produce documents [132-1] (dmz) [Entry date 05/07/96]

4/24/96 134 RESPONSE by defendant to motion to compel deft to produce documents [132-1], to motion for expedited ruling on mtn to compel deft to produce certain documents [131-1] (dmz) [Entry date 05/07/96]

4/29/96 135 ATTORNEY APPEARANCE for defendant MT ST, defendant Marc Racicot, defendant MT ST Dept Corr, defendant Rick Day, defendant Mike Mahoney, defendant Admin, Dept by Kimberly A. Kradolfer (dmz) [Entry date 05/07/96]

4/30/96 136 REPLY by plaintiff to response to motion to compel deft to produce documents [132-1], motion for expedited ruling on mtn to compel deft to produce certain documents [131-1] (dmz) [Entry date 05/07/96]

5/2/96 137 AFFIDAVIT of Dan Evans (dmz) [Entry date 05/07/96]

5/3/96 138 ORDER by Judge Charles C. Lovell granting pltf's motion to compel deft to produce documents [132-1], granting motion for expedited ruling on mtn to compel deft to produce certain documents [131-1] (cc: all counsel) (dmz) [Entry date 05/07/96]

5/3/96 139 PROTECTIVE ORDER by Judge Charles C. Lovell re: production of documents (see order for particulars) (cc: all counsel) (dmz) [Entry date 05/07/96]

5/8/96 -- REMARK - Folder containing sealed exhibits of hearing 3/24/95, 3/25/95 and 3/26/95 and Transcript of Proceedings of 3/23/95 thru 3/26/95 and 6/8/95 (also sealed) mailed to Clerk, Helena, Attention: Margaret Bentwood (kjh)

6/25/96 140 ORDER by Judge Charles C. Lovell pptic set for 8/16/96 is reset to ; final pretrial conference set for 11:00 9/5/96 (cc: all counsel, all crt staff) (dmz) [Entry date 06/26/96]

7/9/96 -- Rec'd stipulation and order re extending discovery ddline (baf) [Entry date 07/24/96]

7/16/96 141 NOTICE by USA of depositions of Steve Redfern, Rick Basega, Dave Beatty, Dave Lanning, Paul Cherico, Bill Pohjala, Candace Neubauer, Dan Chladek, William Perry, Mike Mahoney, Rick Day (baf) [Entry date 07/24/96]

7/17/96 142 NOTICE of submission of and certificate of service of expert's report by defendant (baf) [Entry date 07/24/96]

7/19/96 143 MOTION by USA to compel discovery related to interstate inmate transfers. w/c/s (baf) [Entry date 07/24/96]

7/19/96 144 ORDER by Judge Charles C. Lovell referring to Mag Judge Leif B. Erickson the motion to compel discovery related to interstate inmate transfers. w/c/s [143-1] (cc: Payne, Keller, Ohler, Kradolfer, CCL) (baf) [Entry date 07/24/96]

7/24/96 145 MINUTES: regarding [143-1] before Mag Judge Leif B. Erickson; Tim Payne present for plaintiff, Keith Keller and David Ohler present for defendants; argument heard regarding plaintiff's Motion to Compel Discovery relating to interstate transfer of inmates; crt will reserve ruling pending submission by Mr. Payne of Supplemental Brief in support of Motion, to be submitted as soon as possible; dfts to then respond within 11 days and reply brief to be filed within 5 days thereafter; dfts agree to provide copy of contract entered into with Texas facility; to C/R: Tina Brilz (kjh)

7/24/96 -- REMARK - file hand carried to Missoula from Helena by Clerk (kjh)

7/26/96 -- REMARK - file returned to Helena from Missoula by certified mail (kjh) [Entry date 08/09/96]

8/1/96 -- MINUTES: terminating case referral to Mag Judge Leif B. Erickson - case referral was not terminated when file was returned to Hlna (dmz) [Entry date 08/16/96]

8/5/96 146 STIPULATION and ORDER by Judge Charles C. Lovell : ; parties shall have to and until 8/16/96 to respond to Dfts' request to identify names of MSP inmate and employee

witnesses expected to be called at trial; and that deadline for settlement of any issues is extended until 8/16/96. (cc: Payne, Kradolfer, Keller, Ohler) (gar) [Entry date 08/06/96]

8/8/96 148 NOTICE by plaintiff of taking deposition of Schaefer, Schoenig, Kembel on 8/14/96 and 8/15/96 at MSP and Hlna (dmz) [Entry date 08/16/96]

8/8/96 149 ORDER by Judge Charles C. Lovell ; pretrial order ddl set for 8/26/96, ddl for filing of pretrial briefs extended to 8/30/96 (cc: all counsel) (dmz) [Entry date 08/16/96]

8/9/96 147 NOTICE by plaintiff of taking deposition of Gary DeLand on 8/20/96, 10:00 am at SLC, UT (dmz) [Entry date 08/16/96]

8/13/96 150 MOTION by defendant to quash subpoena issued to Gary DeLand (dmz) [Entry date 08/16/96]

8/13/96 151 MEMORANDUM/BRIEF by defendant in support of motion to quash subpoena issued to Gary DeLand [150-1] (dmz) [Entry date 08/16/96]

8/15/96 152 ORDER by Judge Charles C. Lovell rejecting findings and recommendations motion FINDINGS AND RECOMMENDATION [96-1], denying pltf's motion for preliminary injunction [15-1], denying defts' motion for summary judgment [23-1], denying as moot defts' motion for hearing [107-1] ; trial set for 9:30 9/16/96 (cc: all counsel) (dmz) [Entry date 08/16/96]

8/20/96 153 NOTICE by defendants of withdrawal Motion to Quash Subpoena [150-1] w/c/s (gar) [Entry date 08/26/96]

8/22/96 154 MOTION by defendants to continue trial date and memo in support. w/c/s (gar) [Entry date 08/26/96]

8/22/96 155 MOTION by defendants for leave to file discovery w/c/s (gar) [Entry date 08/26/96]

8/22/96 156 MOTION by defendants to compel w/c/s (gar) [Entry date 08/26/96]

8/22/96 157 BRIEF by defendant in support of motion to compel [156-1] w/c/s (gar) [Entry date 08/26/96]

8/22/96 158 FIRST MOTION by defendants in limine w/c/s and exh (gar) [Entry date 08/26/96]

8/22/96 -- LODGED DEFT'S THIRD DISCOVERY REQUESTS (baf) [Entry date 08/28/96]

8/22/96 -- LODGED pLF'S rESPONSE TO dFTS FOURTH dISCOVERY rEQUESTS (baf) [Entry date 08/28/96]

8/26/96 159 RESPONSE by plaintiff USA to motion to continue trial date [154-1] w/c/s (gar)

8/26/96 -- PROPOSED Final Pretrial Order submitted by plaintiff USA (gar) [Entry date 09/09/96]

8/26/96 166 MINUTES: ; Pretrial order ddl satisfied 8/26/96 (gar)  
[Entry date 09/09/96]

8/28/96 160 MOTION by defendant for site visit w/c/s (baf)

8/28/96 161 MOTION by defendant for hearing at the prison. w/c/s (baf)

8/28/96 162 ORDER by Judge Charles C. Lovell ; status hearing set for  
2:30 8/28/96, at which time crt will hear, consider and  
ddecide plf's rqst for access to potential witnesses and  
files, and will further consider Dft's rqst for  
continuance. (cc: faxed to Maddox, Ohler, Keller, called  
Kradolfer, CCL) (baf)

8/28/96 163 MINUTES: before Judge Charles C. Lovell C/R: Tina Brilz.  
Present in chambers, William G. Maddox, P. Keith Keller,  
David Ohler. STATUS CONF. RE Plf's claim of being denied  
access to certain files, witnesses and to the premises for  
inspection by an expert. Keller hrd stating plf allowed  
to interview witnesses listed on final pretrial order. Now  
want to interview more witnesses, see files and have a new  
expert. Dfts don't want to reopen discov if trial is to  
proceed Sept 16. Cnsl both hrd on these issues. Crt  
indicates both sides should pare witnesses down to the  
minimum, clearly identify those to the other side and there  
should be ample opportunity f or discovery re what those  
witns will testify to before trial. Exhibits also should  
be identified. While Maddox is here, he will be allowed  
access to what he needs at prison. This applies to the  
expert as well. No obj by state. Protective custody issue  
is discussed. Crt indicates if there is an urgent need  
regarding this, cnsl to bring to the court's attention. Crt  
to do scheduling order reopening discovery and resetting  
trial date. Cnsl Keller has conflict on Oct 15 as a trial  
date. Court hopes to try this soon, November at the  
latest. (baf)

8/28/96 164 STENO NOTES of proceedings before Judge Charles C. Lovell  
( Court Reporter: Tina Brilz) Hearing date: 8/28/96 status  
report minutes [163-1] (baf)

8/29/96 167 ORDER by Judge Charles C. Lovell granting Pltf's motion to  
produce [126-1] Pltf's request for access to inmates,  
inmate files and prison tour by expert dueing wk of Sept  
2-6, 1996 is granted. Dfts' motion for continuance of trial  
is granted, [154-1] ; trial is not set for 9:30 12/2/96 at  
Helena ; final pretrial conference set for 11:00 11/20/96  
at Helena. FURTHER ORDERED, within 15 days the pltf shall  
determine its final witness list in order to conclude this  
final phase of discovery now being conducted at the prison,  
and to determining the minimum number of inmate witnesses  
needed to fairly present Pltf's case with non-cumulative  
testimony. At same time Pltf shall also file a proposed  
supplement to proposed final pretrial order, setting forth  
identity of proposed witnesses. Dfts shall have 15 days to  
reppond with their witness list and proposed supplement to  
proposed final pretrial order. The discovery deadline is

10/30/96. Both parties shall file pretrial brfs on or bef 11/15/96. cc: CCL, Clk, USM, Payne, Keller, Kradolfer, Ohler, Crt Rpr. (gar) [Entry date 09/09/96]

8/30/96 165 ORDER by Mag Judge Leif B. Erickson denying motion to compel discovery related to interstate inmate transfers. w/c/s [143-1]. Case referral terminated (cc: all counsel) (kjh) [Entry date 09/03/96]

9/9/96 168 RESPONSE by plaintiff to motion for site visit [160-1] (dmz) [Entry date 09/11/96]

9/9/96 169 RESPONSE by plaintiff to motion for hearing at the prison. [161-1] (dmz) [Entry date 09/11/96]

9/10/96 170 OPPOSITION MEMORANDUM by USA to dfts' first motion in limine [158-1] w/c/s (baf) [Entry date 09/19/96]

9/11/96 171 MOTION by USA to 1. extend time for respns to Dft's motn to compel til 9/20/96; 2) to extend time for US to name its witnesses til 10/7/96; and the time for dfts to name their witnesses be correspondingly extended til 10/15/96, 3) Even after discov cutoff, dfts be required to give USA any add'l material placed in the prison file of any inmate the US has included in its witns list, and crt clarify that videotaped examinats (which are not for purp of discov but for presentatn of evid to crt) are not subj to discov ddline. Govt also states that along w/fire safety, pties have not settled issue of protectn frm harm. (baf) [Entry date 09/19/96]

9/11/96 172 MEMORANDUM/BRIEF by USA in support of motion relating to crt's 8/29/96 order, (baf) [Entry date 09/19/96]

9/11/96 173 Certificate of service of Motion and Order #171 & 172 by USA (baf) [Entry date 09/19/96]

9/12/96 174 Defendant's Memorandum opposing U.S's motion for extension of time w/c/s (baf) [Entry date 09/19/96]

9/13/96 177 JOINT MOTION by plaintiff, defendant to dismiss issues of medical, dental and mental health care with attached stipulation and order (dmz) [Entry date 10/04/96]

9/17/96 175 ORDER by Judge Charles C. Lovell granting Plf's motion relating to the crt's 8/29/96 order in its entirety. Plf to name its witnesses on or before October 7, 1996, and Dfts to name their witnesses on or bef 10/22/96. At same time plf and dfts to also file new amended proposed final pretrial order inter alia setting forth the identity of their proposed witnesses. The discov ddline to be 11/22/96. The trial date of 12/2/96 and final pretr conf on 11/20/96 are both vacated and jury trial is reset for 9:30 1/27/97 ; final pretrial conference is reset for 11:00 12/13/96, both proceedings in Helena, MT crtrm. Both pties to file pretrial brfs by 12/6/96, to include a trial exhibit list, with obj noted thereon and two bound cpies of the trial exhibits. (cc: Payne etc., Keller, Ohler, Kradolfer, CCL) (baf) [Entry date 09/19/96]

9/18/96 176 TRANSCRIPT filed by RPR Tina Brilz of Status Conference Proceedings 8/28/96. (baf) [Entry date 09/19/96]

9/18/96 178 RESPONSE by plaintiff to motion to compel [156-1] (dmz) [Entry date 10/04/96]

9/23/96 179 ATTORNEY APPEARANCE for plaintiff USA by Mark S. Masling, Margo J. Schlanger (dmz) [Entry date 10/04/96]

9/23/96 180 REPLY by defendant to response to motion in limine [158-1] (dmz) [Entry date 10/04/96]

9/30/96 181 REPLY by defendant to response to motion to compel [156-1] (dmz) [Entry date 10/04/96]

10/8/96 182 NOTICE by defendant of taking deposition of William Gray on 10/15/96, 2:30 at Deer Lodge, MT (dmz) [Entry date 10/25/96]

10/11/96 183 MOTION by defendant for leave to file supplemental brief re mtn to compel (dmz) [Entry date 10/25/96]

10/17/96 184 ORDER by Judge Charles C. Lovell ; final pretrial conference set for 12/12/96 is reset to 11:00 1/10/96 (cc: Payne, Keller, Ohler, Tina, USM, Security, CCL, TC, Kradolfer) (dmz) [Entry date 10/25/96]

10/22/96 -- PROPOSED fpto submitted by plaintiff, defendant (dmz) [Entry date 10/25/96]

10/23/96 185 ORDER by Judge Charles C. Lovell granting motion for leave to file supplemental brief re mtn to compel [183-1] clerk to file proffered brief (dmz) [Entry date 10/25/96]

10/23/96 186 SUPPLEMENTAL BRIEF by defendant re motion reply [181-1] (dmz) [Entry date 10/25/96]

10/24/96 187 MOTION by plaintiff for leave to file response to suppl brief of deft (dmz) [Entry date 10/25/96]

10/24/96 188 MOTION by plaintiff for protective order covering BOP depositions and memo in support (dmz) [Entry date 10/25/96] [Edit date 11/21/96]

11/15/96 -- PROPOSED corrections to fpto submitted by plaintiff LODGED 10/22/96 (dmz) [Entry date 11/21/96]

11/21/96 189 ORDER by Judge Charles C. Lovell granting motion for protective order covering BOP depositions [188-1]. 1) Dfts to limit their examination of US federal BOP deponents to questions about BOP policies and practices, and will refrain frm asking questns about particular BOP facilities. 2) Dfts will limit their exam of BOP deponents to questns appropriate fror fact witnesses, and will not seek opinions, speculations or judgments about Montana State Prison. (cc: Payne, Weinstein, Maddox; Masling, Schlanger, Keller, Ohler, kradolfer, CCL) (baf) [Entry date 11/22/96]



11/25/96 190 ORDER by Judge Charles C. Lovell US' granting motion for leave to file response to suppl brief of deft [187-1]. Clerk shall file "United States, Response to Dft's Supplemental Brief Re: Motion to Compel". cc: CCL, Kradolfer, Ohler, Keller, Masling, Payne (gar)

11/25/96 191 RESPONSE by plaintiff to Dft's Supplemental Brief Re: motion to compel [156-1] w/c/s and attachments (gar)

11/27/96 192 JOINT MOTION by plaintiff, defendant to amend 9/17/96 order requiring parties to include obj to exhibits in pretrial briefs (dmz) [Entry date 12/02/96]

12/2/96 193 STIPULATION BY ALL amending fpto re: Section K (dmz)

12/2/96 194 ORDER by Judge Charles C. Lovell granting joint motion to amend 9/17/96 order requiring parties to include obj to exhibits in pretrial briefs [192-1] - parties to file obj to trial exhibits by 1/8/97 (cc: Ohler, Keller, Masling, Payne) (dmz)

12/6/96 195 TRIAL briefs submitted by plaintiff USA with 8 cartons of exhibits - placed in vault (dmz) [Entry date 12/12/96]

12/6/96 196 TRIAL brief submitted by defendant MT ST - exhibits in vault (dmz) [Entry date 12/12/96]

12/17/96 197 ORDER by Judge Charles C. Lovell - final pretrial conference scheduled for 11:00 on 1/10/97 is rescheduled for 9:30 on 1/10/97. (cc: Payne & USA cnsl, Keller, Ohler, Kradolfer) (baf) [Entry date 12/18/96]

12/20/96 198 SUPPLEMENT by defendant to pretrial order and notice of use of discovery materials (dmz) [Entry date 12/30/96]

1/8/97 199 MOTION by plaintiff USA in limine to exclude particular witnesses and exhibits, and to limit certain testimony and corss-exam at trial (gar)

1/8/97 200 MEMORANDUM/BRIEF by plaintiff USA in support of motion in limine to exclude particular witnesses and exhibits [199-1], of motion to limit certain testimony and cross-exam at trial [199-2] (gar)

1/8/97 201 PLTF'S SUPPLEMENT TO PRETRIAL ORDER AND NOTICE OF USE OF DISCOVERY MATERIAL (gar)

1/8/97 202 PROOF/NOTICE OF SERVICE by plaintiff USA of mots in limine, brief in support, sup to PTO and Notice (gar)

1/8/97 203 ORDER by Judge Charles C. Lovell denying Dfts' motion for hearing at the prison. [161-1] (cc: CCL, Payne, Kradolfer, Ohler, Keller) (gar)

1/8/97 -- REMARK Rec'd Pltf's Exhibits 152-164, sealed. (gar)

1/8/97 204 EXHIBIT list by plaintiff USA (per Exhibits submitted

under seal) (gar)

1/8/97 205 OBJECTIONS by defendants to Plaintiff's exhibits w/c/s (baf) [Entry date 01/10/97]

1/8/97 206 ORDER by Judge Charles C. Lovell denying motion to compel discovery [156-1]; and denying motion in limine [158-1] (cc: Ohler, Keller, Payne, Matteucci, AUSA Hlna, CCL) bf for dmz (baf) [Entry date 01/10/97]

1/10/97 207 MINUTES: for before Judge Charles C. Lovell C/R: Tina Brilz. FINAL PRETRIAL CONFERENCE. Pr for Plf: Sherry Matteucci, Timothy R. Payne, William G. Maddox, Mark S. Masling, Margo Schlanger. Pr for Dft. P. Keith Keller, Joe Seifert, David L. Ohler. Crt asks for rpt on settlmt negotiations. Sherry Matteucci rports for USA. 2 issues left to be resolved. Fire safety and inmate safety. Hope to engage further in settlmt discussions. Discussion had re inmate safety and possibility of add'l facility for vulnerable inmates. Pties willing to discuss solutions to resolve these issues. Crt discusses safety of witnesses and access of public to this trial. Crt feels trial should be public, and wants no danger to any witness. Crt asks cnsl how best to accomplish this, asks cnsl to rpt before trial on this. Re motion for site visit. Crt suggests we begin with opening stmts (approx 30 min each side) and then have the site visit at Prison. Dft Keller says may take 5-6 hrs. Plf Tim Payne not sure site visit will be that helpful with the issues at hand and prefers not to interrupt trial. Suggests the site visit the Friday before trial. Crt unable to do visit then, but will do site visit after opening stmts. Crt asks cnsl to try to agree on fire protection issues. This leaves protective custody issue. Crt asks pties if want settlmt judge. Plf Matteucci asks 10 days to try on their own for settlmt; and if unable, then they could ask crt for ptcipatn of settlmt judge. Re the motion in limine re excluding iwtns, wxhibits, excluding evid and cross-exam - discussion had re testim of Mssrs Bud, Mihelish, Redfern and Geech. Keller states any one of these could be called as rebuttal witns on some issue coming up at trial. If certain items don't become issues at trial, they wouldn't be called at trial. In regard to testimony of Ferris, Beasom, Neubauer, discussion had by cnsl and crt; crt will best deal with these issues at time of trial. Regarding cross-exam. Ms. Schlanger hrd. Crt spks to prior inconsistent stmts of witnesses and witns credibility. Crt indicates shouldn't have unusual restrictions on testimony. USA wants transcription of certain tape recordings earlier than just before testim of witns. State objects. Crt would likely give an opportunity to examine transcript before examining witns. Masling asks time to brief on this. Crt could also examine these in camera and make ruling on work product privilege. Crt gives 5 days for simultaneous briefs. Crt brings up what can be done to protect identity and content of witns testim and still have public trial. Tim Payne says they plan to file protective order before trial asking that inmates be identified by number and that they refer to other inmates by number during testimony, asking that no

drawn caricatures be allowed in crtrm and that the transcript be sealed. Crt indicates that public's right to know is involved and we'll follow where inmates are identified by number and refer to other inmates by number during testimony. In regard to agreement relating to other

issues and asking crt to approve those determinations, does crt need to make findings. Both cnsl argue against crt needing to make findings. Tim Payne (USA) brings up deft's motn regarding place of trial. Is told there was a ruling and trial will take place here in Helena. Tim Payne brings prisoner concerns regarding losing their housing assignment because of coming to testify. Ohler reports he understands this won't happen. Crt says there should be no prejudice to them because of their testimony here. Crt brings up plf's burden on aggregious and flagrant violation to constitutional rts. Crt indicates perhaps there could be further briefing on this. Cnsl have no quarrel with crt's interpretation of the statute as stated. Regarding exhibits, crt will rule on all exhibits by written order prior to trial. Crt asks when to expect summaries. USA (Masling) says 1 wk frm today. After rcpt of summaries, crt will resolve exhibit issue. Govt asks dft basis for their objectns. Keller (dft) says Friday can provide basis for their objectns. Crt takes exhibits under adv and will rule on all exh at one time. On aggregious and glagrant issue dfts ask til Friday fro add'l briefing. USA obj. Crt says brief may be filed. Keller says need advance notc to move inmates. Crt understands State transports inmates and is working with U.S. Marshals on this. Crt suggests pties try to agree on schedule of when an inmate might testify. USA will try to schedule this and pties to try to agree. Nothing more from either side. (baf)

- 1/10/97 208 STENO NOTES of proceedings before Judge Charles C. Lovell ( Court Reporter: Tina Brilz) Hearing date: 1/10/97 status report minutes [207-2] (baf)
- 1/13/97 209 PROTECTIVE ORDER by Judge Charles C. Lovell - order governs disclosure and use by the defts and defts' cnsl & retained expert of the notes of pltf's expert, Steve Martin, portions of which are being produced to defts as part of disc in this litigation, US agrees to disclose notes taken by Martin during his most recent tour of the MT ST Prison re interviews or file reviews that may be the subj of Martin's expert testimony, other notes are being disclosed, defts' cnsl will not give the notes to any of the defts or defts' employees and the notes will not be brought onto the grounds of MSP except personally by defts' cnsl who will keep them in his possession at all times, cnsl may, however, show the notes & discuss the notes and the info in them w/defts or defts' employees for the limited purpose of preparing for this litigation, cnsl may provide a copy of the notes to defts' expert, Gary DeLand, who likewise shall not provide the notes to defts or defts' employees, but who may show the notes & discuss the notes & info in them w/defts and defts' employees for the purpose of preparing for litigation, neither the notes, or info in them will be disclosed to any inmate, either by defts' cnsl or any other

person, parties agree to the above provisions and will jointly submit this stip order to the crt seeking that it be made a crt order, enforceable by litigation and contempt sanctions, whether or not this agmt is accepted by the crt and made a crt order, it shall be binding upon the parties, their employees, their experts, and their cnsl, this order does not constitute a concession by the US that the protected material is discoverable or admissible (cc: Keller, Payne, Matteucci, Ohler, Kradolfer, CCL, TC) (dmz) [Entry date 01/15/97]

- 1/16/97 210 OBJECTIONS by defendant to pltfs' supplemental exhibits [204-1] (dmz)
- 1/16/97 211 PLTF'S SUPPLEMENTAL EXHIBITS (dmz)
- 1/16/97 212 MEMO by plaintiff relating to production of taped or transcribed stmts of its inmate witnesses (dmz)
- 1/17/97 213 OBJECTIONS by defendant to pltf's exhibits (dmz) [Entry date 01/21/97]
- 1/17/97 214 SUMMARIES OF SELECTED EXHIBITS by plaintiff (filed under seal) in expando (dmz) [Entry date 01/21/97] [Edit date 01/21/97]
- 1/21/97 215 MOTION by defendant to extend time to address issues re Mark Phares testimony (dmz)
- 1/21/97 216 MOTION by plaintiff for protective order re confidentiality of MSP inmate witnesses (dmz) [Entry date 01/22/97]
- 1/21/97 217 MEMORANDUM/BRIEF by plaintiff in support of motion for protective order re confidentiality of MSP inmate witnesses [216-1] (dmz) [Entry date 01/22/97]
- 1/21/97 -- PROPOSED protective order submitted by plaintiff (dmz) [Entry date 01/22/97]
- 1/22/97 218 MOTION by plaintiff, defendant for order adopting confidentiality agreement to govern disclosure and use by the defts of information contained in the federal bureau of prisons SIS manual, Chapters 10 and 11 (dmz)
- 1/23/97 219 RESPONSE by defendant to motion in limine to exclude particular witnesses and exhibits [199-1], to motion to limit certain testimony and corss-exam at trial [199-2] w/c/s (baf)
- 1/24/97 220 MEMORANDUM by defendant opposing protective order w/c/s (baf)
- 1/27/97 221 MINUTES: before Judge Charles C. Lovell C/R: Tina Brilz. HEARING. Pties Timothy R. Payne, William Maddox, Mark Masling & Margo Schlanger pr for plf. Keith Keller and David Ohler pr for dfts. Tim Payne informs crt negotiations have been ongoing, & Friday a tentative agmt was reached. The Dept of Justice approved it, but dfts

made some changes. There are 1 or 2 issues to work out. Cnsl asks crt for time to perfect the agrmt. Crt asks about the agmt and asks if plf is prepared to dismiss case if agmt is reached. Tim Payne says once the agmt terms are met, case would be dismissed w/prej. K. Keller reports crt need not monitor if state is in compliance. If not, plf could reopen case. Crt informs cncl if case can't go to trial today, crt schedule wouldn't allow another trial date til probably 1998. At 9:42 crt adj to give cnsl time to meet and they are to report back to crt at 10:00. 10:02 Reconvene w/all present as before. T. Payne reports there is a finalized agmt which would be filed in a few days once signatures are obtained. Payne and Keller both hrd re substance of the agmt. They speak of special management inmates and their security and services needed. Crt allows til Wednesday to file the agmt w/crt. Pties jointly move for no trial at this time, with the knowledge that if the agmt fails, there'll be no new trial til 1998. Crt vacates trial. The prison visit scheduled for today is also cancelled. Crt thanks cnsl for settlemt efforts. (baf)

- 1/27/97 222 STENO NOTES of proceedings before Judge Charles C. Lovell ( Court Reporter: Tina BArilz) Hearing date: 1/27/97 status report minutes [221-1] (baf)
- 1/29/97 223 RESPONSE by plaintiff USA to Dfts' summary of objections to Pltf's Exhibits [213-1] w/c/s (gar) [Entry date 01/30/97]
- 1/29/97 224 JOINT MOTION with Stipulated Agreement attached for order conditionally dismissing action conditional upon Dfts' achieving compliance with terms of Stip Agreement. (gar) [Entry date 01/30/97]
- 1/31/97 225 ORDER by Judge Charles C. Lovell - having read and considered the Joint Mtn of the parties and the stipulated agreement entered by them, the crt hereby conditionally dismisses this action, pursuant to Fed. R. Civ. P. 41(a)(2), conditional upon defts' achieving compliance with the terms of the stipulated agreement, this case is placed on the crt's inactive docket, but the crt retains jurisdiction over the case until a final dismissal with prejudice. IT IS HEREBY ORDERED that the clerk of crt shall place this case on inactive status for a period of one year, after which the Clerk shall close the case administratively, clerk directed to notify parties of entry of this order (cc: Payne, Weinstein, Maddox, Masling, Schlanger, Matteucci, Kradolfer, Keller, Ohler, CCL, TC) (dmz)
- 1/31/97 226 ORDER by Judge Charles C. Lovell denying as moot all mtns currently pending (cc: all govt cnsl, Keller, Payne, Ohler, Kradolfer, AUSA) (dmz) [Entry date 02/03/97]
- 1/31/97 -- REMARK Rec'd from Robert H. Powell AO #20484 of MSP, Mot for Emergency Injunction and Motion for Hearing (gar) [Entry date 02/05/97]
- 2/5/97 227 ORDER by Judge Charles C. Lovell, Powell's motion for emergency injunction and motion for hearing (lodged

1/31/97) are denied as moot. cc: CCL, Powell-cert mail, Payne, Keller, Kradolfer, Ohler, Matteucci (gar)

3/14/97 228 TRANSCRIPT filed of pretrial conf proceedings taken on 1/10/97, Hlna (dmz) [Entry date 03/19/97]

7/30/98 229 MINUTES: administratively closed pursuant to order of Judge Charles C. Lovell of Jan 31, 1997 (seal)

7/30/98 230 NOTICE by defendants of receipt of Vols 1 and 2, original and copy, picked up by Keller Law Firm (dmz) [Entry date 12/22/98]

8/11/98 231 NOTICE by plaintiff relating to exhibits in this case - signed by Timothy Payne - stating to destroy the exhibits - exhibits were destroyed by dmz (dmz) [Entry date 12/22/98]

5/20/02 -- RECEIVED untitled motion Robert G. Hornback requesting removal frm Kansas facility. (baf) [Entry date 06/06/02] [Edit date 06/07/02]

5/20/02 232 MOTION from pro se deflt Hornbackto intervene (baf) [Entry date 06/07/02]

6/6/02 233 ORDER by Judge Charles C. Lovell denying motion to intervene [232-1] (cc: Kradolfer, Ohler, Keller, Schlanger/Masling, Maddox, Weinstein/Payne;; Matteucci, CCL,PED,Hornby ) (baf) [Entry date 06/07/02]

6/18/02 -- RECEIVED - letter from Sabastian Canon regarding prison conditions (copy given to law clk) (baf)

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Case Flags:  
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<b>Billable Pages:</b>	36	<b>Cost:</b>	2.88