

02/08/1993 12:21:28 =====

UNITED STATES GOVERNMENT MEMORANDUM

DATE: FEBRUARY 5, 1993

TO: WALLACE H. CHENEY
GENERAL COUNSEL

FROM: BILL BURLINGTON *MARU*
REGIONAL COUNSEL

SUBJECT: MONTHLY REPORT FOR JANUARY 1993

SUBSTANTIVE PLEADINGS (COMPLAINT, MOTION FOR SUMMARY
JUDGMENT, ETC.)

NONE.

SETTLEMENTS

NONE.

ADVERSE DECISIONS OR SIGNIFICANT DECISIONS

02/08/1993 12:21:31 =====

NO ADVERSE DECISIONS WERE RECEIVED DURING THIS MONTH.

SIGNIFICANT DECISIONS

SLAVEN V. UNITED STATES OF AMERICA, INC., IP 92-1750-C, SD/IN

THE BOP DID NOT HAVE ANY INVOLVEMENT IN THIS CASE, HOWEVER,
BECAUSE OF ITS SIGNIFICANCE, GERALD CORAZ, AUSA, SD/IN
FORWARDED A COPY OF THE OPINION FOR INFORMATION PURPOSES.

A MILAN INMATE REPEATEDLY FILED COMPLAINTS ESPOUSING THE VIEW
THAT THE US IS A CORPORATION; HE IS A FREE CITIZEN NOT
REGISTERED WITH THE US; HE WAS FRAUDULENTLY INDICTED AND
SUBJECTED TO THE LAWS OF CONGRESS IN TITLES 18 AND 21; AND HE
WAS COERCED INTO PLEADING GUILTY AND IS NOW ENSLAVED IN
VIOLATION OF THE 13TH AMENDMENT. IN AN ORDER FILED
JANUARY 15, 1993, THE COURT FINED SLAVEN \$300 FOR VIOLATION
OF RULE 11, F.R.CIV.P.; DIRECTED PAYMENT WITHIN 30 DAYS OR
THE COURT WILL ISSUE ORDER ATTACHING HIS INMATE ACCOUNT;
DIRECTED HIM TO KEEP COURT INFORMED OF ADDRESS UNTIL
FINE IS PAID; AND ORDERED HIM TO DISCLOSE IN ANY FUTURE

02/08/1993 12:21:35 =====

COMPLAINT RAISING THE SAME OR SIMILAR ISSUES, THE
CLAIMS MADE IN THIS CASE AND THE OTHER THREE CASES AND
THE DISPOSITION INCLUDING THE SANCTIONS.

ALLEN V. BOP, ET AL., 92-82, ED/KY (ASHLAND)

THE COURT ADOPTED THE MRR OF NOVEMBER 10, 1992 AND
DISMISSED THE ACTION JANUARY 19, 1993. THIS IS A BIVENS

CASE WHERE PLAINTIFF ALLEGED CONSTITUTIONAL VIOLATION BY ASH STAFF FOR FAILURE TO PROTECT HIM FROM AN INMATE ASSAULT AT ASHLAND IN JANUARY 1990, DELIBERATE INDIFFERENCE TO HIS MEDICAL NEEDS BY DELAYING TRANSPORTING HIM TO THE LOCAL HOSPITAL WHICH WAS CAUSED BY INTERROGATION, AND DELAY IN PROPERLY DIAGNOSING THE NATURE OF THE SKELETAL AND SOFT TISSUE INJURIES TO HIS BACK. TH BASED UPON KENTUCKY'S ONE YEAR S THE REPEAL OF THE TOLLING PROVIS 1990 MEANT THAT THE ONE YEAR PER ACTION COMMENCED ON THAT DATE. COMPLAINT WAS DEEMED FILED ON JA EARLIEST, IT IS BARRED BY THE ST

Shuell - Ct. granted gov's. Motion to Dismiss ; denied Stay pending appeal

02/08/1993 12:21:38 =====

UPDATE ON CASES, TRIALS OR HEARI SHUELL V. DOJ, 92-CV-60438-AA, E

Peterson - Ct. granted SJ in gov's. favor

TS

CASE FILED 12-3-92. AN OLD LAW SENTENCE OF TEN YEARS WAS DUE FO DECEMBER 8, 1992. INMATE WAS TO SERVE A STATE LIFE SENTENCE. HIS ATTORNEY OBTAINED A TRO BLOCKING THE RELEASE ASSERTING THAT THE INMATE ELECTED TO WAIVE HIS SGT. A MOTION TO LIFT TRO WAS FILED BY THE GOVERNMENT. THE HEARING ON THE MATTER SCHEDULED FOR JANUARY 28, 1993 WAS RESCHEDULED FOR FEBRUARY 3, 1993.

Ct.

PETERSON AND BALISTERI V. BOGAN, 91-CV-77150-DT, ED/MI (MILAN)

THIS IS THE CASE WHERE A MILAN INMATE'S REQUEST TO MARRY AN EX-CONTRACT EMPLOYEE WAS DENIED. THE COURT GRANTED PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION AND ORDERED THAT THE MARRIAGE AND VISITATION BE PERMITTED. HEARING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BASED UPON QUALIFIED IMMUNITY AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS SCHEDULED FOR FEBRUARY 3, 1993.

2/16/93

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ASSISTANT REGIONAL COUNSEL FROM ALONG WITH WARDEN BOGAN AND LYNN

Call Bill

GARRETT V. WHALEN, 2:92CV244, ED,

THIS IS A MEDICAL TREATMENT CASE INMATE SEEKS \$1.5 MILLION FOR PHY ALLEGEDLY CAUSED BY A FIVE MONTH AND SURGICAL REMOVAL OF GALL BLAD PRIOR TO THE TIME FOR RESPONSE BY ORDERED RELEASE OF THE MEDICAL RE PLAINTIFF. THE INSTITUTION DISCL SUBSEQUENTLY, DEFENDANTS HAVE FIL THE DEFENSE OF QUALIFIED IMMUNITY

REPRESENTATION NOT RECOMMENDED FOR STAFF

NONE.

Ruwardz Can you find out what happened?

Do we have a file on this? No.

Call Bill

ITEMS OF INTEREST, PERSONAL LEAVE, BUSINESS TRIPS, MOVES, ETC.

BILL BURLINGTON, REGIONAL COUNSEL, WAS IN MARO FEBRUARY 1 AND 2

2/08/1993 12:21:47 =====

FOR ETHICS TRAINING AND FOI/PA TRAINING. TRAVEL TO KENTUCKY ON ISSUE OF JURISDICTION FOR FCI, MANCHESTER FOLLOWED.

JOHN JACKSON, ATTORNEY (PETERSBURG) AND RENEE BARLEY, PARALEGAL, FOI/PA (CENTRAL OFFICE) PROVIDED THIS OFFICE WITH EXCELLENT FOI/PA TRAINING ON FEBRUARY 2, 1993.

MARIAN CALLAHAN, ASSISTANT REGIONAL COUNSEL, WILL BE TRAVELING TO FPC, ALDERSON FOR ETHICS TRAINING FEBRUARY 9-10, 1993. NO ANNUAL LEAVE PLANNED.

MIKE PYBAS, ASSISTANT REGIONAL COUNSEL, WILL BE TRAVELING TO FCI, MILAN ON FEBRUARY 8, 1993 FOR THE PETERSON HEARING AND ETHICS TRAINING ON FEBRUARY 9 AND 10TH. HE WILL ALSO BE MEETING WITH AUSA'S FROM DETROIT DURING THIS TIME. ON FEBRUARY 11, 1993 HE WILL BE PRESENTING ETHICS TRAINING CCMC-CINCINNATI.

MARY WILBURN, ASSISTANT REGIONAL COUNSEL, HAS NO TRAVEL SCHEDULED. ADMINISTRATIVE LEAVE FOR JURY DUTY IS SCHEDULED FOR FEBRUARY 17, 1993.

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MICHAEL SULLIVAN, ATTORNEY ADVISOR, HAS NO LEAVE OR TRAVEL SCHEDULED.

MILT WILLIAMS, PARALEGAL, IS SCHEDULED FOR ANNUAL LEAVE FEBRUARY 11-16, 1993. NO TRAVEL SCHEDULED.

KATHY HARRIS, PARALEGAL TRAINEE, HAS NO LEAVE OR TRAVEL SCHEDULED.

Sharon
→

THE LEGAL STAFF ACQUIRED ADDITIONAL OFFICE SPACE AND COMPLETED THE MOVE INTO THIS SPACE ON JANUARY 21 & 22. THIS OFFICE NOW HAS A NEW FAX NUMBER (SECOND HAND FAX MACHINE) DIRECTLY INTO THE LEGAL OFFICE. THE NEW FAX NUMBER IS 301/317-5139 OR FTS 700/394-5139.

SIGNIFICANT FTCA CLAIMS

NONE.

SIGNIFICANT ADMINISTRATIVE REMEDIES

NONE.

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SITUATIONS OF INTEREST, CONTACT WITH FEDERAL BENCH, HAZARDOUS WASTE SITES, ETC.

IN REVIEWING A 3582(C)(1)(A) SENTENCE REDUCTION FOR REGIONAL DIRECTOR'S SIGNATURE, A PHONE CALL FROM THE SENTENCING JUDGE WAS RECEIVED ASKING WHY THE DELAY AND ACCUSING THE AGENCY OF BUREAUCRATIC SHUFFLING, ETC. THE PROBLEM WAS THAT THE PACKET HAD BEEN RECEIVED IN THE REGION WITHOUT ANY INDICATION OF THE JUDGE'S INTEREST IN THE CASE. CONTACT WITH JUDGE, AND UPDATES ON INMATE'S MEDICAL CARE WAS MADE BY INSTITUTION STAFF WITHOUT INFORMING REGIONAL STAFF. A MEETING BETWEEN REGIONAL CORRECTIONAL PROGRAMS ADMINISTRATOR, REGIONAL HEALTH SYSTEMS ADMINISTRATOR AND LEGAL HAS RESOLVED THIS COMMUNICATION PROBLEM.

MARY WILBURN, ASSISTANT REGIONAL COUNSEL, IN HER CAPACITY AS FEDERAL WOMEN'S PROGRAM MANAGER, HAS SCHEDULED THE APPEARANCE OF AN IRS AGENT TO ANSWER QUESTIONS AND PROVIDE INFORMATION ON CURRENT TAX ISSUES TO REGIONAL STAFF. THE MEETING IS SCHEDULED FOR FEBRUARY 5TH IN MARO.

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FEDERAL BUREAU OF PRISONS
MID-ATLANTIC REGIONAL OFFICE
FEBRUARY 5, 1993

FROM: BILL BURLINGTON, REGIONAL COUNSEL

TO: WALLACE H. CHENEY, ASST. DIR./GENERAL COUNSEL
CENTRAL OFFICE

SUBJ: FEBRUARY 1993 MONTHLY REPORT

ADMINISTRATIVE REMEDIES

	JAN	FEB
RECEIVED	95	119
ANSW'D	103	103
NUM PEND	81	97
OVERDUE	0	2

TORT CLAIMS

	JAN	FEB
--	-----	-----

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RECEIVED	56	68
ANSW'D	33	59
PENDING	212	221
OVERDUE	13	8

FOI/PRIVACY

	JAN	FEB
--	-----	-----

RECEIVED	36	28
ANSW'D	13	20
PENDING	23	31
OVERDUE	0	6

LITIGATION

	JAN	FEB
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NEW CASES	17	16
CLOSED	93	14
PENDING	133	135
HRGS & TRL.	0	4
SETTLEMENTS	0	0

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SUBSTANTIVE PLEADINGS (COMPLAINTS, MOTION FOR SUMMARY JUDGMENT, ETC.)

NONE.

SETTLEMENTS:

NONE.

ADVERSE DECISIONS OR SIGNIFICANT DECISIONS:

UNITED STATES V. MERCADO, E.D. KENTUCKY. (CRIMINAL)
AFTER A TWO DAY TRIAL, ON MARCH 1, 1993 A FEDERAL JURY RETURNED A VERDICT OF NOT GUILTY IN THE CRIMINAL TRIAL OF DR. MERCADO. DR. MERCADO WAS ACCUSED OF ACCEPTING A BRIBE FROM AN FCI, ASHLAND INMATE IN ORDER TO EXPEDITE THE INMATES MEDICAL CARE. THE DEFENSE ATTORNEY WAS VERY PERSUAISIVE IN HIS ARGUMENT TO THE JURY THAT DR. MERCADO FELT THE MONEY WAS BEING OFFERED TO HIM AS A LOAN. NO DECISION HAS BEEN MADE AT THIS POINT OF WHETHER DR. MERCADO'S ACTIONS VIOLATED ANY OF THE BUREAU CODE OF CONDUCT PROVISIONS.

03/08/1993 07:50:09 =====

PETERSON V. BOGAN, 91-CV-77150-DT, ED/MI.
ON FEBRUARY 8, 1993 A SUMMARY JUDGMENT HEARING WAS HELD IN DETROIT. WARDEN BOGAN AND MICHAEL PYBAS, ASST. REGIONAL COUNSEL ATTENDED HEARING. THIS BIVENS CASE INVOLVED THE WARDEN'S DENIAL OF A REQUEST FOR MARRIAGE BETWEEN AN INMATE AND A FORMER CONTRACT TEACHER. PREVIOUSLY THE COURT HAD GRANTED A PRELIMINARY INJUNCTION ALLOWING THE MARRIAGE TO TAKE PLACE AND ORDERING THAT VISITATION BE ALLOWED EVEN THOUGH THE WARDEN EXPRESSED SERIOUS SECURITY CONCERNS, PARTICULARLY IN CONTROLLING AND ENFORCING RESTRICTIONS ON THE FORMATION OF EMOTIONAL RELATIONSHIPS BETWEEN STAFF AND INMATES IN THE FUTURE AT MILAN. BEFORE THE PRELIMINARY INJUNCTION COULD BE APPEALED, THE INMATE WAS PLACED IN A HALF-WAY HOUSE, MOOTING ANY INJUNCTIVE RELIEF. THE COURT RULED AT THE CONCLUSION OF THE HEARING THAT THE WARDEN WAS WELL WITHIN HIS DISCRETION IN DENYING THE MARRIAGE, THERE WAS NO CLEARLY ESTABLISHED LAW PUT FORTH BY COUNSEL FOR THE PLAINTIFFS SHOWING ANY ENTITLEMENT TO THE MARRIAGE, AND THE WARDEN WAS THEREFORE ENTITLED TO QUALIFIED IMMUNITY. THE CASE WAS DISMISSED.

SHUELL V. JUSTICE DEPT., NO. 92-CV-60438-AA, ED/MI.
A HEARING WAS HELD ON FEBRUARY 8, 1993 IN ANN ARBOR, MI ON THE GOVERNMENT'S MOTION TO DISSOLVE TRO AND DISMISS. PREVIOUSLY THE COURT HAD GRANTED INMATE'S COUNSEL A TRO EXPARTE TO BLOCK HIS RELEASE FROM FCI, MILAN, AT THE EXPIRATION OF HIS SENTENCE, TO SERVE A STATE LIFE

03/08/1993 07:50:21 =====

SENTENCE. THIS OLD LAW INMATE SOUGHT TO EXTEND HIS FEDERAL INCARCERATION BY SEVERAL YEAR BY WAIVING STATUTORY GOOD TIME CREDITS. THE GOVERNMENT SUCCESSFULLY ARGUED THAT THE INMATE HAD NO LIBERTY INTEREST OR OTHER RIGHT TO BE HOUSED OR CONFINED BY THE GOVERNMENT AND WHEN HIS SENTENCE WAS DETERMINED SASTISFIED, HE HAD NO RIGHT TO REMAIN INCARCERATED. THE COURT SPECIFICALLY FOUND THE CONTRARY HOLDING IN THE PUBLISHED WOODSON CASE (D.C.) UNPERSUAISIVE. THE INMATE SOUGHT A STAY PENDING APPEAL WHICH WAS DENIED. HE WAS TRANSFERRED TO STATE OF MICHIGAN CUSTODY. THE INMATE'S ATTORNEY HAS APPEALED TO THE SIXTH CIRCUIT.

UNITED STATES V. JACOBINI, 90-CR-167 (ADS), EASTERN DISTRICT OF NEW YORK:
A FCI, MORGANTOWN INMATE PETITIONED THE COURT FOR "HOME CONFINEMENT" BY "MOTION FOR MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT". INMATE INCLUDED IN HIS MOTION A SIGNED STATEMENT FROM FCI, MRG PHYSICIAN THAT INMATE HAS A "MEDICAL CONDITION INEVVITABLY LEADING TO MYOCARDIAL INFRACTION AND SUDDEN DEATH", AND A MEMORANDUM STATING THAT INMATE CANNOT BE TREATED BY LOCAL CARDIOLOGISTS. JUDGE CALLED AN EVIDENTIARY HEARING ON ISSUE. THE JUDGE APPEARED TO INTERPRET THE DOCTOR'S SUBMISSIONS AS

A MOTION ON THE PART OF BOP FOR CONSIDERATION UNDER 18 USC 3582(C)(1)(A). DECLARATIONS WERE SUBMITTED BY WARDEN AND DOCTOR, HOWEVER HEARING WAS NOT CANCELLED. INMATE SUBMITTED REBUTTALS TO THESE DECLARATIONS AND AUSA'S RESPONSE. INMATE ADMITTED TO EXEMPLARY CARE BY INSTITUTION MEDICAL STAFF.

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JUDGE CANCELLED HEARING AFTER REVIEWING ADDITIONAL MATERIALS SUBMITTED BY MARO LEGAL STAFF NOTING THAT INMATE IS ATTEMPTING TO MANIPULATE A 6 MONTH PRE-RELEASE PLACEMENT. INMATE HAD REFUSED TO ACCEPT A 2 MONTH HALFWAY HOUSE PLACEMENT, WHICH WAS OFFERED, AND DID NOT APPEAL DECISION THROUGH ADMIN. REMEDY PROCEDURE.

Do either of these ever need to be brought to WHe's attention?
USA V. ALBERT ANDERSON, CR. NO. 92-00180-08(S) N.D.W.VA.
CRIMINAL INDICTMENT IN MAJOR DRUG CASE IN JEOPARDY BECAUSE LEGAL MAIL WAS OPENED IMPROPERLY. INFORMATION FOUND IN LEGAL MAIL INDICATED THAT PERSONS HOUSED IN THE PRETRIAL UNIT ALONG WITH DEFENDANT WERE WITNESSES AGAINST HIM AND SHOULD HAVE BEEN SEPERATEES. INSTITUTIONAL STAFF NOTIFIED AUSA. DEFENSE ATTORNEY BROUGHT MOTION TO DISMISS INDICTMENT, OR IN THE ALTERNATIVE MOTION FOR SANCTIONS DUE TO VIOLATION OF LEGAL MAIL POLICY. ENVELOPE WAS MARKED WITH ATTORNEY'S NAME, TITLE, AND STAMPED "CONFIDENTIAL" TWO STAFF MEMBERS, OUR CMC AND THE UNIT MANAGER OF PTU TRAVELED TO WHEELING TO TESTIFY AT THE HEARING ON FEBRUARY 24, 1993.

UPDATE ON CASES, TRIALS OR HEARINGS, ETC. NOTED IN PRIOR REPORTS:

GARRETT V. QUINLAN, 92-CV-202, ED/VA, PETERSBURG
A BIVENS ACTION FILED BY INMATE AT FCI, PETERSBURG IN THE EASTERN DISTRICT OF VIRGINIA (NORFOLK). THE JUDGE HAS ORDERED A DEFENDANT TO INFORM THE

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COURT WHETHER HE WILL INSIST ON SERVICE OF PROCESS IN CONFORMITY WITH RULE 4 OF THE F.R.CIV.P. THE COURT STATED THAT IN CASES FILED PRO SE BY PRISONERS, "...FEDERAL OFFICIALS HAVE LONG ACQUIESCED IN (THE COURT'S) PRACTICE" OF MAILING A COPY OF THE COMPLAINT TO EACH DEFENDANT DIRECTLY FROM THE COURT, "RATHER THAN PUTTING THE PLAINTIFF OR THE COURT THROUGH THE EXPENSE OF REQUIRING ACTUAL PERSONAL SERVICE." PLAINTIFF'S ALLEGATION IS THAT HE IS BEING DENIED PLACEMENT IN A COMMUNITY CORRECTIONS CENTER BECAUSE OF MEDICAL DISABILITIES.

ESCOBAR V. GLUCH, NO. 91-CV-71731-DT, ED/MI & BALISTRERI V. BOGAN, 92-CV-73390-DT, ED/MI
IN BOTH OF THESE CASES THE COURT, IN OTHERWISE FAVORABLE RULINGS DISPOSING OF THE CASES ON THE MERITS, HAS REJECTED THE GOVERNMENT'S ARGUMENT THAT IN BIVENS CASES SERVICE IS NOT EFFECTED ON THE FEDERAL EMPLOYEES SUED UNTIL THE US IS SERVED PURSUANT TO RULES 4(D)(4) AND (5), F.R.CIV.P. THE COURT HELD THAT SINCE THE EMPLOYEES WERE BEING SUED IN THEIR INDIVIDUAL CAPACITIES, THE ATTORNEY GENERAL AND US ATTORNEY NEED NOT BE SERVED. WE ARE PRESERVING OUR OBJECTIONS IN THE EVENT EITHER INMATE APPEALS SO THAT WE MAY SEEK AUTHORIZATION TO CROSS-APPEAL IN SIXTH CIRCUIT ON THIS ISSUE. (NOTE--WE ARE ALSO SEEING SIMILAR ATTEMPTS TO REQUIRE OUR EMPLOYEES TO ANSWER WITHIN 20 DAYS INSTEAD OF 60 DAYS IN SME DISTRICTS WITHIN OUR REGION.)

/08/1993 07:55:37 =====

CLEVELAND & PURDUE V. BRUTSCHE (S.D. INDIANA)
THIS IS THE OLD CARLSON V. GREEN CASE. STAFF AF TERRE HAUTE WILL CLOSELY MONITOR THIS BIVENS SUIT AGAINST A FORMER ASSISTANT DIRECTOR, ROBERT

BRUTSCHE. THIS JURY TRIAL BEGINS ON MARCH 9, 1993, AND IS EXPECTED TO LAST 6 WEEKS.

REPRESENTATION NOT RECOMMENDED FOR STAFF:

NONE.

ITEMS OF INTEREST, PERSONAL LEAVE, BUSINESS TRIPS, MOVES, ETC.:

BILL BURLINGTON, REGIONAL COUNSEL WILL BE IN ATLANTA MARCH 9 & 10 TO TEACH MEDICAL/LEGAL SESSION AT MULTI-DISCIPLINARY TRAINING SESSION FOR HEALTH SERVICES STAFF. HE WILL BE ON ANNUAL LEAVE MARCH 13TH TO ATTEND GO GOING AWAY LUNCHEON FOR DIRECTOR QUINLAN.

MARIAN CALLAHAN IS SCHEEDED FOR ANNUAL LEAVE MARCH 22-26TH. SHE ALSO SERVED AS PANEL MEMBER AT CMC TRAINING IN MARO. HER PRESENTATION CONCERNED INTEROFFICE COMMUNICATIONS; CAUTIONING CMC'S AND STAFF TO INCLUDE ALL OUTSIDE COMMUNICATIONS WHEN A PACKET SUCH AS 3582(C)(1)(A) IS SUBMITTED; EXPLAINING NEED FOR CAREFUL DOCUMENTATION IN IFRP AND

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AND OTHER DECISIONS; AND SOLICITING THEIR COOPERATION AS LEGAL'S BEST CONSULTANT IN THE INSTITUTION.

MICHAEL PYBAS, ASST. REGIONAL COUNSEL, MOTHER IN LAW PASSED AWAY ON FEBRUARY 21, 1993. SHE HAD BEEN ILL FOR SOME TIME. MICHAEL WILL BE ATTENDING THE FEDERAL EXECUTIVE BOARD SPECIAL MEETING REGARDING NEW ETHICS REGULATIONS ON MARCH 3RD. HE IS SCHEDULED FOR ANNUAL LEAVE ON MARCH 8TH.

MARY N. WILBURN, ASST. REGIONAL COUNSEL IS SCHEDULED FOR ANNUAL LEAVE ON MARCH 8 AND ON MARCH 18TH TO SERVE ON A PANEL OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN TO AWARD FELLOWSHIPS FOR 2D- AND 3D- YEAR LAW SCHOOL STUDENTS.

MICHAEL SULLIVAN, ATTORNEY HAS NO ANNUAL LEAVE OR TRAVEL SCHEDULED.

MILT WILLIAMS. PARALEGAL ALSO SERVED ON CMC TRAINING PANEL WITH CRIMINAL AUSA OUT OF EASTERN DISTRICT OF VIRGINIA. THEIR SESSION DEALT WITH INTERAGENCY RELATION.

KATHY HARRIS, PARALEGAL TRAINEE HAS NO LEAVE SCHEDULED FOR MONTH, HOWEVER SHE WILL BE TRAVELLING TO DENVER MARCH 21 - APRIL 9 FOR TRAINING AT NLTC.

03/08/1993 07:57:22 =====

RE LAST MONTH'S NOTICE CONCERNING (SECOND HAND FAX MACHINE); OUR DIRECT LINE FAX MACHINE IS BROKEN. PLEASE SEND FAX TRANSMISSIONS TO FTS 700-394-7015 OR 301-317-7019.

SIGNIFICANT FTCA CLAIMS:

THERE HAS BEEN AN INCREASE IN THE NUMBER OF CLAIMS ALLEGING FAILURE TO PROTECT FROM INMATE ON INMATE ASSAULTS FROM TERRE HAUTE. ADMINISTRATIVE CLAIMS ARE ALSO BEING RECEIVED FROM MANCHESTER, MOSTLY RELATING TO PROPERTY TRANSFER.

SIGNIFICANT ADMINISTRATIVE REMEDIES

NONE.

SITUATIONS OF INTEREST. CONTACT WITH FEDERAL BENCH, HAZARDOUS WASTE SITES,
ETC.

NONE.

04/09/1993 12:35:21 =====

DATE: APRIL 7, 1993

TO: WALLACE H. CHENEY
GENERAL COUNSEL

FROM: BILL BURLINGTON, REGIONAL COUNSEL
MID-ATLANTIC REGIONAL OFFICE

SUBJ: MONTHLY REPORT FOR MARCH 1993

SUBSTANTIVE PLEADINGS (COMPLAINT, MOTION FOR SUMMARY JUDGMENT, ETC.)
NONE.

SETTLEMENTS:

STELLA YOUNG V. U.S.A., 91-264, EASTERN DISTRICT OF KENTUCKY (LEX)

PREVIOUSLY REPORT MEDICAL TORT CASE WAS SETTLED IN THE AMOUNT OF \$70,000. DECEDENT, A FORMER FMC, LEX INMATE SUED IN TORT AND UNDER BIVENS FOR DAMAGES, ALLEGING BOP FAILURE TO PERFORM MANDATORY PHYSICAL EXAMINATIONS CAUSED DELAY IN DIAGNOSIS OF ENDOMETRIAL OR UTERINE

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CANCER UNTIL DISEASE WAS TERMINAL. PLAINTIFF DIED SEVERAL MONTHS AFTER COMPASSIONATE RELEASE. SETTLEMENT WITH ESTATE IN THE AMOUNT OF \$70,000 INCLUDED REIMBURSEMENT OF MEDICARE COSTS (\$10,000) AND ATTORNEY'S FEES.

SUSAN MEADE V. U.S.A., EASTERN DISTRICT OF KENTUCKY, 92-352 (LEX)

IN THIS FTCA CASE WE REACHED A SETTLEMENT FOR \$35,000. INMATE MEAD HAD ALLEGED A PHYSICIAN'S ASSISTANT GAVE HER AN IMPROPER SOLUTION FOR HER CONTACT LENS, AND WHEN HER PROBLEMS DEVELOPED, SHE WAS REFUSED MEDICAL TREATMENT. MS. MEAD WILL REQUIRE A CORNEAL TRANSPLANT. DURING DISCOVERY WE REALIZED THAT WE COULD NOT DEFEND THE SUIT. AFTER CONSULTATION WITH THE WARDEN, OFFICE OF GENERAL COUNSEL AND MEDICAL DIRECTOR, A DECISION REACHED TO SETTLE THIS CASE.

ADVERSE DECISIONS OR SIGNIFICANT DECISIONS:

WINSTON V. WHALEN, CA4 (EASTERN DISTRICT OF VIRGINIA) 91-6676 (PET)

IN AN UNPUBLISHED DECISION, THE FOURTH CIRCUIT COURT OF APPEALS REMANDED THIS CASE TO THE DISTRICT COURT FOR PROCEEDING UNDER FTCA. FORMER FCI, PET INMATE SOUGHT \$1650 FOR PROPERTY LOSS. AFTER REFUSING OFFER OF \$250 TO ADMINISTRATIVELY SETTLE CLAIM, HE SUED, NAMING THE WARDEN AND PROPER

04/09/1993 12:35:28 =====

OFFICER AS DEFENDANTS. PLAINTIFF APPEALED AFTER THE COURT DISMISSED HIS ACTION ON GOVERNMENT'S MOTION TO SUBSTITUTE U.S. AS SOLE DEFENDANT, AND ON SUBSTITUTION, TO DISMISS DUE TO STATUTE OF LIMITATION BAR UNDER 2401 COURT OF APPEALS FOUND TORT ACTION VIABLE AS THE GOVERNMENT'S LIMITATIVE DEFENSE TURNS INITIALLY ON PROOF THAT THE ADMINISTRATIVE CLAIM WAS SENT BY CERTIFIED OR REGISTERED MAIL AS REQUIRED BY 2401(B). ON REMAND, AN OFFER OF \$165 WAS MADE TO PLAINTIFF WHICH HE HAS ACCEPTED.

UPDATE ON CASES, TRIALS OR HEARINGS, ETC. NOTED IN PRIOR REPORTS:

BRYANT V. MUTH (4TH CIRCUIT), 91-6672 (FCI, BUTNER)

ON MARCH 30, 1993 THE FOURTH CIRCUIT HEARD ORAL ARGUMENT ON WHETHER BUREAU EMPLOYEE BILL MUTH IS ENTITLED TO QUALIFIED IMMUNITY. IN THIS CASE, A MAGISTRATE RULED BILL MUTH MAY HAVE VIOLATED INMATE BRYANT'S CONSTITUTIONAL RIGHT OF ACCESS TO THE COURT WHEN THEY REFUSED TO RETURN LEGAL RESEARCH WHICH INMATE BRYANT HAD PLACED ON COMPUTER DISKETTES IN VIOLATION OF BUREAU REGULATIONS. THE DISTRICT COURT ACCEPTED THE MRR DENYING QUALIFIED IMMUNITY AND THIS APPEAL FOLLOWED. WE HAVE ARGUED THAT MUTH WAS FOLLOWING BUREAU REGULATIONS, AND AS SUCH, HE SHOULD BE GRANTED QUALIFIED IMMUNITY FROM SUIT. THIS IS THE SAME MAGISTRATE WHO RULED AGAINST US IN STOTTS V. MEESE.

04/09/1993 12:35:34 =====

SOUTH CAROLINA DEPT. OF HEALTH & ENVIRONMENTAL CONTROL, NOTICE OF VIOLATION---FCI, ESTILL

ON MARCH 24, 1993, THE STATE OF SOUTH CAROLINA CONDUCTED AN ENFORCEMENT CONFERENCE IN COLUMBIA, SOUTH CAROLINA. THE HEARING AROSE FROM THE FAILURE OF CONTRACTORS BUILDING THE NEW FACILITY AT ESTILL TO SECURE CERTAIN AIR QUALITY PERMITS AS REQUIRED BY THE CLEAN AIR ACT. MARIANNE SAUNDERS FROM THE COMMERCIAL AND ENVIRONMENTAL LAW BRANCH IN CENTRAL OFFICE REPRESENTED THE BOP IN THE PROCEEDING. WE ARE CURRENTLY AWAITING A DECISION IN THE MATTER.

REPRESENTATION NOT RECOMMENDED FOR STAFF: NONE.

ITEMS OF INTEREST, PERSONAL LEAVE, BUSINESS TRIPS, MOVES, ETC.

BILL BURLINGTON, REGIONAL COUNSEL WILL BE ON ANNUAL LEAVE APRIL 8 THROUGH 14. APRIL 19-23, HE WILL BE ATTENDING MANAGEMENT ASSESSMENT IN HERDON, VA ANNUAL LEAVE IS ALSO SCHEDULED FOR APRIL 30.

DURING THE WEEK OF APRIL 12, MIKE PYBAS WILL BE IN SUNNY FLORIDA ON A HOUSE HUNTING TRIP. FOR THOSE OF YOU WHO HAVE NOT HEARD, MIKE IS HEAD-ING TO SANDY PASTURE EFFECTIVE MAY 16 (FDC, MIAMI).

04/09/1993 12:35:38 =====

MARY WILBURN'S LAST DAY IN MARO IS APRIL 9. SHE WILL BE MOVING TO HER NEW ASSIGNMENT IN THE CENTRAL OFFICE EFFECTIVE APRIL 11.

MARO WILL BE CONDUCTING ANNUAL TRAINING DURING THE MONTH OF APRIL; MARIAN CALLAHAN & MILT WILLIAMS ARE SCHEDULED FOR APRIL 12 & 13; MICHAEL SULLIVAN & LORETTA BASSETTE APRIL 15 & 16; MICHAEL PYBAS APRIL 19 & 20; KATHYRN MARSZALEK APRIL 22 & 23; AND KATHY HARRIS UPON HER RETURN FROM NLTC, WILL BE ON A/L APRIL 12 AND ANNUAL TRAINING APRIL 19 & 23.

TERESA LENEAVE, PARALEGAL, TERRE HAUTE IS SCHEDULED FOR ANNUAL LEAVE APRIL 26-30.

SIGNIFICANT FTCA CLAIMS: NONE.

SIGNIFICANT ADMIN. REMEDIES: NONE. HOWEVER, THERE HAS BEEN A MARKED INCREASE IN APPEALS. DURING MARCH 208 APPEAL WERE SUBMITTED WITH 160 RECEIPTED. INCREASE DUE IN PART TO NEW INSTITUTION AT MAN.

Joyce

04/12/1993 10:30:47 =====

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

DATE: 04/09/93

REPLY TO DOUGLAS CURLESS
ATTN OF: REGIONAL COUNSEL

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

TO: WALLACE H. CHENEY
GENERAL COUNSEL

STATISTICS:

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

TORT CLAIM INVESTIGATION STATUS: AS OF 04/31/1993
BRN LOM LOF LOC LOS NEL PHX PLE SAF SDC SHE TRM TCN

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PENDING OVER 60 DAYS	1	21	0	0	0	0	0	20	3	4	9	45	6
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FOI/PA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RCVD	11	36	43									
CLOSED	27	16	17									
PENDING	131	151	181									
OVERDUE	42	43	56									

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

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

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INS/SOLER:			
NEW	18		
PENDING	143	162	

LITIGATION MATTERS:

SUPREME COURT

DANNIE MARTIN, SAN FRANCISCO CHRONICLE V. RISON ET.AL.

ON MARCH 22, 1993, THE SUPREME COURT DENIED CERT. IN THE ABOVE CASE. ON MARCH 29, 1993, ATTORNEY FOR MARTIN (WHO WAS A LAW SCHOOL CLASSMATE OF ATTORNEY GENERAL JANET RENO) WROTE THE ATTORNEY GENERAL AND ASKED THAT 28 CFR SEC. 540.20(B), ACTING AS A REPORTER WITH A BYLINE AND RECEIVING COMPENSATION FROM THE MEDIA, AND SEC. 540.14(D)(4), PROHIBITION AGAINST OPERATING A BUSINESS, BE DELETED. WXR AND CENTRAL OFFICE PREPARING BOP RESPONSE TO THE LETTER.

9TH CIRCUIT COURT OF APPEALS

JORDAN ET. AL. V. GARDNER ET. AL. CA9 NO.'S 90-35307; 90-35552. EN BANC

04/12/1993 10:30:59 =====

OPINION FEBRUARY 25, 1993.

THE 5 FEDERAL INSTITUTIONS IN WXR CURRENTLY HOUSING FEMALE PRETRIALERS AND SENTENCED OFFENDERS (FCI PLE, MDC LA, MCC SDC, FPC PHX AND FCI TCN) HAVE SUSPENDED CROSS GENDER PAT SEARCHES TEMPORARILY UNTIL FURTHER NOTICE FROM CENTRAL OFFICE AND WXR. WASHINGTON STATE MUST MAKE A DECISION TO PETITION FOR CERT. NO LATER THAN APRIL 26, 1993.

FRALEY V. BUREAU OF PRISONS, ET AL. CA9 NO. 93-35066

(CV 92-348 CI EWA) FRALEY SUED IN DISTRICT COURT TO RECEIVE "PRIOR CUSTODY CREDIT" FOR TIME SPENT IN HOME DETENTION AND ON ELECTRONIC MONITORING. BRIEFING SCH: OPEN 3/29/93. APPELLANT PRO SE FILED MOTION TO SUBMIT ON DISTRICT COURT RECORD.

BEGAY V. KNOWLES, CA9 NO. 92-16389 NOT FOR PUBLICATION PER 9TH CIRCUIT RULE 36-3. 9TH CIRCUIT CASE INTERPRETING BROWN V. RISON AND MILLS V. TAYLOR. COURT STATES BOP INTERPRETATION OF 18 USC SEC. 3583 "OFFICIAL DETENTION" IS INCORRECT AND UNREASONABLE. THE COURT CONTINUES ITS POLICY OF FAILING TO DEFER TO AGENCY INTERPRETATION OF ITS REGULATIONS AND CONTINUES TO IGNORE U.S. V. WILSON AND ALL OTHER CIRCUITS THAT SUPPORT BOP'S POSITION. THIS DECISION REVERSES A DISTRICT OF ARIZONA RULING THAT WAS FAVORABLE TO BOP'S POSITION.

04/12/1993 10:31:03 =====

MILLS V. TAYLOR, CA9 NO. 91-55362 4/9/93

CONFERENCE CALL BETWEEN CENTRAL OFFICE LCI BRANCH, CENTRAL OFFICE ISM, WXR LEGAL, AND WXR ISM ABOUT OPS MEMO FOR ISMS REGARDING APPLICATION OF 9TH CIR. LAW AWARDED HALF WAY HOUSE TIME ON PRETRIAL RELEASE AS "PRIOR CUSTODY C-EDIT". AS WAS STATED LAST MONTH AND IS NOTED IN OUR "MATTERS OF INTEREST" SECTION WE SEE OUR NEXT USDC AND 9TH CIR. BATTLE OVER APPLICATION OF BROWN AND MILLS TO INMATES SENTENCED IN OTHER CIRCUITS, BUT NOW HOUSED IN THE 9TH CIR./WESTERN REGION OF BOP AND CREDIT FOR TIME SPENT IN CCC AS A CONDITION OF SUPERVISED RELEASE. AGAIN, ANYONE GETTING CASES IN YOUR REGION SEEKING APPLICATION FOR SUCH CREDIT PLEASE NOTIFY WRO LEGAL AND COPY US WITH ANY PLEADINGS FILED.

U.S. DISTRICT COURTS:

BONNACI V. MATTHEWS, CV 92-1740 VJW N.D.CAL.(SAN FRANCISCO) INMATE WHO HAD BEEN RELEASED TO CCC AS A CONDITION OF BOND RELEASE WAS SENTENCED UNDER GUIDELINES IN THE 10TH CIRCUIT (UTAH) JUNE 1991. INMATE DESIGNATED TO FCI SHERIDAN. INMATE ASKED FOR JTC PER BROWN V. RISON. INSTITUTION

DENIED HIM CREDIT BASED ON BOP POLICY. INMATE FILED HABEAS CORPUS ADTION IN OREGON. HABEAS CORPUS RELIEF GRANTED BY USDC IN OREGON OVER OUR OBJEC-TIONS. U.S. ATTORNEYS OFFICE DECLINED TO APPEAL. INMATES SENTENCE RECAL-COMPLIANCE WITH COURT'S ORDER. INMATE SENT TO CCC IN UTAH FOR RELEASE

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CULATED IN COMPLIANCE WITH COURT'S ORDER. INMATE SENT TO CCC IN UTAH FOR RELEASE INTO COMMUNITY. CCM RECOMPUTED SENTENCE IN LIGHT OF BOP POLICY AND REMOVED THE JTC FROM SENTENCE. INMATE FILED BP-10 WITH WESTERN REGION. REQUEST DENIED BY REGION BASED ON POLICY AND 10TH CIRCUIT CASE U.S. V. WOODS. INMATE ATTEMPTED TO FILE A CIVIL RIGHTS ACTION IN USDC IN SAN FRANCISCO BASED ON DENIAL OF BP-10. CIVIL RIGHTS COMPLAINT DISMISSED BUT USDC ALLOWED THE INMATE LEAVE TO AMEND THE COMPLAINT AND REFERRED THE MATTER TO MAGISTRATE FOR A RECOMMENDATION TO DETERMINE IF BIVENS SUIT COULD BE FILED. BOP AND U.S. ATTORNEY NEVER SERVED WITH AMENDED COM-PLAINT. MAGISTRATE RECOMMENDS CASE BE REPOSTURED AS BIVENS ACTION AGAINST REGIONAL DIRECTOR IN THAT 9TH CIRCUIT HAD DETERMINED BOP POLICY AND CASE LAW FROM OTHER CIRCUITS WAS INCORRECT. WE ARE FILING OBJECTIONS TO MAGISTRATES REPORT AND RECOMMENDATION BASED ON FAILURE TO SERVE AND LACK OF OPPORTUNITY TO RESPOND TO AMENDED COMPLAINT.

U.S. V. VILLABONA-ALVARADO, CR 88-972(A)-WJR C.D. CAL (LA). INMATE WAS ONE OF 13 DEFENDANTS CONVICTED OF DRUG CRIMES AND SENTENCED TO LIFE WITH NO PAROLE. AT THE TIME OF SENTENCING INMATE'S COUNSEL ASKED THE COURT TO RECOMMEND HE BE KEPT IN CALIFORNIA TO ASSIST COUNSEL IN PREPARATION FOR APPEAL. THE COURT MADE SUCH A RECOMMENDATION PURSUANT TO FR APP PRO 38 (B) AND 28 CFR SEC. 527.20. WXR DESIGNATED THIS INMATE TO USP MARION DUE TO CRIME SEVERITY, SENTENCE LENGTH, RESOURCES IN THE COMMUNITY (INMATE HAS

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NET WORTH OF \$23 MILLION), AND ENHANCED SECURITY NEEDS. INMATES COUNSEL HAS FILED A MOTION FOR TRANSFER BACK TO CALIFORNIA. THE DISTRICT COURT FEELS IT STILL HAS JURISDICTION IN THE MATTER DUE TO THE RECOMMENDATION AT TIME OF SENTENCING. JANELLE BROCK HANDLING WITH ASSISTANCE FROM LEGAL STAFF AT USP MARION.

TRIALS:

U.S. V. DELONEY, CR 92-164 RGS D.AZ. TRIAL: APRIL 27, 1993. PROSECUTION OF FORMER FOOD SERVICE SECRETARY FOR BRINGING DRUGS INTO FCI PHOENIX FOR INMATES. MOTIONS ARGUED IN MARCH RESULTED IN A RULING THAT TELEPHONE CALLS BETWEEN DEFENSE INVESTIGATOR AND INMATE WHO WAS SOLICITED MONITORING. INVESTIGATOR WAS "COACHING" INMATE FOR PERJURY (IS NOW FACING CHARGES), INMATE WAS IN ADMIN. DETENTION. JANE H. COVERING.

FANT V. BOP, C.D. CAL. (LOS ANGELES) TRIAL MARCH 9-11, 1993. INMATE BROUGHT FTCA CLAIM FOR MEDICAL MALPRACTICE CLAIMING OVER \$250,000 IN DAMAGES. THREE DAY TRIAL TO THE COURT CONCLUDED 3/11/93. POST TRIAL POST TRIAL BRIEFS TO BE SUBMITTED BY END OF MONTH. JOHN NORDIN, AUSA AND DEE ALFORD HANDLING.

U.S. V. DIANA NEVELL, CR 92-653 D.AZ. (TUC). WIFE OF INMATE CHARGED WITH

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BRINGING HEROIN IN THROUGH VISITING ROOM. HENTHORN REQUESTS UPDATED/COM-PLETED 4/8/93. TRIAL STARTS 4/13/93. PARALEGAL TOM BYRON WILL ATTEND TRIAL.

SETTLEMENTS:

NONE THIS MONTH

BUT SEVERAL ARE PENDING IN CASES REPORTED IN PREVIOUS REPORTS. GARCIA V. U.S., D. AZ., FTCA BY MOTHER FOR DEATH OF INMATE SON. STEWART V. QUINLAN, D. AZ., EEOC CLAIM BY FORMER CORRECTIONAL OFFICER. APPROX. \$76,500.

ALEXANDER V. PERRILL, D. AZ., BIVENS AGAINST WARDEN & ISM. USAO SEEKING AUTHORIZATION FOR SETTLEMENT FROM DOJ. APPROX. \$30,000.

MATTERS OF INTEREST/CONCERN:

SEE BONNACI ABOVE. THIS COULD BE THE FIRST IN A LONG LINE OF POTENTIAL BIVENS ACTIONS AGAINST BOP STAFF BASED ON THE 9TH CIRCUIT CASES BROWN V. RISON AND MILLS V. TAYLOR INTERPRETING BOP PROGRAM STATEMENT DEFINITIONS OF "CUSTODY", "JAIL TIME CREDIT", AND "DETENTION" IN 18 USC SECTIONS 3568 AND 3585.

ETHICS TRAINING:

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COMPLETED:

TIM ROBERTS: FCI PHX 3/22-23; SEATTLE CCM 4/1 (GEIGER CAMP).

JENIFER GRUNDY: USP LOMPOC AND FCI LOMPOC 4/5 -4/12;
FCI DUBLIN 4/26-27

PERSONNEL MATTERS:

WRO

DOUG CURLESS - RC/AGC MEETING DULLES MARRIOTT SUITES 4/19-4/23
TELEVIDEO TRAINER CRIM PRO FOR NLTC 4/23 2:00 EDT
VALERIE STEWART - MEETING W/USMS, USDC CLERKS, ISM, MDC LA 4/9
ENVIRONMENTAL LAW COURSE, SAN FRANCISCO 4/13-15.
JENIFER GRUNDY - TDY AT LOM 4/13-16
MATT CARNEY - AT USP LOMPOC 4/19
JANELLE BROCK - FLETC 4/19-5/7
JANET AUGUSTINE -
GLORIA POUPAR NLTC TRAINING (AURORA) 3/22-4/9
JUANITA JIGGETS -
LIDA PAETZKE

INSTITUTION STAFF:

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BRN/PAM RILEY-MORGAN: ANNUAL LEAVE 4/1-12. TEMPORARY CUSTODY ASSIGNMENT 3/29-4/1 AND 4/12/23.

TCN/TOM BYRON DUE TO STAFFING SHORTAGES TOM IS WORKING CUSTODY 2 DAYS A WEEK.

MDC LOS/ED ROSS ED CONTINUES AS ACTING DEPUTY HSA