

LITIGATION NARRATIVES
JANUARY 1, 1997 - MARCH 31, 1997

SIGNIFICANT CASES

L. J. and Maylene Carter, LR-C-95-407 (ED/AR)

In this FTCA action, the plaintiffs sought reimbursement for subsistence fees charged while they were housed in a halfway house. Their theory was based on the fact that the Judgment and Commitment Order, which did impose fines and restitution, contained the form language that "The fine includes any costs of incarceration and/or supervision." On January 21, 1997, the court ruled that we acted within our authority in collecting the subsistence fees, and that our actions were not in violation of the J & C. The court also noted that plaintiffs did have a choice in the matter - if they did not want to pay subsistence, they could have been housed in a correctional institution, where no subsistence or costs of incarceration would have been assessed.

Daniel Schmaus v. N. L. Conner, 6:96CV1023 (ED/TX)

In this Habeas action, the inmate alleges his third revoked term of Special Parole had expired and the U.S. Parole Commission had determined his "sentence had expired". He alleges the Bureau of Prisons refuses to release him.

Eddie Wayne Roberson v. Warden, 5:96CV216 (ED/TX)

In this Habeas action, the inmate alleges the Warden refuses to give jail time credit for time he spent in state custody under federal detainer.

Rolf W. Starke v. John M. Tombone, et al., 396-CV3454-G (ND/TX)

This is a Section 1983 case. Plaintiff alleges that the defendants have conspired under the color of state law to violate his First, Fifth, Sixth, Eighth, and Fourteenth amendment rights. Specifically, plaintiff states that his health has suffered as a result of inhaling secondary smoke from cigarettes, cigars, and pipe tobacco products. He only asks for judgment against the defendants. He does not request any monetary damages.

Kenneth Lee Stewart v. John Tombone, Warden, 397-CV0129-R and
Talford H. Royal v. John Tombone, Warden, 397-CV0182-H (ND/TX)

Basically, this is a 3621(e) appeal. There's a little bit of a different twist in these cases versus the normal 3621(e) cases. Petitioners are not challenging the fact that the Bureau of Prisons has classified their crime as a "crime of violence". Rather, they contend that the Bureau of Prisons entered into a "contractual" agreement with them which stated that if they

completed the 500 hour DAPS Program, they would receive a year off their sentence. They state that they were granted the one year off, but when the new program statement concerning crimes of violence was issued, staff at FCI Seagoville found them ineligible for early release. They contend that the Bureau's denial of the year off creates a state created liberty interest.

Wilson Harrell v. Kathleen Hawks, 97-0048-A (WD/OK)

The Bivens case recently filed by inmate Harrell is based on the Ensign Amendment. Harrell is alleging his counselors, the unit manager, the ISM, Warden, Mr. Cooksey, and the Director of the BOP, conspired to deprive him of his 1st, 4th, 5th, 9th, and 14th amendment rights. Harrell is seeking \$1,000,500.00 in damages, an injunction, and attorney fees. A Martinez report is due in March. Harrell has not exhausted his administrative remedies.

Donald Holmes v. S. W. Phelps, et al., 5:96CV225 (ED/TX)

The plaintiff alleges harassment, discrimination, and verbal and physical abuse by FCI Texarkana staff.

Wells v. Carbow, EP-97-CA-029-DB (WD/TX)

An inmate at FCI La Tuna was removed from the ICC program at Lewisburg for having a two point enhancement for firearms. However, after his removal, the inmate had his sentence clarified to state he did not use firearms. Moreover, a Post-Sentence Investigation was prepared that did not give him a two point enhancement for firearms. However, the inmate was never returned to the ICC. The inmate agreed to dismiss the action in return for accelerated CCC placement within policy and home confinement when eligible.

CASES WITH HEARING OR TRIAL

Hoot v. Gibson, A-96-CA-390 (WD/TX)

On January 28, 1997, Judge Sparks held a hearing to consider the petitioner's request for DAP credit for seven weeks spent in non-DAP bed as the result of mutual error of staff and petitioner. The Central Office's position that the petitioner had not met the statutory requirement of 180 days in a DAP bed was articulated by Dr. J. Jones, DAP Administrator, SCRO. The Court ruled that the equities of the case were in the petitioner's favor, and entered judgment orally in favor of the Petitioner.

Gerald Esposito v. George E. Killinger, et al., 4:96-CV-927-Y
ND/TX

A hearing was held on January 31, 1997, on a pending TRO on ESPOSITO, Gerald, who claims we have denied him adequate medical care. At the hearing, the Court denied the TRO due to the requested medical procedure being scheduled. The Judge suggested that Inmate Esposito drop the case to avoid it being dismissed as frivolous.

Noel Edward Plunkett v. Joe Gunia, et al., C-96-548 (SD/TX)

Bivens case. Reported in February. Evidentiary hearing held on March 7, 1990. No ruling as of this time.

Dennis O'Neal McAnnich v. Frank Woods, et al.

Bivens case. Spears hearing held on March 25, 1997.

United States v. Rasha Mansour, 4:97-CV-079-Y (ND/TX)

A commitment hearing for hospitalization was held at FMC Carswell on March 12, 1997, pursuant to 18 USC 4245. Ms. Mansour was committed to our inpatient unit.

Spaniol v. USA

A trial was held in Sherman, Texas on March 12-13, 1997. The judge ordered both parties to submit their closing briefs within 10 days. Ruth Yeager, Deputy Civil Chiefs, feels very optimistic of our chances of prevailing.

CASE WITH SETTLEMENT OR AWARD

Maria Ramos v. U.S.A., Civil Action No. EP-94-CA-342-MC (ND/TX)

Adverse judgment rendered by magistrate. Action brought by the mother and daughter of a former inmate at FPC La Tuna. The daughter has cerebral palsy and cannot walk, talk, or breathe without assistance. In October 1993, when the family went to visit inmate Juan Ramos, there was no handicapped ramp to access the visiting area. The Warden allowed Mrs. Ramos, because she was a frequent visitor, to use the loading ramp around the side of the building. Because a government vehicle was blocking the ramp, Mrs. Ramos wheeled her daughter along the roadway. The roadway contained concrete splatter and was bumpy. Ramos' chair hit one of the concrete bumps, and Ramos became dislodged from her wheelchair. She sustained almost no physical injuries. The Court awarded \$30.00 in actual damages, and \$5,970.00 in pain and suffering (Total judgment \$6,000.00). BOP and U.S. Attorney's Office have agreed to not appeal this case.

SIGNIFICANT TORT CLAIMS

Inmate Marsha BUCHANON, Register Number 19548-001 - Former inmate at FMC Carswell has submitted an administrative claim (T-SCR-97-20), alleging that while she was being x-rayed on January 17, 1995, the x-ray machine malfunctioned and she sustained burns to both of her eyes. She claims that the examination revealed she had sustained flash burns and had photophobia/photo sensitivity. She is seeking three hundred thousand dollars (\$300,000.00) in damages.

A review of the medical documents she attached to her claim indicates that on January 17, 1995, a physician at FMC Carswell noted in her medical chart that she had photophobia secondary to flash in her eyes.

AGERTON, Dr. William D. (Civilian) - (T-SCR-96-472) Dr. Agerton alleges that he was employed by EMCare to provide medical services to health care providers, such as the Federal Medical Center in Fort Worth, Texas, and on May 16, 1996, Dr. John Barry (Clinical Director) refused to allow him to provide medical care at FMC Fort Worth. Dr. Agerton alleges that he has sustained loss of pay and restriction of hospital privileges.

The South Central Regional Health Services Administrator has indicated that the contract was with EMCare and not with any individual. It is not clear at this time why Dr. Agerton was denied access to FMC Fort Worth; however, the claim is currently being investigated by staff at Fort Worth. Dr. Agerton is seeking \$100,000.00 in damages.

BOSTIC, Billye E., Register Number 62285-080 has filed an administrative claim (T-SCR-97-53) because the Bureau of Prisons imposed a cost of incarceration fee. He alleges that after he refused to pay \$21,352.00 per year, he was placed on refusal status until he paroled on June 3, 1996. He contends that he lost early parole consideration, halfway house placement, pay for six months, social security pay for three months, three months of earnings, work privileges, dormitory privileges, and purchase privileges.

Mr. Bostic has attached a Memorandum and Opinion (Billye E. Bostic v. Joe Aguirre, Warden, EP-96-CA-139-DB) by United States District Judge David Briones, in which Mr. Bostic's Habeas was granted. Judge Briones stated that the "Bureau of Prisons shall not collect cost of incarceration fees" because Mr. Bostic's sentence did not meet all three prongs of 28 C.F.R. § 505.1. In addition, there is documentation attached to Mr. Bostic's claim that indicates that the Bureau of Prisons continued to hold him accountable for the cost after Judge Briones issued the order on April 30, 1996.

ROBERTSON, Vernon Ray, Register Number 17017-057 has filed an administrative tort claim alleging that on December 16, 1996, he was violently assaulted by a State of Oklahoma inmate while they were housed at FTC Oklahoma City. Mr. Robertson contends that he was beaten and stabbed with a broom handle. He also states that the inmate had a history of violence and that BOP staff failed to provide adequate protection. He seeks \$300,000.00 in damages. (T-BOP-97-015)

MEDICAL

GADSON, Floyd, Register Number 09390-058 - Mr. Gadson contends on June 13, 1996, he requested medication for his diabetes. He states that he was refused treatment and was issued an incident report. He contends that as a result of the denied medical care, he developed a diabetic ulcer on his foot, which burst open and has caused him a significant amount of pain. Mr. Gadson requests \$4,500,000.00 for emotional distress and permanent physical injury. (T-SCR-97-44)

CARTER, Norma J., Register Number 21603-034 - Harry T. Winmann, 3850 N. Causeway Boulevard, Number 590, Metairie, Louisiana, has filed a claim (T-SCR-97-28) on behalf of Norma J. Carter. Ms. Carter alleges that medical staff at FPC Bryan denied timely surgical care for a pilonidal abscess and that she ultimately had to undergo a colostomy. Ms. Carter is a diabetic and contends that she is susceptible to wound infection. She is seeking \$500,000.00 in damages.

COLLINS, Clyde, Register Number 16940-009 - (T-SCR-97-64) The family of deceased inmate has filed a claim for the death of Mr. Collins. Al Weisenberger, an attorney in El Paso, has submitted the claim, but there is no authorization from Mrs. Collins or any of Mr. Collins' six children authorizing Mr. Weisenberger to represent them in a wrongful death claim against the government.

Mr. Collins died from a heart attack while playing softball at FPC El Paso on July 17, 1996. The Collins family contends that the Bureau of Prisons did not provide adequate treatment for Mr. Collins abnormal EKG in March 1995, nor was the annual physical conduct in March 1996. The family also states that staff failed to perform CPR within a reasonable time, prohibited another inmate "who was trained in CPR" to perform CPR, and did not timely summons an ambulance. The claimants seek \$15,000,000.00 in damages (\$5,000,000 for personal injury and \$10,000,000.00 for wrongful death).

MEDICAL/ADA CLAIM

PETERSEN, Justin, Register Number 98535-012 - Mr. Petersen contends that during transfer between MDC Los Angeles and FCI Bastrop his prosthetic socks were lost, that because staff did not replace the socks he has suffered a breakdown of the skin on his amputated stump, that FCI Bastrop is not adequately equipped to house disabled inmates, that while he was housed there he slipped and hit his head on his locker, and that the shower bar broke and he fell causing a bruise to his hand.

Mr. Petersen complains that he was transferred to USFMCP Springfield for treatment, but because he only had 5 months remaining to be served, staff would not consider making any significant repairs to his prosthetic device. He seeks \$900 for temporary repair of his prosthesis, \$18,000 for replacement of his prosthesis and \$15,000 for personal injury. (T-NCR-97-150). Investigation pending.

REYNOSO-OLASCAGO, Jose, Register Number 64714-079 - Mr. Reynoso-Olascago alleges that while he was walking on the track at FCI Big Spring, he was hit in the face by a bat that had slipped out of a softball player's hands. He was transported to a local community hospital for treatment, he later underwent surgery to repair his fractured jaw. He claims that BOP staff negligently allowed him to walk around the track while a game was in progress. He seeks \$10,000,000.00 in damages. (T-SCR-96-430). No liability concerns.

FANTROY, Richard, Register Number 27764-077, alleges during June 1996 at FMC Fort Worth, he was given incorrect medication for his medical condition. The claim is in the amount of \$500,000. (T-SCR-97-47). Investigation pending.

TELFAIR, Milton, Register Number 59903-080, has filed a claim concerning his medical treatment at FCI Oakdale. He is confined to a wheelchair and suffers from recurrent anal fissures. He underwent a hemorrhoidectomy and anal fissurectomy, but feels additional treatment should have been provided. He is currently incarcerated at FMC Fort Worth. (T-SCR-97-25). Investigation pending.

SIGNIFICANT ADMINISTRATIVE REMEDIES

Fort Worth received and responded to Administrative Remedy #128997-F1, in which Wali Muhammed, Reg. No. 19148-009, alleged Nation of Islam were denied access to an additional meeting time and their yearly ceremonial meal. There was no validity to the allegations.

Administrative Remedy 130071-F1, Inmate Freeman, requests to display a "dream catcher". He alleges this is an American Indian religious belief. Information received indicates the BOP does not recognize this as a religious item although some institutions allow it. Texarkana denied the inmate's request. Our office has not received a regional appeal regarding this issue, the inmate has until April 17, 1997 to file an appeal.

Inmate Wayne Matra, at FCI Texarkana, filed a Request for Administrative Remedy, Case Number 124992-F1, the inmate alleges discrimination in religious practices. He alleges the institution is not utilizing the proper "prayer oil". The institution's response was that the oil was not a religious item in itself; however, it was used to facilitate a religious practice. We agreed to return to using the requested oil.

Inmate Baxendale filed Administrative Remedy 125535-F1, alleging that the BOP misinterpreted the Ensign Amendment. He specifically requested to continue receipt of "Playboy".

MEDICAL MALPRACTICE:

LITIGATION

Caesar Morales-Morales v. Norris Knight, et al., 597CV0023 (ND/TX)

In this action, the plaintiff names a contract physician, contract clinic, contract hospital, retired BOP physician and current physician. The plaintiff asserts he fell on his arm, surgery was performed, and that despite the surgery he still has problems. He asserts improper and inadequate treatment due to deliberate indifference. There is no show cause order in this matter; thus, research for a litigation report has not yet occurred.

James Watson Ramsey v. USA, et al., 3:96-CV-3358-G (ND/TX)

This FMC Fort Worth case involves 12 named defendants. The inmate claims he was subjected to cruel and unusual punishment through denial and delay of medical care of his burns. Based on a preliminary assessment, there does not appear to be any liability on the part of staff. Mr. Ramsey's complaint appears to be frivolous pursuant to the PLRA.

Carter v. FMC Medical Review Board, et al., 4:96-CV-690-A (ND/TX)

The inmate had a previous case filed which raised identical issues regarding the lack of medical care she received at FMC

Carswell. The case was dismissed as frivolous pursuant to the Prison Litigation Reform Act of 1995 on December 1, 1996.

TORTS (FTCA)

Inmate Norma CARTER, asserts government negligence regarding timely provision of surgical care for a pilonidal abscess at outside hospital by staff at FPC Bryan, resulting in extensive parasacral infection. Preliminary investigation reveals no evidence of delay or inappropriate treatment by FPC Bryan staff.

CANIPE, Terry, Register Number 60647-080 (T-BOP-96-159)- Inmate alleges that during the morning hours of July 30, 1994, while he was incarcerated at FCI Bastrop, he was attacked by other inmates during an institution lockdown. He claims that he sustained a broken finger and "other injuries." Mr. Canipe contends that he did not seek immediate medical attention because he had been warned by other inmates not to give any information about how he sustained the injuries.

At approximately 6:00 p.m., Mr. Canipe reported to institution staff that he had slipped on some stairs and had fallen down. Medical staff examined Mr. Canipe and requested x-rays of his hand and face. On August 2, 1994, the x-ray revealed that he had suffered a broken finger, and approximately ten days later, he was examined by a contract orthopedic physician who noted a partial ligament rupture on the splinted finger. The inmate was instructed to initiate range of motion exercises. On August 11, 1994, an x-ray revealed a dislocation involving the joint of the right ring finger. Surgery was later performed by a contract surgeon, and Mr. Canipe was referred to Springfield. Mr. Canipe is seeking one million dollars in damages.

ENSIGN AMENDMENT:

LITIGATION

FCI El Reno. Harrell v. Hawkins. Inmate asserts that return of publication pursuant to Ensign Amendment violates his constitutional rights.

TORTS

Adam Winchester has submitted a tort claim seeking \$128.80 because he is not receiving his monthly subscription of Penthouse magazine.