



**U.S. Department of Justice**

*Federal Bureau of Prisons*

*South Central Regional Office*

*Dallas, Texas 75219*

December 7, 2001

**MEMORANDUM FOR CHRISTOPHER ERLEWINE  
ASSISTANT DIRECTOR/GENERAL COUNSEL**

**FROM:** Michael D. Hood, Regional Counsel

**SUBJECT:** Monthly Report - November 2001

**ADMINISTRATIVE REMEDIES**

	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
<b>RECEIVED</b>	198	175	218	208	238	265	233	240	250	342	259	
<b>ANSWERED</b>	122	121	135	150	148	167	206	150	165	185	202	

**TORT CLAIMS**

	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
<b>PENDING</b>	225	227	231	239	260	252	264	255	272	256	281	
<b>RECEIVED</b>	72	49	86	72	69	53	82	81	60	95	57	
<b>ANSWERED</b>	80	48	69	61	68	48	82	60	69	63	61	
<b>PENDING OVER SIX MO</b>	217	228	248	250	261	257	264	276	263	269	277	
	0	0	0	0	0	0	0	0	0	0	2	

**FOI/PRIVACY**

	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
<b>PENDING</b>	43	57	45	57	33	35	26	46	65	84	43	
<b>RECEIVED</b>	102	56	89	71	80	72	77	71	88	29	32	
<b>ANSWERED</b>	95	68	77	95	78	81	57	52	69	70	33	
<b>PENDING OVER 20 DAYS</b>	57	45	57	33	35	26	46	65	84	43	42	
	3	3	5	1	2	0	1	5	5	15	11	

**LITIGATION**

	JA	FE	MA	AP	MA	JU	JU	AU	SE	OC	NO	DE
	N	B	R	R	Y	N	L	G	P	T	V	C
<b>CASES RECD</b>	17	11	21	19	10	10	10	14	17	14	16	
<b>CASES CLOSED</b>	5	5	12	17	12	9	7	14	15	11	9	
<b>HABEAS CORPUS</b>	11	4	13	8	3	5	6	6	6	8	9	
<b>BIVENS</b>	4	5	4	9	4	1	1	5	8	2	5	
<b>FTCA</b>	1	1	3	1	3	3	1	2	1	2	2	
<b>OTHER</b>	1	1	1	1	0	1	2	1	2	2	0	
<b>LIT REPORTS</b>	12	15	16	19	16	10	9	14	8	6	13	
<b>HEARINGS/ TRIALS</b>	1	0	1	2	0	0	1	1	0	1	2	
<b>SETTLEMENTS/ AWARDS</b>	0	0	0	0	0	2	0	1	0	0	0	

**CASES WITH HEARINGS OR TRIALS**

On November 6, 2001, an 18 U.S.C. §4245 commitment hearing was held regarding inmate Jay Larson. The court found that inmate Larson was suffering from a mental disease or defect requiring hospitalization at FMC Carswell for treatment.

On November 27, 2001, an 18 U.S.C. §4246 commitment hearing was held regarding inmate Alonya Butler, a pretrial inmate currently committed to FMC Carswell under 18 U.S.C. §4241(d). The court found that inmate Butler was suffering from a mental disease or defect which would create a substantial risk of injury or property damage if inmate Butler were to be released. Therefore, the court ordered her committed to the custody of the Attorney General for further treatment.

**CASES WITH SETTLEMENTS OR AWARDS****a. Adverse judgments**

None

**b. Tort Claim settlements**

None

**c. Other settlements**

None

**SIGNIFICANT CASES****USP BEAUMONT**

Denard Neal v. Kathleen Hawk-Sawyer, et al., 01-2021-RMU (DDC). The inmate plaintiff in this claims that his Eighth Amendment Rights were violated when he was tortured and sexually abused by staff in the Special Housing Unit in August and September of 2000.

He seeks \$15,000,000 in punitive damages, \$15,000,000 compensatory damages, court costs and attorney's fees. The Warden has referred the allegations. Plaintiff is now housed at USP Allenwood.

Gerald Masterson v. United States of America, et al., 1:01CV596-ED/TX. The pro se inmate plaintiff in this matter alleges that several staff subjected him to excessive force during an incident which occurred on December 17, 1999. He also alleges that he was denied medical care for his injuries. The administrative tort claim inmate Masterson previously filed was denied on February 16, 2001. However, the defendants have been under criminal investigation and/or prosecution, and there are concerns regarding whether representation will be afforded.

### **FCI SEAGOVILLE**

Jones v. Soles, No. 3:99-CV-1237-M (N.D. Tex.). On November 20, 2001, Magistrate Judge Paul D. Stickney issued a Report and Recommendation in which he recommended that the defendant's motion for summary judgment be denied. The plaintiff had alleged that the defendant, a Correctional Officer at FCI Seagoville who supervised the plaintiff's compound work detail, had retaliated against him for seeking informal resolution of a dispute concerning the scheduling of the plaintiff's vacation time. The retaliation allegedly took the form of reassigning the plaintiff to Food Service for one day and subsequently having the plaintiff transferred to another low security institution. The Magistrate concluded that the plaintiff had properly plead "a chronology of events from which retaliation may plausibly be inferred" (the 5th Cir. standard for pleading retaliation claims where a plaintiff does not have direct evidence retaliatory intent) and, therefore, concluded that genuine issues of material fact existed which precluded summary judgment.

The Magistrate also concluded that the defendant should not be afforded the protection of qualified immunity as there is a genuine issue of material fact as to whether retaliation actually occurred, and a reasonable Correctional Officer in defendant's position would know that taking adverse action against an inmate in retaliation for exercising his right to petition the government and his right of access to the courts is unconstitutional as the law is well established in this area. Dallas CLC staff and the

AUSA assigned to the case are evaluating potential objections to the Report and Recommendation.

### **FCC BEAUMONT**

Newman. In these previously reported cases and claims, the medical file was reviewed by Armed Forces Institute of Pathology (AFIP), wherein they determined that BOP medical care was not the proximate cause of the inmate's death. However, AFIP, has expressed significant concerns about the quality of care provided by the contractor (UTMB) at FCC Beaumont.

## **SIGNIFICANT TORT CLAIMS**

### **FCI BASTROP**

Farmers Insurance Group. This is a subrogation claim brought by the insurance company of the driver of a vehicle which was involved in a collision by a staff-driven van in May 2001, while staff were escorting inmates on a local medical trip. The amount of the claim is \$14,135.39. (TRT-SCR-2002-02711)

Iwegbu. Former FCI Big Spring inmate Daniel Ify Iwegbu (currently designated at FCC Beaumont - Medium) claims that during an institution lockdown on March 6, 2001, staff used excessive force to place him in a SHU cell with four other inmates. The claimant asserts that the staff involved were aware that he had a pre-existing serious back injury, which was exacerbated by the application of excessive force, and which ultimately required surgical intervention. The claimant alleges that he sustained severe pain and that surgical treatment would not have been needed but for the exacerbation of his previous injury by the application of excessive force. He seeks compensation in the amount of \$10,000,000.00. (TRT-SCR-2002-07187)

See Newman under Significant Cases.

## **SIGNIFICANT ADMINISTRATIVE REMEDIES**

### **USP BEAUMONT**

John B. Roux claims that he was denied proper medical treatment after being stabbed on May 12, 2001. It appears that inmate Roux's stab wound left him with a 15% occlusion of his left thorax (basically blood collecting in his lung), which University of Texas Medical Branch (UTMB) staff diagnosed on May 15, 2001. After numerous x-rays and evaluations by UTMB staff, inmate Roux's left thorax occlusion increased from 15% to 65% and required him to be referred to the Hospital Galveston Emergency Room for treatment and eventual surgery in June of 2001. Inmate Roux now reportedly has decreased lung capacity in his left lung. At this time, we have concerns about the contract medical care. (Remedy No. 251204-F1)

## **UPCOMING TRIALS OR HEARINGS**

### **CCM NEW ORLEANS**

Garza. Oral arguments before the 5<sup>th</sup> Circuit are scheduled for December 13, 2001. The plaintiff's counsel filed an appeal in this previously reported wrongful death case.

### **FMC FORT WORTH**

Digideo. A hearing for inmate Digideo pursuant to 18 U.S.C. §4246 is slated for December 18, 2001, before Judge John McBryde.

Hatcher. A video conferencing is scheduled for January 7, 2002, in the case of inmate [REDACTED]. A Philadelphia federal court is interested in inmate Hatcher's medical condition. Inmate Hatcher submitted her paperwork for compassionate release in 1996 and it was denied. We don't know whether inmate Hatcher will resubmit a compassionate release request. Inmate Hatcher is currently suffering from non-Hodgkin lymphoma and a host of other medical conditions. However, she is not expected to expire soon.

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**MEDICAL MALPRACTICE**

**LITIGATION**

See Newman under Significant Cases above.

**TORT CLAIMS**

See Newman under Significant Cases above.

**ENSIGN AMENDMENT**

None

**LITIGATION**

None

**TORT CLAIMS**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIMS**

None

**PRISON LITIGATION REFORM ACT ORDERS**

None

**SITUATIONS OF INTEREST**

**FCI BASTROP**

Judge R. Hinojosa of the Southern District of Texas, McAllen Division, visited the institution on November 2, 2001. He teaches a course on federal sentencing at the University of Texas School of Law, and he brought his class to tour and discuss federal sentences.

**FMC FORT WORTH**

Inmate [REDACTED], a self-proclaimed adherent of Christian Identity who arrived at FMC Fort Worth on October 18, 2001, has requested to be housed exclusively with "Aryan" inmates. Inmate [REDACTED] claims that being housed with "Aryan" inmates only is a central tenet of his faith, and alleges that he was afforded unspecified accommodation of some of his religious practices when he was previously housed at FCI Florence. A review and investigation of inmate [REDACTED] request is pending.

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**FDC HOUSTON**

The occupancy date of the CLC offices was delayed when Facilities staff encountered asbestos in the existing floor. Contract workers hired by GSA will conduct the removal of the asbestos on December 8 and 9, 2001. Facilities staff will require approximately one additional week to complete the renovations.

**CRIMINAL MATTERS AND PROSECUTIONS**

**FMC FORT WORTH**

On October 22, 2001, an FMC Fort Worth perimeter patrol officer observed inmate [REDACTED] attempting to escape the institution by attempting to scale the inside perimeter fence. The inmate was stopped and restrained by responding staff, and he remains in Administrative Detention pending FBI referral and investigation.

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**FDC HOUSTON**

On November 16, 2001, the (SD/TX) Court granted the motion for release on bond pending appeal filed by a former FDC Houston correctional officer, Anthony Ray Carter. Mr. Carter intends to appeal the sentence imposed in connection with his conviction for Sexual Abuse of a Ward. Specifically, Mr. Carter contends institution staff improperly submitted a letter to the U.S. Probation Office recommending that the Court impose a term of incarceration.

**USP POLLOCK**

On November 24, 2001, staff found Pamela Copeland, prospective visitor of inmate Dewayne Ervin, to be in possession of 27 grams of a green leafy substance which appeared to be marijuana. Ms. Copeland had the marijuana in 12 balloons that she had concealed on her person. Ms. Copeland consented to a visual search, which the Warden had authorized based upon intelligence gathered by institution SIS staff. The FBI were on-site at the time of the search and took Ms. Copeland into custody. On November 28, 2001, Ms. Copeland was indicted in the Western District of Louisiana for Providing or Possessing Contraband in Prison, in violation of 18 USC 1791.

**FCI TEXARKANA**

Inmate Martinez-Ortega entered a plea agreement in the ED/TX for Possession of a Weapon in a Correctional Facility and is awaiting sentencing. He was indicted on July 10, 2001.

Inmate Bernard Garcia was sentenced in the ED/TX on November 19, 2001, to 24 months, for his escape from the satellite camp on January 21, 2001.

**PERSONAL ISSUES**

[REDACTED]

[REDACTED]

b6

Scheduled Annual/Sick Leave:

[REDACTED]

- December 7 - Annual Leave
- December 14 - Annual Leave

[REDACTED]

- December 19-30 - Annual Leave

[REDACTED]

- December 20-24 - Annual Leave