



**U.S. Department of Justice**

*Federal Bureau of Prisons*

*South Central Regional Office*

*Dallas, Texas 75219*

February 8, 2002

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

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

**SUBJECT:** Monthly Report - January 2002

**ADMINISTRATIVE REMEDIES**

	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>RECEIVED</b>	190											
<b>ANSWERED</b>	167											

**TORT CLAIMS**

	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>PENDING</b>	261											
<b>RECEIVED</b>	48											
<b>ANSWERED</b>	93											
<b>PENDING</b>	216											
<b>OVER SIX MO</b>	0											

**FOI/PRIVACY**

	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>PENDING</b>	66											
<b>RECEIVED</b>	63											
<b>ANSWERED</b>	60											
<b>PENDING</b>	69											
<b>OVER 20 DAYS</b>	12											

**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>	16											
<b>CASES CLOSED</b>	12											
<b>HABEAS CORPUS</b>	10											
<b>BIVENS</b>	5											
<b>FTCA</b>	1											
<b>OTHER</b>	0											
<b>LIT REPORTS</b>	17											
<b>HEARINGS/ TRIALS</b>	0											
<b>SETTLEMENTS/ AWARDS</b>	1											

**CASES WITH HEARINGS OR TRIALS**

None

**CASES WITH SETTLEMENTS OR AWARDS****a. Adverse judgments**See Free under Significant Cases.**b. Tort Claim settlements**

None

**c. Other settlements**

None

**SIGNIFICANT CASES****FCI BASTROP**

Free v. Miles, A-01-CA-291-JN (WD/TX). The petitioner had been borrowed from state custody, where he was serving a prison sentence, pursuant to a federal writ. Upon his federal sentencing, the U.S. Marshals erroneously failed to return him to the state, and the Bureau designated him to a federal facility. Six months later, upon discovery of the erroneous designation, the Bureau returned him to state custody, and the state credited him throughout the time of the erroneous designation. Nevertheless, the local court determined that when the U.S. Marshals failed to return the petitioner to the custody of the state, the federal sentence commenced as per the strict language of 18 U.S.C. § 3585(a). Since the court found this statute unambiguous, it declined to take into account the language of P.S. 5160.04, which states that an erroneous designation is to be treated as not having happened. As a result, the six-month period of time was not approached by the court as potential jail credit time under 18 U.S.C. §3585(b), but as time spent in

federal custody serving a federal sentence that had already commenced. Accordingly, the court ordered that the Bureau credit the six months of erroneous designation against the federal sentence. The court stopped short, however, of ordering that the Bureau credit all of the time, without interruption, after the erroneous designation, which it could have done consistent with its reasoning. Such an order would have resulted in over three years of dual credit from the time of the erroneous designation to the petitioner's completion of his state sentence and his final, correct designation to Bureau custody.

The Magistrate's Report and Recommendation, which was adopted by the court, was not brought to our attention by the U.S. Attorney's office because of a change in personnel in that office. When the Bureau received the Order adopting the R&R, it was too late to object. The decision is not reported. All concerned agree not to appeal or to file a reconsideration.

#### **USP BEAUMONT**

Joe Louis Simpkins v. U.S., 1:00CV609 (ED/TX). The inmate plaintiff in this action filed an administrative tort claim, alleging Bureau staff failed to secure his property in a timely manner after he was assaulted and taken to Health Services. Approximately five months after the denial of his administrative claim, the plaintiff named several individuals in a lawsuit, but not the United States. He did not name the United States in his action until nearly eight months after he initiated suit. The Court concluded the plaintiff's claim against the United States was not able to "relate back" to the date his lawsuit was originally filed and was, therefore, barred by the statute of limitations.

#### **FMC CARSWELL**

Lily Schmidt v. Lucy Mallisham, 4:01-CV-1014-A (ND/TX). Petitioner alleges that she had been subjected to physical and sexual abuse by staff and has had personal property stolen by staff while housed at FMC Carswell. Due to the gradual escalation of petitioner's poor judgement, which causes her to violate institution rules in an increasingly self-destructive manner, the FMC Carswell Chief Psychiatrist is in the process of preparing a commitment petition to submit to the court. Petitioner's sexual allegations have been appropriately referred to OIA, and petitioner was offered the full panoply of programs provided for in the sexual assault prevention and intervention program statement. She refused all programs and also declined a "rape kit" examination.

#### **FCI EL RENO**

Beasley v. Peterson, No. CIV-01-1001 (WD/OK). Plaintiff filed a Bivens complaint which also sought injunctive relief. Plaintiff alleged that his release to Canadian County (Oklahoma state authorities) on a detainer placed by the State of Kansas would cause him to unnecessarily spend 10 days in the Canadian County Jail waiting on Kansas authorities who would eventually drop the detainer. Plaintiff was scheduled for mandatory release from his federal sentence on January 4, 2002. Magistrate Judge Robert

Bacharach entered a temporary restraining order on January 3, 2002, prohibiting FCI El Reno from releasing Plaintiff to Canadian County on January 4, 2002.

Supplemental filings were made citing relevant case law which stated Canadian County could lawfully accept custody of Plaintiff as an intermediary on the Kansas detainer. Magistrate Judge Bacharach dissolved his order of January 3, 2002, based upon his case. Plaintiff was released to Canadian authorities on January 4, 2002.

#### **FCI FORREST CITY**

Allen Ware v. BOP, No. 01-1384 (8<sup>th</sup> Cir. Jan. 8, 2002): After denying Defendants' motion for dismissal based upon qualified immunity, the case was appealed to the Eight Circuit Court of Appeals. The Court of Appeals entered an opinion reversing the District Court's denial of qualified immunity, the basis of which was that the inmate had no constitutionally protected liberty interest implicated by the suspension of his visitation privileges.

Albert J. Muick v. Unites States of America, Case No. 6:01-CV-1062-Orl-22DAB (MD/FL) (Bivens). Plaintiff alleges that medical staff members at FCI Forrest City were negligent in providing medical treatment to him. The plaintiff alleges that he repeatedly informed medical staff that he needed an examination and additional medication to treat his hemorrhoids, but medical staff continually denied him proper treatment. As a result of inadequate treatment for this condition, the plaintiff alleges that he suffered emotional distress, humiliation, and embarrassment.

#### **CCM HOUSTON**

Elizabeth Garza v. Correctional Systems, Inc. et al., M-01-298 (SD/TX). Plaintiff, a former employee of a halfway house under contract with the Bureau, asserts that Community Corrections staff violated her constitutional rights during their administrative investigation relating to misconduct allegations. The halfway house terminated plaintiff after the CCM instructed the halfway house that plaintiff was no longer authorized to work with federal offenders.

#### **FTC OKLAHOMA CITY**

Lodee Perry v. United States, No. CIV-00-136 (WD/OK). This case was placed on the December 2001, trial docket. However, on January 22, 2002, the court granted the United States' motion to transfer the case to the District of Colorado.

#### **FCI SEAGOVILLE**

Larry Powell v. Unknown Named Warden, et al., No. 4:02-CV-0021-A (ND/TX). In a case originally filed in state court and recently removed to N.D. Tex., plaintiff, currently designated at FCC Beaumont - Medium, is suing several FMC Carswell and FCI

Seagoville staff, as well as a Magistrate Judge and the Chief District Judge of the N.D. Tex. Plaintiff alleges that the defendants "knowingly and recklessly stepped outside of their official capacity to cause damage to occur" to him and his wife, an inmate currently designated at FMC Carswell. It appears that plaintiff is challenging the denial of inmate-to-inmate correspondence privileges between him and his wife by staff at Carswell and Seagoville when he and his wife were designated at those facilities in 1998 and 1999. Plaintiff seeks a wide range of injunctive relief and \$100,000,000 in damages.

### SIGNIFICANT TORT CLAIMS

#### **FCI OAKDALE**

In the Findler and Findler claim, a law firm states it sent inmate [REDACTED] a settlement check in the amount of \$7,500.00 for endorsement. Inmate [REDACTED] was to return the endorsed check to the law firm. Instead, however, the check, which had already been endorsed by the law firm, was removed from the envelope and credited to the inmate's commissary account without the law firm's receipt of its legal fees. The law firm alleges the check should not have been credited to the inmate's account; therefore, the Bureau is liable for their fees of \$2,500.00. (TRT-SCR-2002-07625) b7c

### SIGNIFICANT ADMINISTRATIVE REMEDIES

None

### UPCOMING TRIALS OR HEARINGS

#### **FCI SEAGOVILLE**

Jones v. Soles, No. 3:99-CV-1237-M (ND/TX). Trial is currently scheduled for February 11, 2002. As previously reported, plaintiff alleges that defendant, an FCI Seagoville Correctional Officer, had him moved to a less favorable work assignment and ultimately transferred to another institution in retaliation for plaintiff seeking informal resolution of a dispute over the scheduling of plaintiff's vacation time.

### MEDICAL MALPRACTICE

#### **LITIGATION**

See Muick above.

#### **TORT CLAIMS**

None

**ENSIGN AMENDMENT**

None

**LITIGATION**

None

**TORT CLAIMS**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIMS**

None

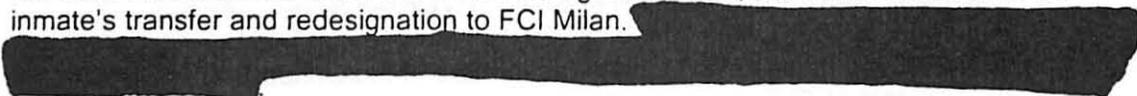
**PRISON LITIGATION REFORM ACT ORDERS**

None

**SITUATIONS OF INTEREST**

**FDC HOUSTON**

On January 9, 2002, an attorney representing a former inmate deposed Jason Terris, Health Services Administrator, in regard to a matter pending in a state court in Michigan. The former inmate sued several private health care providers who treated him while he was designated to halfway house in Michigan City, Indiana. One or more remaining defendants are asserting the Bureau delayed the inmate's transfer to a hospital facility that was able to correctly diagnosis his brain abscess condition (the first hospital had incorrectly diagnosed him as having an inoperable brain tumor). As the Assistant Health Services Administrator in the Mid-Atlantic Regional Office, Mr. Terris assisted in the inmate's transfer and redesignation to FCI Milan.



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Michael Shelby, United States Attorney for the Southern District of Texas, visited the

institution on January 17, 2002.

Mr. Shelby's comments indicated that he is very supportive of the Bureau of Prisons, particularly with regard to the prosecution of inmates who engage in assaultive behavior against staff.

#### **USP POLLOCK**

On December 30, 2001, staff observed inmate Jack Ashworth in respiratory arrest in the inmate dining hall during the evening meal. Health Services staff responded and attempted to assist inmate Ashworth. An ambulance was called, wherein he was taken to a local hospital. Inmate Ashworth was pronounced dead at 11:15 p.m due to Cardiopulmonary Arrest, secondary to Respiratory Arrest caused by a foreign body obstruction. Inmate Ashworth had a large piece of meat lodged in his airway that could not be dislodged by medical personnel. An investigation is pending.

#### **CRIMINAL MATTERS AND PROSECUTIONS**

##### **USP BEAUMONT**

On January 17, 2002, inmate Van Dugay was sentenced to 9 months imprisonment to be followed by a three-year term of supervised release by the United States District Court for the Eastern District of Texas. Inmate Dugay previously pled guilty to Possession of Contraband (Marijuana) in Prison, in violation of 18 USC 1791(a)(2).

On January 23, 2002, inmate James Brocklehurst was sentenced to 8 months imprisonment to be followed by a three-year term of supervised release by the United States District Court for the Eastern District of Texas. Inmate Brocklehurst previously pled guilty to Possession of Contraband (Marijuana) in Prison, in violation of 18 U.S.C. 1791 (a)(2).

On January 19, 2002, inmates Armando Canales and Manuel Flores were indicted in the United States District Court for the Eastern District of Texas. Each inmate is charged with one count each of violating 18 U.S.C. 113, Assault with a Dangerous Weapon; and 18 U.S.C. 1791, Possession of a Prohibited Object While in a United States Penitentiary.

On January 16, 2002, inmate Michael Wair was indicted in the United States District Court for the Eastern District of Texas. Inmate Wair was charged with one count of violating 18 U.S.C. 111, Assault of a Correctional Officer While in a United States Penitentiary.

On January 16, 2002, inmate Kevin Dooley was indicted in the United States District Court for the Eastern District of Texas. Inmate Dooley was charged with one count which alleges that he violated 18 U.S.C. 1791, Possession of Illegal Contraband (Marijuana) in Prison.

On January 16, 2002, inmate Richard Delano was indicted in the United States District Court for the Eastern District of Texas. Inmate Delano was charged with one count which alleges that he violated 18 U.S.C. 1791, Possession of Illegal Contraband (Marijuana) in Prison.

On January 16, 2002, inmate Anthony Patrick was indicted in the United States District Court for the Eastern District of Texas. Inmate Patrick was charged with a two count indictment which alleges that he violated 18 U.S.C. 1791, Possession of a Prohibited Object While in a United States Penitentiary; and 18 U.S.C. 111, Assault of a Correctional Officer. Inmate Patrick is currently housed at USP Lompoc.

On January 9, 2002, inmate Edmond Wright was sentenced to one year of probation with a \$100 special assessment in the Eastern District of Texas. Inmate Wright previously pled guilty on August 28, 2001, to Providing a Prohibited Object to an Inmate in violation of 18 U.S.C. 1791. In a second count, inmate Wright was found guilty of violating 21 U.S.C. 846, Conspiracy to Possess with Intent to Distribute Marijuana. He was sentenced to 37 months of imprisonment to be followed by a two-year supervised

release term on this charge, which shall be served consecutive to his current sentence of imprisonment. The above charges stem from inmate Wright's attempt to introduce drugs into USP Beaumont.

#### **FCI BEAUMONT (LOW)**

On January 7, 2002, inmate Artemio Hernandez pled guilty in the Eastern District of Texas to five counts of violating 18 U.S.C. 111, Assaulting, Resisting or Impeding Federal Correctional Officers.

#### **FPC BRYAN**

Former correctional officer Stephen Gormly was sentenced to a 36-month term of probation and fined \$2,500 in the United States District Court for the Southern District of Texas. As previously reported, this former staff member was convicted of Sexual Abuse of a Ward in violation of 18 U.S.C. 2243(b).

#### **FCI SEAGOVILLE**

While housed in the FCI Seagoville detention center pending sentencing for threatening the President, inmate Archie Glass attempted to mail another threatening letter to President Bush. One of the officers reviewing outgoing mail discovered the letter, which was simply a piece of paper on which the inmate had written, "Dear Mr. President, this is Antrax [sic]. You're dead. Archie Glass." The envelope contained granules of salt. The Secret Service was contacted, as they were the agency dealing with the inmate's existing

case. They picked the letter up as evidence and used it in the sentencing phase of inmate Glass' current case. The inmate received a 37 month sentence in that case in the Northern District of Texas.

**FCI THREE RIVERS**

Three inmates were recently sentenced in United States District Court for the Southern District of Texas for the assault of another inmate in connection with the disturbance on the recreation yard on February 6, 2001. All three inmates previously pled guilty of assault resulting in serious bodily injury in violation of 18 U.S.C. 113(6). On January 9, 2002, Pedro Garcia-Becerra received a 63-month sentence of imprisonment, to be served consecutively to his current sentence, to be followed by three years of supervised release, restitution of \$9,718, and a \$100 special assessment. On January 11, 2002, Lauro Fonseca received a 22-month sentence of imprisonment, to be served consecutively to his current sentence, to be followed by three years of supervised release, restitution of \$9,718, and a \$100 special assessment. On January 18, 2002, Luciano Resendez-Mendez received at 96-month sentence of imprisonment, to be served consecutively to his current sentence, to be followed by three years of supervised release, restitution of \$9,718, and a \$100 special assessment.

**FCI FORREST CITY**

On December 31, 2001, Inmate [REDACTED] was observed standing over Inmate [REDACTED] striking him with a closed fist to the face and body. In addition, he was kicking and head butting Inmate [REDACTED]. Marianna B Unit Officer also observed a sharpened, metal, instrument approximately six inches long laying next to Inmate [REDACTED]. The weapon was recovered from the floor and turned over to the SIS' evidence locker. Both inmates complied with staff orders to cease fighting and hand restraints were applied without resistance. Inmate [REDACTED] was treated for a laceration to the back of the head, swollen left eye, and a small laceration to the left ring finger. Inmate [REDACTED] was treated for multiple bite marks to the face and one puncture wound to the left upper rear shoulder. Both inmates were then escorted to the Special Housing Unit pending disciplinary action.

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**PERSONAL ISSUES**

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**Scheduled Annual/Sick Leave**



- February 14-15 - Annual Leave
- February 21-22 - Annual Leave
- February 28 - - Annual Leave
- March 6