



LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	17											
CASES CLOSED	4											
HABEAS CORPUS	13											
BIVENS	4											
FTCA	0											
OTHER	0											
LIT REPORTS	12											
HEARINGS/ TRIALS	0											
SETTLEMENTS/ AWARDS	0											

**CASES WITH HEARINGS OR TRIALS**

None

**CASES WITH SETTLEMENTS OR AWARDS**

**a. Adverse judgments**

None

**b. Tort Claim settlements**

None

**c. Other settlements**

None

**SIGNIFICANT CASES**

FMC Carswell reports: U.S. v. Rasha Mansour, 9:97-CV-079-Y. Motion for Issuance of Judgment of Discharge. The Order was signed by the Judge on January 9, 1998.

Enrique Campos Navarette v. Sam Calbone, et al., 1:97-CV-24-C This inmate complains about the Bureau's denial of his early release because of an INS detainer lodged against him at FCI Big Spring.

## SIGNIFICANT TORT CLAIMS

See medical malpractice tort claim heading.

Norris McGraw, T-SCR-98-009, \$575,000. Ms. McGraw an inmate at FMC Fort Worth, alleges negligent medical care, infliction of mental anguish, and emotional distress. Specifically, he alleges a Registered Nurse dilated his eyes, resulting in an eye infection and permanent physical and psychological injury since he is now paranoid about any future treatment he may endure.

## SIGNIFICANT ADMINISTRATIVE REMEDIES

None

## UPCOMING TRIALS OR HEARINGS

USA v. David N. J. Smith, CR-3-97-9 (ND/TX). A sentencing teleconference is set for January 30, 1998, at 2:00 p.m., for a criminal case set in the Southern District of Ohio. This will be FCI Big Spring's first use of this technology. This will be a coordinated with the Immigration and Naturalization Service who will be providing the equipment and Cornell Corrections who will be providing the space for the hearing.

Haroldo R. Martinez-Rodriguez v. United States, Civil No. EP-96-224-F (WD/TX), is scheduled for a January 30, 1998, mediation conference before Magistrate Richard Mesa. An offer of \$25,000 has been extended to settle this FCI La Tuna medical malpractice claim. A substantial part of this settlement offer consists of a constructive trust which would allow plaintiff to receive the surgical repair of his ruptured bicep tendon which he claims he should have occurred during his incarceration. Apparently plaintiff's current refusal to accept this settlement offer is against the advice of counsel.

## MEDICAL MALPRACTICE

### LITIGATION

Reed v. Stone, A-97-CA-899-JN, WD/TX. Plaintiff at FCI Bastrop entered federal custody with cheloid on one ear, brings suit against HSA for denying cosmetic surgery to remove cheloid. The defense's position is that purely cosmetic surgery is not within the scope of health services provided to inmates.

### TORT CLAIMS

MARTINEZ, Jorge - Mr. Martinez, an inmate housed at FMC, Fort Worth, alleges that on April 9, 1997, his right hip joint was replaced by a physician at a local community hospital. He contends that the prosthesis has become dislocated five times since the surgery because the wrong size prosthesis was implanted. It is clear that the surgery was performed by a contract physician, but Mr. Martinez implies that staff at Fort Worth delayed the surgery from October 1996 until April 1997. He further states that in November 1997, while he was being transported back from a local hospital, the transporting BOP staff member failed to secure his wheelchair and the chair overturned causing further pain. Mr. Martinez seeks ten million dollars in damages. (T-SCR-97-538)

**ENSIGN AMENDMENT**

**LITIGATION**

None

**TORT CLAIM**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIM**

None

**PRISON LITIGATION REFORM ACT ORDERS**

None

**SITUATIONS OF INTEREST**

**FCI BASTROP**

Martinez v. USA. On January 30, a mediation will be held in Houston in a major medical malpractice suit. The case involves an alleged delay in treatment for a neck fracture. FCI Bastrop

recommends offering settlement in the amount of \$50,000. The AUSA is seeking \$100,000 to \$500,000 to settle the case. The Region has sent their recommendation to the OGC.

#### **FCC BEAUMONT**

January 12-14, 1998, Darrel Waugh facilitated a visit to the USP for two AUSA's from Los Angeles, California, and two local FBI agents interviewing inmates regarding the staff killing at USP Lompoc.

#### **FCI BIG SPRING**

A former Correctional Officer was sentenced January 9, 1998, in Federal District Court, in Lubbock, Texas, on a one count indictment for violating 18 U.S.C. 2243, Sexual Abuse of a Ward. He was sentenced to 18 months confinement; a \$100 special assessment, and one-year supervised release term. Sentry reflects he voluntarily self-surrendered at FCI Jesup, Georgia, January 16th.

Plaintiff's depositions are scheduled to take place on February 24-26, 1998, in the Johnnie Fay Ray v. United States of America, at FCI Big Spring. 1:97-CV-0091-C, FTCA claim.

#### **FTC OKLAHOMA**

Numerous members of the Oklahoma Federal Bar Association visited and toured the FTC on Thursday, January 22, 1998. Also, DOJ and BOP attorneys visited the institution January 12-15, 1998, to gather further information regarding Trentadue litigation.

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

#### **FCC BEAUMONT**

January, 14, 1998, FPC inmates FLARES, Samuel and RUIZ, Jose were indicted by a grand jury for escape (18 U.S.C. § 751(a) from the FPC on January 11, 1998. The inmates were captured by U.S. Marshals and local law enforcement on January 12, 1998.

Inmate assault on staff; Inmate MOSEY, Stanley, was referred for criminal prosecution for assaulting a staff member while intoxicated, no serious injuries. Prosecution was declined, and the Warden does not dispute the decision.

Inmate assault on staff; Inmate LACUNATE, January 9, 1998, determination pending.

Inmate assault on inmate; Inmate LONG, January 9, 1998,

determination pending.

Inmate assault on inmate; Inmate CLARK, January 19, 1998, determination pending.

#### **FMC FORT WORTH**

On December 27, 1997, Assault on Staff. Garcia-Gomez, Mando threw a grapefruit rind at compound officer in the Dining Hall. Inmate was placed in Administrative Detention pending investigation, and referral to FBI for further investigation.

On January 3, 1998, Possession of Marijuana. Villareal-Tamayo, Gerardo, and Moyers-Saenz, Jose. Marijuana was found in the cell of the above-referenced inmates. Both inmates were placed in Administrative Detention. The case has been referred to FBI for investigation.

On January 6, 1998, inmate on inmate. Armenta-Hernandez, Marcello assaulted Agbada, Cyriacus in the weight pile of the Recreation Yard. Inmates were escorted to Administrative Detention, and has been referred to the FBI for investigation.

On January 10, 1998, inmate on inmate. Vicario, Manual assaulted Ramos, Ruben in the Austin Unit. Inmates were placed in Administrative Detention. The case has been referred to the FBI for further investigation.

On January 11, 1998, inmates Wood, William and Sama Humberto were fighting in the TV room in the Fort Worth Unit. The inmates were placed in Administrative Detention, and the case was referred to FBI for further investigation.

On January 15, 1998, inmates Harbin, Carl and Rodriguez, Alfredo were involved in a fight in the Fort Worth Unit. Both inmates were placed in Administrative Detention, and the case was referred to the FBI for further investigation.

#### **FTC OKLAHOMA**

Inmate Janie Weddington threw a food cart at a SHU officer on January 11, 1998, striking his left foot. The FBI was notified and determined not to refer this matter for prosecution, and the Warden concurs.

On January 14, 1998, ISM staff were placing inmate Robert Kenaston in a R&D cell in preparation for the outgoing airlift when inmate Leonard Faulcon ran to the cell door and struck inmate Kenaston in the chest with a closed fist. Inmate Kenaston and ISM staff sustained minor injuries and were treated. The FBI was notified and determined not to submit this to the U.S. Attorney's Office for prosecution, and the Warden concurs.

## **FCI SEAGOVILLE**

We were recently notified by the FBI that Inmate Robert Hendron and his wife will be indicted for Introduction of Heroin into FCI Seagoville. The drugs were mailed to the inmate on December 16, 1997.

Inmate Stanley Dutton will most likely be indicted by the Federal Grand Jury for Child Molestation. His wife was recently indicted by the Rogers County, Oklahoma grand jury for the same charges. In October 1997, an ISM staff member discovered incriminating information in a letter from Dutton's wife concerning sexual activities that she had with their then six month old daughter. Has been referred to the FBI for prosecution . No response as of yet.

Inmates Cazares, Rodriguez, Orozoco and Almeida face indictment for aggravated assault on staff. These inmates placed a toxic substance in a staff's member coffee while on their work detail. Has also been referred to the FBI for prosecution. No response as of yet.

## **FCI TEXARKANA**

On January 16, 1998, Inmate CORTI JO was discovered missing from the satellite camp during the 10:00 p.m. count. At approximately 11:40 p.m., after a negative search, he was placed on escape status, and the FBI was notified.

## **FCI THREE RIVERS**

### **PERSONAL ISSUES**

Mike Hood	-	February 2-6	-	Military Leave
Lisa Sunderman	-	February 13	-	Annual Leave
Marsha Foulks	-	(half-day) January 30	-	Annual Leave
	-	February 17		
	-	February 23		
Linda Nutt	-	February 17	-	Annual Leave
Josie Wilches	-	February 13	-	Annual Leave
Patsy Davis	-	February 2-6	-	Annual Leave

Barbara Wilson - 12 weeks of family leave will begin sometime  
in the next three weeks.



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BIVENS	4	3										
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LIT REPORTS	12	17										
HEARINGS/ TRIALS	0	2										
SETTLEMENTS/ AWARDS	0	0										

#### CASES WITH HEARINGS OR TRIALS

Angelo Rivera v. Bureau of Prisons (SD/TX). A hearing was held on January 29, 1998. State inmate, being held by BOP, seeks release to state custody. Petitioner was released to the custody of the State of Rhode Island; hence the relief sought is now moot.

*Warrant conducted on 1/29/98. Petitioner, Magistrate Judge in State District of Texas, Frank Hester, 1/29/98. State inmate, being held by BOP, seeks release to state custody. Petitioner was released to the custody of the State of Rhode Island; hence the relief sought is now moot. Consultation with a specialist Magistrate Judge. Pending and under preparation for settlement of this case.*

#### CASES WITH SETTLEMENTS OR AWARDS

##### a. Adverse judgments

None

##### b. Tort Claim settlements

The Isaac Martinez medical malpractice tort from FCI Bastrop has been approved for settlement by DOJ in the amount of \$275,000, which has previously been accepted. Final paperwork is being prepared.

c. Other settlements

None

SIGNIFICANT CASES

FCI La Tuna reports Gonzalez v. Slade, EP-98-CA-028-DB (WD/TX). An inmate who received a two-point enhancement challenges his ineligibility for 3621(e) early release.

FPC Bryan reports Gatson v. Pendleton, H-97-2226 (SD/TX). An inmate who received a two-point enhancement challenges her ineligibility for 3621(e) early release.

FCI La Tuna reports Robert Mitchell v. The United States of America, et al., Civil Action No. EP-97-CA-450-H (WD/TX). Although plaintiff's complaint raises issues regarding CCC placement and the Inmate Financial Responsibility Program, the significant issue raised by Mr. Mitchell is that he was not provided adequate medical treatment for his alleged medical condition while in Bureau of Prisons custody.

Mr. Mitchell now has Prostate Adenocarcinoma, or cancer of the prostate, and his condition is inoperable. He contends the Bureau of Prisons was negligent in not testing his high PSA (Prostate Specific Antigen) readings in a timely manner, and that when such testing was ultimately completed, his cancer had spread to a point where it could not be operated on or removed. We have clear documentation in the medical record that Mr. Mitchell refused not one but two biopsies shortly after his arrival which would have allowed FCI La Tuna medical staff to treat his condition sooner.

FCI Texarkana reports Perry Montgomery v. N. L. Conner, Civil Action 5:98CV016, (ED/TX). The petitioner claims his conviction of a drug offense with a weapons enhancement should not be considered a crime of violence. He requests early release.

Dr. William D. Agerton v. USA, et al. This FMC Fort Worth Bivens and FTCA styled case involves a physician who was under contract with the University of North Texas Health Sciences Center. The contract provided for physicians to provide after hours, on-site emergency services for inmates. Due to Dr. Agerton's refusal to follow the attending BOP physician's orders, he was prevented from entering the institution. He is alleging negligent and intentional conduct on the part of BOP officials and a constitutional deprivation and unlawful taking of his contract without due process.

Clyde Chase v. USBOP. This is an FMC Fort Worth FTCA case, originally filed in December 1994, which has bounced from Connecticut, to WD/LA, to ND/TX. Mr. Chase alleges deliberate

indifference and negligence to his serious medical needs, arising from an accident which occurred at FCI Oakdale in 1989. He seeks \$30,000,000.

Dennis Hampton v. Dr. John Barry, et al. Mr. Hampton names two consultants, in addition to two BOP staff members in this FMC Fort Worth case. He alleges the physician failed to explain side effects of medicine provided to him, which resulted in his fall from an upper bunk. He further alleges the Warden refused to follow the direction provided by the Central Office and did not transfer him to Butner to receive needed medical treatment.

Clark v. USA. This SCRO case is still awaiting determination by OGC and AUSA on whether this sentencing issue case should be appealed. SCRO has recommended appeal.

Terry Cryar v. Richard Peckham, et al., Civil Action No.5:98CV003 ED/TX. In this Bivens action, the plaintiff alleges medical deliberate indifference and names five employees. Specifically, he alleges he was denied high blood pressure medication for 21 days after informing medical staff that he required such medication. Medical records indicate hypertension medication was prescribed; however, the inmate refused. He was counseled and after constant refusal, referred to Psychology. A response is due March 14, 1998.

FCI El Reno reports Rodney Whitley v. Flowers, 97-163-R (WD/OK). The district court concluded that the BOP exceeded its statutory grant of authority regarding the use of sentence enhancements for determinations of early release eligibility. Currently, we are seeking reconsideration and/or a stay pending the decision in another enhancement case that is now before the Tenth Circuit.

#### SIGNIFICANT TORT CLAIMS

Dimas Soto Valencia, an inmate at FCI Big Spring filed a medical malpractice claim for failing to provide adequate treatment prior to a heart attack. Inmate alleges nerve damage to his left arm due to medical malpractice. He also seeks damages due to exposure to second hand smoke. T-SCR-98-045

Alton Oxendine, T-SCR-99-020, alleges he fell on October 7, 1997, down the second floor steps in Dallas Unit at FMC Fort Worth because there was no light on the stairway and because he was housed on the second floor, in spite of his medical condition, which has resulted in permanent disability. He claims liability in the amount of \$1,000,000.

JENKINS, Ann Marie - Ms. Jenkins contends that she sustained a blister on her right foot as a result of improperly fitted steel toed shoes. Ms. Jenkins states that the blister got infected and did not heal, and that she was transferred to FMC Carswell on

July 12, 1996, for an "arteriogram and surgery on the toe." Ms. Jenkins continues her claim by indicating that medical staff at FMC Carswell did not respond promptly, and her toe was amputated on November 26, 1996. She claims amputation of her leg was later discussed because the "arteriogram" was not performed until February 10, 1997. Ms. Jenkins seeks \$10,000.00 in damages. T-SCR-98-050

MASON, Stephen - Mr. Mason, an inmate housed at USFMCP Springfield has submitted a personal injury medical claim, alleging that on November 12, 1996, he fell in the UNICOR Warehouse at FCI El Reno and fractured his right wrist. He contends that medical staff failed to provide adequate medical care for 44 days, which resulted in greater pain and anguish and possible disfigurement.

Documents indicate that he did report a fall to Health Services staff but the Physician Assistant noted that the wrist was "bruised." The records indicate that the hand was not x-rayed until December 10, 1996, and that a navicular fracture was sustained. There are initial concerns that a thorough exam was not conducted shortly after the injury. The amount of damages sought is \$50,000. (T-SCR-98-091)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

Kamal Patel an inmate at FMC Fort worth has filed three pending Requests for Administrative Remedy, all dealing with his need for additional protein to supplement mainline and with the inadequacy of the Common Fare Program. Mr. Patel is a Hindu inmate.

#### UPCOMING TRIALS OR HEARINGS

Haroldo R. Martinez-Rodriguez v. United States, EP-96-224-F (WD/TX), originating from FCI La Tuna, is scheduled for a March 16, 1998 trial following an unsuccessful January 30, 1998 mediation conference. At the mediation, contrary to prior indications by plaintiff's counsel, plaintiff was unwilling to accept a reversionary trust. As previously reported, an offer of \$25,000, much in the form of a reversionary trust, had been extended to settle this medical malpractice claim stemming from plaintiff's assertion that he did not receive necessary surgical repair of his ruptured bicep tendon. Efforts to settle this case for a lesser amount without use of a reversionary trust continue. The court has scheduled a hearing for March 6, 1998 in Pettigrew v. Fleming, A-97-CA-0088-SS, WD/TX. The petitioner, who was sent to a halfway early after the court ordered the BOP not to consider him violent by virtue of his two-point enhancement, was caught drinking at the halfway house and sent back to FCI Bastrop. He claims that if the BOP had sent him to

the halfway house as soon as he finished RDAP, rather than waiting for the court to order it, he would have been freed prior to the date of the incident.

## MEDICAL MALPRACTICE

### LITIGATION

See also significant cases heading.

### TORT CLAIMS

Norma Carter - This FPC Bryan malpractice tort is pending final DOJ approval to settle the case for \$150,000.

Susan Arocha - On this FPC Bryan wrongful death tort, the six month deadline will not be met due to continuing settlement negotiations. The claimant's attorney has recently been appointed; thus, we seek proof of representation before settlement negotiations can resume.

Frederick Goldsby, T-SCR-98-054, alleges he fell from his wheelchair while in Administrative Detention at FMC Fort Worth, which is not wheelchair accessible, injuring his rotator cuff. He further alleges the physician assistant failed to perform the proper diagnostic tests and he went untreated until August 6, 1997. He claims liability in the amount of \$3,500,000.

Linn Edward Davis, T-SCR-98-011, alleges a problem with his carotid artery, due to negligent treatment at FMC Fort Worth. He claims liability in the amount of \$1,500,000.

See also significant tort claims heading.

## ENSIGN AMENDMENT

### LITIGATION

None

### TORT CLAIM

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIM**

None

**PRISON LITIGATION REFORM ACT ORDERS**

None

**SITUATIONS OF INTEREST**

**FCC BEAUMONT**

On February 18, 1998, a tour of the USP was provided to members of the Inn of Court, including Chief U.S. District Court Judge, Richard Schell, U.S. Dist. Ct. Magistrate Judge Earl Hines, and approximately 30 distinguished members of the Beaumont legal community.

**FCI BIG SPRING**

A video conference was held on February 5, 1998, between AUSA Robert Bernard, the Honorable Jane Cooper-Hill, U.S.D.C., SD/TX, and inmate Anez S. Robinson. Judge Cooper-Hill granted inmate Robinson leave to amend his FTCA complaint styled Anez S. Robinson v. United States of America, Frank Woods, et al, CA C:97-51, to a Bivens Action. Seven new defendants will be added to this instant case, four of which are staff members at FCI Big Spring.

Depositions were held on February 25 and 26, 1998, in the Johnnie Fay Ray v. United States of America, 1:97-CV-0091-C, FTCA claim.

**FTC OKLAHOMA**

District Attorney Bob Macy and several special investigators toured the FTC on February 4, 1998. Mr. Macy has not decided whether or not a multi-county state grand jury will convene regarding the Trentadue matter. The institution is currently assisting Mr. Macy's investigators with their preliminary investigation.

## CRIMINAL MATTERS AND PROSECUTIONS

### **FCI BASTROP**

Inmate David Gaidusek was witnessed ingesting what appeared to be balloons in the visiting room. He was placed in a dry cell for several days, after which several balloons emerged and the contents tested positive for heroin. The case has been referred to the FBI.

### **FCC BEAUMONT**

Inmate Regalado was found in Possession of Marijuana, and inmates Regalado and Macias were also found in possession of heroin on February 11, 1998. Case referred to FBI; determination pending.

The visiting wife of inmate Macias was arrested and charged with attempting to introduce marijuana into the USP. Through intelligence gathering, Correctional Services staff were expecting the visitor, coordinated with the FBI, and obtained a search warrant prior to her entering the institution. Upon refusing a requested search, the woman was arrested by FBI agents and searched, revealing several balloons of marijuana under her breast.

United States v. Jose Ricardo Ruiz, 1:98-CR-3, ED/TX.  
FPC Beaumont inmate scheduled for trial on escape on Monday, March 2, 1998. The other inmate who escaped with him, Samuel Flores, previously pleaded guilty to escape and is awaiting sentencing.

### **FCI FORREST CITY**

On January 1, 1998, inmates V. Griffieth and C. Pulliam were involved in a fight in the housing unit. Both inmates received minor injuries. The case was declined and the Warden agrees with the decision.

On January 3, 1998, inmates D. Nicholas and D. Shell were involved in a fight in the housing unit. The inmates received minor injuries. The case was declined and the Warden agrees with the decision.

On January 4, 1998, inmates S. Ortiz and J. McMahon were involved in a fight in the food service area. Minor injuries were sustained. The case was declined and the Warden agrees with the decision.

On January 8, 1998, inmates J. Quintero and P. Lopez were involved in a fight in the Facilities Department. Minor injuries

were sustained. The case was declined and the Warden agrees with the decision.

On January 14, 1998, inmates M. Castano and V. Ayulo were involved in a fight in the housing unit. The inmates received minor injuries. The case was declined and the Warden agrees with the decision.

On January 24, 1998, several inmates were involved in a fight. The case is still pending. The inmates involved were J. Guthridge, F. Carrillo, J. Munoz, G. Gonzales, B. Cedillo, and J. Gonzales. The fight took place in the housing unit and minor injuries were sustained.

On February 6, 1998, inmate J. Johnson refused to cuff up. No injuries were sustained. The case was declined and the Warden agrees with the decision.

On February 8, 1998, inmate A. Nelson assaulted his visitor in the Visiting Room. No injuries were sustained. The case was declined and the Warden agrees with the decision.

On February 10, 1998, inmate F. Pelester assaulted staff in the Special Housing Unit by throwing an unknown liquid on the staff member. No injuries were sustained. The case was declined and the Warden agrees with the decision.

On February 11, 1998, several inmates were involved in a fight. The case is still pending. The inmates involved were M. Byse, W. Harden, and A. Gregory. The fight took place in the housing unit and minor injuries were sustained.

#### **FMC FORT WORTH**

Inmate Joel Canales was assaulted by Kamal Patel and Abel Saenz on February 4, 1998. This assault was considered serious and Canales sustained numerous injuries. The inmates were placed in Administrative Detention pending investigation, and the case was referred to the FBI for possible prosecution.

Randy Davis, Relford Hankins and Tyrone Ferrell attempted to sexually assault Lin Davis by tying him to his bed on Houston Unit on February 4, 1998. Inmates were placed in Administrative Detention pending investigation. The case was referred to the FBI for possible prosecution.

#### **FTC OKLAHOMA**

Inmate on inmate assault on January 26, 1998, involving punches to the chest and facial areas, with no medical treatment required. The FBI declined the matter for prosecution and the Warden concurs.

Unit Officer observed a fight on February 8, 1998, between two

inmates who were pushing each other. The Officer separated and removed the inmates from the unit. No medical treatment was necessary, and prosecution was declined. The Warden concurs with this decision.

Inmate on staff assault occurred on February 9, 1998. SHU inmate Abduk Adediran became uncooperative when he was told he could not take various articles out to recreation with him, at which point he refused recreation. When the inmate was placed back in the cell, he attempted to pull away from the officer as the handcuffs were being removed. The officer, in trying to retain his handcuff key, struck his hand against the food slot and sustained lacerations to two of his fingers. The FBI was notified but declined prosecution because the officer only received a minor cut. The Warden concurs.

Inmate on inmate assault on February 12, 1998, in holding cell in R&D. Staff observed inmate Richard Garza kicking inmate Armando Lopez, and a piece of pencil lead sticking out of the left side of inmate Lopez's neck. The FBI was notified and declined prosecution. The Warden concurs.

#### **FCI TEXARKANA**

(Update) On February 17, 1998, inmates Ray Mack and Rodrick Robinson pleaded guilty to escape from Texarkana Camp. Sentencing is scheduled for a later date.

#### **PERSONAL ISSUES**

Mike Hood	-	March 9-13	-	Annual Leave
Lisa Sunderman	-	March 26-27	-	Annual Leave
Marsha Foulks	-	March 6	-	Annual Leave
	-	March 9-27	-	Glynco, GA
Jason Sickler	-	March 18-20	-	Annual Leave
Martin Sweaney	-	March 16-20	-	Annual Leave
Josie Wilches	-	March 4 and 6	-	Annual Leave
	-	March 9-10	-	Annual Leave
Patsy Davis	-	March 30	-	Annual Leave



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BIVENS	4	3	6									
FTCA	0	2	1									
OTHER	0	1	2									
LIT REPORTS	12	17	15									
HEARINGS/ TRIALS	0	2	2									
SETTLEMENTS/ AWARDS	0	0	0									

#### CASES WITH HEARINGS OR TRIALS

Pettigrew v. Fleming, A-97-CA-088-SS, WDTX. Habeas Corpus petition revived by an inmate at FCI Bastrop. In 1997, the court ruled that the petitioner was non-violent, so the BOP sent him to a halfway house early so he could benefit from the sentence reduction provision of 18 USC Section 3621(e). Petitioner consumed alcohol while at the halfway house, and was sent back to Bastrop, where he revived his petition. In response to a motion for immediate release, a hearing was held. The court dismissed the petition on the ground that the Fifth Circuit's ruling in Venegas removed any eligibility for reduction for which the petitioner may or may not have been eligible.

A trial took place March 16-19, 1998, in Haroldo R. Martinez-Rodriguez v. United States, Civil No. EP-96-224-F (WD/TX), an FTCA medical malpractice case originating from FCI La Tuna. Post trial briefing is currently taking place. Although we do not expect the Court's ruling for several weeks, prior to the completion of the government's case, the Court indicated that it was contemplating a damage award for only a small portion of plaintiff's requested damages. This award would be for pain and suffering the plaintiff experienced during the eight-month period preceding the time in which plaintiff was offered a surgery he states was required.

#### CASES WITH SETTLEMENTS OR AWARDS

##### a. Adverse judgments

Whitley v. Flowers - In this El Reno 3621(e) case, the inmate was denied early release eligibility due to his two point enhancement

under Section 9. Chief Judge Russell found Martin v. Gerlinski persuasive. This ruling comes after two other judges ruled in favor of the BOP (Fristoe v. Thompson and Owens v. Flowers). The inmate was placed in a CCC, and we have recommended he only serve 4 months in transitional services due to the particular facts and rulings in this case.

**b. Tort Claim settlements**

None

**c. Other settlements**

None

**SIGNIFICANT CASES**

FPC Bryan reports: Scott v. Pendleton - C.A. #H-97-1928 (S.D. TX, Houston Division). Inmate seeks early release pursuant to §3621(e). Petitioner has exhausted Administrative Remedies. Recommended MSJ based on Venegas decision.

FPC Bryan: Spears v. Pendleton - C.A. #H-97-2178 (S.D. TX, Houston Division). Inmate seeks early release pursuant to §3621(e). Recommend MTD based on lack of standing to bring suit as Petitioner has declined RDAP participation and, therefore, has not successfully completed the program. Also, he has not exhausted Administrative Remedies. MSJ recommended based on Venegas decision.

FPC Bryan: Pinkston v. Pendleton - C.A. #H-97-2166 (S.D. TX, Houston Division). Inmate seeks early release pursuant to §3621(e). Recommended MSJ based on Venegas decision

Vernon Ray Robertson v. USA, CIV-97-1643-C. In this FTCA case, the FTC Oklahoma City tort claim was settled in the amount of \$1500.00, and paid toward restitution pursuant to a court order. The case involved failure to protect issues, as he was assaulted by a high security inmate.

**SIGNIFICANT TORT CLAIMS**

FMC Fort Worth inmate Linn Edward Davis alleges failure of BOP officials to protect him from attempted sexual assault in his room. He claims liability in the amount of \$4,400,000.00. (T-SCR-98-078)

Sharon Gladden as personal representative of the estate of Joseph Scott Gladden, deceased (T-SCR-98-134). Claimant is represented by counsel and seeks \$100,000.00 under several liability theories, all of which attempt to make the United States responsible for the suicide death of this former FCI El Reno staff member. Mr. Gladden committed suicide shortly after the October 1995 disturbance at FCI El Reno.

Inmate Tracy Anne Dziadura is represented by counsel and seeks \$2,070,000.00 under numerous liability theories. Ms. Dziadura states that an FTC Oklahoma City staff member raped her while she was incarcerated at that facility. The U.S. Attorney's Office is pursuing criminal charges against the named staff member.  
(T-SCR-98-135)

The Central Office and Regional Office held a teleconference regarding settling the Norma Carter FPC Bryan tort claim for \$150,000.00. A final decision is pending.

Attorney has been appointed on the Flores-Cabrera wrongful death claim from FPC Bryan. The attorney seeks settlement now not based solely on daughter's claim, but also on behalf of the estate.

MOORE, Larry, an inmate at USP Beaumont, alleges medical negligence in treating a nail fungus and buttocks rash and seeks \$500,000.00. Claim is significant because it is the first medical negligence claim which involves actions of the independent contractor, University of Texas Medical Branch. The investigation of this claim will be limited to determining whether government staff overstepped the bounds of the contractual relationship in providing health care to the inmate. Presumably, the claim will be denied based on the independent contractor exception to the FTCA.

Inmate Dimas Soto Valencia claims medical malpractice for care received at FCI Big Spring, which led to a heart attack. Inmate is seeking \$30,000,000. The case is being reviewed by the Regional Health Services Administrator. We anticipate some problems with this case.

Michael Kennedy at FCI Oakdale alleges his refusal to be placed in restraints for outside medical trip forced him to refuse medical treatment. He alleges that because he did not receive medical treatment, he continues to suffer pain and have difficulty in walking. Inmate is seeking \$2,500,000. Many aspects of this claim are in litigation in the Western District of Louisiana. (T-SCR-98-073)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

None

MEDICAL MALPRACTICE

LITIGATION

Cancio v. United States, et al. The plaintiff alleges medical staff at FCI Oakdale failed to provide appropriate medical treatment for an injured finger. Plaintiff suffered a broken finger. He received prompt medical attention, but alleges follow-up medical treatment was non-existent.

Telfair v. United States, et al. The plaintiff is paraplegic and confined to a wheelchair. Because of this confinement, the plaintiff suffers hemorrhoids and recurrent anal fissures. The plaintiff alleges he did not receive proper medical treatment and equipment that would prevent the occurrence and reoccurrence of these conditions. The plaintiff has filed a tort claim on the same issues. See tort claim T-SCR-97-25.

TORT CLAIMS

Inmate Corrine Ford alleges that she sustained further injury to her knee due to lack of medically accessed vans and poorly trained staff at FMC Carswell. She claims liability in the amount of \$250,000.00. (T-SCR-98-040)

Inmate Ann Jenkins alleges that delay of proper medical care at FMC Carswell caused amputation of her toe. She claims liability in the amount of \$10,000.00. (T-SCR-98-050)

See also significant tort claims heading.

ENSIGN AMENDMENT

LITIGATION

None

**TORT CLAIM**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIM**

None

**PRISON LITIGATION REFORM ACT ORDERS**

Braun v. DOJ, Order of Dismissal dated March 25, 1998. Plaintiff had filed four previous lawsuits in which the court had found to be frivolous. Plaintiff had alleged that staff had denied him access to the courts by not allowing him to keep legal material belonging to other inmates. Plaintiff was recently transferred to FCI Texarkana.

**SITUATIONS OF INTEREST**

**FTC OKLAHOMA**

District Attorney Bob Macy's state investigators conducted luminol testing of SHU cell 709A on March 2, 1998, and OIG continues with their investigation and interviewing of staff relating to the Trentadue matter.

The Trentadue defense inspection of the FTC was held on March 18, 1998, and attended by six private counsels in addition to BOP and DOJ attorneys.

Trentadue Rule 30(b)(6) depositions were conducted on March 25-26, 1998, at plaintiff's counsel's office in Oklahoma City.

**CRIMINAL MATTERS AND PROSECUTIONS**

**FCC BEAUMONT**

United States v. Jose Ricardo Ruiz , 1:98-CR-3, E.D.TX. - Inmate escaped from FPC Beaumont. On March 25, 1998, the AUSA reported inmate Ruiz signed a plea agreement and will be scheduled for sentencing. The other inmate who escaped with him, Samuel Flores, previously pleaded guilty to escape and is awaiting sentencing.

#### FCI FORREST CITY

On February 27, 1998, inmate Juan Anial-Clara assaulted inmate Guadalupe Gonzales by kicking him on the left side of his face in a housing unit. The FBI was notified, declined prosecution, and the Warden agrees.

On March 4, 1998, inmate Mario Castano-Perez sprayed an unknown substance on inmate Christopher Reigle striking inmate Reigle in his face. Two staff were also sprayed with the unknown substance. One staff member was sprayed on the back of his head and shoulder areas and the other staff member was sprayed on his upper left shoulder and head areas. No injuries were sustained. The FBI declined to prosecute, and the Warden agrees with the decision.

On March 5, 1998, inmate Walker pushed inmate Rodriguez. Then Rodriguez pushed inmate Walker into a wall locker. Upon contact with the locker, inmate Walker received a cut to the left side of his face. Inmate Rodriguez did not sustain any injuries. The FBI declined to prosecute, and the Warden agrees with the decision.

On March 10, 1998, inmate Charles Sargent was identified as having been involved in a fight with inmate Clifford Brown. Both inmates were examined by medical staff and were placed in SHU pending investigation.

On March 13, 1998, inmate Osamu Takino assaulted inmate Walter Kasierczak by throwing a glass filled with an unknown liquid at the inmate striking him in the face. Both inmates received medical evaluations with no apparent injuries. The FBI was notified, declined to prosecute, and the Warden agrees with the decision.

On March 21, 1998, at approximately 3:50 P.M., there was a physical altercation involving nineteen inmates in a housing unit. Inmates Crosthwaite-Contreras, R., Ortiz-Quezada, J., and Rodriguez-Ruiz, F. received obvious injuries. All identified

inmates were subsequently placed in SHU. The FBI was notified, and the investigation continues.

On March 21, 1998, at approximately 10:15 P.M., inmate

Castaneda-Romero, J. reported that he had been assaulted by unidentified inmates. Investigation into the assault revealed several inmates as possible assailants. Several inmates received minor injuries. The FBI was notified and an investigation continues.

On March 23, 1998, staff were notified that inmate Omar Amaro-Olvera had a torn T-shirt and minor abrasions to the face and upper lip. The inmate stated that he was involved in a fight with a guy for jumping in front of him during mainline; however, he refused to identify the other inmate. The inmate was examined and placed in SHU. The FBI were notified, and an investigation continues.

#### **FMC FORT WORTH**

On March 3, 1998, at FMC Fort Worth, Thomas Lowe assaulted a staff member. He was placed in Administrative Detention pending investigation, and the case was referred to the FBI for possible prosecution.

ERNANDEZ-ESPINOSA, Ernesto, assaulted a staff member at FMC Fort Worth on March 3, 1998. He was placed in Administrative Detention pending investigation. The case was referred to the FBI for possible prosecution.

The referral of January 3, 1998, previously reported on Gerardo Villarreal-Tamayo for Possession of Marijuana, has been accepted by the FBI for prosecution.

#### **FTC OKLAHOMA**

On February 24, 1998, inmate on staff assault occurred involving inmate Roger Cullen, who slapped a nurse on both sides of his face with open hands. He sustained no injuries, and inmate Cullen was placed in SHU. The FBI was notified and because of the lack of injury and the nature of the circumstances, declined referring the matter for prosecution. The Warden concurs.

On February 25, 1998, inmate on inmate assault. Inmate Ronald Christy struck inmate Eugene Smith in the forehead and chest areas. Neither inmate sustained any injuries. The FBI declined referring the matter for prosecution. The Warden concurs.

On March 2, 1998, inmate on staff assault occurred when inmate Lorenzo Watson was argumentative with the unit officer and forced open the television room door, which the officer was attempting to secure. The door struck the officer in the forehead. Responding staff placed the inmate in restraints and placed him in SHU. The officer was treated by medical staff for a minor contusion to the forehead. The FBI was notified, and declined referring the matter for prosecution because of the minor injuries. The Warden concurs.

On March 10, 1998, inmate on inmate assault occurred when inmate Juan Garcia told staff he had been assaulted and had several contusions to his lip, head, and shoulder areas. The unit was secured for a cell to cell search, which revealed inmate Julian Gurolla had injuries consistent with his involvement in an assault. Neither inmates required medical treatment. The FBI was notified but declined referring the matter for prosecution. The Warden concurs.

On March 14, 1998, inmate on inmate assault occurred involving inmate Vera-Porras striking inmate Hernandez-Gutierrez in the facial area during a verbal altercation. The FBI declined referring the matter for prosecution. The Warden concurs.

On March 18, 1998, inmate on inmate assault occurred when inmate Jerome Copeland struck inmate Walter Myles in the facial area. The FBI declined referring the matter for prosecution. The Warden concurs.

On March 19, 1998, inmate assault occurred when inmate David Taylor approached the unit officer with injuries to his left eye consistent with being assaulted, but claimed he sustained his injuries the previous night when he fell in the shower. Medical staff treated inmate Taylor for a 2 cm laceration and swelling to the left eye. The FBI declined referring the matter for prosecution. The Warden concurs.

Update: Contact with Assistant U.S. Attorney Mark Yancey, Criminal Division, revealed Civil Rights is still investigating the matter of sexual abuse by former Correctional Officer McManus. Mr. Yancey only recently received the investigation report conducted by the FBI.

#### **FCI TEXARKANA**

On March 16, 1998, during a routine search of inmate Richard Drinkard's cell in the SHU, a balloon containing marijuana was discovered. The incident was referred to the FBI, and they declined to investigate due to the diminutive amount. The Warden concurs.

(Update) - The FBI is working on a plea agreement between inmates regarding their actions to steal government property and use the chemicals for the production of narcotics.

#### **FCI THREE RIVERS**

*Amber Lucia was found with a small amount of marijuana in her cell on March 10, 1998. She was referred to the FBI, and they declined to investigate due to the diminutive amount. The Warden concurs.*

The Larry Price case has been referred for a staff assault.

March 8, 1998, a Unit Officer observed inmate Price and another inmate in a physical altercation. Price resisted staff by striking the Unit Officer with a closed fist in his shoulder area. His response has not been received from the P.D.

Side Dixon has been referred for inmate assault with a knife on March 22, 1998. Dixon stabbed another inmate's arm and leg in a hallway with a box cutter blade in an inmate housing unit. Dixon was over a 911 station. His response has not been received from the P.D.

## **PERSONAL ISSUES**

### **Scheduled Annual/Sick Leave:**

Lisa Sunderman	-	April 17 (1/2 day) April 20-21	-	Annual Leave
Marsha Foulks	-	April 10, 13	-	Annual Leave
Linda Nutt	-	April 3, 6	-	Annual Leave
Patsy Davis	-	April 24, 27	-	Annual Leave
Paul Layer	-	April 13, 14	-	Annual Leave
Linda DuBose	-	April 13- May 1	-	Annual Leave
Mike Flagor	-	April 2, 1998	-	Sick Leave

### **Other Scheduled Absences:**

Lisa Sunderman	-	April 6-10	-	ICP, FCI Bastrop
Jason Sickler	-	April 27-30	-	Sentencing Training Denver, CO
Paul Layer	-	April 6-10	-	Leadership Forum Alexandria, VA
Karen Summers	-	April 27-29	-	Sentencing Training Denver, CO
Julie Gerardi	-	April 27-29	-	Sentencing Training Denver, CO



LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	17	15	19	14								
CASES CLOSED	4	9	34	35								
HABEAS CORPUS	13	9	11	8								
BIVENS	4	3	6	3								
FTCA	0	2	1	1								
OTHER	0	1	2	2								
LIT REPORTS	12	17	15	14								
HEARINGS/ TRIALS	0	2	2	1								
SETTLEMENTS/ AWARDS	0	0	0	0								

**CASES WITH HEARINGS OR TRIALS**

Estrada-Guerrero, Ruby; 69166-198 - Emergency mental health commitment pursuant to §4245 was held April 24, 1998. The inmate was committed by the District Judge.

**CASES WITH SETTLEMENTS OR AWARDS**

**a. Adverse judgments**

Caliste v. Flowers- 3621(e) Habeas. An inmate at FCI El Reno was denied early release eligibility due to his two point enhancement under Section 9. The R&R from Magistrate Bana Roberts found Martin v. Gerinski persuasive and in accordance with Whitley. This ruling comes after two other judges ruled in favor of the BOP (Fristoe v. Thompson and Owens v. Flowers).

Summary judgement has been entered against the United States in the FPC Bryan case of Ahr v. Reno, a civil action based upon an assertion that the government breached the Settlement Agreement, which resolved this former employee's EEO Complaint. Settlement authority not to exceed \$15,000 has been sought, and the Court has directed that mediation between the parties occur in the near future.

**b. Tort Claim settlements**

None

**c. Other settlements**

None

### SIGNIFICANT CASES

FPC El Paso reports V. Vasquez v. J. Aguirre, et al., EP-97-CA-503-DB (WD/TX), a medical treatment case. The case is significant in that it received coverage in the El Paso Times newspaper on April 19, 1998. The article addressed inmate litigation in the El Paso area. This case is also significant in that an initial review of the matter indicates there is a possibility that records for a brief period of time may be missing from plaintiff's medical file.

### SIGNIFICANT TORT CLAIMS

Inmate Dimas Soto Valencia, an inmate at FCI Big Spring, claims medical malpractice led to a heart attack. Inmate is seeking \$30,000,000. He has also filed a Bivens suit. This case is being forwarded to the Office of Quality Management.  
(T-SCR-98-045)

Settlement was offered to James Valiant in the amount of \$645.00. Inmate Valiant sought \$1,795.46 for the loss of numerous pieces of personal property that could not be located when he was returned to general population after spending one day in the Special Housing Unit of FCI El Reno. Institution staff could not account for the whereabouts of inmate Valiant's property and believe that some of it was inadvertently discarded.

### SIGNIFICANT ADMINISTRATIVE REMEDIES

None

### UPCOMING TRIALS OR HEARINGS

Claudette Hubbard v. United States; 4-97-CV-195-WS, ND/FL Tallahassee Division. Trial continued to May 26, 1998. Telephone conference was held on April 22, 1998 with AUSA, Plaintiff's attorney, and four staff members. Inmate Hubbard

alleges that three rings with stones, (inmate values at \$6,000), were improperly confiscated and destroyed. BOP Policy and guidelines were followed by FMC Carswell staff.

Muhammad, Ruth - Contacted AUSA to file for a \$4245 Mental Health Commitment Hearing.

Thomas Norris Thompson v. USA is set for trial in the Dallas Division of the Northern District of Texas for May 4, 1998, at 10:00 a.m.

#### MEDICAL MALPRACTICE

##### LITIGATION

See Valencia case under significant tort claims heading.

##### TORT CLAIMS

See also significant tort claims heading.

#### ENSIGN AMENDMENT

##### LITIGATION

None

##### TORT CLAIM

None

#### RELIGIOUS FREEDOM RESTORATION ACT

##### LITIGATION

None

##### TORT CLAIM

None

#### PRISON LITIGATION REFORM ACT ORDERS

None

## SITUATIONS OF INTEREST

### FMC FORT WORTH

On April 20, 1998, the SIA received a note indicating inmate Alvin Jones was conducting a business by charging inmates for legal assistance. Inmate Jones was placed in the Special Housing Unit pending an investigation. When inventorying Jones' property, it was discovered he had personal information concerning Executive staff including their home addresses. Inmate Jones was interviewed by the FBI and the SIA. He is pending a transfer.

### FTC OKLAHOMA

A second Trentadue defense inspection of the FTC was held on April 7, 1998. In attendance were numerous defense counsels who were unable to make the first scheduled inspection on March 18, 1998.

Plaintiffs in Trentadue inspected the FTC on April 16, 1998. In attendance were attorneys Charles Sampson, Scott Adams, Jesse Trentadue, along with Rudy Riet, one photographer, and one videographer. Also in attendance were DOJ attorneys Steven Snyder and Peter Schlossman.

## CRIMINAL MATTERS AND PROSECUTIONS

### FCC BEAUMONT

(LOW) On March 24, 1998, inmate Luis Carmona-De La Torre physically assaulted an officer resulting in minor injuries. The case was referred to FBI for prosecution. A decision is pending.

Former staff member was indicted on April 23, 1998, on one count of conspiracy to provide contraband in a prison and another count of possession of marijuana in a prison. Inmate William Talley was indicted on the same two counts. Each individual faces a maximum sentence of 10 years in prison and a \$500,000 fine. The staff member is currently free on bond.

### FCI FORREST CITY

On March 31, 1998, inmate Rodriguez-Cortez stated to his Detail Supervisor that inmate Delgado-Aviles placed an air staple gun against his left hip and pulled the trigger, discharging a staple into his hip. Inmate Rodriguez-Cortez was seen by medical staff and treated for two puncture wounds to the left hip. Inmate Delgado-Aviles was placed in SHU. The FBI declined prosecution,

and the Warden agrees with the decision.

On March 31, 1998, recreation staff requested assistance due to a physical altercation involving approximately five inmates. Inmate Valdivia was treated for a scratch under his upper and lower lips. Inmate Montes-Alfaro was treated for a scratch under the left eye. No other injuries were noted. All identified inmates were examined by medical staff and subsequently placed in the SHU. The case is now under investigation by the FBI.

On April 12, 1998, SHU staff responded and found inmate Garcia-Becerra, after having his hand restraints removed, assaulting inmate Depaz-Ostorga. Inmate Depaz-Ostorga was in hand restraints at the time of the assault. The FBI was notified, and an investigation continues.

On April 13, 1998, inmates Munoz-Pera and Castro were fighting on the SHU recreation yard. Staff separated the inmates and escorted them to Medical Services for treatment. Inmate Castro received multiple abrasions and lacerations to his facial area and right forearm. Inmate Munoz-Pera sustained multiple abrasions to both of his hands (knuckles). Both inmates were placed back in the SHU. The FBI declined prosecution, and the Warden agrees with the decision.

On April 17, 1998, staff observed inmate Timothy Fisher leaving from the back of the unit at a fast pace going into the restroom. The inmate had been injured. Inmate Rios-Ortega was observed by the Operations Lieutenant having multiple abrasions to the chest area and a cut on the inside of his lower lip. Inmate Fisher made a picture identification of inmate Rios-Ortega as the inmate he was involved in a fight with. The FBI declined prosecution, and the Warden agrees with the decision.

On April 19, 1998, inmate Marmolejo and Morales-Maldonado were involved in a fight. Both inmates were throwing closed fist punches at one another. Both inmates were examined by medical staff and subsequently placed in SHU. The FBI declined prosecution, and the Warden agrees with the decision.

#### **FMC FORT WORTH**

On March 29, 1998, at FMC Fort Worth, Long Term Care Unit, inmates Pablo Estevez-Rodriguez and Keo Sipraseuth were involved in an altercation. No prosecution will be sought.

Former staff member pleaded guilty to possessing and providing contraband to federal inmates. The staff member ran a drug delivery service for almost two years, wherein he smuggled liquor

and drugs into the institution. He faces up to 20 years imprisonment without parole and a fine of \$250,000. Sentencing is scheduled for July 7, 1998.

#### **FTC OKLAHOMA**

Inmate on staff assault on April 5, 1998, involving inmate Ismael Pompa-Martinez who grabbed the officer's arm through the SHU food slot. There were no injury to staff or inmate. FBI was notified and failed to refer for prosecution because the incident lacked sufficient amount of injury to meet the prosecutorial guideline. The Warden concurs with this decision.

Inmate on staff assault on April 6, 1998, involving the same inmate as above when he threw a liquid substance out the food slot and it struck the SHU officer. Again, there was no serious bodily injury, the FBI declined referring the matter for prosecution, and the Warden concurs.

Inmate on staff assault on April 8, 1998, involving inmate David Bishop who attempted to kick the unit officer in the face when he was conducting a pat search on the inmate. The officer was able to block the kick and was not harmed. Responding staff escorted inmate Bishop to SHU and enroute he kicked in a backward motion and struck an officer in the knee, became combative, and attempted to break free. Inmate Bishop was treated for minor redness to his wrists and superficial scratches to the upper chest. Staff members sustained minor abrasions, scratches, and contusions. The FBI was notified but declined referring the matter for prosecution due to failure to meet prosecutorial guidelines for serious bodily harm. The Warden concurs.

Inmate on staff assault on April 13, 1998, during an escort in SHU, when inmate Stephen McClay resisted staff and assaulted an officer by biting him on the left forearm. Officers were treated for bruising of the left arm and abrasion to the right knee. The injuries failed to meet the USAO guidelines for serious bodily injury; thus, the FBI did not refer the matter for prosecution. The Warden concurs.

#### **FCI TEXARKANA**

On April 17, 1998, a staff member was arraigned by the Grand Jury for providing contraband to an inmate. The staff member asserted a not guilty plea.

On April 17, 1998, a staff member was indicted by the Grand Jury for having sex with an inmate and making a false statement. Arraignment is scheduled for a later date.

**FCI THREE RIVERS**

**NEWS**

Senators John Chafee, Dennis Chabot, Richard Durbin, Jim DeMint, Joe Lieberman, John McCain, and Nelson Rockefeller visited  
Washburn and State St. during their visit.

June 1993. Governor's Press Release. *Senators visit Washburn*. The case is scheduled for the State Party on May 11, 1993.

Senators introduced bills to be considered by Senate members in a separate bill. Senators (S. Durbin and Steve Stabenow) are also expected  
to be involved. (Washburn on November 1993). The case is scheduled for the State Party on May 11, 1993.

With help from the state, Washburn is now receiving more information and materials into the institution after a visit. (Washburn on January  
1993). The case is scheduled for the State Party on  
May 11, 1993.

Senators Robert Stabenow and Jim DeMint have been reported for prosecution for providing inside information on the State Party.

**PERSONAL ISSUES**

**Scheduled Annual/Sick Leave:**

Mike Hood	-	April 29- May 4	-	Annual Leave
Marsha Foulks	-	May 8 May 11	-	Annual Leave Sick Leave
Patsy Davis	-	May 1 May 4	-	Annual Leave
Mike Flagor	-	May 7 May 25	-	Annual Leave
Julie Gerardi	-	April 30 May 1	-	Annual Leave
Jim Schluter	-	May 8-18	-	Annual Leave

Georganne Osborn, Paralegal Specialist, will be reporting to FMC Carswell in May. Best Wishes Georganne.

An Tran will be on maternity leave soon. Local legal duties have been delegated to various individuals within the institution. If you have any questions, please contact either AW(P) Brian Hoyt or Executive Assistant Gary Gray.

**NOTE**

Barbara Wilson returned on May 4, 1998.

**Other Scheduled Absences:**

Lisa Sunderman	-	May 27, 28	-	Staff Assistance Visit, FCI Forrest City
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**U.S. Department of Justice**

*Federal Bureau of Prisons*

*South Central Regional Office*

*Dallas, Texas 75219*

June 5, 1998

MEMORANDUM FOR WALLACE H. CHENEY  
 ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - May 1998

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	160	180	189	163	197							
ANSWERED	90	108	141	85	158							

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	133	156	195	201	193							
RECEIVED	56	67	52	48	45							
ANSWERED	33	36	46	45	53							
PENDING	156	187	201	205	185							
OVER SIX MO	0	1	1	1	1							

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
PENDING	56	56	54	15	*2 1							
RECEIVED	28	30	43	88	45							
ANSWERED	28	22	82	70	41							
PENDING	56	54	15	33	21							
OVER 20 DAYS	22	45	13	10	9							

\*Adjusted total of pending cases from last month.

LITIGATION												
	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
CASES RECD	17	15	19	14	10							
CASES CLOSED	4	9	34	35	29							
HABEAS CORPUS	13	9	11	8	3							
BIVENS	4	3	6	3	4							
FTCA	0	2	1	1	1							
OTHER	0	1	2	2	2							
LIT REPORTS	12	17	15	14	15							
HEARINGS/ TRIALS	0	2	2	1	2							
SETTLEMENTS/ AWARDS	0	0	0	0	1							

#### CASES WITH HEARINGS OR TRIALS

Telephone Spears hearing conducted on May 13, 1998, in Green case (reported below). It appears that the majority of claims in this complaint are time barred and will be dismissed. The only complaint still alive concerns the issue whether inmate should receive reconstructive knee surgery. Judge feels this issue could be addressed at FCI Three Rivers.

William Kennedy v Dr. Joseph Berry, SD/TX. This complaint involves a contract psychiatrist that prescribed medication which the inmate felt he should not have received. It appears the majority of the claims are time barred and will be dismissed. At this point it is unknown whether DOJ will approve representation in this FCI Three Rivers case. See significant tort claim section below.

#### CASES WITH SETTLEMENTS OR AWARDS

##### a. Adverse judgments

Wali Muhammed v. USA, 4:96-CV-711-A. The Honorable John McBryde rendered a \$45,000 judgment against the United States, stating that the BOP did not properly house the inmate at FCI Texarkana and FCI El Reno due to his medical condition. The court held we breached our duty to appropriately house inmates under Title 18 U.S.C. 4042. A memo is being prepared discussing an appeal.

##### b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

Rocha v. Reno, A-97-CA-549-SS, WDTX. Defendant's Motion for Summary Judgment was granted by court. This FCI Bastrop age and race discrimination EEO claim would otherwise have gone to trial in June.

FPC Bryan reports that a court ordered mediation in Ahr v. Reno took place on May 7, 1998. An agreement could not be reached at that time. On Friday, May 22, 1998, institution legal staff were advised that Ms. Ahr sent a letter to the AUSA offering to "split the difference" between the last settlement offers, and accept \$11,250 to settle both the civil case and the pending EEO complaint. A draft agreement is in process at this time, and it is expected that the case will be settled in the near future.

Steven Sherrod v. Bob Guzik, CIV-97-1530-1. In this FTC Oklahoma City case, the court ordered remand to the BOP to consider Petitioner as convicted of a non-violent offense and a sentence reduction for successful completion of the drug treatment program.

Dennis O'Neal McAnnich v. Frank Woods, et al., SD/TX, C.A. No. C-96-132, Bivens. Case dismissed with prejudice on March 31, 1998. This case has been ongoing since March 1996. There were a total of 118 documents filed in court, three court appearances, six telephone conferences, and one unsuccessful mediation conference. The complaint centered on plaintiff's belief that defendants were deliberately indifferent to the problems he experienced with his shoulders. He claimed he had been denied surgery as recommended by two physicians and that defendants retaliated against him for filing the lawsuit by subjecting him to transfers, cell searches, and other harassing conduct. The court granted summary judgement finding there was no genuine issue of material fact on plaintiff's Eighth Amendment or retaliation claims and that defendant's conduct was objectively reasonable.

Alfred Green v. USA, C.A. No. C-98-103, SD/TX, Bivens. In this FCI Three Rivers case, the plaintiff has named 15 staff members in his complaint. No defendants have been served, but the court ordered a telephonic Spears hearing. Plaintiff is alleging he injured his back while employed in UNICOR in 1996, and as a result went to a medical center for treatment.

SIGNIFICANT TORT CLAIMS

On March 30, 1998, inmate Brocchini, an inmate at FCI Forrest

City, was given an order to move away from the food slot in his door so the slot could be secured. He refused the order and advised the officer to stand back, he (Brocchini) was going to "get that MF," and he attempted to close the food slot, However, the inmate continued to push the food slot open. The SHU #1 officer then closed the food slot and held it closed with his body. The inmate then complained of an injury to his finger. The food slot was opened and the injury examined. The inmate was seen by institution medical staff and referred to the local hospital for emergency speciality treatment. The FBI and SIS were notified, and the case was referred to OIA.

William Kennedy seeks \$5,000,000.00 compensation for liver, back, brain, and emotional injury as a result of the BOP placing him under clinical trial without his consent. Claims contract psychiatrist gave him medication without his knowledge or consent, which caused liver damage and panic attacks. He believes the drugs induced hepatitis. (FCI Three Rivers)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

Inmate Margaret Broderick at FMC Carswell claims discrimination because she is not allowed to use the bold key on the typewriter for the entire content of her legal documents. She is claiming that she is visually impaired. Response includes explanation that she will be scheduled for an eye exam.

Inmate Bee Tyler at FMC Carswell requests she be allowed to attend RDAP. She claims discrimination due to her physical limitations. (She has polio and is in a motorized wheelchair, but she has no other medical limitations). Response advised her that if she met the RDAP requirements then she could pursue with her unit team the chance of being designated to Bryan.

See Significant Tort Claims Section above from FCI Forrest City pertaining to inmate Brocchini.

Kamel Patel, an inmate at FMC Fort Worth, is again bringing up the issue of his religious ring. This issue was previously addressed via the Administrative Remedy Procedure in 1996; however, he now wishes to challenge the Bureau's decision to allow him to wear the ring on a chain under his shirt. He asserts the stone in the ring must touch his skin.

#### UPCOMING TRIALS OR HEARINGS

None

#### MEDICAL MALPRACTICE

## LITIGATION

Shrader v. Sandoval, A-97-CA-896-SS, USDC/WDTX. FCI Bastrop plaintiff alleges that defendant physically abused him during a rectal examination. OIA investigation failed to sustain the charge. Defendant, as a PHS officer, should be granted exclusive immunity, resulting in dismissal.

## TORT CLAIMS

Inmate Maria Ramos alleges medical negligence in regard to her shoulder pain that she has had since entering the Bureau of Prisons. She claims liability in the amount of \$70,000.00.

## ENSIGN AMENDMENT

### LITIGATION

None

### TORT CLAIM

None

## RELIGIOUS FREEDOM RESTORATION ACT

### LITIGATION

None

### TORT CLAIM

None

## PRISON LITIGATION REFORM ACT ORDERS

None

## SITUATIONS OF INTEREST

### FPC BRYAN

On Wednesday, May 20, 1998, U.S. District Judge Vanessa Gilmore, S.D. TX, visited FPC Bryan to speak to the graduation class of the Intensive Confinement Center. Judge Gilmore was provided a tour of the institution following the graduation ceremony.

### FMC CARSWELL

Activation of Administrative Unit on May 21, 1998.

Activation of General Population Unit scheduled for May 26, 1998.

#### **FCI EL RENO**

Recently a peer review was conducted of the Legal Services Department.

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

#### **FCI FORREST CITY**

On May 2, 1998, inmates Hernandez-Lopez and Castaneda-Romero assaulted inmate Guerra with closed fists and a plastic chair in a housing unit. All three inmates were examined by medical staff. Inmate Guerra received blunt trauma to the head and forearm. Inmate Hernandez-Lopez and Castaneda-Romero received no injuries. All three inmates were placed in the SHU. The FBI was notified and an investigation continues.

On May 13, 1998, the Plumbing Shop Foreman reported he had been assaulted by inmate Reynolds. Inmate Reynolds had thrust his chest out striking the Plumbing Shop Foreman in the right shoulder. Inmate Reynolds was restrained and escorted to Medical Services for evaluation of his injuries. There were no injuries noted to the staff member or the inmate. The inmate was placed in the SHU. The FBI was notified.

On April 28, 1998, the Education Staff observed inmate Buentrostro-Amezcuca push inmate Morales-Diaz in the chest with both hands. Inmate Morales-Diaz then pushed inmate Buentrostro-Amezcuca in the chest. Inmate Morales-Diaz then struck inmate Buentrostro-Amezcuca in the left eye with a closed fist. Additional staff were summoned who separated and secured the two inmates. Both inmates were examined by Medical Staff for injuries and subsequently placed in the Special Housing Unit. The FBI were notified and the investigation continues.

#### **FMC FORT WORTH**

On May 8, 1998, a referral to OIG was made on a staff member for inappropriate relationship with an inmate. The criminal investigation is ongoing at this time.

On May 17, 1998, a referral to the U.S. Attorney's Office/FBI was made on Alvin Jones for threats against multiple staff. The USAO declined to prosecute. The Warden concurs with the decision.

## **FTC OKLAHOMA CITY**

An inmate on staff assault occurred on May 1, 1998, involving inmate Miguel Gutierrez. The inmate, while being strip searched, became combative striking an officer in the face with a closed fist. The officer sustained only redness to the right side of his facial area. The FBI was notified; however, referral for prosecution was declined due to failure to meet prosecutive guidelines. The Warden concurs with this action.

## **FCI THREE RIVERS**

Inmates Jacob Baca, Jose Cadena, Santos Garcia, and Antonio Gonzalez have been indicted for assault with a deadly weapon for their involvement in a June 1997 attack on several inmates. The U.S. Attorney's Office is preparing the case for trial. There was insufficient evidence to prosecute Julio Villanueva, Raul Garza, and Antonio Rios for their involvement in the attack; therefore, these inmates are pending disciplinary action.

Prosecution was denied for inmates Gabriel Alarcon and Jorge Leyva for their assault on inmate Pablo Garcia in the SHU recreation yard. Prosecution was declined. This case is pending further review by the Warden. Prosecution was declined on Arto Dixon for assault. Inmate Dixon assaulted another inmate with a box cutter blade. This case is pending further review by the Warden.

Prosecution was declined on inmate Jose Romo for assault. Inmate Romo stabbed another inmate with a pencil in the palm of his hand and struck him several times with his closed fist. This case is pending further review by the Warden.

Inmate Todd Tanner has been referred for prosecution for Possession of Narcotics. During a cell search, inmate was found to be in possession of 40 corners of a green leafy substance that tested positive for marijuana.

Inmate Guillermo Garcia has been referred for prosecution for Assault on Staff. This inmate is unstable due to his failure to take his prescribed medications. While attempting to move him to a different cell in SHU, inmate became aggressive after handcuffs were placed on him. During a struggle with an officer, the officer was struck in the face by the inmate. No injuries reported by the officer.

Inmate James Esmolina has been referred for prosecution for Possession of Marijuana. During a pat search leaving UNICOR, 26.7 grams of marijuana were located in the inmate's possession.

Inmate Eduardo Zunica has been referred for prosecution for Possession of Narcotics. During a cell search and subsequent pat search, inmate was found to be in possession of 10 cut up pieces of potato chip bags containing a brown substance. The substance tested positive for amphetamine.

**PERSONAL ISSUES**

**Scheduled Annual/Sick Leave:**

Mike Hood	-	June 22-26	- Annual Leave
Marsha Foulks	-	June 26	- Annual Leave (12n - 4pm)
Jason Sickler	-	June 22-26	- Annual Leave
Lisa Sunderman	-	June 29	- Annual Leave
Paul Layer	-	June 29 & 30	- Annual Leave
Karen Summers	-	June 15-19	- Annual Leave
Julie Gerardi	-	June 15-19	- Annual Leave

**Other Scheduled Absences:**

Jim Schluter	-	June 1-15	- Public & Media Training (Denver, CO)
Barbara Wilson	-	June 25-26	- CLE Training
Mike Flagor	-	June 12	- Annual Leave

**NOTE**

J. D. Crook will be assisting the FTC on Thursdays until An Tran returns from maternity leave.



**U.S. Department of Justice**

*Federal Bureau of Prisons*

*South Central Regional Office*

*Dallas, Texas 75219*

July 1, 1998

MEMORANDUM FOR WALLACE H. CHENEY  
 ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - June 1998

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	160	180	189	163	197	190						
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TORT CLAIMS												
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LITIGATION

	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
CASES RECD	17	15	19	14	10	11						
CASES CLOSED	4	9	34	35	29	28						
HABEAS CORPUS	13	9	11	8	3	7						
BIVENS	4	3	6	3	4	2						
FTCA	0	2	1	1	1	2						
OTHER	0	1	2	2	2	0						
LIT REPORTS	12	17	15	14	15	8						
HEARINGS/ TRIALS	0	2	2	1	2	2						
SETTLEMENTS/ AWARDS	0	0	0	0	1	0						

### CASES WITH HEARINGS OR TRIALS

Knight v. Heftler. Trial held at FCI Seagoville on Monday, June 8, 1998. Chief Judge Jerry Buchmeyer presided. The case was a Bivens actions stemming from an inmate's alleged food poisoning. None of the other inmates who testified suffered any illness after eating the allegedly tainted shrimp. In less than two hours, Judge Buchmeyer granted the government's Motion to Dismiss.

Plunkett v. Gunja. Telephone conference scheduled. Judge issued no orders or rulings as a result of hearing. FCI Three Rivers inmate contends that he was transferred to the Southern District of Texas in retaliation for litigation filed against the BOP and its employees. The plaintiff also avers that BOP staff negligently forced him to cell with an inmate who threatened to sexually assault plaintiff.

### CASES WITH SETTLEMENTS OR AWARDS

#### a. Adverse judgments

#### b. Tort Claim settlements

Norma Carter - FPC Bryan medical malpractice claim was approved by DOJ for settlement in the amount of \$150,000. Final paperwork is being currently prepared.

#### c. Other settlements

FPC Bryan reports that a settlement agreement has been signed in

Ahr v. Reno, H-96-3641 (SD/TX). In exchange for \$11,250.00, Ms. Ahr will withdraw above captioned matter and a pending EEO complaint raising retaliation issues.

### SIGNIFICANT CASES

Stephen Casey Blalock v. United States of America, 1:98-CV-120-C (ND/TX). On June 3, 1998, Blalock, an FCI Big Spring inmate, filed a civil action challenging the inclusion of his instant offense as a crime of violence in all cases. Blalock was convicted of being in possession of a firearm during and in relation to a drug trafficking crime. Blalock challenges the 5th Circuit interpretation of Venegas. He cites other circuits have followed Downey v. Crabtree and that the 5th circuit interpretation of 3621(e) denies him the opportunity to benefit from an early release following the completion of his 500-hour drug treatment program. The record reflects that before Blalock entered the 500-hour program he had been placed on notice that he would not be eligible for early release due to his instant offense.

Yuk Rung Tsang v. Bureau of Prisons Office of General Counsel, 1:98-CV-114-C, (ND/TX). FCI Big Spring reports that Tsang has filed this civil action claiming he completed the 500-hour drug treatment program in 1994. The Bureau was aware Tsang had a detainer lodged against him for deportation before he began the program. The record reflects Tsang entered the program immediately after the designated Residential Treatment Unit was burned during an institution riot. Tsang and other inmates were placed in other units at FCI Phoenix and allowed to complete the program as if they had been assigned to a dedicated drug treatment unit. Approximately two years after completing the 500-hour program, Tsang was notified his early release to his detaining authority had been revoked. The record reflects this early release was revoked due to Tsang's failure to reside in a dedicated drug treatment unit. Tsang argues this was not his fault. He states he completed the program in good faith. We have found no record Tsang was ever offered the opportunity to return to a Residential Drug Treatment Unit to complete the mandatory stay of 180-days. We are waiting on a decision from the Central Office as to Tsang's eligibility to benefit for this early release.

Len Davis v. BOP, et al., PB-C-97-494 (ED/AR). The Community Corrections Center in New Orleans reports that a death row inmate housed in a state facility refiled a previously dismissed Personal liability claim against a BOP employee. A Motion to Dismiss the new suit on res judicata grounds has already been filed.

Reed v. Stone, A-97-CA-899-JN, WDTX. Bivens action against the HSA at FCI Bastrop alleges deliberate indifference in failing to obtain treatment for keloid formations on plaintiff's ear.

Defendant's Motion for Summary Judgment granted by court.

Jeff H. King Sr. v. Janet Reno, LR-C-98-258/Civil No. 3-94-33.

In this FCI Forrest City case, inmate King was convicted of Felon in Possession of a Firearm, Title 18 U.S.C. section 922 (g). The inmate was denied the year off because the offense was determined to be a crime of violence. The inmate challenges this determination.

Dr. Omar Tusshani v. USA, is a suit filed by plaintiff against the U.S. Marshals Service and FMC Fort Worth. Plaintiff received significant injuries while housed in a contract detention facility in Wyoming under a USMS contract. He was transferred to FMC Fort Worth to receive physical therapy. This suit alleges plaintiff received inadequate medical care and treatment and, as a result, sustained permanent damage and significantly reduced life expectancy. The administrative claim was in the amount of \$15,000,000 and was denied.

Brian Maurice Fuller v. USA. This civil action out of FCI La Tuna alleges plaintiff suffered severe physical injury at FCI Three Rivers to his knee, hip, and back, due to the negligent and wrongful acts of BOP employees. Plaintiff further alleges he was subjected to a delay in surgery and that the rehabilitation following surgery was below the standard of care, causing further damage and resulting in a second surgery. Further, plaintiff alleges he was prescribed a harmful medication. The claim is unclear as to where these allegations took place, but it appears he questions the care he received at FCI Three Rivers, FCI Bastrop, and FMC Fort Worth. He is seeking \$3,241,000 in damages.

FCI La Tuna reports Westray Daves v. Slade, EP-98-CA-218-H (WD/TX). Inmate Daves challenges the early release policy barring his eligibility because the policy was promulgated after he was sentenced.

FTC Oklahoma reports that Steven Sherrod v. Bob Guzik, CIV-97-1530-L. By judgment entered May 28, 1998, the petition for Habeas Corpus was granted, and the matter was remanded to the Bureau of Prisons for further proceedings consistent with the Report and Recommendation and Fristoe v. Thompson \_\_F.3d\_\_ (10<sup>th</sup> Circuit, April 28, 1998.) Unit Management is currently processing the referral for CCC placement.

James Burdette Newton v. Federal Bureau of Prisons, 5:98cv194 (ED/TX) - Petitioner contends that he is being wrongfully denied early release from FCI Texarkana because of prior guilty pleas he allegedly made without the benefit of counsel.

#### **SIGNIFICANT TORT CLAIMS**

Anthony Austin (aka Wa'il M. Muhannad) contends staff at

USP Beaumont failed to provide adequate surveillance equipment in common areas which would protect inmates from physical attacks. He also contends that specific staff failed to supervise the common areas. Mr. Austin contends that a staff member observed the attack, but failed to intervene in a timely manner. Mr. Austin contends that another inmate intervened and stopped the attack, but not until he experienced convulsions and severe lacerations below his chin. He states that he now is suffering nerve damage on the left side of his face and body. The sum certain requested is \$25,000.00. (T-SCR-98-099)

Ronald Fishman, an inmate incarcerated at FMC Fort Worth, claims liability in the amount of \$1,500,000 (T-SCR-98-240). Fishman alleges he was denied access to needed medical care (500-hour Drug Abuse Program), which has caused mental anguish and emotional distress, resulting in depression and inability to sleep.

The family of Julian Yarbrough, who died while incarcerated at FMC Fort Worth, claims liability in the amount of \$2,800,000. They allege the BOP failed to timely diagnosis squamous cell carcinoma in the neck, which ultimately resulted in Mr. Yarbrough's death. (T-SCR-98-260)

An FPC El Paso staff member filed tort claim T-SCR-98-239, in which she seeks \$250,000.00 for personal injury. She alleges that a staff chaplain fondled her at FCI La Tuna. We understand that she and a female staff chaplain, who alleges being assaulted in a similar manner by the same staff member, have filed EEO claims. Her administrative tort claim was filed by an attorney acting on her behalf.

Tomas Zambrano, an inmate housed at FDC Oakdale, alleges that he was injured while playing softball. He contends that a specific Physician's Assistant initially refused to examine him and instructed him (Mr. Zambrano) to report to sick call on the following Monday, May 12, 1997. On May 12, 1997, x-rays were taken and it was determined that the fibula at his right ankle was fractured. Surgery was ultimately performed and \$100,000.00 sum certain is noted as damages for the misdiagnosis and malpractice of a displaced fracture of the fibula. (T-SCR-98-148)

Inmate Liasse Bazelias contends that staff at FDC Oakdale examined him upon his arrival on November 6, 1996, and determined that he was in "satisfactory medical condition." He alleges that during January 1997, he was treated for a cold and staff inappropriately prescribed a 800 mg. of ibuprofen three times per day, which has resulted in the destruction of his kidneys. He seeks \$6,912,000.00 in damages and future medical care. (T-SCR-98-224)

Inmate Alfred Green seeks \$3,000,000.00 as compensation for deliberate indifference to his medical needs by the medical

department and UNICOR staff members at FCI Three Rivers. Inmate alleges he was ordered to push a fork lift up a ramp in UNICOR during 1994, which resulted in right knee, hip, and back injuries. Inmate further alleges there was a long delay in detecting the injuries; medical staff refused to follow recommended treatment; and medical staff refused to provide effective pain medication to relieve his pain. Inmate had two back surgeries and one knee surgery prior to his federal incarceration. He was seen at least 68 times by various medical personnel and evaluated by six specialists. Inmate was also evaluated by USMCFP Springfield. There is no evidence to support inmate's allegation of deliberate indifference.

Inmate David Gibson seeks \$10,000.00 as compensation for deliberate indifference to his medical needs by the medical department at FCI Three Rivers. Inmate alleges he was sprayed with pepper spray in 1994 while being transported to FCI Three Rivers, and that he did not receive any medical treatment for 72 days. He claims his sight has diminished, he has to wear glasses, and he suffers from dizziness, headaches, and nausea. Investigation revealed a canister of pepper spray accidentally ruptured on an inmate transportation bus while in route to FCI Three Rivers. Inmate was treated upon his arrival at this institution. He was evaluated at least 21 times by various medical department staff and six times by an Optometrist. There is no evidence to indicate medical staff were deliberately indifferent to inmate's medical needs. It is the belief of the medical department that inmate's eye difficulties are a result of his chronic conjunctivitis and not his exposure to pepper spray.

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

USP Beaumont reports Remedy No. 161938-F1 in which USP inmate Talbott (fiance of Attorney Helen Wang) challenges the May 15, 1998 rejection of an incoming publication, The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases. The publication was rejected due to its detailed discussions of the ingredients, operation, and construction of explosives. Inmate Talbott alleges the publication is necessary for appeal of his criminal convictions.

Inmate John Binar from FCI Big Spring is challenging the Bureau of Prisons' system of determining the rated capacity of an inmate room, in respect to double bunking inmate beds.

#### UPCOMING TRIALS OR HEARINGS

None

#### MEDICAL MALPRACTICE

**LITIGATION**

None

See significant tort claims - Yarbrough administrative claim.

**TORT CLAIMS**

**FMC CARSWELL**

Inmate Norma Nelson - T-SCR-98-261, alleges medical negligence in regard to her partial breast reconstruction surgery having to be reopened to obtain the full margins of the biopsy, resulting in a radical mastectomy. She claims liability in the amount of \$6.5 million.

**ENSIGN AMENDMENT**

**LITIGATION**

None

**TORT CLAIM**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIM**

None

**PRISON LITIGATION REFORM ACT ORDERS**

None

**SITUATIONS OF INTEREST**

**FCC Beaumont**

LOW - On June 9, 1998, following an investigation by Legal Department staff, Attorney Helen Wang was restricted from Complex-wide visitation (legal and social), confidential written

correspondence with inmates (special mail), and unmonitored legal telephone calls with inmates. These restrictions were based on Attorney Wang's history of violating Bureau of Prisons rules, most recently of which included paying an inmate at the LOW to solicit inmate clients for her. A complete packet documenting the investigation was forwarded to the Regional Counsel and Central Office, Office of General Counsel.

June 23, 1998 - Paul Layer and Darrel Waugh attended the Beaumont City Council meeting to consider the proposed contract for fire protection at the Complex. The contract was approved by a vote of 5-1, and will provide first response fire protection to the Complex until June 30, 2000, at a price of \$3000.00 per year.

#### **FMC CARSWELL**

On June 24, 1998, Dr. Kenneth Moritsugu awarded Pins and Boards to PHS officers for their promotions.

Wallace Cheney, General Counsel, toured FMC Carswell and FMC Fort Worth on June 30, 1998.

#### **FTC OKLAHOMA CITY**

DOJ attorneys conducted Trentadue plaintiffs' depositions June 15-19.

#### **FCI OAKDALE**

Inmate Detusch has been deported and is now in the custody of Canadian authorities.

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

#### **FCI BASTROP**

In response to the Warden's concern that the FBI was not helping the BOP in the prosecution of three crimes, the staff attorney spoke to Richard Pittman, the Assistant Civil Chief of the U. S. Attorney's Office in Austin, who pledged to do something about it. The next day the local FBI agent called the SIS Lieutenant, and it now appears that these cases will go forward:  
Gadusek: Inmate was observed swallowing balloons in the Visiting Room. He was placed in a dry cell, where he passed the balloons, whose content tested positive for heroin. He will probably plead guilty.

Ramirez: Inmate threw urine and feces on officer in SHU. Staff witnesses are available to testify, if needed. He will probably plead guilty.

Zuidema: An incoming piece of correspondence was found to contain

LSD. This is the weakest of the three, since it is difficult to prove that the inmate knew the LSD was coming in.

#### **FCC BEAUMONT**

Camp - On June 25, 1998, federal inmate Samuel Flores was sentenced following his plea of guilty to escape from the FCC Beaumont Camp on January 11, 1998. Inmate Flores received an 18 month consecutive federal term of imprisonment, three years supervised release, and a \$100.00 special assessment (no criminal fine). Inmate Flores was sentenced by Chief Judge Richard Schell, Eastern District of Texas, Beaumont. Inmate Ruiz, Jose is tentatively scheduled for sentencing on the same charge July 25, 1998.

Low - On June 1, 1998, Warden Tombone and Paul Layer met with Mike Bradford, U.S. Attorney, Eastern District of Texas, Michelle Englade, AUSA, and Bob Fortune, Special Agent, FBI, regarding criminal prosecution of Luis Carmona-De La Torre for assaulting a correctional officer at the LOW. The U. S. Attorney supports seeking criminal prosecution through criminal information, as opposed to a grand jury indictment.

USP - On June 15, 1998, former Correctional Officer Jessica Sills pleaded guilty to Providing or Possessing Contraband in Prison (18 U.S.C. § 1791), in connection with an incident where she was paid to supply inmates in the USP with marijuana.

#### **FCI EL RENO**

June 10, 1998, Assault on Inmate - Staff observed Filiberto Flores and Leonardo Hernandez-Garcia fighting in Unit 4. Prosecution declined due to no serious injury. Warden concurs.  
**FCI FORREST CITY**

On May 23, 1998, Amador-Rodriguez assaulted the Cook Supervisor by throwing an apple striking the staff member on the right biceps and right eye. While being escorted into the SHU, the inmate began pulling away from the escorting officer. The staff member then regained control and the inmate was placed into a holding cell. The inmate was examined by medical staff and placed into Administrative Detention without further incident. Both staff and the inmate received injury assessments by medical staff with no injuries noted. The FBI was notified and the investigation continues.

On May 24, 1998, a unit officer requested medical assistance when she observed inmate Rodriguez-Cortez sitting in the TV room wiping blood from his facial area. A visual search was conducted on all inmates in the unit at which time inmate Earl Marcenus was discovered by staff to have multiple abrasions to the neck and chest area. Both inmates were placed in Administrative Detention without further incident. Both inmates received medical

assessments by medical staff with injuries noted. The FBI was notified and an investigation continues.

On May 26, 1998, the Control Center Officer announced a call for assistance in a housing unit. Staff observed inmate Eddie Rhyan staggering toward the officer's station bleeding from his left eye. Inmate Stephen Mitchell was observed yelling to inmate Rhyan that he was going to hurt him (Rhyan). Staff restrained both inmates and escorted them to the institution hospital and then to the SHU. The FBI was notified and the investigation continues.

On June 9, 1998, the Community Confinement Center in Houston, TX. Notified FCI Forrest City that inmate Soto-Gonzalez failed to report to his scheduled CCC in Houston. The inmate was scheduled to arrive at 8:30 a.m. on June 9, 1998. The inmate was placed on escape status at 4:17 p.m. The U. S. Marshals Service and the FBI were notified.

On June 14, 1998, a Food Services staff member observed inmate Javier Ramos lying on the floor of Food Services. Staff further observed inmate Guillen standing over inmate Ramos with a broom handle placed against Ramos' neck applying pressure. Additionally, staff observed inmate Mungia with both his hands placed on inmate Guillen's left and right shoulder. Food Service staff ordered all three inmates to stop and they complied. The three were escorted to Health Services and examined by medical personnel. They sustained minor injuries. After the examination, the inmates were placed in SHU. The FBI was notified and an investigation continues.

On June 22, 1998, inmate Arvayo-Castillo entered the Lieutenant's Office and admitted he had been in a physical altercation with an unknown inmate. According to the inmate, he was sleeping and another inmate entered his cubicle and struck him in his head with a foreign object. The inmate was treated by medical staff. He sustained two lacerations to the back of his head and two small abrasions to his back area. The inmate was placed in SHU and the FBI was notified.

#### **FTC OKLAHOMA CITY**

An inmate on staff assault occurred on June 1, 1998, when inmate Bronco, Lucio, while being escorted from R&D to the Special Housing Unit, became verbally abusive and confrontational. Inmate Bronco attempted to pull away from escorting staff and then head butt an officer. Both the officer and inmate Bronco fell to the floor. Accompanying staff gained control of the inmate, and he was escorted to his cell without further incident. Neither staff nor inmate Bronco sustained any injury. The FBI was notified; however, they declined referral for prosecution.

The Warden concurs.

On June 23, 1998, while being escorted from a housing unit to R&D, inmate Joel Moreno-Olives attempted to strike an escorting officer in the facial area with his elbow. The inmate was taken to the floor, restrained, and then moved on to R&D without further incident. No injuries were sustained by either staff or the inmate. The FBI was notified, but declined referring for prosecution. The Warden concurs.

#### **FCI TEXARKANA**

Staff member pled guilty to the charge of having sex with an inmate and received one year probation.

#### **FCI THREE RIVERS**

The U. S. Attorney's Office will prosecute inmate James Esmolina for possession of marijuana. During a pat search leaving UNICOR, 26.7 grams of marijuana were located in the inmate's possession.

The U.S. Attorney's Office will prosecute inmate San Martin Zuniga for possession of narcotics. During a cell search, and subsequent pat search, inmate was found to be in possession of 10 cut up pieces of potato chip bags containing a brown substance. The substance tested positive for amphetamine.

Prosecution was declined for staff assault by inmate Gabriel Alarcon. Inmate grabbed staff member's genitalia through food slot in SHU while issuing toilet paper. No injury to staff. Warden concurs with decision.

Prosecution was declined for assault on staff with a weapon by inmate Jesus Fernandez-Delgado. While fighting with another inmate in UNICOR, inmate Fernandez picked up a long handle dust pan, swung it around, and hit another inmate and a staff member. No injuries were sustained. Warden concurs with decision.

The following inmates were referred to the U. S. Marshal's Office after they walked away from the satellite camp: Jose Reyes-missing during midnight count on May 23, 1998; Juan Garcia-missing during 4:00 p.m. count on May 30, 1998; Michael Martinez-missing during midnight count on June 6, 1998; and David Cervera-missing during 4:00 p.m. count on June 11, 1998.

#### **PERSONAL ISSUES**

##### **Scheduled Annual/Sick Leave:**

Mike Hood	-	July 23-24	-	Annual Leave
Lisa Sunderman	-	July 2, 6-10	-	Annual Leave

Marsha Foulks	-	July 6, 10, 13 & 20	-	Annual Leave
Linda Nutt	-	July 6-10	-	Annual Leave
Darrel Waugh	-	July 1-15	-	Annual Leave
Karen Summers	-	July 20-24	-	Annual Leave

**Other Scheduled Absences:**

Julie Gerardi, FCI Three Rivers, will be attending Diversity Management Training at FMC Carswell on July 14-17, 1998.

Jason Sickler, SCRO Attorney Advisor, will be located at FCC Beaumont beginning July 19, 1998. The institutions that Jason currently oversees will maintain their working relationship with Jason, to the extent possible. Jason will be greatly missed.

Mike Hood and Lisa Sunderman will be attending the Legal Conference the week of July 27, 1998. Marsha Foulks will be acting Regional Counsel during their absence.



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

August 5, 1998

MEMORANDUM FOR WALLACE H. CHENEY  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - July 1998

ADMINISTRATIVE REMEDIES												
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LITIGATION
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<b>BIVENS</b>	4	3	6	3	4	2	5					
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<b>HEARINGS/ TRIALS</b>	0	2	2	1	2	2	2					
<b>SETTLEMENTS/ AWARDS</b>	0	0	0	0	1	0	1					

#### CASES WITH HEARINGS OR TRIALS

Telephone conference status call conducted on July 21, 1998, in Horey v. Woods. C-97-292, SD/TX. Inmate requested conference call to seek a delay in court hearing. Trial was rescheduled for October 19, 1998.

Telephone conference status call conducted on July 20, 1998, in Noel Plunkett v Joe Gunja, et al. C-96-548, SD/TX. Inmate requested conference call to discuss status of the case. Judge ordered inmate receive a complete copy of his medical records within seven days.

#### CASES WITH SETTLEMENTS OR AWARDS

##### a. Adverse judgment

None

##### b. Tort Claim settlements

None

##### c. Other settlements

None

#### SIGNIFICANT CASES

Barbara G. Harrison-Philpot v. Janet Reno, Writ of Habeas Corpus regarding the absence of a RDAP program at FMC Carswell. She makes equal protection and ADA claims regarding discrimination against female inmates medically assigned to the only female medical facility (FMC Carswell) because no RDAP is offered.

Bulmar Villarreal v. George E. Snyder, H-C-98-72. This FCI Forrest City inmate claims that he was denied his one year off, even though he has satisfied all of the requirements under 18 U.S.C. 3621(e). The inmate believes the denial stems from the unjust treatment of inmates with INS detainers. The U.S. Attorney's Office has not yet received this case.

FCI La Tuna reports Stauffer v. Slade, a habeas case concerning early release pursuant to 18 U.S.C. Section 3621(e). Inmate Stauffer asserts an equal protection violation due to his ineligibility for early release consideration as an old law inmate, particularly where he is ineligible for parole under the terms of one of his three old law sentences.

Joseph Gagliano v. N. L. Conner 5:98CV209 - An FCI Texarkana inmate alleges he was improperly removed from DAP. BOP fails to recognize prescription drug addiction. Therefore, he complains that he is being denied early release eligibility.

James Lee Dillon v. Michael Purdy, et al., C-97-587, SD/TX, Bivens. Petitioner at FCI Three Rivers asserts the Hospital Administrator was deliberately indifferent to his medical needs because he did nothing and did not tell Petitioner what the pain was. Petitioner is requesting an unspecified monetary settlement for the pain and suffering he was forced to endure.

Johnnie Fay Ray v United States. In this FCI Big Spring case, a contract teacher fell off a golf cart driven by an inmate. A settlement conference was held on July 17, 1998, and the government proposed settlement in the amount of \$60,000.00 (subject to the approval of the Bureau of Prisons and the Department of Justice). This offer countered the plaintiff's offer of an \$80,000.00 settlement.

Agerton v. U.S., C-98-292, S.D.Tex. - (FMC Fort Worth case) Former contract physician alleges wrongful termination of privileges at FMC Fort Worth. He filed in state court, but we seek removal to federal court. Originally this case was filed as C-98-033, S.D.Tex., and was dismissed for failing to state an FTCA claim upon which relief could be granted. A motion to dismiss based on res judicata was provided to AUSA.

#### SIGNIFICANT TORT CLAIMS

T-SCR-98-250, Robert Kenaston, an inmate at FTC Oklahoma City, claims he was subjected to racial discrimination and attempted murder when staff placed him in a cell with another inmate whom staff knew was claimant's enemy. Claimant states he was beaten in the face and head area by the inmate, and body-slammed by staff. Claimant alleges injuries to his neck, head, and back, and seeks \$200,000.00 in damages.

T-SCR-98-319, USP Beaumont Inmate Collins, Miko alleges he was assaulted by another inmate when placed in the other inmate's cell in the USP SHU. Claimant alleges staff were expressly informed by the assaulting inmate not to put claimant in his cell or an assault would occur. Claimant seeks \$25,000.

Ollie Clemons, T-SCR-98-277, claims liability in the amount of \$185,000. Clemons alleges he was thrown from his wheelchair when his tire hit a worn and jagged part of the sidewalk at FMC Fort Worth. He states he suffered a broken leg, mental anguish, and emotion distress as a result of BOP's failure to maintain a safe living environment.

Derek Belmonte, T-SCR-98-279, claims liability in the amount of \$750,000. Belmonte claims BOP staff at FMC Fort Worth wrongfully confiscated his electric wheelchair without cause, resulting in exacerbation of neuropathy in his left upper extremity creating physical pain and mental anguish.

Louis Summers, T-SCR-98-296, claims liability in the amount of \$750,000. Summers claims BOP staff at USMCFP Springfield and FMC Fort Worth were aware of osteomyelitis in his left upper extremity and failed to adequately treat it, which he fears will result in further surgery.

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

None

#### UPCOMING TRIALS OR HEARINGS

FCI La Tuna reports that a Spears hearing is scheduled for August 20, 1998, in Lubbock, Texas, in the matter of Estupinan-Vasquez v. United States. This is a medical malpractice case in which plaintiff alleges he received insufficient medical care for an injured Achilles tendon. We are attempting to transfer the case to Dallas.

Floyd Gadson v. USBOP, set for trial on August 24, 1998, in the Honorable John McBryde's court. This case involves an altercation between inmate Gadson and Health Technician Michael

Schappaugh. Gadson is seeking \$25 in damages from Schappaugh and 3.5 million from the United States, for medical negligence for a three day delay in receiving medication.

#### MEDICAL MALPRACTICE

#### LITIGATION

None

**TORT CLAIMS**

See also Significant Tort Claims heading.

**ENSIGN AMENDMENT**

**LITIGATION**

None

**TORT CLAIM**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIM**

None

**PRISON LITIGATION REFORM ACT ORDERS**

None

**SITUATIONS OF INTEREST**

Assistant United States Attorney Robert Bernard has been removed from four Bureau of Prisons' cases filed in the Southern District of Texas, on a motion of the Civil Section Chief for the Southern District. Mr. Bernard faces contempt charges before Magistrate Judge Jane Cooper-Hill. Mr. Bernard will appear before the court on August 5, 1998.

**FTC OKLAHOMA**

Depositions in Trentadue were held July 20-24, 1998.

**CRIMINAL MATTERS AND PROSECUTIONS**

**FCC BEAUMONT**

On Monday, July 20, 1998, in the U.S. District Court for the

E.D.Tex., Beaumont, inmate Macias, John pleaded guilty to Attempt to Obtain a Prohibited Object (marihuana) in violation of Title 18 U.S.C. § 1791(a)(2). The guilty plea stemmed from a February 16, 1998, incident where inmate Macias' wife was attempting to introduce marihuana to the inmate through visiting at the USP. (Inmate Macias' wife pleaded guilty May 22, 1998, to Attempting to Provide a Prohibited Object (marihuana), and will be sentenced in the near future.) Inmate Macias faces a possible maximum 5 year term of imprisonment. A sentencing update will be provided.

Inmate Regalado pleaded guilty to Possession of Heroin in violation of Title 18 U.S.C. § 1791(a)(2), as the result of an incident which occurred February 10, 1998, at the USP where heroin was found in his cell. Inmate Regalado faces a possible maximum 20 years term of imprisonment. A sentencing update will be provided.

#### **FPC BRYAN**

An in-depth investigation into assertions of sexual abuse of inmates by staff has been proceeding for the past three weeks. One staff member has been placed on home duty status pending the results of the investigation and a decision as to whether prosecution will be pursued. Additional staff members are under investigation, but these investigations are in their infancy.

#### **FMC CARSWELL**

A former correctional officer was sentenced for sexual abuse of an inmate and received three months confinement, a \$500.00 fine, and one year supervised release.

#### **FCI EL RENO**

June 28, 1998, Possession of Marijuana - Staff were conducting random pat searches on the compound and found three small pieces of folded paper on inmate Juan Arredondo. FBI declined prosecution due to small amount. Warden concurs with decision.

Inmate Michael Schaffer is set for trial in September for possession of narcotics. See March 1997 report.

#### **FCI FORREST CITY**

On June 29, 1998, a unit officer was making rounds in the unit. The officer approached inmate Rodriguez lying face down on his bed. The officer asked inmate Rodriguez to stand up and face him. At this time the officer observed the inmate with multiple

abrasions to his face. The inmate identified inmate Sanchez-Cruz as the inmate he was fighting within the multiple purpose T.V. room. The inmates were escorted to Health Services and were examined by medical staff. The inmates were placed in SHU. The FBI was notified and an investigation continues.

On July 3, 1998, inmate Burel came to the Lieutenant's office with blood on his face and shirt. An investigation revealed that the inmate along with inmate Martin had been involved in a fight in the bathroom located in Recreation following a verbal dispute which had occurred in the Food Service Department. The FBI were notified and the investigation continues.

On July 10, 1998, inmate Fisher reported to the officer's station in a housing unit with bleeding from his right nostril and a swollen face on the left side just above the lip. A preliminary investigation revealed inmate Fisher had been a victim of an assault outside the unit bathroom located in Helena A. The inmate was examined by medical staff and placed in SHU. The FBI were notified, they declined, and the Warden agrees.

On July 20, 1998, inmates Munoz-Peralta, Contreras-Rojas, and Depaz-Ostorga were in restraints in SHU in a holding cell awaiting movement to R and D for transport. Inmates Contreras-Rojas and Depaz-Ostorga began assaulting inmate Munoz-Peralta by head butting and kicking him. The inmates were examined by medical staff with minor injuries noted. The FBI were notified and the investigation continues.

On July 23, 1998, the control center announced a body alarm in Wynne B Unit. Inmates Ibarra-Saucedo and Torez were fighting. The inmates were examined by medical staff with minor injuries noted. The FBI were notified and the investigation continues.

#### **FMC FORT WORTH**

The former Food Service Foreman at FMC Fort Worth was sentenced on July 7, 1998, by the Honorable Terry Means to a 46-month term of imprisonment for Providing Contraband in Prison. He has been designated to FCI Sandstone.

#### **FTC OKLAHOMA CITY**

Inmate on inmate assault on July 21, 1998, wherein inmate Rodney White struck inmate Michael Holloway repeatedly with closed fists. The FBI presented the case to an AUSA, who declined prosecuting the case for failure to meet United States Attorney's guidelines for prosecution. The Warden concurs with this

decision

**FCI SEAGOVILLE**

On July 7, 1998, a former staff member was indicted in the ND/TX for Inappropriate Relations With an Inmate. No further information is known at this time.

**FCI TEXARKANA**

(Pending from last month) - Staff member pled guilty to introduction of contraband to an inmate. Sentencing pending.

**FCI THREE RIVERS**

Inmates Jacob Baca, Santos Garcia, Antonio Gonzales, Julio Villanueva, Julio Cadena, and Raul Garza pled guilty to assaulting Christopher Martinez and Bruno Diaz-Cruz in front of the control room in June 1997. Sentencing is scheduled for September of 1998.

**PERSONAL ISSUES**

**Scheduled Annual/Sick Leave:**

Mike Hood	-	August 17-18 August 31- September 3	-	Annual Leave Military Leave
Lisa Sunderman	-	August 14	-	Annual Leave
Linda Nutt	-	August 7	-	Annual Leave
Josie Wilches	-	August 6-7 August 11	-	Annual Leave
Patsy Davis	-	August 14&17	-	Annual Leave
Paula Haskett	-	August 10-12 August 19-26	-	Annual Leave
Julie Gerardi	-	August 17-28	-	Annual Leave
Al Munguia	-	August 3-6	-	Military Leave
Linda DuBose	-	August 7-10	-	Annual Leave
Traci Williams	-	August 4-6	-	Annual Leave

**Other Scheduled Absences:**

Mike Flagor - August 24-28 - Managing Diversity  
Training, MSTC Denver

Darrel Waugh - August 10-14 - Basic Sentence  
Computation, MSTC Denver

August 31- - Sentencing Training,  
September 3 MSTC Denver

**NOTE:**

Jason Sickler, Attorney Advisor, currently has his office at FCC  
Beaumont - LOW. He will continue to maintain his regional  
responsibilities, including his 3621(e) oversight, until the end  
of August. Jason may be reached at (409) 727-8172 ext. 2006, and  
facsimiles for him may be sent to (409) 626-3500.

An Tran is back now at FTC Oklahoma City.



**U.S. Department of Justice**

*Federal Bureau of Prisons*

*South Central Regional Office*

*Dallas, Texas 75219*

September 4, 1998

MEMORANDUM FOR WALLACE H. CHENEY  
 ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - August 1998

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	160	180	189	163	197	190	186	208				
ANSWERED	90	108	141	85	158	138	125	123				

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	133	156	195	201	193	193	176	175				
RECEIVED	56	67	52	48	45	47	52	48				
ANSWERED	33	36	46	45	53	61	54	57				
PENDING	156	187	201	205	185	179	174	166				
OVER SIX MO	0	1	1	1	1	1	1	1				

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	56	56	54	15	21	21	24	16				
RECEIVED	28	30	43	88	45	42	38	48				
ANSWERED	28	22	82	70	41	39	46	47				
PENDING	56	54	15	33	21	24	16	17				
OVER 20 DAYS	22	45	13	10	9	9	8	5				

LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	17	15	19	14	10	11	13	18				
CASES CLOSED	4	9	34	35	29	28	21	8				
HABEAS CORPUS	13	9	11	8	3	7	7	9				
BIVENS	4	3	6	3	4	2	5	4				
FTCA	0	2	1	1	1	2	1	4				
OTHER	0	1	2	2	2	0	0	1				
LIT REPORTS	12	17	15	14	15	8	11	12				
HEARINGS/ TRIALS	0	2	2	1	2	2	2	2				
SETTLEMENTS/ AWARDS	0	0	0	0	1	0	1	1				

#### CASES WITH HEARINGS OR TRIALS

U.S. v. Muhammad, 4:98-CV-0356-BE. FMC Carswell inmate Ruth Muhammad was committed for hospitalization pursuant to 18 U.S.C. § 4245 on August 13, 1998.

On August 25, 1998, a trial was held in the Floyd Gadson v. Michael Schappaugh matter, which involved allegations of deliberate indifference to his serious medical needs. The Honorable John McBryde heard this FMC Fort Worth case, and a motion for directed verdict was made by the AUSA. The Judge granted the government's motion, based upon plaintiff's failure to prove harm and/or damages.

#### CASES WITH SETTLEMENTS OR AWARDS

##### **a. Adverse judgments**

FCI La Tuna reports that a \$10,800 plus interest and cost adverse judgement was issued in Haroldo Martinez v. United States. A trial was conducted in March 1998, for this personal injury case after settlement negotiations failed. The Office of General Counsel previously authorized settlement of this case for up to \$30,000. An appeal will likely be recommended.

**b. Tort Claim settlements**

Annie Mae McGee, Civilian. Approved tort settlement in the amount of \$2,108.90, for damage to her vehicle by an FMC Fort Worth inmate assigned to the outside landscape detail.

**c. Other settlements**

Johnnie Fay Ray v. U.S., FCI Big Spring's personal injury case. OGC has approved settlement of this case in the amount of \$60,000. Final paperwork has been prepared; the government awaits the plaintiff's signature.

Pending final OGC approval, the FMC Fort Worth case Wali Muhammed will be settled for \$25,000. This follows an adverse decision holding us liable for \$45,000 for improper housing assignments based on his medical condition.

**SIGNIFICANT CASES**

Woods v. U.S., 4:98-CV-0441-A. FMC Carswell inmate Carolyn Woods acting on behalf of her sister and the estate of their deceased mother, inmate Elizabeth Scallion, filed a wrongful death suit in the amount of \$5 million dollars.

FMC Fort Worth received service on Jimmy Lee Rebman v. USA, a FTCA case in which plaintiff is alleging medical malpractice on the part of Bureau of Prisons' personnel. Specifically, plaintiff alleges the BOP failed to timely provide a corneal transplant.

An FCI El Reno inmate, Prince Webber, challenges the sufficiency of materials in the inmate law library. This complaint may be significant, given the recent posture of the 10th Circuit with regard to inmate law libraries. Specifically, inmate Webber, in federal custody by way of a Military Court Martial, requests that the Bureau be compelled to provide the Military Justice Reporter.

**SIGNIFICANT TORT CLAIMS**

FMC Fort Worth inmate Ernesto Garcia-Olvera's tort claim has been denied; however, we are negotiating a settlement with him in an amount less than \$50,000. We await final approval from DOJ and OGC. (T-SCR-98-105)

Eric Sampson, an inmate at USP Beaumont, alleges he was assaulted by another inmate in the housing unit by having heated liquid

thrown on him. Claimant alleges BOP failed to protect him and seeks \$500,000. Claim was submitted by attorney on behalf of inmate. (T-SCR-98-344)

Tomas Zambrano - In this FDC Oakdale claim, we are negotiating settlement with his attorney for an amount between \$500 and \$1,000 for our delay in providing adequate medical care for his fractured ankle. (T-SCR-98-148)

Mr. Espinosa-Munoz, an inmate housed at FMC Fort Worth, has submitted a claim alleging that on December 16, 1996, he was transported by BOP officers to a community hospital in Fort Worth, where he was prepped for heart catheterization surgery. Mr. Espinosa-Munoz states that when he was informed of the type of surgery, he requested that the escorting officer contact Health Services staff at FMC Fort Worth to verify the need for the surgery. He continues to state that after he was administered medications the BOP Officer confirmed that the wrong inmate had been brought to the hospital.

Mr. Espinosa-Munoz also alleges that he has suffered complications because staff did not restrict his movements after a spinal test was performed on November 23, 1996. There is some question as to whether or not the spinal test was performed as a result of an accident in UNICOR on July 6, 1995. Mr. Espinosa-Munoz submitted a claim in 1995 due to the accident, but it was denied based on DEMKO. He seeks \$6 million dollars in damages. (T-SCR-98-356)

Mr. De La Rosa, an inmate housed at FCI Forrest City, alleges that he suffers from hearing loss, chronic pain, and headaches. Mr. De La Rosa states that he needs surgery, but that it has been denied because it is too expensive. He seeks \$20,000.00. (T-SCR-98-291)

Mr. Summers, an inmate housed at FMC Fort Worth, alleges that medical staff at FMC Fort Worth and USMCFP Springfield were aware that he has "osteomyelites" in his left arm and shoulder. He contends that due to the lack of medical attention it spread to his upper arm bone and that it now has become infected. He seeks \$750,000.00 in damages. (T-SCR-98-296)

Ms. Monroe is housed at FMC Carswell. She states that staff have failed to provide her medical treatment for her Lupus and kidney disease since August 16, 1997, when she awoke "bleeding." Ms. Monroe states that she went to the bathroom and called out to an officer, but she was placed in SHU, and that staff still have not provided her with medical treatment for the "flare-up." She adds that she has been denied a compassionate release and other programs due to her race, age, and religion. She seeks \$1.5 million in damages. (T-SCR-98-321)

Ms. Matos is currently housed at FCI Tallahassee, but contends that staff at FMC Carswell negligently failed to diagnosis and treat "dysmenorrhea and uterine prolapse." She states that she subsequently underwent a vaginal hysterectomy and developed an infection when her bladder was lacerated during the surgery. Staff at the Osteopathic Medical Center of Texas, are listed as witnesses. It is assumed that the surgery was performed by a contract physician. Ms. Matos seeks \$10 million dollars in damages for future medical care, etc. (T-SCR-98-336)

Mr. Kenaston, who is currently housed in the Admax Unit at Florence, contends that on January 14, 1998, when he was being transferred from FTC Oklahoma City, he was assaulted by another inmate and staff. Mr. Kenaston states that he was handcuffed and "shackled" before he was placed in the cell with the unrestrained inmate who assaulted him. He adds that staff also assaulted him, and that his neck, back, and head were injured. He seeks \$200,000.00 for pain and suffering. Case has been referred to OIA. (T-SCR-98-250)

Mr. Collins is housed at USP Beaumont. He alleges that he was handcuffed and placed in a cell with an inmate who has a history of attacking others in the past. Mr. Collins states that he experienced lacerations and swelling to his face and as a result has decreased vision in his left eye. He seeks \$25,000 in damages. (T-SCR-98-319)

Mr. Sanderson, who is incarcerated at FCI Taft, contends that he was enrolled in the 500-hour RDAP program at FCI La Tuna, and that after three months into the program he was transferred to FCI Taft. He states that now he is not eligible for the one year reduction from his sentence. Mr. Sanderson seeks \$250,000 and/or a one year reduction in his sentence. (T-SCR-98-248).

Ms. Geiger is currently housed at FPC Bryan. She alleges that inmates working in the kitchen at Bryan are not adequately supervised. She adds that on June 8, 1998, she was moving a pot of boiling macaroni when she tripped over a cart left unattended in the middle of the aisle. Ms. Geiger states that she sustained burns on 75% of her left arm and 10% on her right arm for which she did not receive adequate medical care. She seeks \$1 million dollars. (T-SCR-98-309)

Mr. Palmisano has filed a claim alleging that when he was incarcerated at FCI La Tuna staff failed to treat his pre-existing heart problem, asthma, ETS allergy, and seizure history. Mr. Palmisano states that Warden Franco refused to allow him to be treated by a cardiologist. He adds that he has permanent damage to his arteries. He seeks \$50 million dollars in damages. (T-SCR-98-310)

**SIGNIFICANT ADMINISTRATIVE REMEDIES**

None

**UPCOMING TRIALS OR HEARINGS**

In Schrader v. Sandoval, A-97-CA-896-SS, Western District of Texas, the court has set a hearing for September 3, 1998, on the Notice of Substitution of the United States as Defendant in place of Sandoval, who is a PHS physician at FCI Bastrop accused of cruel and unusual punishment in a medical context.

In USA v. Jamie Estrada-Fernandez, Estrada-Fernandez's conviction for assaulting a Correctional Supervisor at FCI Big Spring during a December 23, 1996, disturbance was overturned by the 5th Circuit Court due to the court's failure to provide specific instructions to the jury. The retrial has been set for October 5, 1998.

**MEDICAL MALPRACTICE**

**LITIGATION**

See Significant Cases, Cases With Hearings, Cases With Settlements or Awards sections.

**TORT CLAIMS**

See Significant Tort Claims section.

**ENSIGN AMENDMENT**

**LITIGATION**

None

**TORT CLAIM**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

#### **TORT CLAIM**

None

#### **PRISON LITIGATION REFORM ACT ORDERS**

None

#### **SITUATIONS OF INTEREST**

On August 3, 1998, Richard Ledford was found on the Long Term Care Unit at FMC Fort Worth, the apparent victim of a suicide. Ledford's right arm had been cut with a razor blade and he had bled to death. The FBI was called in to rule out foul play or criminal misconduct. The FBI determined there was no foul play, nor apparent criminal misconduct.

U.S. v. Klat, 97-11282, U.S. Court of Appeals, 5<sup>th</sup> Circuit. FMC Carswell inmate filed an appeal challenging the magistrate judge's authority to hear her mental health commitment hearing and whether his decision is appealable.

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

##### **FCI BASTROP**

The U.S. Attorney's Office in Austin has agreed to prosecute three criminal matters referred from FCI Bastrop. US v. Ramirez arose over an inmate throwing urine and feces on a staff member. US v. Gaidusek arose over an inmate who ingested three balloons containing heroin in the visiting room. US v. Zuidema arose over an inmate receiving LSD through the mail.

##### **USP BEAUMONT**

On August 25, 1998, U.S. District Court Judge Cobb, E.D.Tex., sentenced inmate Jose Ricardo Ruiz to a 46 month term of imprisonment, three years of supervised release, and a \$100.00 special assessment for escaping from the FCC Beaumont Satellite Camp on January 11, 1998. Inmate Ruiz's term of imprisonment for this offense will run consecutive to his current term of imprisonment.

A preliminary hearing for former inmate Luis Carmona-De La Torre was held on August 28, 1998, before Magistrate Judge Wendell

Radford, E.D.Tex., on a misdemeanor charge of Assault Upon an Officer. A Public Defender was appointed and the arraignment was August 31, 1998.

A criminal trial is scheduled to begin September 18, 1998, for USP inmate Justin Mosely, who is charged with Assaulting Another Inmate.

#### **FPC BRYAN**

An in-depth investigation into assertions of sexual abuse of inmates by staff has been proceeding for the past several weeks. Three staff members have been placed on home duty status pending the results of the investigation and a decision as to whether prosecution will be pursued. Additional staff members and former staff members are under investigation. Warden Pendleton met with the AUSA's and OIG officials involved in the pursuit of this case.

#### **FMC CARSWELL**

Former officer Morganfield was sentenced to three months incarceration, a \$500 fine, and one year SRT for Sexual Abuse of an Inmate.

#### **FCI EL RENO**

On August 5, 1998, the mobile patrol officer reported a fight on the recreation yard. The mobile patrol officer moved to the area and observed several inmates assaulting another inmate. Mobile patrol officers ordered the inmates to cease the attack several times with negative results. One officer fired a warning shot into the dirt. All aggressive actions discontinued and the inmates dropped to the ground. Responding staff restrained all involved inmates and escorted them to the Health Services Department for examination and treatment of injuries. After an initial interview with inmates on the recreation yard, the following inmates were placed in the Special Housing Unit pending further investigation into the incident: Ciriaco-Gomez, Villavicencio-Millan, Cardenas, Valdez, Botello, Nishinaka, Tapia-Nicholas, Vargas, Melendez-Martinez, Torres-Perez, Rodriguez and Garcia. Inmate Basurto-Gomez was transported to the local hospital for two puncture wounds to the abdomen, two puncture wounds to the chest, one puncture wound to the right side of his neck and multiple minor abrasions/lacerations. Inmate Gomez-Gutierrez received a fractured nose and an abrasion to his right ring finger. No staff members were injured in the incident. The FBI was notified. An investigation continues.

On August 18, 1998, staff discovered two inmates in the second floor overflow room striking each other with their fists. Staff separated inmates Daley Washington and William Pewitte. Both inmates sustained minor lacerations and abrasions on the facial area. Both inmates were escorted to the Health Services Unit where they were treated for minor injuries. An investigation continues. The FBI was notified.

#### **FCI FORREST CITY**

On July 28, 1998, staff observed inmates in Food Service acting suspiciously. Upon further investigation inmates Covarrubias and Enriques were found to have injuries consistent with fighting. Both inmates were escorted to the Health Services Department and examined. Both inmates received minor injuries. The FBI was notified and the investigation continues.

On July 29, 1998, a SHU unit officer approached inmate Fisher's cell to speak with him about a prior incident. When the Officer opened the food slot, the inmate threw a liquid substance at him which struck the open food slot. The Officer was not struck by the substance. No injuries were sustained. The FBI was notified and the investigation continues.

On August 9, 1998, inmate Mills assaulted a SHU Officer by striking him on the left hand as he reached for a comb through the food slot. The Officer sustained a minor abrasion to his left hand near his thumb. The FBI was notified, declined, and the Warden agrees.

On August 11, 1998, inmate Mills assaulted a SHU Officer by kicking him on the right lower leg. The Officer placed inmate Mills against the wall until additional staff could assist. No injuries were sustained by the inmate. The Officer received minor injuries to his leg. The FBI was notified and the investigation continues.

On August 22, 1998, inmate Garcia assaulted the Food Service Foreman by pushing him. The inmate did not sustain any injuries. The Foreman was examined by the Duty P.A. with no noted injuries. The inmate was placed in SHU, the FBI was notified, and the investigation continues.

#### **FMC FORT WORTH**

On July 28, 1998, Tommy McCary stabbed Joe Lee Merimon with a sharpened screw attached to a toothbrush, inflicting several puncture wounds. None were serious. Both inmates were placed in the Special Housing Unit pending further investigation. This case was referred for prosecution; however, the AUSA declined to

Barbara Wilson	-	09/24-25/98	-	Annual Leave
Al Munguia	-	09/14-25/98	-	Military Leave
Linda Dubose	-	09/25-29/98	-	Annual Leave

**Other Scheduled Absences:**

Darrel Waugh	-	08/31/98 - 09/03/98	-	Sentencing Training MSTC, Denver
Karen Summers	-	09/08-11/98	-	FTCA Administrative Claims for Agency Counsel
Paula Haskett	-	09/08-11/98	-	Training
J. D. Crook	-	08/31/98 - 09/03/98	-	Sentencing Training MSTC, Denver
Dan Severson	-	08/31/98 - 09/03/98	-	Sentencing Training MSTC, Denver

Theresa Montoya, Honors Attorney, will arrive September 14. We say farewell to Jason Sickler (now at FCI Beaumont-Low) and appreciate the hard work and talent he contributed to our office.

m:\GROUPS\DRLEGAL.MONTH.FMT



**U.S. Department of Justice**

*Federal Bureau of Prisons*

*South Central Regional Office*

*Dallas, Texas 75219*

October 9, 1998

MEMORANDUM FOR WALLACE H. CHENEY  
 ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - September 1998

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	160	180	189	163	197	190	186	208	207			
ANSWERED	90	108	141	85	158	138	125	123	134			

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	133	156	195	201	193	193	176	175	162			
RECEIVED	56	67	52	48	45	47	52	48	64			
ANSWERED	33	36	46	45	53	61	54	57	69			
PENDING	156	187	201	205	185	179	174	166	157			
OVER SIX MO	0	1	1	1	1	1	1	1	1			

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	56	56	54	15	21	21	24	16	17			
RECEIVED	28	30	43	88	45	42	38	48	30			
ANSWERED	28	22	82	70	41	39	46	47	39			
PENDING	56	54	15	33	21	24	16	17	8			
OVER 20 DAYS	22	45	13	10	9	9	8	5	4			

LITIGATION
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	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>CASES RECD</b>	17	15	19	14	10	11	13	18	8			
<b>CASES CLOSED</b>	4	9	34	35	29	28	21	8	31			
<b>HABEAS CORPUS</b>	13	9	11	8	3	7	7	9	5			
<b>BIVENS</b>	4	3	6	3	4	2	5	4	2			
<b>FTCA</b>	0	2	1	1	1	2	1	4	1			
<b>OTHER</b>	0	1	2	2	2	0	0	1	0			
<b>LIT REPORTS</b>	12	17	15	14	15	8	11	12	12			
<b>HEARINGS/ TRIALS</b>	0	2	2	1	2	2	2	2	3			
<b>SETTLEMENTS/ AWARDS</b>	0	0	0	0	1	0	1	1	0			

#### CASES WITH HEARINGS OR TRIALS

Schrader v. Sandoval, A-97-CA-896-SS (WDTX). The court held a hearing on September 3 to determine whether this FCI Bastrop suit could be properly maintained as a Bivens-style action, given that the defendant, a physician assistant, is a commissioned officer in the Public Health Service, and 42 USC Section 233(a) makes any suit for malpractice against a PHS officer in his or her private capacity a suit against the USA pursuant to the FTCA. The court heard testimony from both the plaintiff and defendant, and later denied the U.S. Attorney's motion to substitute the USA for the defendant.

Horey v. Wood, Status/Pretrial Hearing was conducted in the Southern District of Texas on October 6, 1998. As a result of the hearing, a trial date was set for October 20, 1998. See Upcoming Trials or Hearings section.

FMC Fort Worth Attorney, Al Munguia, traveled to Lubbock, Texas, on Tuesday, September 29, 1998, for a Spears hearing in Emery Estupinan-Vasquez v. United States, et al., a case that arose at FCI LaTuna. The Spears hearing was previously docketed for August 20, 1998, and it was postponed without anyone notifying the BOP.

#### CASES WITH SETTLEMENTS OR AWARDS

##### a. Adverse judgments

Schrader v. Sandoval, A-97-CA-896-SS (WDTX). (See above) In denying the U. S. Attorney's motion to substitute the United States for the individually-named defendant, the court made an adverse ruling. The AUSA advises that the Department of Health and Human Services, of which the PHS is a component, seeks to

appeal the ruling, and that the DOJ is likely to authorize one.

Wali Muhamed - BOP, DOJ, and plaintiff's attorney have reached a settlement agreement for \$18,000. This is a significant decrease from our previous adverse judgment of \$45,000.

**b. Tort Claim settlements**

In the Zambrano medical malpractice claim from FCI Oakdale, we offered \$550 to settle the claim. The attorney alleged that had staff timely x-rayed the claimant's ankle, such would have prevented his ankle from becoming displaced.

**c. Other settlements**

None

**SIGNIFICANT CASES**

Claudette Hubbard v. United States filed in the Northern District of Florida, Tallahassee Division. An inmate complained about the confiscation and destruction of her property at FMC Carswell. The attorney at FMC Carswell provided the AUSA at Tallahassee with a Litigation Report that did not mention Discretionary Function defense. Without the knowledge of the BOP, the AUSA, Roy Blondeau, sought permission from the Department of Justice, (not Bureau of Prisons) to use Discretionary Function as a basis for dismissal. He received permission and the court dismissed the case.

FCI El Reno inmate Roger Gresham is claiming medical staff were deliberately indifferent to his medical needs related to his fall off a staircase in a housing unit. The inmate specifically complains that medical staff delayed rendering appropriate medical care.

Derek Belmonte, an FMC Fort Worth inmate, has filed a Bivens civil action in the Northern District of Texas, 4:98-CV-403-Y, alleging Bureau of Prisons' staff confiscated his electrical wheelchair upon his arrival. He states his wheelchair tipped over and caused head trauma in September 1997. He further alleges he has been restricted from participating in programs due to his disability and confinement to the Long Term Care Unit and that he has not been afforded appropriate physical therapy.

FTC Oklahoma City reports Steven Griggs v. Kathleen Hawk, CIV-98-690M. Inmate Griggs had filed a Bivens action against Attorney General Janet Reno, Director Hawk, Warden Guzik, and the United States for denying plaintiff a 12-month sentence reduction because of his two-point gun enhancement. The Magistrate Judge in his R&R granted defendant's motion to dismiss plaintiff's Bivens claims for monetary damages based on sovereign

immunity and due process violations. However, he recommended that plaintiff's action for injunctive relief be construed as a §2241 habeas petition and that the petition be granted to the extent that the BOP is directed to consider within 30 days from any Order adopting the R&R whether plaintiff should receive a sentence reduction without reliance upon sentencing factors.

#### SIGNIFICANT TORT CLAIMS

John Wilkins, an FMC Fort Worth inmate, has filed an administrative claim, alleging negligence and inadequate treatment for a hypospadias condition. He claims government negligence in the amount of \$5,000,000 for personal injury. (T-SCR-98-376)

Jose Espinosa, an FMC Fort Worth inmate, has filed an administrative claim alleging negligence on the part of the government in contracting with an orthopedic consultant, which resulted in two orthopedic surgeries. He claims government liability in the amount of \$6,000,000 for personal injury. (T-SCR-98-356)

Ronald Harris arrived at FMC Fort Worth from FCI Marianna on November 18, 1997, where he continues to be housed. He states that he injured his left knee while playing basketball at FCI Marianna and subsequently had surgery to repair the dislocated patella and ruptured tendon. Mr. Harris further states that the treating physician recommended that he (Mr. Harris) receive physical therapy once a day, five times per week, but he did not believe that the staff were qualified so he refused the therapy. Mr. Harris continues to complain that medical staff at FMC Fort Worth placed him in a unit without access to an elevator and he fell and re-injured his knee. Mr. Harris is seeking \$1.5 million for alleged personal injuries. (T-SCR-98-415)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

FMC Carswell Inmate, Bee Tyler, filed a BP-9 alleging discrimination at FPC Bryan because the facility is not handicap accessible. This inmate was medically cleared and transferred to Bryan to participate in the RDAP program. It was determined at the time of arrival at FPC Bryan that her medical needs exceeded their staffing resources. Thus, this inmate was transferred back to FMC Carswell so that her medical needs could be best served.

FMC Carswell Inmate, Ginger Schlesinger, filed a BP-9 in regard to FMC Carswell not having an RDAP program.

Two administrative remedies were filed at FMC Oklahoma City alleging staff misconduct. Cadre inmate William Harding claims a staff member tampered with his mail because the recipient received the mail ripped and missing pages. Inmate Anthony

Spencer filed a remedy alleging a staff member had made inappropriate statements and then lied to his supervisors regarding his action. Both matters are currently under SIS investigation.

#### UPCOMING TRIALS OR HEARINGS

Robert Horey v. Frank Woods, et al., C-97-292, SD/TX. Jury trial has been scheduled for October 20, 1998, in Corpus Christi. Pre-trial conference has been set for October 9, 1998. This is the case involving FCI Three Rivers where the inmate alleges that the institution failed to provide him with fresh water, protective clothing, and proper waste facilities after his cell became flooded with water containing human waste. The inmate contends that as a result, he became ill.

#### MEDICAL MALPRACTICE

##### LITIGATION

See Significant Cases Section.

##### TORT CLAIMS

See Significant Tort Claim Section.

#### ENSIGN AMENDMENT

##### LITIGATION

None

##### TORT CLAIM

None

#### RELIGIOUS FREEDOM RESTORATION ACT

##### LITIGATION

None

##### TORT CLAIM

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FMC Carswell's Construction Completion Ceremony (C-4) is to be held October 22, 1998. Director Hawk Sawyer, Executive Staff members, Regional Director White, local judicial staff, as well as various members of the surrounding community have been invited to attend.

FCI Oakdale Inmate Alvin Jones is scheduled to be released from BOP custody on November 24, 1998.

CRIMINAL MATTERS AND PROSECUTIONS

**FCI BASTROP**

The U.S. Attorney's Office will prosecute three cases referred from Bastrop. Michael Gaidusek is accused of ingesting heroin-filled balloons in the visiting room. Moises Ramirez is accused of throwing feces and urine on a staff member while in Special Housing, and Geoffrey Zuidema is accused of receiving LSD through the mail.

**FCC BEAUMONT**

On October 2, 1998, in the United States District Court for the E.D.TX, inmate Regalado was sentenced to a 33-month term of imprisonment (consecutive to current sentence), and a \$100 special assessment after previously pleading guilty to Possession of Heroin in the USP Beaumont.

Additionally, on the same date and in the same court, former USP Correctional Officer Jessica Sills was sentenced to three years probation, a \$1000 fine, and a special assessment after previously pleading guilty to Attempting to Provide Marijuana in a Federal Prison.

(USP) A criminal trial for inmate William Talley is scheduled for October 19, 1998, in the E.D.Tex. Inmate Talley is charged with conspiracy to provide, and possession of, marijuana in a federal prison (two separate counts). Inmate Talley is a co-defendant of former Correctional Officer above.

(LOW) A criminal trial for inmate Luis Carmona-de la Torre is scheduled for October 19, 1998, in the E.D.Tex. on a misdemeanor

charge of assault upon an officer. The defendant is expected to plead guilty prior to trial.

(USP) On September 14, 1998, inmate Justin Mosely pleaded guilty to possession of a weapon (shank), which he used to assault another inmate. Sentencing is scheduled for December 18, 1998.

(USP) On September 1, 1998, a criminal referral was made for inmate Luis Salas for an inmate-on-inmate assault; prosecution decision pending.

(USP) On September 3, 1998, a criminal referral was made for inmate Neil Sugarman and Fidelin Adorno-Va for an inmate-on-inmate assault; prosecution decisions pending.

(USP) On September 14, 1998, a criminal referral was made for inmate Timothy Hatten for possession of marijuana; prosecution decision pending.

(USP) On September 10, 1998, an inmate-on-inmate homicide occurred. Inmate Ellis Mosher is suspected of stabbing inmate Stanley Moseley to death with a homemade knife. The FBI and U.S. Attorney's Office are actively pursuing prosecution.

#### **FCI BIG SPRING**

Subpoenas for staff were issued September 18, 1998, for USA v. Jamie Estrada-Fernandez. Estrada-Fernandez's conviction for assaulting a Correctional Supervisor during a December 23, 1996, disturbance was overturned by the 5th Circuit Court due to the Court's failure to provide specific instructions to the jury. The retrial has been set for October 5, 1998.

#### **FPC BRYAN**

An in-depth investigation into assertions of sexual abuse of inmates by staff has been proceeding for the past several weeks. Three staff members have been placed on home duty status pending the results of the investigation and a decision as to whether prosecution will be pursued. One of these staff members has subsequently resigned from Bureau employment. Additional staff

members and former staff members are under investigation. Warden Pendleton met with the AUSA's and OIG officials involved in the pursuit of this case.

#### **FMC CARSWELL**

DNA test on semen saved by an inmate indicates a match to DNA of a food service worker accused of sexual relations with an inmate. Prosecution will be forthcoming.

## **FCI EL RENO**

On September 8, 1998, staff conducted a search of cell D-17 in E-Unit. During the search staff found a coke can with a screw off top. Inside the can, staff discovered three balloons. The balloons were filled with what was later identified as marijuana. The FBI has been notified. The can was determined to be in the possession of Inmate Noe Casarez.

## **FCI FORREST CITY**

Staff observed inmates Carrillo, Felix, Gomez-Rivera, Mora-Sorin and Jose assaulting inmates Valdivia, Ruben and Montes-Alfaro. The trial was held on September 17, 1998, and the inmates were acquitted, because the Judge said that they were coming to the defense of another.

On August 28, 1998, Recreation staff reported a fight between inmates Gallego-Aviles and inmate Cortez-Cid. An investigation revealed that inmates Gallego-Aviles and Cortez-Cid had struck each other in the facial area. Both inmates were examined by medical staff and escorted to the Special Housing Unit. The FBI declined prosecution, and the Warden agrees with the decision.

On September 9, 1998, inmate Choice became aggressive toward the Operations Lieutenant as staff attempted to place hand restraints on him to be escorted to Administrative Detention. Inmate Choice was placed on the ground, and hand restraints were applied. The inmate was escorted to Health Services for a medical examination and placed in Special Housing. The FBI was notified and the investigation continues.

On September 17, 1998, inmate Charles was ordered to remove the paper from his window in cell 202 in the Special Housing Unit. Inmate Sargent was also ordered to remove the sheet covering his bunk. He refused to comply. The Use of Force team entered the cell, placed the inmate in hand cuffs, and proceeded to remove the paper from his window and the excess linen. As staff were attempting to remove the hand cuffs from the inmate, he began pulling his arm through the food slot. The Use of Force team entered the cell a second time and placed the inmate in ambulatory restraints. The team exited the cell with no further problems. Ambulatory restraints were removed at 5:12 a.m. on September 18, 1998. An incident report was issued. The case has been referred.

## **FTC OKLAHOMA CITY**

On August 25, 1998, inmate Luis Carmona De La Torre threw a food sack at a staff member in R&D. Staff placed him against the wall, and the inmate sustained minor abrasions to the right

chest, left shoulder, and left lower rib cage. Prosecution was declined for failure to meet prosecutorial guidelines, and the Warden concurs.

On August 28, 1998, inmate Jesse Tweedy was found with a torn mattress cover tied around his neck. Staff responded and removed the material from his neck. Inmate Tweedy was conscious and breathing, but had slight facial discoloration. Prosecution was declined for failure to meet prosecutorial guidelines, and the Warden concurs.

On September 5, 1998, inmate Patrick Kerrigan was in Health Services for medical observation because he threatened to hang himself. He became combative and verbally abusive during a medical examination and was placed in restraints. The FBI was notified for informational purpose only.

#### **FCI THREE RIVERS**

Inmate James Esm Medina pled guilty to Possession of Contraband (marijuana) in a Penal Institution. Sentencing scheduled for November 2, 1998.

Inmate Martin Zuniga pled guilty to Possession of Contraband (marijuana) in a Penal Institution. Sentencing scheduled for November 10, 1998.

Inmate Todd Tanner pled guilty to Possession of Contraband (marijuana) in a Penal Institution. Sentencing scheduled for November 4, 1998.

Inmates JB Butler and Stevie Stenson, and Butler's niece pled guilty to Drug Introduction. Sentencing scheduled for November 1998.

Inmate on inmate assault involving seven Mexicanemi members against two Sureno members on June 10, 1997, resulted in the following convictions:

Inmate Santos Garcia received a five year sentence for Possession of a Weapon. Inmate Jose Cadena received a 50-month sentence for Possession of a Weapon. Inmate Antonio Gonzalez received a 33-month sentence for Possession of a Weapon. Inmate Jacob Baca received a six-month sentence for Simple Assault.

Inmate Valdemar Verdusco has been referred for Staff Assault. Inmate assaulted staff member by throwing his food tray through the food slot in SHU, striking staff member on his right hand and wrist. No injuries.

#### **PERSONAL ISSUES**

**Scheduled Annual/Sick Leave:**

Mike Hood - October 26 & 27 - Annual Leave  
Lisa Sunderman - October 30 - Annual Leave  
Marsha Foulks - October 26-30 - Annual Leave  
Linda Nutt - October 30 - Annual Leave  
Patsy Davis - October 26 & 27 - Annual Leave  
Paul Layer - October 13-16 - House Hunting Trip  
Bill Shively - October 6-16 - Annual Leave  
Georganne Osborn - October 13-16 - Annual Leave

**Other Scheduled Absences:**

None

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3 RFLA

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

November 9, 1998

MEMORANDUM FOR WALLACE H. CHENEY  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - October 1998

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	160	180	189	163	197	190	186	208	207	199		
ANSWERED	90	108	141	85	158	138	125	123	134	142		

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	133	156	195	201	193	193	176	175	162	153		
RECEIVED	56	67	52	48	45	47	52	48	64	76		
ANSWERED	33	36	46	45	53	61	54	57	69	56		
PENDING	156	187	201	205	185	179	174	166	157	173		
OVER SIX MO	0	1	1	1	1	1	1	1	1	1		

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	N	B	R	R	Y	N	L	G	P	T	V	C
PENDING	56	56	54	15	21	21	24	16	17	8		
RECEIVED	28	30	43	88	45	42	38	48	30	42		
ANSWERED	28	22	82	70	41	39	46	47	39	31		
PENDING	56	54	15	33	21	24	16	17	8	19		
OVER 20 DAYS	22	45	13	10	9	9	8	5	4	2		

LITIGATION
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	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
CASES RECD	17	15	19	14	10	11	13	18	8	11		
CASES CLOSED	4	9	34	35	24	28	21	8	31	4		
HABEAS CORPUS	13	9	11	6	2	7	7	9	5	2		
BIVENS	4	3	7	3	4	2	5	4	2	2		
FTCA	0	2	1	1	1	2	1	4	1	1		
OTHER	0	1	2	2	2	0	0	1	0	2		
LIT REPORTS	12	17	15	14	15	8	11	12	12	10		
HEARINGS/ TRIALS	0	2	2	1	2	2	2	2	3	1		
SETTLEMENTS/ AWARDS	0	0	0	0	1	0	1	1	0			

CASES WITH HEARINGS OR TRIALS

Horey v. Woods. Case tried in the Southern District of Texas. This FCI Three Rivers case sounded in *Bivens* and FTCA. The *Bivens* portion of the case was to be tried by jury. However, after the plaintiff's case in chief, the *Bivens* action against former Warden Woods and Safety Manager Michael Noakes was dismissed for failure to rise to the level of a constitutional violation (deliberate indifference standard was not proved). The FTCA portion of the lawsuit survived. The magistrate judge announced that she would rule on the case within 30 days. On October 29, 1998, the magistrate judge entered judgment in favor of the defendants. However, the judge ruled that staff breached their duty to provide cleaning supplies and sanitary conditions after the flooding.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

Gray v. Kalista, et al., A-97-CA-402-SS, USDC/WDTX. In this FCI Bastrop *Bivens*-style action, the court dismissed all but one of the four defendants, declaring that defendant Stringfellow failed to show that changing the plaintiff's responsibility rating to "poor" in response to a finding of guilt of a 200-level violation was appropriate. The court also declared that Ms. Stringfellow had failed to show that as case manager, she was not responsible for ensuring the release of the plaintiff from DS at the expiration of his DS time. Finally, the court declared that a material issue of fact remained regarding whether she must have done either or both of these two acts in retaliation for a threat by the plaintiff that he was going to sue one of the other defendants.



b5

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

Rodriguez v. BOP, et al., A-98-CA-657-SS, USDC/WDTX. FCI Bastrop inmate requests a sentence reduction pursuant to 18 U.S.C. Section 3621(e)(2)(B). He states the halfway house placement requirement was applied retroactively.

Kevin Ford v. Guzik, et al., the Chief District Judge issued an Order on October 16, 1998, finding dismissal of this FTC Oklahoma City suit inappropriate at this time, and also ruling against defendants' arguments of qualified immunity and respondeat superior for the Warden and Lieutenant White even though Judge Russell did say Lieutenant White is entitled to qualified immunity to the extent plaintiff seeks damages against him on a separate Bivens claim for an alleged cover up, but not on the claim of supervisory liability. An appeal is under consideration.

SIGNIFICANT TORT CLAIMS

None

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

None

MEDICAL MALPRACTICE

LITIGATION

None

TORT CLAIMS

None

ENSIGN AMENDMENT

LITIGATION

None

TORT CLAIM

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIM

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

October 8 & 23, 1998 - Federal Court staff from the E.D. Tex. toured USP Beaumont with assistance from legal staff. No federal district court judges or magistrate judges attended.

On October 8, 1998, a team from the Central Office visited FMC Carswell to investigate the need for the Residential Drug Abuse Program (RDAP) at the facility. It was approved, on a somewhat smaller scale than what was originally requested, and is slated to begin sometime in the near future. This was a direct result of a potential lawsuit and administrative remedies filed regarding the unavailability of RDAP at Carswell.

Carswell's Construction Completion Ceremony was held on October 22, 1998. The Director, Regional Director, and Warden's George Killinger and Sam Pratt were in attendance. Also in attendance were Paul Coggins, the United States Attorney, the Tarrant County Medical Examiner, and other community representatives.

Inmate [REDACTED] releases from BOP custody in November: . . .

b7C

On October 22, 1998, Judge Robert T. Dawson and his staff toured FCI Texarkana. Judge Dawson is from the United States District Court, Western District of Arkansas.

On October 23, 1998, Congressman Max Sandlin (Texas) and his staff toured FCI Texarkana.

#### CRIMINAL MATTERS AND PROSECUTIONS

##### FCC BEAUMONT

(USP) Sentencing is scheduled for December 18, 1998, for inmate Justin Mosely, who previously pleaded guilty to Possession of a Weapon (shank), which he used to assault another inmate.

(USP) A criminal trial for inmate William Talley is scheduled for November 17, 1998, in the E.D.Tex. Inmate Talley is charged with Conspiracy to Provide, and Possession of, Marijuana in a Federal Prison (two separate counts). Inmate Talley is a co-defendant of former Correctional Officer Jessica Sills.

(LOW) On September 1, 1998, the U.S. Attorney's Office, E.D.Tex., declined prosecution of inmate [REDACTED] for Attempted Introduction of Marijuana Into the Institution (through an incoming publication). Warden Tombone concurs with decision.

(LOW) On October 19, 1998, inmate Luis Carmona-De La Torre pleaded guilty in U.S. District Court, E.D.Tex. to Misdemeanor Assault of a Correctional Officer. Sentencing is anticipated within 60-90 days.

(USP) On October 2, 1998, former USP Correctional Officer Jessica Sills was sentenced to three years probation, \$1000 fine, and \$100 special assessment, after previously pleading guilty to Providing Marijuana Inside a Federal Prison.

(USP) On October 2, 1998, inmate Joe Regalado was sentenced to 33 months and \$100 special assessment after previously pleading guilty to Possession of Heroin Inside a Federal Prison.

(USP) The U.S. Attorney's Office, E.D.Tex., declined prosecution of inmate [REDACTED] for an inmate-on-inmate assault. Warden Pitzer concurs with the decision.

(USP) The U.S. Attorney's Office, E.D.Tex., declined prosecution of inmate [REDACTED] for an inmate-on-inmate assault. Warden Pitzer concurs with the decision.

(USP) The U.S. Attorney's Office, E.D.Tex., declined prosecution of inmate [REDACTED] for Possession of Marijuana. Warden Pitzer concurs with the decision.

b7C

(USP) Criminal prosecution referrals were submitted for an inmate-on-inmate assault occurring October 15, 1998, involving inmates [REDACTED]. Determination pending. b7c

(USP) Following an investigation, Correctional Officer Leonard Harris was arrested and charged with Introducing Marijuana and Heroin. He was been arraigned and is currently out on bond.

#### FCI BIG SPRING

A retrial was held October 5, 1998, in the Federal Court house in Lubbock Texas, in a case styled USA v. Jamie Estrada-Fernandez. Jamie Estrada-Fernandez was again convicted for assaulting Lt. Travis Gilbreath during a December 23, 1996, disturbance. The retrial was overturned by the 5th Circuit Court due to the Court's failure to provide specific instructions to the jury. Sentencing will not be until December 1998.

#### FPC BRYAN

The assertions of sexual abuse of inmates by staff reported in previous reports has been placed on the docket to be considered by the Grand Jury.

#### FCI FORREST CITY

On October 16, 1998, a fight occurred in the Education Department. Inmates [REDACTED] were identified as being involved in the altercation. A preliminary investigation revealed that inmate [REDACTED] was attacked by inmates [REDACTED] and [REDACTED]. Inmate [REDACTED] picked up a three-hole punch and struck inmate [REDACTED] causing a laceration to the right side of his head. Inmate [REDACTED] sustained minor abrasions to his face and wrist. Inmate [REDACTED] sustained no apparent injuries. The FBI was notified and the investigation continues. b7c

#### FCI LA TUNA

Senior Officer [REDACTED] was assaulted by inmate [REDACTED] on May 9, 1998. The matter has been referred to the FBI for criminal prosecution. Inmate [REDACTED] punched Officer [REDACTED] in the mouth with a closed fist, and bit him in the upper left arm. Lieutenant [REDACTED] was also assaulted by this same inmate during this same incident when he fell to the floor with the inmate falling on top of him. Lieutenant [REDACTED] was attempting to restrain the inmate from assaulting Officer [REDACTED] when he slipped and fell, bringing inmate [REDACTED] down upon him. The inmate was subsequently restrained, and placed in Administrative Detention. All staff

and inmates involved were subsequently examined by medical staff.

Although the SIS file does not document the exact time and date a criminal referral occurred, the matter was subsequently referred to the FBI for criminal prosecution. The record documents an FBI Agent receiving certain photographs pertaining to this matter from the SIS Lieutenant as early as May 28, 1998. The inmate was turned over to U.S. Marshals for Criminal Prosecution on August 26, 1998, and remains in their custody at this time. The matter has been assigned to Assistant U.S. Attorney Stephen Jurecky for criminal prosecution.

#### FTC OKLAHOMA CITY

On September 26, 1998, inmate [REDACTED] repeatedly punched inmate [REDACTED] in the head and upper torso area in plain view of staff. Inmate [REDACTED] made no attempt to defend himself. Inmate [REDACTED] sustained a small scratch to the lower left side of his neck. Prosecution was declined for failure to meet prosecutorial guidelines. The Warden concurs. b7c

On September 29, 1998, inmate [REDACTED] attempted to kick a Deputy United States Marshal while in the jetway area, and he was restrained by staff. There were no injuries. Approximately an hour later, a team was assembled to move inmate [REDACTED] from R&D to SHU. The inmate was disruptive and spit at the Captain, striking him in the facial area. The FBI was notified for informational purpose only.

On October 2, 1998, inmate [REDACTED] was disruptive, spit on staff, verbally threatened himself and staff, and refused to put his clothes on or be restrained. A use of force team was assembled and inmate [REDACTED] was moved and placed in progressive ambulatory restraints. The FBI was notified for informational purpose only.

On October 6, 1998, a use of force team moved inmate [REDACTED] from SHU to R&D for the outgoing airlift. Inmate [REDACTED] had refused to submit to restraints. The FBI was notified for informational purpose only.

On September 25, 1998, an Information was filed charging correctional officer Joe Anthony McManus with three separate counts of Engaging in Sexual Acts With Inmates in or about March 1997, in violation of 18 U.S.C. § 2243(b). On October 2, 1998, Mr. McManus entered into a plea agreement whereby he pleaded guilty to the three-counts. The maximum penalty for each count is one year imprisonment and/or a fine of \$100,000, and a one year term of supervised release. Sentencing date has not been set.



*Office*

**U.S. Department of Justice**

**Federal Bureau of Prisons**

*South Central Regional Office*

*Dallas, Texas 75219*

December 7, 1998

MEMORANDUM FOR WALLACE H. CHENEY  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - November 1998

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	160	180	189	163	197	190	186	208	207	199	196	
ANSWERED	90	108	141	85	158	138	125	123	134	142	137	

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	133	156	195	201	193	193	176	175	162	153	163	
RECEIVED	56	67	52	48	45	47	52	48	64	76	78	
ANSWERED	33	36	46	45	53	61	54	57	69	56	45	
PENDING	156	187	201	205	185	179	174	166	157	173	196	
OVER SIX MO	0	1	1	1	1	1	1	1	1	1	1	

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
PENDING	56	56	54	15	21	21	24	16	17	8	19	
RECEIVED	28	30	43	88	45	42	38	48	30	42	50	
ANSWERED	28	22	82	70	41	39	46	47	39	31	50	
PENDING	56	54	15	33	21	24	16	17	8	19	19	
OVER 20 DAYS	22	45	13	10	9	9	8	5	4	2	2	

LITIGATION

	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
CASES RECD	17	15	16	14	16	11	13	15	8	11	11	
CASES CLOSED	4	9	14	22	19	29	11	8	21	4	3	
HABEAS CORPUS	13	9	11	8	8	7	7	9	5	5	5	
BIVENS	4	2	6	3	4	2	5	4	2	2	4	
FTCA	0	0	1	1	1	1	1	1	1	1		
OTHER	0	1	0	2	2	1	1	1	0	2		
LIT REPORTS	12	17	15	14	15	8	11	12	12	14		
HEARINGS/ TRIALS	0	2	2	1	2	2	2	2	3	1		
SETTLEMENTS/ AWARDS	0	0	0	0	1	1	1	1	0			

CASES WITH HEARINGS OR TRIALS

McMeans v. United States, EP-97-CA-507-F. In this FCI La Tuna personal injury case, a very brief Order to Show Cause hearing was held on November 19, 1998. Plaintiff McMeans did not appear, and the District Judge indicated he would take dispositive action in short order. Plaintiff has not responded to any pleadings filed by the United States.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

None

SIGNIFICANT TORT CLAIMS

[REDACTED], an FMC Fort Worth inmate, has filed an administrative claim, alleging negligence on the part of FMC Fort Worth staff in his medical care. Specifically, b7C  
[REDACTED] alleges BOP staff failed to perform diagnostic tests to determine the etiology of episodes of dizziness and syncope he experienced at the law library. He claims government negligence in the b7C

of \$3,000,000, for personal injury. (T-SCR-98-453)

Numerous FCI La Tuna staff and some civilians have filed administrative tort claims alleging damage to their privately owned vehicles resulting from over spray. FCI La Tuna recently painted a water tower located in the reservation housing area, and over spray is alleged to have been carried by wind to POV's parked in the reservation area, the Training Center, and the staff parking lot.

[REDACTED], an FCI Oakdale inmate, has filed an administrative tort claim alleging personal injury because he has not been placed in a 500 hour drug treatment program. (T-SCR-98-326)

[REDACTED] is housed at FDC Oakdale as an Immigration Detainee. [REDACTED] contends that on November 19, 1996, he was being returned to FCI Oakdale from Immigration Court in a van driven by an Immigration Officer, when the driver made a sharp turn and while he was bracing himself with his hand and shoulder, he heard a sharp pop in his back. He adds that an institution Physicians Assistant "snapped" his neck, and that he was treated with therapy and muscle relaxers for months because of the pain shooting from his neck to his head. But, he states the pain continues, and institution medical staff are not taking his injury "seriously." He is seeking \$25,000 for the injury and alleged inadequate medical care. (T-SCR-98-503)

[REDACTED] an inmate housed at FCI Forrest City, is seeking \$2 million. He alleges that specific staff in Health Services at FCI Forrest City are deliberately indifferent to his medical needs because they have not referred him to a specialist (Podiatrist) and he suffers "extreme" foot pain and knee damage. (T-SCR-98-466)

[REDACTED] an inmate housed at FCI Bastrop, is seeking \$15,000.00. He alleges that staff at FCI Bastrop failed to timely diagnosis his injured right shoulder. (T-SCR-98-498)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

FCI Oakdale inmate, [REDACTED] is also pursuing a placement in the RDAP through the administrative remedy process. See [REDACTED] claim under Significant Tort Claim Heading.

#### UPCOMING TRIALS OR HEARINGS

U.S. v. Ruth Muhammad, 98-10960; U.S. v. Susan Klat, 4-97-CV-678-A; and U.S. v. Jacqueline Dennis, 4-97-CV-0729-A (ND/TX FTW),  
United States Court of Appeals for the Fifth Circuit.  
This involves three mental health commitment inmates from FMC Carswell. Inmate Muhammad's attorney is claiming that there was insufficient evidence to commit her and argues religious freedom and freedom of speech. Inmate Klat and Inmate Dennis argue that the Magistrate Judge lacked the jurisdiction to commit them. On December 2, 1998, the AUSA argued the appeals before the Fifth Circuit in New Orleans.

**MEDICAL MALPRACTICE**

**LITIGATION**

None

**TORT CLAIMS**

See Significant Tort Claims Heading.

**ENSIGN AMENDMENT**

**LITIGATION**

None

**TORT CLAIM**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIM**

None

**PRISON LITIGATION REFORM ACT ORDERS**

None

## SITUATIONS OF INTEREST

Until further notice, Darrel Waugh will be Acting Supervisory Attorney at FCC Beaumont.

United States of America v. Angie Mitchell, 4-98-CR-180-Y, (ND/TX, FTW). A Judge has ordered FMC Carswell mental health staff to perform a Forensic Study on Angie Mitchell on an outpatient basis. (She would come to the institution from the "street"). We are vigorously opposing this with the assistance of the criminal AUSA.

## CRIMINAL MATTERS AND PROSECUTIONS

### FCC BEAUMONT

Conspiracy to Provide and Possession of Marijuana (Talley, 14753-056). Case dismissed 11/13/98. Warden Pitzer agrees with determination.

Introduction of Narcotics (Macias). Inmate pleaded guilty; sentenced 11/17/98 to six months consecutive to his current sentence and three years supervised release. Warden agrees with determination.

### FCI BIG SPRING

An FCI Big Spring Food Service employee was arrested on November 25, 1998, at the institution for Introduction of Contraband. Prosecution and other charges are now pending.

### FPC BRYAN

The assertions of sexual abuse of inmates by staff reported in previous reports have been placed on the docket to be considered by the Grand Jury. The Grand Jury heard testimony regarding the case against one of the staff members, and we hope to hear soon of any possible indictment in that matter.

### FMC CARSWELL

On October 23, 1998, [REDACTED] assaulted a staff member. No weapon was involved, but there were injuries to the staff member, which consisted of a minor contusion to his right shin. [REDACTED] has been referred to the FBI. Investigation is still pending at this time.

While standing mainline, the Inmate Systems Manager was approached by inmate [REDACTED]. She claimed she was eligible for 530 days of jail credit, thereby allowing her to release on Friday (October 30). She stated that documentation was [REDACTED].

forwarded to the Records Office. After reviewing the file to verify the inmate's story and not finding anything to substantiate her story. The mailroom was notified to monitor the mail regarding possible documentation on jail credit for this particular inmate. A letter was received from a Louisiana parish sheriff's office later that day. It tipped off staff because it was too lengthy and provided more information than what was requested. The agency was contacted to verify the authenticity. The letter proved to be bogus and a referral was made to the FBI. On October 29, 1998, inmate [REDACTED] assaulted a staff member. No injuries were reported. This has been referred to the FBI. b7C

On November 22, 1998, inmate [REDACTED] assaulted a Mental Health Nurse. No injuries were reported. This has been referred to the FBI.

#### FCI EL RENO

Twenty-four Mariel Cubans were placed in administrative detention without incident based on a drop note and information received from the FBI involving a possible hostage situation at the institution. FBI declined prosecution, and the Warden concurs.

During a routine shakedown, staff found a homemade hang glider in UNICOR. FBI notified.

#### FCI FORREST CITY

On October 26, 1998, inmates [REDACTED] and [REDACTED] were found fighting in the Spanish T.V. room. Both inmates were examined by medical staff and escorted to the Special Housing Unit with no further incident. The FBI was notified. U. S. Attorney's Office declined referral for prosecution, and the Warden agrees. b7C

On November 6, 1998, inmate [REDACTED] became passive resistant with facilities staff when they ordered him to turn over a book he was reading. Staff ordered inmate [REDACTED] to report to the lieutenant's office and he again refused staff's orders. The inmate then grabbed a snake bit and attempted to assault staff with this weapon. Staff gained physical control. The inmate was placed in hand restraints and escorted to the lieutenant's office without further incident. The FBI was notified.

#### FTC OKLAHOMA CITY

On October 16, 1998, inmate George [REDACTED] struck inmate [REDACTED] in the face and gave him a swollen eye.

On October 20, 1998, Inmate [REDACTED] assaulted staff by scratching his hand with her fingernails. b7C

The FBI declined to refer case for prosecution for failure to meet prosecutorial guidelines, and the Warden concurs.

**PERSONAL ISSUES**

None

**Scheduled Annual/Sick Leave:**

[REDACTED]

[REDACTED]

- December 28- - Annual Leave  
January 1, 1999

[REDACTED]

- December 28- - Annual Leave  
January 1, 1999

[REDACTED]

- December 21-25 - Annual Leave

[REDACTED]

- December 21-25 - Annual Leave

[REDACTED]

- December 23-28 - Annual Leave

[REDACTED]

- December 21-25 - Annual Leave

[REDACTED]

December 28- - Annual Leave  
January 1, 1999

[REDACTED]

- December 28- - Annual Leave  
January 1, 1999

[REDACTED]

- December 21-25 - Annual Leave

**Other Scheduled Absences:**

[REDACTED]

- December 7-11 - Training-Denver

m:\GROUPS\DRLEGAL.MONTH.FMT



*Handwritten initials: O, R, R*

**U.S. Department of Justice**  
**Federal Bureau of Prisons**

*South Central Regional Office*

*Dallas, Texas 75219*

January 8, 1999

MEMORANDUM FOR WALLACE H. CHENEY  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - December 1998

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LITIGATION

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HEARINGS/ TRIALS	0	2	2	1	2	2	2	2	3	1	1	1
SETTLEMENTS/ AWARDS	0	0	0	0	1	0	1	1	0	0	0	1

#### CASES WITH HEARINGS OR TRIALS

U.S. v. Ruth Muhammad, 98-10960; U.S. v. Susan Klat, 4-97-CV-678-A and U.S. v. Jacqueline Dennis, 4-97-CV-0729-A. (ND/TX FTW), U.S. Court of Appeals for the 5<sup>th</sup> circuit. This involves three mental health commitment inmates from FMC Carswell. The AUSA made oral arguments before the 5<sup>th</sup> Circuit Court of Appeals regarding whether a Magistrate had authority to commit individuals under Title 18. No determination has been made at this time.

On December 22, 1998, an in-person Spears hearing was conducted in Daniel De La Cruz, Sr. v. Michael A. Purdy, et al., SD/TX, C. A. No. C-98-419.

#### CASES WITH SETTLEMENTS OR AWARDS

##### a. Adverse judgments

None

##### b. Tort Claim settlements

[REDACTED] in the [REDACTED] tort claim, T-SCR-98-356. This case involved a multitude of causes of action. [REDACTED]

b5  
b7c

On January 5, 1999, FMC Fort Worth legal staff participated in a mediation conference on the Thomas Norris Thompson v. USA matter. Approval for settlement up to \$2,500 has been granted. The parties have reached agreement to settle the case for \$15,000. The U. S. Marshals gave approval on \$12,500. This case involves

allegations of medical malpractice. Our settlement is for administrative purposes.

c. Other settlements

None

SIGNIFICANT CASES

In Wolfgang Von Schlieffen v. USA, a former FMC Fort Worth inmate alleges staff were negligent in failing to prevent an assault on him by another inmate. He is seeking \$2,500,000, in damages against the United States.

[REDACTED], daughter of a deceased FMC Fort Worth inmate, has filed an action against the United States, seeking unspecified damages against the United States. She alleges that FMC Fort Worth staff did not have adequate oxygen, which resulted in the death of her father. b1c

Dale Wayne Lawton v. Guzik, Warden, CIV-98-1690-C. Inmate pled guilty to cultivation of marijuana and a firearm was found in his residence during a search. Inmate completed the 500 hour drug abuse treatment program at FCI Seagoville on August 26, 1998, and then transferred to FTC Oklahoma City. Claims he is eligible for early release under Fristoe.

Griggs v. Hawk, CIV-98-0690-M. Court Order on December 31, 1998, dismissed plaintiff's Bivens claims, construing plaintiff's request for injunctive relief as a §2241 habeas, and directing the BOP to consider, within 30 days, whether inmate Griggs is eligible for §3621 early release without relying on sentencing factors.

Jose Sanchez-Montoya v. Sam Pratt, et al, 3:98-CV-2528-P, ND/TX Dallas Division. This is a BIVENS case filed against Warden Pratt, HSA Gordon Trueblood, an unknown optometrist, and physician's assistants. He alleges these staff have refused to provide eye surgery and have been deliberately indifferent to his pain, discomfort, and vision loss.

SIGNIFICANT TORT CLAIMS

[REDACTED], a former USP Beaumont inmate, alleges staff failed to protect him, which resulted in being stabbed, and consequently paralysis. He seeks \$100,000.00 compensation. (T-SCR-9-

[REDACTED] an inmate housed at FMC Fort Worth, alleges that medical staff at FMC Fort Worth were negligent when they amputated his left great toe. He states that staff failed to timely diagnose and treat an ingrown toenail condition, which

resulted in the toe becoming infected. [REDACTED] adds that he is subjected to infections easily due to his diabetic condition. He seeks one million dollars in damages. (T-SCR-98-576)

On December 19, 1998, [REDACTED], an FMC Fort Worth inmate who filed an administrative claim for negligence in treating a left ankle fracture, had his left leg amputated below the knee. The inmate has returned to the institution and is presently recovering. Settlement negotiations continue.

[REDACTED]. DOJ had asked us to negotiate with him prior to their approval.

FCI Oakdale inmate [REDACTED] filed a claim alleging he suffered a neck and shoulder injury as a passenger in an INS bus returning from a deportation hearing. This inmate alleges he continues to suffer neck and shoulder pain and that the medical care he received did not alleviate the pain. The inmate is claiming \$25,000 in damages. (T-SCR-98-503)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

FMC Carswell has recently received a high volume of copouts and administrative remedies from numerous inmates regarding their convictions and sentences. Inmate [REDACTED] appears to be the instigator of the complaints. All of the complaints contain identical wording and arguments. [REDACTED] makes the typical "militia" or "Republic of Texas" types of claims against federal jurisdiction. All of these inmates have been reported to SIS for intelligence purposes.

#### UPCOMING TRIALS OR HEARINGS

In Gray v. Roddy, a Bastrop Bivens-type suit in which the plaintiff claims his case manager wrongfully changed his "responsibility" rating, and also failed to ensure his return from DS to AD status upon the completion of his DS time. The plaintiff will be deposed on January 8, 1999, at FCI Big Spring, his current place of confinement. Martin Sweaney plans to attend.

#### MEDICAL MALPRACTICE

##### LITIGATION

See Significant Cases Section.

##### TORT CLAIMS

See Significant Tort Claims Heading.

ENSIGN AMENDMENT

LITIGATION

None

TORT CLAIM

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIM

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

United States of America v. Angie Mitchell, 4-98-CR-180-Y, (ND/TX,FTW). A Judge has ordered FMC Carswell mental health staff to perform a Forensic Study on Angie Mitchell on an outpatient basis. (She would come to the institution from the "street"). We are vigorously opposing this, and the plans are that the AUSA will assist us in our opposition to the Court.

On December 1, 1998, officials from 14 countries visited FCI Three Rivers to tour the institution and receive a briefing on basic operations. Dignitaries included legal representatives from Argentina, Bangladesh, Code D'Ivoire, El Salvador, Ethiopia, Jamaica, Macedonia, Mozambique, Nicaragua, Nigeria, Pakistan, Serbia/Montenegro, Turkey, and Ukraine. The tour was sponsored by the U.S. Information Agency.

CRIMINAL MATTERS AND PROSECUTIONS

FCC BEAUMONT

On December 18, 1998, USP Beaumont inmate Justin Mosley was sentenced to a five-year prison term, consecutive to his current

offense, by Judge Cobb for violating 18 U.S.C. § 1791(a)(2) (Making, Possessing, or Obtaining Contraband in Prison). Inmate Mosley stabbed inmate Clinton Teague with a shank 11 times on December 23, 1997. Judge Cobb departed upward from the Sentencing Guidelines' recommendation of a 37 to 46 month sentence based upon inmate Mosley's lengthy history of violence.

#### FCI BIG SPRING

Former Food Service Foreman Keith D. Conner, was indicted by a Federal Grand Jury in Lubbock, Texas, on seven felony counts:

18 U.S.C. 201(b)(2)(A), Bribery of a Public Official. (Three counts.)

18 U.S.C. 1791 (a)(1), Providing Contraband in Prison. (Two counts.)

21 U.S.C. 841 (a)(1), Distribution and Possession of Marijuana with Intent to Distribute. (Two Counts.)

Mr. Conner was arraigned on December 29, 1998, and entered a plea of not guilty. Trial is set for February 1, 1999.

#### FPC BRYAN

Charles Alexander, Cook Foreman, was indicted on November 23, 1998, on a total of nine counts of sexual activity with female inmates at FPC Bryan. Six of these are alleged violations of 18 USC 2243(b) [Sexual Act], and three are alleged violations of 18 USC 2244(a)(4) [Sexual Contact]. No trial date has been set. Mr. Alexander has been placed on indefinite suspension pending resolution of these charges. Inquiry continues into the actions of two additional FPC Bryan employees, one of whom remains on home duty status, and the other has resigned his Bureau employment.

#### FTC OKLAHOMA CITY

Inmate [REDACTED] was combative in R&D, grabbed staff by the shirt collar, and pushed staff away from him. There were no injuries. The FBI declined referral to U.S. Attorney's Office. b2c

Inmate [REDACTED] became agitated during visual search in R&D and threw her shoe at a staff member, striking her on the left leg causing a contusion to her shin. The FBI declined referral to the U.S. Attorney's Office.

Inmate fight between inmate [REDACTED] and inmate [REDACTED] had no injury, and inmate [REDACTED] had redness in the back of the neck area. The FBI declined referral to the U.S. Attorney's Office.

Office.

Inmate [REDACTED] assaulted inmate [REDACTED] by striking him in the chest area. There were no injuries. FBI declined referral to U.S. Attorney's Office.

Inmate [REDACTED] attempted suicide on December 16, 1998, by placing a noose made from mattress cover around his neck as he stood on top the cell bed. Staff observed inmate [REDACTED] making this attempt and escorted him to the institutional hospital for suicide watch. There was no injury and FBI declined referring this matter to U.S. Attorney's Office. b7c

Inmate [REDACTED] attempted to head-butt a Springfield bus staff member as he was processed for the outgoing bus lift. Inmate [REDACTED] was already in leg irons, handcuffs, and a Martin chain and the staff was placing the black box on him. Inmate [REDACTED] received minor contusion to his right wrist, and the staff member received superficial abrasions, swelling of the knees, and a soft tissue injury below the right eye. FBI declined referral to the U.S. Attorney's Office due to minor injuries.

The Warden concurs with all referral declinations.

#### FCI SEAGOVILLE

Bridgette Jones, former case manager at FCI Seagoville, was sentenced the week of December 14, 1998, to six months probation and ten months community service for having an inappropriate sexual relationship with an inmate.

It is anticipated three indictments will be handed down mid-January against inmate Frank Taylor, who introduced 27 balloons of cocaine into the institution.

Inmate Thomas Monohan, will be indicted for Murder for Hire. He attempted to do this while incarcerated at FCI Seagoville. His intended victim was his father, who was in the process of changing his will. It is anticipated the indictment will be handed down in February 1999.

An FBI referral was made on inmate [REDACTED] for conducting a fraudulent business from inside FCI Seagoville. The FBI is tentatively scheduled to conduct their investigation in January 1999. b7c

A referral was made on inmate [REDACTED] who seriously assaulted another inmate. In November 1998, the AUSA declined prosecution because the assailant was reluctant to cooperate. The Warden concurred with the decision.