

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

June 9, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - May 2000

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NO V	DEC
RECEIVED	227	220	304	219	255							
ANSWERED	105	132	162	182	169							

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	257	256	280	261	279							✓
RECEIVED	61	76	53	46	70							
ANSWERED	62	62	82	40	82							
PENDING	256	270	251	267	267							
OVER SIX MO	0	0	0	0	0							

FOI/PRIVACY												
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PENDING	5	13	10	35	45							
RECEIVED	48	58	98	81	74							
ANSWERED	40	61	73	71	88							
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OVER 20 DAYS	0	0	0	0	0							

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	12	11	7	9	24							
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BIVENS	3	2	2	2	6							
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OTHER	0	0	3	1	1							
LIT REPORTS	12	11	7	10	12							
HEARINGS/ TRIALS	1	4	2	2	1							
SETTLEMENTS/ AWARDS	0	0	1	0	0							

CASES WITH HEARINGS OR TRIALS

FMC FORT WORTH

Brian Maurice Fuller v. United States of America, (USDC/ND/TX). On May 17-18, 2000, a trial was held in this FMC Fort Worth case at which the plaintiff alleged negligent medical care, failure to diagnose, and delay in medical care of his knee and back. The court found at the conclusion of the final argument that (i) the conduct of the BOP, its agents, employees and representatives did not fall below the appropriate standard of care; (ii) the conduct of the BOP was not a proximate cause of injury or damage to the plaintiff; (iii) the BOP, its agents, employees and representatives were not negligent in furnishing medical care to the plaintiff; and (iv) the defendant was entitled to judgement as a matter of law, in that the plaintiff did not present sufficient evidence to prosecute or support his claims of medical negligence.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

FCI EL RENO

Baker v. Fleming, (USDC/WD/OK). As previously reported, this is a 3621(e) case wherein the district judge stayed the proceedings pending the Tenth Circuit Court of Appeals' ruling in Ward v. Booker. The district judge recently took note of the Ward decision and found that the case controlled Baker. As a result, we have been directed to give petitioner Baker "individualized consideration" for 3621(e) early release using the sentencing

enhancement as "only one factor."

Kenneth Jones v. A. M. Flowers, (10th Cir., April 13, 2000). The appellate court affirmed the district court decision (WD/OK) in this previously reported case. The district court found that it was impermissible to deny a 3621(e) early release to the petitioner based upon his 2-pt. firearm sentencing enhancement. Our recommendation for an appeal in this case was disapproved by OGC.

Albert John Clark III v. L. E. Fleming, (10th Cir., May 1, 2000). The appellate court affirmed the district court decision (WD/OK) in this previously reported case. The district court found that it was impermissible to deny a 3621(e) early release to the petitioner based upon his 2-pt. sentencing enhancement.

b5

b. Tort Claim settlements

The previously reported McCutchen administrative tort claim has been settled for \$175. In this case, the inmate/claimant was injured when her wheelchair tipped over while on an escorted trip to an outside hospital. (T-SCR-99-526)

c. Other settlements

None

SIGNIFICANT CASES

FCI BASTROP

Vasquez v. Miles, (USDC/WD/TX). The petitioner raises a number of grounds in support of his claim that he has been wrongly denied early release pursuant to 18 USC §3621(e).

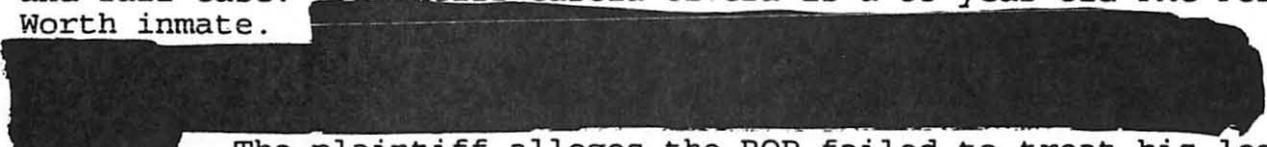
Garza-Guillen v. Fleming, et al., (USDC/WD/TX). In this matter, the court dismissed the 8th Amendment claim. This constitutional claim was based upon deliberate indifference allegedly demonstrated by a number of employees and private practitioners with regard to medical care. The court declared that since the alleged injury occurred while the plaintiff was at his UNICOR job assignment, the IACA was the exclusive remedy for the allegedly improper medical treatment that followed. Thus, the court ruled that it was without subject-matter jurisdiction. Additionally, the court found that all of the BOP employees were entitled to qualified immunity.

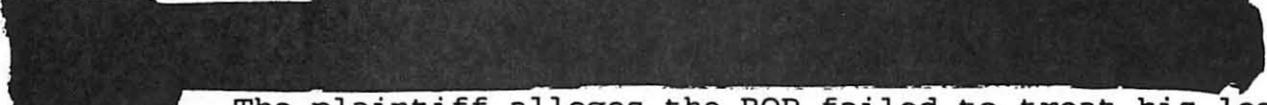
FCI FORREST CITY

Fields v. United States, (USDC/ED/ARK). In this previously reported ABA & UFAS case, the court ruled in our favor. The court dismissed the case for lack of exhaustion (a jurisdictional basis), thereby precluding him from needing to address the merits. The court believed that Fields should have completed his administrative remedies with the BOP as well as the Architectural Transportation Board procedures, before filing suit.

FMC FORT WORTH

Claudia Riley, Personal Representative of the Estate of James Bert McDougal, v. Wilfredo Feliciano, et al., (USDC/ND/TX). Plaintiff Claudia Riley, the personal representative of the estate of former inmate James McDougal, filed a Bivens/FTCA wrongful death claim. The plaintiff alleges that FMC Fort Worth staff failed to take appropriate action in placing inmate McDougal in a dry cell when they knew he could not produce a urine sample. The plaintiff alleges staff failed to provide inmate McDougal's medication while he was in the Special Housing Unit. Also, the plaintiff alleges that staff failed to respond to inmate McDougal's complaints that he was dizzy and short of breath, and that they failed to administer McDougal's prescribed medication.

Ernesto Garcia-Olvera v. United States, (USDC/ND/TX). This case is a medical negligence/FTCA matter which arises out of a slip and fall case. Plaintiff Garcia-Olvera is a 55 year old FMC Fort Worth inmate. 

. The plaintiff alleges the BOP failed to treat his leg fracture in an appropriate manner, thereby causing his leg to be amputated.

Yarborough v. United States et al., (USDC/SD/MS). In this previously reported wrongful death case, last week's \$140,000 and this week's \$100,000 settlement offers were denied. We will ask for an Order of Judgment for \$40,000-45,000, in accordance with Rule 68. Depositions began in June.

FCI TEXARKANA

Michael Joseph Kearns v. N. L. Conner, (USDC/ED/TX). The inmate refuses to sign the "Agreement to Adhere to an Installment Schedule" for his committed fine. As a result, he was not released on his release date of February 14, 2000. He has filed suit requesting an immediate release.

SIGNIFICANT TORT CLAIMS

Hester. Anthony Hester a BML inmate who alleges that, as a result of unspecified retaliatory acts by the SCR Regional Designator, he missed several litigation deadlines in state civil cases, resulting in their dismissal. He claims that as a result of these dismissals, he has been unable to collect on debts owed to him. As a result, he alleges, this has prevented him paying debts he owes. He seeks \$4,030,000 in compensation.
(T-SCR-2000-01013)

Morales-Reyes. BIG inmate Jose Morales-Reyes states that during the June 1999 disturbance, staff discharged shotguns loaded with lead buckshot, and he was shot in the back. He seeks \$200,000.00 in compensation. (T-SCR-00-00372)

Encizo-Estrada. BIG inmate Apolonio Encizo-Estrada states that during the June 1999 disturbance, staff discharged shotguns loaded with lead buckshot and he was shot near his heart and in the "crook" of his left arm. He seeks \$200,000.00 in compensation. (T-SCR-00-00374)

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

FMC FORT WORTH

Matlock v. United States of America v. USA (USDC/CD/CA). A settlement conference was held on June 2, 2000, in this USP Lompoc case. To assist the AUSA, FMC Fort Worth legal staff facilitated a telephonic conference in the case. The plaintiff alleges negligent dental care by BOP staff, and some liability concerns have been raised.

MEDICAL MALPRACTICE

LITIGATION

See SIGNIFICANT CASES and UPCOMING TRIALS OR HEARINGS headings.

TORT CLAIMS

None

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FCC BEAUMONT

At approximately 4:00 a.m. on June 1, 2000, an apparently drunken driver sped past the stop sign at the FCC Beaumont complex entrance. His car struck a curb, became airborne, and passed through the complex entrance sign, tearing the steel sign out of its frame. His car passed through the steel frame and struck a street light pole approximately 20 feet behind the entrance sign with sufficient force to wrap the sign around the pole. The car was damaged to the extent that local law enforcement and EMS were required to cut the driver out of the vehicle. The driver was immediately transported to a local hospital. We are currently awaiting word of the driver's identity and medical condition. The Facilities Department estimates approximately \$1,200 in repair costs for the curb, landscaping, and sign.

FMC FORT WORTH

Albert Lipscomb, former Dallas City Councilman, and former pre-trial inmate at FMC Fort Worth, was sentenced on April 27, 2000, to a 40-month home confinement term. Lisa Sunderman, Deputy Regional Counsel, attended the trial and assisted the AUSA.

FDC HOUSTON

On May 19, 2000, Mervyn Mosbacher, United States Attorney for the

Southern District of Texas, toured FDC Houston. Mr. Mosbacher, and the four members of his staff who accompanied him, had favorable comments about the facility and staff.

CRIMINAL MATTERS AND PROSECUTIONS

USP BEAUMONT

The trial of inmate Vicente Medina, which was originally scheduled to begin on May 16, 2000, has been continued to July 11, 2000. Inmate Medina is being tried for assault with intent to commit murder in connection with his assault on inmate Donald Jermosen on March 31, 2000. Inmate Medina used a sharpened instrument (of unknown type) in the assault. Inmate Jermosen sustained multiple abrasions and puncture wounds, none of which were life-threatening. b7C

FCI BEAUMONT (MEDIUM)

Inmates Jose Gamez-Reyes, Jose Jaramillo-Hernandez, and Radney Montgomery-Castillo were sentenced on May 19, 2000. As previously reported, inmate Montgomery-Castillo pled guilty to assault with a dangerous weapon and assault causing serious bodily injury on February 14, 2000. The remaining inmates were convicted on the same charges on February 17, 2000, after a three day trial and approximately 45 minutes of jury deliberation. The three inmates had used baseball bats to assault a fourth inmate on the recreation yard.

Inmate Montgomery-Castillo received a 105 month term. Inmates Gamez-Reyes and Jaramillo-Hernandez received 115 month terms. All sentences were ordered to run consecutive to the sentences each inmate is currently serving. All but one of the sentences were at the top end of the sentencing guideline range for the offenses for which the inmates were convicted.

FCI BIG SPRING

On April 27, 2000, all 11 inmates involved in the June 1999 disturbance pled guilty to one count of Rioting. The sentencing date is pending.

FCI EL RENO

On May 24, 2000, former Food Service worker Ha Le was sentenced to a 27-month term of imprisonment for Possession of Marijuana with Intent to Distribute and Possession of Cocaine with Intent to Distribute. Ha Le has been ordered to surrender to the United States Marshal on June 19, 2000.

On May 10, 2000, inmate Darrell Hudec pled guilty to attempted escape. He is scheduled for sentencing in this month. On

June 12, 2000, inmate Hudec's co-defendant, James Penick, is to be tried for the same incident.

FTC OKLAHOMA CITY

On May 24, 2000, Correctional Officer [REDACTED] was charged and arraigned in federal court with engaging in sexual contact with an inmate. Officer [REDACTED] was released on bond. b6

FCI THREE RIVERS

Inmate Saul Lopez-Hernandez was found guilty by a jury on May 16, 2000, of assaulting a staff member. Sentencing is scheduled for July 26, 2000. This inmate assaulted a staff member in the dining hall during the noon meal.

PERSONAL ISSUES

[REDACTED]

Paula Champion, former FMC Carswell Legal Instruments Examiner, resigned effective June 9, 2000.

Scheduled Annual/Sick Leave:

- [REDACTED] - June 15-16 - Annual Leave
- [REDACTED] - June 15-20 - Annual Leave

Other Scheduled Absences:

- [REDACTED] - June 5-16 - Paralegal Training
- [REDACTED] - June 12-16 - House Hunting Trip
- [REDACTED] - June 19-23 - General Counsel Meeting



U.S. Department of Justice

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June 22, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM:

Michael D. Hood, Regional Counsel

SUBJECT:

Monthly Report - May 2000

Table with 13 columns (JAN-DEC) and 3 rows (RECEIVED, ANSWERED) under the heading ADMINISTRATIVE REMEDIES.

Table with 13 columns (JAN-DEC) and 5 rows (PENDING, RECEIVED, ANSWERED, PENDING, OVER SIX MO) under the heading TORT CLAIMS.

Table with 13 columns (JAN-DEC) and 5 rows (PENDING, RECEIVED, ANSWERED, PENDING, OVER 20 DAYS) under the heading FOI/PRIVACY.

LITIGATION												
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CASES WITH HEARINGS OR TRIALS

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 On May 17-18, 2000, a trial was held in this FMC Fort Worth case at which the plaintiff alleged negligent medical care, failure to diagnose, and delay in medical care of his knee and back. The court found at the conclusion of the final argument that (i) the conduct of the BOP, its agents, employees and representatives did not fall below the appropriate standard of care; (ii) the conduct of the BOP was not a proximate cause of injury or damage to the plaintiff; (iii) the BOP, its agents, employees and representatives were not negligent in furnishing medical care to the plaintiff; and (iv) the defendant was entitled to judgement as a matter of law, in that the plaintiff did not present sufficient evidence to prosecute or support his claims of medical negligence.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

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a. Adverse judgments

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b. Tort Claim settlements

The previously reported McCutchen administrative tort claim has been settled for \$175. In this case, the inmate/claimant was injured when her wheelchair tipped over while on an escorted trip to an outside hospital. (T-SCR-99-526)

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None

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[REDACTED] b5
A settlement memorandum is being prepared. The plaintiff alleges the BOP failed to treat his leg fracture in an appropriate manner, thereby causing his leg to be amputated.

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None

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MEDICAL MALPRACTICE

LITIGATION

See **SIGNIFICANT CASES** and **UPCOMING TRIALS OR HEARINGS** headings.

TORT CLAIMS

None

ENSIGN AMENDMENT

None

LITIGATION

None

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SITUATIONS OF INTEREST

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PERSONAL ISSUES

[REDACTED] b6

[REDACTED]

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b6

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U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

July 10, 2000

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

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - June 2000

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HEARINGS/ TRIALS	1	4	2	2	1	0						
SETTLEMENTS/ AWARDS	0	0	1	0	0	1						

CASES WITH HEARINGS OR TRIALS

FMC CARSWELL

Barrett v. United States. A settlement conference was held in this FTCA suit on June 29, 2000. Inmate Barrett (currently at FPC Bryan) alleges she fell off an upper bunk, and her back and left leg were not treated by medical staff in a timely manner. No settlement was reached at the conference.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

FCI EL RENO

Steve Schardein v. L. E. Fleming. In this RDAP case, the Tenth Circuit Court of Appeals affirmed the ruling of the District Court (WD/OK) that it was improper for the BOP to deny an early release due to a two-point sentencing enhancement. We are awaiting word from OGC as to whether further appeals are authorized.

Allen J. Brooks v. L. E. Fleming. In this RDAP case, the District Court (WD/OK) directed that the BOP give the petitioner "individualized reconsideration" for early release pursuant to Ward v. Booker. We are awaiting word from OGC as to whether further appeals are authorized.

Steven Baker v. L. E. Fleming. In this RDAP case, the District Court (WD/OK) directed that the BOP reconsider the petitioner for early release pursuant to Ward v. Booker. We are awaiting word from OGC as to whether further appeals are authorized.

FMC FORT WORTH

Jonnie A. Yarborough, Administratrix of the Estate of Julian Barnett Yarborough, Jr., Deceased, et al. v. United States of America, et al. In this previously reported wrongful death case, a settlement offer of \$25,000 was accepted by the plaintiffs and is pending signatures.

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FCI EL RENO

Cathcart v. United States Bureau of Prisons. On May 4, 2000, the United States Court of Appeals for the Tenth Circuit issued an opinion in this case. The petitioner was borrowed from state custody via a writ of habeas corpus. At the conclusion of the federal proceedings, he remained in federal custody due to an administrative error. Once the error was discovered, petitioner was immediately returned to state custody. Petitioner alleged he was being made to serve his federal sentence in installments. Further, he disputed the BOP's refusal to grant prior custody credit on his federal sentence for the time he was on writ and erroneously in federal custody. Lastly, the petitioner sought his sentence to be run concurrently, since the sentencing court was unaware of the state's pending charges.

The appellate court stated that petitioner received credit toward the service of his state sentence for the time he was in federal custody and cited 18 U.S.C. 3585(b) as the statute prohibiting double credit. The appellate court ruled that since the sentencing court did not affirmatively order concurrent sentences, the sentences were appropriately run consecutively. The appellate court further decided petitioner was in the same position he would have been had he served the full state sentence in state custody.

FMC FORT WORTH

Ernesto Garcia-Olvera v. United States. Inmate Garcia-Olvera, presently incarcerated at FMC Fort Worth, filed this case pursuant to the FTCA alleging negligence by the BOP in treating him for a fracture to his left ankle caused when he allegedly

slipped and fell on wet concrete steps leading to the recreation facility on or about August 15, 1997. On September 1, 1997, the plaintiff re-injured his ankle, and his non-displaced fracture became a displaced fracture. There were complications and surgery was performed. Eventually, his leg below his knee was amputated.

[REDACTED]

b5

Crosby L. Powell, et al. v. United States of America, et al. (U.S.C.A. 5th Cir.). We assisted the U.S. Attorney's Office (USAO) by providing them with information for its Response to Plaintiffs' Motion Requesting a Court Order Directing the Defendants to Allow Legal Correspondence Between the Co-Plaintiff Parties. Karen Summers provided information regarding the plaintiff/inmates' allegations that legal mail had been rejected, thus interfering with their correspondence in a criminal case in which they were co-defendants. The court required a response to these allegations. We provided the USAO with documentation that the plaintiff/inmates' correspondence had been previously approved by the BOP.

McGuire v. United States. In this wrongful death case, a court ordered mediation hearing was scheduled to be held on June 23, 2000; however, the hearing was postponed because the Plaintiff arrived early and did not wait until the hearing commenced at 10:30 a.m. The hearing will not be rescheduled until the Court rules on the United States' dispositive motion.

[REDACTED]

b5

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Henson v. U.S. Bureau of Prisons. The U.S. Court of Appeals for the Fifth Circuit affirmed the District Court's (WD/LA) dismissal of inmate Thomas Henson's 2241 petition. Henson was found to have a tobacco pipe containing a residue which tested positive for marijuana. Disciplinary proceedings were instituted against Henson, and he requested a urinalysis. The urinalysis came back negative, and Henson requested a retest of the pipe at his own expense. That request was denied, and after a hearing, he was found to have possessed marijuana and lost 14 days good time credit. Henson's habeas petition challenged the denial of his request to retest the pipe. The appellate court affirmed the lower court's decision stating that "Henson had no due process right to retest the pipe."

FCI THREE RIVERS

William Kennedy v. United States of America. On June 22, 2000, a Magistrate Judge issued a R&R that recommended our summary judgement motion be granted. In this FTCA case, former inmate William Kennedy alleges he received negligent medical care while he was housed at FCI Three Rivers.

Shipley v. Janet Reno. Our summary judgement motion was granted on June 16, 2000. This was a Bivens case in which the inmate claimed deliberate indifference by FCI Three Rivers' medical department with regards to the treatment of his eyes. The inmate still has a separate FTCA suit which raises the same allegations.

SIGNIFICANT TORT CLAIMS

FCI OAKDALE

Gassiott. [REDACTED], a former BOP employee, filed a claim for \$4,000,000 because he alleges his supervisor did not follow medical restrictions issued by Gassiott's physician, causing Gassiott to suffer a stroke. (TRT-SCR-2000-00384) b6

FCI TEXARKANA

Kenemore. Inmate [REDACTED] claims he was placed in the Special Housing Unit and forced to live with an inmate who had Hepatitis C. He claims he had to share toilet facilities with no hot water or disinfectant. He claims the cell was only cleaned once during his stay. He also alleges there were three days in b7c

which there was no ventilation. He requests \$500,000 for personal injury. (TRT-SCR-2000-01650)

SIGNIFICANT ADMINISTRATIVE REMEDIES

Several FMC Carswell inmates have filed administrative remedies alleging they were exposed to hazardous levels of lead on their job assignments.

UPCOMING TRIALS OR HEARINGS

See CRIMINAL MATTERS AND PROSECUTIONS heading.

MEDICAL MALPRACTICE

LITIGATION

See SIGNIFICANT CASES and CASES WITH SETTLEMENTS OR AWARDS headings.

TORT CLAIMS

None

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

SITUATIONS OF INTEREST

FCI EL RENO and FTC OKLAHOMA CITY

Tim Roberts and An Tran attended a Civil Division meeting at the USAO on June 29, 2000.

FDC HOUSTON

On June 8, 2000, Anthony Davis, Intelligence Operations Officer, testified in the capital sentencing phase of U.S. v. Christopher Andre Vialva, et al., (WD/TX). Mr. Davis' testimony concerned matters associated with the incarceration of inmate gang members. The jury returned with a sentence of death for both defendants.

FCI TEXARKANA

Inmate Michael Kearns is being incarcerated past his scheduled release date for his refusal to sign an Agreement to Adhere to an Installment Schedule for a committed fine. His scheduled release date was February 14, 2000. We recently filed our response to his civil action. A Report and Recommendation is pending.

Former employee Tina Troxler was deposed by AUSA Dane Smith in connection with her defamation suit against the BOP and her former BOP supervisor.

CRIMINAL MATTERS AND PROSECUTIONS

USP BEAUMONT

The trial of inmate Vicente Medina, which was originally scheduled for May 16, 2000, and then continued to July 11, 2000, is now currently scheduled to begin on July 24, 2000. Inmate Medina is being tried for Assault With Intent to Commit Murder in connection with his assault on inmate [REDACTED] on March 31, 2000. b7C

FCI BEAUMONT (LOW)

On June 9, 2000, in the visiting room during normal visitation hours, inmate Clarence Lee was discovered to be in possession of marijuana that was provided to him by his female visitor. Inmate Lee was indicted on June 22, 2000.

FCI BIG SPRING

Presentence Investigation Reports are being received by the U.S. Attorney's Office on the 11 inmates involved in the June 1999 disturbance.

FPC BRYAN

Inquiry continues into the possibly sexually abusive actions of three FPC Bryan employees, one of whom remains on home duty status. The other two have resigned their Bureau employment. No prosecution of these individuals is foreseen, and administrative action is under consideration.

FCI EL RENO

On June 12, 2000, the criminal trial of inmate James Penick was conducted, and he was convicted of attempted escape.

FCI TEXARKANA

On May 11, 2000, a homemade knife was found in the air duct in inmate Jose Herrera-Langarci's cell. Inmate Herrera-Langarci admitted he possessed the weapon. On June 8, 2000, the USAO accepted for prosecution the charge of Possession of a Weapon.

On May 25, 2000, inmate Samuel Chap failed to report to a CCC on

a furlough transfer from FCI Texarkana. A warrant for his arrest has been issued.

PERSONAL ISSUES

[REDACTED]

Scheduled Annual/Sick Leave:

b6

- [REDACTED] - July 17-21 - Annual Leave
- [REDACTED] - July 17-28 - Annual Leave
- [REDACTED] - July 24-28 - Annual Leave
- [REDACTED] - July 31-August 4 - Annual Leave

Other Scheduled Absences:

None

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

July 10, 2000

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

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - June 2000

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NO V	DEC
RECEIVED	227	220	304	219	255	329						
ANSWERED	105	132	162	182	169	203						

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	257	256	280	261	279	290						
RECEIVED	61	76	53	46	70	72						
ANSWERED	62	62	82	40	82	70						
PENDING	256	270	251	267	267	292						
OVER SIX MO	0	0	0	0	0	0						

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	5	13	10	35	45	31						
RECEIVED	48	58	98	81	74	84						
ANSWERED	40	61	73	71	88	62						
PENDING	13	10	35	45	31	53						
OVER 20 DAYS	0	0	0	0	0	0						

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	12	11	7	9	24	10						
CASES CLOSED	12	5	11	13	15	7						
HABEAS CORPUS	7	7	2	6	16	6						
BIVENS	3	2	2	2	6	2						
FTCA	2	2	0	0	1	2						
OTHER	0	0	3	1	1	0						
LIT REPORTS	12	11	7	10	12	7						
HEARINGS/ TRIALS	1	4	2	2	1	0						
SETTLEMENTS/ AWARDS	0	0	1	0	0	1						

CASES WITH HEARINGS OR TRIALS

FMC CARSWELL

Barrett v. United States. A settlement conference was held in this FTCA suit on June 29, 2000. Inmate Barrett (currently at FPC Bryan) alleges she fell off an upper bunk, and her back and left leg were not treated by medical staff in a timely manner. No settlement was reached at the conference.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

FCI EL RENO

Steve Schardein v. L. E. Fleming. In this RDAP case, the Tenth Circuit Court of Appeals affirmed the ruling of the District Court (WD/OK) that it was improper for the BOP to deny an early release due to a two-point sentencing enhancement. We are awaiting word from OGC as to whether further appeals are authorized.

Allen J. Brooks v. L. E. Fleming. In this RDAP case, the District Court (WD/OK) directed that the BOP give the petitioner "individualized reconsideration" for early release pursuant to Ward v. Booker. [REDACTED] b5

Steven Baker v. L. E. Fleming. In this RDAP case, the District Court (WD/OK) directed that the BOP reconsider the petitioner for early release pursuant to Ward v. Booker. [REDACTED] b5

FMC FORT WORTH

Jonnie A. Yarborough, Administratrix of the Estate of Julian Barnett Yarborough, Jr., Deceased, et al. v. United States of America, et al. In this previously reported wrongful death case, a settlement offer of \$25,000 was accepted by the plaintiffs and is pending signatures.

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FCI EL RENO

Cathcart v. United States Bureau of Prisons. On May 4, 2000, the United States Court of Appeals for the Tenth Circuit issued an opinion in this case. The petitioner was borrowed from state custody via a writ of habeas corpus. At the conclusion of the federal proceedings, he remained in federal custody due to an administrative error. Once the error was discovered, petitioner was immediately returned to state custody. Petitioner alleged he was being made to serve his federal sentence in installments. Further, he disputed the BOP's refusal to grant prior custody credit on his federal sentence for the time he was on writ and erroneously in federal custody. Lastly, the petitioner sought his sentence to be run concurrently, since the sentencing court was unaware of the state's pending charges.

The appellate court stated that petitioner received credit toward the service of his state sentence for the time he was in federal custody and cited 18 U.S.C. 3585(b) as the statute prohibiting double credit. The appellate court ruled that since the sentencing court did not affirmatively order concurrent sentences, the sentences were appropriately run consecutively. The appellate court further decided petitioner was in the same position he would have been had he served the full state sentence in state custody.

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slipped and fell on wet concrete steps leading to the facility on or about August 15, 1997. On September 1 plaintiff re-injured his ankle, and his non-displaced became a displaced fracture. There were complications and surgery was performed. Eventually, his leg below his knee was amputated. This case was authorized for settlement (up to \$50,000.00) in the administrative claim phase. [REDACTED]

Settlement

b5

Crosby L. Powell, et al. v. United States of America, et al. (U.S.C.A. 5th Cir.). We assisted the U.S. Attorney's Office (USAO) by providing them with information for its Response to Plaintiffs' Motion Requesting a Court Order Directing the Defendants to Allow Legal Correspondence Between the Co-Plaintiff Parties. Karen Summers provided information regarding the plaintiff/inmates' allegations that legal mail had been rejected, thus interfering with their correspondence in a criminal case in which they were co-defendants. The court required a response to these allegations. We provided the USAO with documentation that the plaintiff/inmates' correspondence had been previously approved by the BOP.

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b5

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UPCOMING TRIALS OR HEARINGS

See CRIMINAL MATTERS AND PROSECUTIONS heading.

MEDICAL MALPRACTICE

LITIGATION

See SIGNIFICANT CASES and CASES WITH SETTLEMENTS OR AWARDS headings.

TORT CLAIMS

None

ENSIGN AMENDMENT

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LITIGATION

None

TORT CLAIMS

None

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LITIGATION

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TORT CLAIMS

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SITUATIONS OF INTEREST

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PERSONAL ISSUES

[REDACTED]

b6

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- | | | |
|------------|--------------------|----------------|
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| [REDACTED] | - July 17-28 | - Annual Leave |
| [REDACTED] | - July 24-28 | - Annual Leave |
| [REDACTED] | - July 31-August 4 | - Annual Leave |

Other Scheduled Absences:

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U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

August 10, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - July 2000

ADMINISTRATIVE REMEDIES												
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ANSWERED	40	61	73	71	88	62	69					
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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	12	11	7	9	24	10	20					
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OTHER	0	0	3	1	1	0	0					
LIT REPORTS	12	11	7	10	12	7	9					
HEARINGS/ TRIALS	1	4	2	2	1	0	1					
SETTLEMENTS/ AWARDS	0	0	1	0	0	1	1					

CASES WITH HEARINGS OR TRIALS

Troxler v. United States. A hearing was held on July 25, 2000, on the government's Motion to Dismiss. The plaintiff initially filed this case as a slander action against a co-worker. However, the United States was substituted for the co-worker as a defendant. The plaintiff has requested that the co-worker be re-joined as a defendant. The Magistrate has deferred her decision on this request pending the production of additional evidence.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

FMC FORT WORTH

Ernesto Garcia-Olvera v. United States. FMC Fort Worth inmate Olvera-Garcia (a 55-year-old male) filed this case pursuant to the Federal Tort Claims Act alleging that the BOP failed to treat his fractured ankle in an appropriate manner. As a result of an ankle injury, the inmate's leg was amputated below the knee. This case was settled for \$235,000.

c. Other settlements

None

SIGNIFICANT CASES

FMC FORT WORTH

Claudia Riley, Personal Representative of the Estate of James Bert McDougal, v. Wilfredo Feliciano, et al. As previously reported, Claudia Riley, the personal representative of the estate of former inmate James McDougal, has filed a Bivens/FTCA suit which arises out of the death of this inmate at FMC Fort Worth. Riley alleges the inmate's wrongful death was caused by his dry cell placement when staff knew he could not produce a urine sample. Riley alleges the failure to provide inmate McDougal with his medication while he was in the SHU contributed to his premature death. Riley further alleges that staff members were negligent and failed to respond to inmate McDougal's complaints of dizziness and shortness of breath. An answer will be filed soon.

FPC EL PASO

Garner v. United States of America. FMC Fort Worth inmate Charles Garner has filed an FTCA suit alleging medical malpractice due to delayed medical treatment of his cervical condition. The inmate was deposed by the AUSA on Friday, July 28, 2000. Several other witnesses are due to be deposed in this case shortly. [REDACTED] b5

SIGNIFICANT TORT CLAIMS

Woods. FTC Oklahoma City inmate [REDACTED] filed a personal injury claim which states his injured right hand only received a cursory exam when he arrived at the FTC, and he was told it was only bruised and not broken. However, he claims that when he arrived at USP Leavenworth, x-rays revealed his hand was broken in two places. Inmate Woods seeks \$250,000.00 in compensation. (TRT-SCR-2000-01813) b7C

SIGNIFICANT ADMINISTRATIVE REMEDIES

FTC Oklahoma City inmate [REDACTED] filed an administrative remedy request seeking a sentence reduction under 18 U.S.C. § 3582 due to his extraordinary remorse for his offense and exemplary post-offense conduct while serving his 292-month sentence. The remedy request was denied, and the inmate is now pursuing an application for commutation of sentence with the U.S. Pardon Attorney. b7C

UPCOMING TRIALS OR HEARINGS

FMC FORT WORTH

Berman v. J.D. Lamer, et al. Former inmate Berman has filed suit in the Middle District of Pennsylvania alleging negligent medical care was rendered at USP Lewisberg and FMC Fort Worth. This matter is being handled by NERO, and there is an August 2000, trial setting. FMC Fort Worth's Medical Officer, Dr. Barry, will be a witness for the government.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

MEDICAL MALPRACTICE

LITIGATION

See CASES WITH SETTLEMENTS OR AWARDS, SIGNIFICANT TORT CLAIMS, SIGNIFICANT CASES, and UPCOMING TRIALS OR HEARINGS headings.

TORT CLAIMS

See Significant Tort Claims heading.

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FMC FORT WORTH

United States v. Hammond. Inmate Hammond was sentenced in the Southern District of Texas to a 51-month jail term for Embezzlement of Employee Welfare Benefit, Union Fund; False Statement to Bank; and Tax Evasion. Inmate Hammond is due to be re-sentenced; however, he has substantial medical problems which restrict him from traveling at this time. This case has sparked congressional interest. FMC Fort Worth's Legal Department has provided substantial assistance in responding to frequent requests from the U.S. Attorney's Office, a member of Congress, and inmate Hammond's attorney.

FCI TEXARKANA

Inmate Michael Kearns continues to be held for his refusal to sign an Agreement to Adhere to an Installment Schedule for a committed fine. His release date was February 14, 2000. We recently filed our response to his civil action, and a Report and Recommendation is pending.

FDC HOUSTON

On July 13, 2000, U.S. District Court Judge Lee Rosenthal (SD/TX) provided inmate Tony Gillis with a hearing on his request for a court order directing that he be confined in a Federal Medical Center pending sentencing. Inmate Gillis represented to the Court that FDC Houston medical staff had diagnosed him as having colon cancer. In claiming he was not receiving proper medical treatment, he asserted that when he was taken to a contract health care provider, staff prevented him from receiving necessary care by refusing the provider's request to remove security restraints. The Court denied inmate Gillis' request after learning that he has not been diagnosed with any form of cancer and that the outside provider was unable to complete the diagnostic testing, a barium enema, because inmate Gillis had stopped the procedure (stating that it was too uncomfortable).

CRIMINAL MATTERS AND PROSECUTIONS

USP BEAUMONT

United States v. Gallaway. The trial of former correctional officer Gerald Gallaway is currently scheduled for September 1, 2000. Gallaway was arrested last April after accepting a delivery of crack cocaine intended for introduction into the institution and distribution to inmates. The FBI and USAO expect a plea bargain.

United States v. Medina. On July 26, 2000, after about 3 hours of deliberation, a jury acquitted inmate Vincente Medina of assault charges. Medina was charged with assaulting inmate [REDACTED] last January. Apparently, the jury accepted Medina's defense that [REDACTED] was about to sexually assault him, and that he stabbed [REDACTED] with a pen in order to ward off the assault. Additionally, it appears that the jury was reluctant to convict because a weapon was not recovered.

b7C

FCI BIG SPRING

June 1999 Disturbance Prosecutions. Ten of the eleven inmates involved in the June 22, 1999, disturbance have been sentenced. On July 7, 2000, inmate Trinidad Cereceda-Holguin was sentenced to 51 months to run consecutively with his current sentence. On July 21, 2000, the following inmates were sentenced to the following terms of consecutive incarceration: inmate Gabriel Pena-Garcia, 24 months; inmate Humberto Hinojosa-Rodriguez, 30 months; inmates Ramon Andavzao-Romero, Luis Manuel Gonzalez-Sifuentes, Felix Ibarra-Villalva and Ricardo Padilla-Inigo, 51 months; and inmates Mario Munoz-Martinez and Daniel Sanchez-Soto, 77 months. Inmate Boogart Rodela-Avila's prior sentence has run, but he was sentenced to another 37 month term.

United States v. Groves. Inmate Michael Groves (Camp Escapee) and his wife, Diana Groves, pled not guilty to Escape and Assisting Escape, respectively, and they are scheduled for the August 2000 trial docket.

FPC BRYAN

A proposal of termination letter has been issued to a correctional officer, charging him with Conduct Unbecoming of a Correctional Officer, Unauthorized Contact with an Inmate Family Member, Failure to Report Contact from an Inmate, and Providing False Statements During an Investigation. A similar proposal letter has been issued to another former FPC Bryan staff member, now stationed at FDC Houston.

FTC OKLAHOMA CITY

On July 23, 2000, at approximately 1:39 p.m., a SHU officer discovered inmate Vongmany Vannady with a sheet around his neck with the other end secured to the bed post. Inmate Vannady was pronounced dead at the local hospital at 2:25 p.m. The FBI, U.S. Marshals, and Oklahoma Medical Examiner's Office were notified, and an investigation continues.

United States v. Grimsley. On July 25, 2000, former correctional officer Jill Grimsley pled guilty to one misdemeanor count under

18 U.S.C. 2243(b), Sex Act With an Inmate in Official Detention and Under Custody of Defendant.

United States v. McBride. This prosecution for sexual abuse of inmates has been previously reported. On July 25, 2000, former correctional counselor Breavess McBride was sentenced to 146 months incarceration on counts 1,3,5,7,9; 36 months incarceration on counts 2,4,6,8,10; 12 months incarceration on misdemeanor count 11, and 3 years of supervised release. The terms of incarceration are to run concurrently. The judge dropped the 4 level enhancement for violence, and the obstruction of justice enhancement. There was an assessment of a special fine of only \$100 per felony count and \$50 for the misdemeanor count, totaling \$1,050.00.

PERSONAL ISSUES

[REDACTED]

b6

Scheduled Annual/Sick Leave:

[REDACTED] - August 11-14 - Annual Leave

Other Scheduled Absences:

[REDACTED] - August 7-11 - Training
[REDACTED] - August 12-16 - ACA Conference
[REDACTED] - August 16-17 - Butner
[REDACTED] - August 18 - SCRO Retreat
[REDACTED] - August 21-September 1 - Military Leave