

*File*  
*monthly* Department of Justice

**Federal Bureau of Prisons**

South Central Regional Office

Dallas, Texas 75219

October 10, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - September 2000

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	227	220	304	219	255	329	257	296	244			
ANSWERED	105	132	162	182	169	203	241	158	218			

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	257	256	280	261	279	290	272	266	275			
RECEIVED	61	76	53	46	70	72	68	78	59			
ANSWERED	62	62	82	40	82	70	69	75	68			
PENDING	256	270	251	267	267	292	271	269	266			
OVER SIX MO	0	0	0	0	0	0	0	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	5	13	10	35	45	31	53	42	32			
RECEIVED	48	58	98	81	74	84	58	66	89			
ANSWERED	40	61	73	71	88	62	69	77	63			
PENDING	13	10	35	45	31	53	42	31	58			
OVER 20 DAYS	0	0	0	0	0	0	0	2	0			

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	12	11	7	9	24	10	20	20	9			
CASES CLOSED	12	5	11	13	15	7	35	5	0			
HABEAS CORPUS	7	7	2	6	16	6	13	15	5			
BIVENS	3	2	2	2	6	2	7	1	3			
FTCA	2	2	0	0	1	2	0	4	0			
OTHER	0	0	3	1	1	0	0	0	1			
LIT REPORTS	12	11	7	10	12	7	9	12	9			
HEARINGS/ TRIALS	1	4	2	2	1	0	1	0	5			
SETTLEMENTS/ AWARDS	0	0	1	0	0	1	1	0	0			

### CASES WITH HEARINGS OR TRIALS

#### FMC FORT WORTH

Shiela McGuire v. Turnbo, et al. On September 26, 2000, a mandatory mediation hearing was held in the chambers of Judge Bleil in this previously reported case. No settlement was reached. A tentative pretrial conference is slated for October 17, 2000; however, it will likely be postponed until a later date due to scheduling conflicts.

#### FPC EL PASO

Garner v. U.S.A. On October 4, 2000, after a two day trial in this FTCA case, judgment was rendered in our favor based on our Motion for Judgment. FMC Fort Worth inmate Charles Garner sued alleging medical malpractice due to delayed medical treatment of his cervical condition.

 However, the inmate refused our offers to settle the case for a reasonable sum. Therefore, the case was taken to trial.

#### FCI THREE RIVERS

Lenard Earl Davis v. William Gerth. On September 15, 2000, a telephonic Spears hearing was held in this Bivens case in which the inmate is alleging (i) he was assaulted by a staff member while in handcuffs, and (ii) he did not receive proper medical attention while in four point restraints. There has been no service; however, Judge Cooper-Hill ordered the production of any investigatory reports to the court within 20 days, and a copy of

the inmate's medical chart from the date of the alleged incident to be given to the inmate.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FCI BEAUMONT (Low)

Bruce T. Tames v. John M. Tombone. This is a Bivens action in which an Asian American inmate claims that he was denied due process and equal protection when he was not transferred to a more desirable UNICOR work detail, while other less experienced inmates were transferred to the detail despite the fact that they were non-citizens with INS deportation detainers. The plaintiff seeks \$500,000 in damages.

FCI BEAUMONT (Medium)

Favis Clay Martin v. Gary L. Johnson, et al. In this matter, a Texas state boarder currently designated at BMM is attempting to sue in Texas state court his sister-in-law (the Director of the Texas Department of Criminal Justice (TDCJ)) and his BOP Unit Manager. The plaintiff alleges that his Unit Manager, at the direction of plaintiff's sister-in-law, has submitted materially false and misleading information in progress reports to TDCJ. The plaintiff alleges that this information "will surely affect the outcome of his parole review in May 2001," but does not claim to have sustained any actual injury as of yet. The plaintiff seeks injunctive and declaratory relief, \$50,000 in compensatory damages, and \$10,000 in punitive damages. The U.S. Attorney's Office has filed a Notice of Removal to federal court pursuant to 28 U.S.C. § 1442 on behalf plaintiff's Unit Manager.

SIGNIFICANT TORT CLAIMS

FCC OAKDALE

GEICO. While returning from training in his POV, an employee had an automobile accident. The employee had a friend with him and the friend was injured in the accident. The friend filed for medical treatment through the employee's personal insurance, GEICO, who paid the claim in the amount of \$59,956.91. GEICO is now seeking to subrogate the claim. (TRT-SCR-2000-02098)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

Several FMC Carswell inmates have alleged that female inmates with medical designations do not have the availability to RDAP that non-medically designated inmates have. Additionally, they allege that male inmates qualify for the one year reduction more often than female inmates due to their gender.

#### UPCOMING TRIALS OR HEARINGS

##### FMC FORT WORTH

Haliq v. United States. As previously reported, FMC Fort Worth inmate Haliq alleges he slipped on water on the floor of the Dallas Unit Laundry Room. He also alleges that the defendant had knowledge of the water prior to his accident. Trial is set on the November 2000 docket. Local settlement approval for up to \$2,000 is being sought.

##### FCI THREE RIVERS

John Abie Reese v. M. Campbell. As previously reported, this defendant's summary judgment motion was recently denied in this Bivens case. The inmate alleges that the defendant assaulted him during a pat search, causing him to suffer pain that required medical treatment. The court determined the defendant failed to establish as a matter of law that the injury the inmate received was de minimis. A jury trial is scheduled for November 13, 2000.

Also, see CASES WITH HEARINGS OR TRIALS heading.

#### MEDICAL MALPRACTICE

##### LITIGATION

James David Crow, III v. U.S. Department of Justice, et al. This Bivens action was recently transferred to the U.S. District Court for the Eastern District of Texas from the District of Columbia. The plaintiff, who is presently designated at BML, alleges that he has received unconstitutionally inadequate medical care for Osteomyelitis of the heel at MIL, PHX, and OKL. No Beaumont defendants are named. The plaintiff seeks injunctive relief and \$1,000,000 in damages.

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FCI EL RENO

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] b2

[REDACTED]

FDC HOUSTON

On Thursday, September 21, 2000, Judge Lynn Hughes quashed an instanter subpoena issued by defense counsel in United States v. James Collins and Yank Barry (SD/TX), a case related to the public corruption cases against former Louisiana Governor Edwin Edwards, a former Houston mayor, and 17 others.

[REDACTED] b5

On September 11, 2000, the Court had considered a previously issued defense subpoena and ordered the release of all documentation concerning Graham's incarceration at FDC Houston but later limited that order following an in-camera review.

CRIMINAL MATTERS AND PROSECUTIONS

FCI EL RENO

We were informed last month that inmate Jesus Macias-Nevarez pled guilty to introduction of contraband (narcotics) into a federal institution. No sentencing date has been set.

FCI THREE RIVERS

Gabriel Gonzalez was indicted on September 13, 2000, for Possession Of A Weapon. He is awaiting sentencing. Five sharpened metal rods were found in the inmate's high-top tennis shoe during a pat search on June 20, 2000.

PERSONAL ISSUES

[REDACTED] b4

**U.S. Department of Justice**

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November 9, 2000

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 ASSISTANT DIRECTOR/GENERAL COUNSEL

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**CASES WITH HEARINGS OR TRIALS**

**FPC EL PASO**

Garner v. United States, EP-99-CA-423. This previously reported FTCA action went to trial on the merits on October 3, 2000. Mr. Garner alleged medical malpractice against staff at the FPC El Paso and FCI La Tuna. The plaintiff represented himself. Once plaintiff rested his case, Defendant made a Motion for Judgment as a Matter of Law pursuant to Rule 52(c). Judgment in favor of the United States was granted on October 4, 2000.

**FMC FORT WORTH**

Haliq v. United States of America, Civil Action 4:97-CV-1030-Y, Northern District of Texas, Fort Worth Division. A mandatory settlement conference was held on October 11, 2000. No settlement was reached. This is a slip and fall case, wherein the plaintiff alleges the government was negligent in not warning him of water that was allegedly on the floor at or near the ice machine of his housing unit. The trial was held on November 8, 2000.

**CASES WITH SETTLEMENTS OR AWARDS**

a. Adverse judgments

FCI FORREST CITY

Allen B. Ware v. Marvin D. Morrison, 2:99CV00210. Plaintiff filed a complaint alleging that the defendants violated his First, Fifth and Eighth Amendment rights when they suspended the visitation privileges of his wife for eighteen months. The BOP filed a Motion for Summary Judgment which was denied, stating that there were troubling circumstances surrounding the suspension of the Plaintiff's visitation privileges with his wife. The court ruled that suspending visitation was atypical under the Sandin analysis, violated a clearly established right, and that due process should have been afforded. Thus, our Motion for Summary Judgment was denied. The AUSA and SCR plan on recommending an appeal. An appeal/adverse decision memo will be forwarded to OGC.

b. Tort Claim settlements

FPC BRYAN

A \$40,000 settlement was accepted by [REDACTED] Executrix of the estate of inmate Hortencia Flores-Cabrera. Inmate Flores-Cabrera died on September 1995, from drug-induced renal failure following treatment by FPC Bryan medical staff.

FCI FORREST CITY

Donald Walters v. U.S.A., LR-C-99-913. Plaintiff alleged that the Medical Department at FCI Forrest City refused to give him the proper care resulting in the loss of his left great toe. Plaintiff was seeking \$250,000.00. Due largely to a shift in our expert's position, the case was settled for \$12,500.

c. Other settlements

None

SIGNIFICANT CASES

FCI BASTROP

In Warren v. Miles, No. 00-50117 (5<sup>th</sup> Cir., Oct. 13, 2000) (appeal taken from A-99-CA-136-JN, USDC/WDTX). The Fifth Circuit affirmed on two significant grounds the District Court's decision upholding the BOP's denial of early release eligibility based upon a two-point enhancement for possession of a dangerous weapon. The first ground was that the BOP's modification of

28 CFR § 550.58 on May 17, 1996, which distinguished between violent and non-violent offenses, merely clarified the existing rule regarding ineligibility of violent offenders, and hence did not violate the ex post facto clause of the Constitution. The second ground was that the BOP's construction of 18 USC § 3621(e)(2)(B) was permissible, and hence not an abuse of discretion.

#### FCC BEAUMONT

Alejandro Rodriguez-Rodriguez v. B. Small, No. 1:99-CV-520 (E.D. Tex.). By letter dated October 30, 2000, the Torts Branch advised that representation of the defendants by private counsel at government expense was approved. Representation by private counsel was sought because the allegations in this case are presently pending in a criminal investigation by the Office of Inspector General. As previously reported, in this Bivens suit, a former BMP inmate alleges staff improperly housed him in a SHU cell with two other inmates and made him sleep on the floor after he returned from the University of Texas Medical Branch hospital in Galveston, where he had received ear and nose surgery. He also alleges that when he refused to continue sleeping on the floor, he was placed in ambulatory restraints for 55 days, assaulted by staff on two occasions, and denied both meals and medical attention on two occasions. The plaintiff seeks \$600,000 in damages.

#### FMC CARSWELL

Strothers v. Samford, 4:99-CV-797-A, United States District Court, Northern District of Texas, Fort Worth Division. Subsequent to a remand by the 5th Circuit on the issue of inmates being subjected to excessive cold, Judge McBryde denied our Motion for Summary Judgment, which included the defense of qualified immunity, in this Bivens case filed by a former FMC Carswell inmate. The U.S. Attorney's Office will not be filing an interlocutory appeal. Judge McBryde is considering sanctions against the AUSA originally assigned to this case. The AUSA has filed a response to the court regarding possible sanctions against him. A decision is pending.

#### FTC OKLAHOMA CITY

Hunnicuttt v. Hawk, CIV-98-1717-A. In this case, inmate Hunnicutt was convicted under 21 U.S.C. § 846 (for which he was given a two-point enhancement for possession of firearms) and 18 U.S.C. § 371, Conspiracy. Despite being deemed ineligible for early release due to his two-point enhancement, inmate Hunnicutt started the drug abuse program at FCI El Reno in November of 1997. Inmate Hunnicutt filed a BP-9 challenging the determination, and he was advised he was ineligible based on the

Director's discretion due to the two-point enhancement. He petitioned the Western District of Oklahoma for habeas relief. While drafting the Government's response, it was discovered that the underlying offense to the § 371 Conspiracy conviction was a crime of violence (18 U.S.C. 924(c)), thus making the conspiracy conviction a crime of violence. The final order by District Judge Wayne Alley held the BOP did not exceed its statutory authority when the BOP made an amended decision that inmate Hunnicutt's ineligibility was based on his conviction of the violent crime of conspiracy to violate 924(c). Inmate Hunnicutt then appealed, and on October 16, 2000, the 10th Circuit affirmed.

#### **FCI TEXARKANA**

Coy Lynn Owens v. United States of America, 5:00cv255. Inmate alleges staff at FTC Oklahoma applied his leg irons too tightly prior to his transfer, his foot and ankle had been affected by polio, and that when he complained, staff refused to adjust them. Inmate Owens further alleges that when he arrived at FCI Texarkana, there were visible injuries to his ankle to include a knot. He alleges he received inadequate medical treatment, and he is requesting \$2,000,000.00.

#### **FCI THREE RIVERS**

Cuellar v. Purdy, CA-H-00-201, USDC/SDTX, Houston Division. The petitioner, a deportable alien not eligible for CCC placement, claims that he was discriminated against by virtue of his deportability when he was denied early release pursuant to 18 USC § 3621(e)(2)(B).

Kinder, et al. v. USA, et al., CA-C-00-175, USDC/SDTX, Corpus Christi Division. In this hybrid Bivens- FTCA suit, three inmates complain that while confined in SHU at FCI Three Rivers, their cells were flooded, causing them to be exposed to human waste; they also claim that they were not allowed to clean up properly, and that they were injured by the exposure.

#### **SIGNIFICANT TORT CLAIMS**

##### **FCI BIG SPRING**

Bertram. Inmate [REDACTED] states that on February 3, 2000, staff were negligent in categorizing him as a sex offender and because of this categorization, staff have treated him as a sex offender. He is requesting compensation in the amount of \$975,000.00. (TRT-SCR-2000-02590)

Bertram. Inmate [REDACTED] states that on February 3, 2000, staff were negligent by placing him in a two man cell with

six other inmates in boxer shorts and canvas shoes only. Inmate Bertram further states that staff were negligent when staff took him outside to a holding pen, still in boxer shorts and canvas shoes, in sub-freezing weather and kept him outside for approximately 45 minutes without clothes. He is requesting compensation in the amount of \$7,500.00. (TRT-SCR-2001-02975)

Bertram. Inmate [REDACTED] states that from February 4, 2000, through October 13, 2000, staff were negligent when denying him full programming afforded to U.S. citizen inmates and waiving his right to have fully staffed unit team meetings. He is requesting compensation in the amount of \$8,000.00. (TRT-SCR-2001-03051)

#### FTC OKLAHOMA CITY

Lee. Inmate [REDACTED] claims he has a fear of flying and accommodations have always been made for him to travel by bus or van with the exception of his movement on April 19, 2000. Inmate claimed on that date he was forced out of the cell by a "cell abstraction riot team" and forced onto the plane. He claims he was choked, dragged, and restraints were placed on so tight that his circulation was cut off. Inmate Lee also made allegations that the U.S. Marshals used electrical masking tape and taped his head to the seat of the plane. Inmate Lee is seeking \$1,000,000 for the alleged physical assault, pain and suffering, and mental and demeaning attack on his psyche, back, head and neck injuries. (TRT-SCR-2000-02881)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

None

#### UPCOMING TRIALS OR HEARINGS

##### FCI THREE RIVERS

Reese v. Campbell, CA-C-99-237, USDC/SDTX, Corpus Christi Division, is scheduled for trial in Corpus Christi on November 13, 2000. The plaintiff in this Bivens-style suit alleges that a correctional officer intentionally kicked him, thus inflicting cruel and unusual punishment upon him. Martin Sweaney will be the representative for FCI Three Rivers.

Also, see CASES WITH HEARINGS OR TRIALS heading.

#### MEDICAL MALPRACTICE

#### LITIGATION

Also, see CASES WITH HEARINGS OR TRIALS 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

On October 11, 2000, Karen Summers, Paralegal Specialist, and Russ Purdue, Executive Assistant, FCI Seagoville, provided Michael Gill, Special Assistant United States Attorney, Northern District of Texas (Dallas Division) with a tour of FCI Seagoville and the Detention Center.

FDC HOUSTON

On October 20, 2000, Judge Lee Rosenthal stayed a previously issued order for the production of telephone tapes to defense counsel representing inmate [REDACTED]. Although inmate [REDACTED] a pretrial inmate, claimed that he had participated in telephone conversation which included exculpatory statements, he did not know the date or time of the call, nor was he even certain as to which of the telephone numbers on his telephone list the call had been placed. The Court reconsidered the matter on October 24, 2000, following a probable cause hearing,

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at which time the Court directed FDC Houston to provide the United States Attorney's Office with a list of telephone calls inmate ██████████ placed to a specified number. From that list of fourteen calls, defense counsel selected four calls that were copied and provided to the AUSA. The AUSA is to review the calls and provide the defense with any Brady material those tapes may contain.

## CRIMINAL MATTERS AND PROSECUTIONS

### FCI BEAUMONT (ADMIN)

On October 3, 2000, the services of a contract teacher were terminated after she admitted to the investigating SIA staff that she had engaged in sexual or otherwise inappropriately personal relations with several inmates at each of the FCC Beaumont institutions. U.S. Attorney's Office staff have advised that they intend to indict the contract teacher on appropriate charges.

### FCI BEAUMONT (LOW)

The beginning of the trial of inmate ██████████ has been continued until November 27, 2000. As previously reported, inmate Lee has been charged with Possession With Intent to Distribute Marijuana in violation of 21 U.S.C. § 841(a) and Possession of a Prohibited Object in Prison in violation of 18 U.S.C. § 1719(a) in connection with his attempt to smuggle marijuana into the institution through the Visiting Room in June.

On October 19, 2000, a former FCC Beaumont - Low Correctional Officer was indicted for Possession With Intent to Distribute Cocaine in violation of 21 U.S.C. § 841(a)(1). As previously reported, on September 29, 2000, the officer was arrested in a hotel parking lot after accepting \$1,500 and approximately ½ a kilogram of powder and crack cocaine from an undercover agent of the Office of Inspector General. The arrest was the culmination of a joint investigation by FCC Beaumont SIA staff, the Office of Inspector General, and the Jefferson County Joint Drug Task Force. The officer believed that the agent from whom he obtained the cocaine was a relative of an inmate to whom the officer was to deliver the cocaine. In exchange for the delivery, the officer was to keep the \$1,500 and a small quantity of crack for either sale or personal use. The officer's arraignment is currently scheduled for November 21, 2000.

### FCI BIG SPRING

On October 13, 2000, inmate Michael Wayne Groves, II, was sentenced for Escape and Aiding and Abetting to a term of 18

months to be served consecutive to his sentence previously imposed.

#### FCI LA TUNA

At 6:30 p.m. on September 22, 2000, the SHU officer intercepted a handwritten letter written by inmate Ramon Sanchez. The letter was addressed to inmate Oscar Vela-Avalos. The letter stipulated inmate Sanchez intended to introduce Black Tar Heroin into the Main Institution through the Visiting Room. Inmate Sanchez was placed in Dry Cell Status. When he subsequently defecated, eight balloons were recovered containing an unknown substance. Testing proved positive for Marijuana and inconclusive for Black Tar Heroin. The inmate subsequently defecated and two more balloons were recovered that tested positive for marijuana and inconclusive for Black Tar Heroin. The matter was referred to FBI on September 25, 2000, and the case was accepted for prosecution on September 27, 2000.

#### FTC OKLAHOMA CITY

At approximately 3:45 p.m., a unit officer was in the process of securing the last unit orderly who was putting his cleaning supplies away in the unit supply closet. She instructed him to hurry in order to lock-down for count. At this time, inmate Damon Childers turned around, approached her, grabbed her genitalia area, and returned to his assigned cell. The officer secured the inmate in his cell and immediately notified the operations lieutenant. There were no injuries to staff or inmate. The inmate was placed in the Special Housing Unit without further incident, pending investigation. The FBI has been notified and has accepted the matter for referral to the U.S. Attorney's Office for prosecution.

#### FCI SEAGOVILLE

FCI Seagoville SIS worked a drug introduction case with the FBI in May 1998. Inmate Taylor's girlfriend, Elvie Bell, was supplying Taylor's younger sister, Shilita Taylor, with cocaine. Shilita would bring cocaine-filled balloons to Taylor in the inmate Visiting Room, where he would swallow them. FCI Seagoville SIS confiscated 29 balloons, obtained cooperation from inmate witnesses, and helped obtain a confession from inmate Taylor with the FBI. Inmate Taylor confessed to the SIS and FBI. It was referred to the AUSA, who accepted it for prosecution. Trial is scheduled for November 27, 2000.

#### PERSONAL ISSUES

[REDACTED]

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December 8, 2000

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CASES WITH HEARINGS OR TRIALS

**FCI THREE RIVERS**

Reese v. Cambell, C-99-237 (USDC/SD/TX). On November 13, 2000, this case was tried before U.S. Magistrate Judge Cooper-Hill in Corpus Christi. The plaintiff alleged that the defendant, a correctional officer, by kicking him without justification in the back of the foot, had used excessive force, thus inflicting cruel and unusual punishment on him. The seven-person jury was charged with answering two questions: first, whether the defendant had used excessive force, and second, if the defendant had used excessive force, what, if any, compensation was owed the plaintiff. The jury's first finding was that the defendant had used excessive force. The jury's second finding was that the plaintiff had not suffered a compensable harm. Because judgment could be entered for the plaintiff only if the jury answered both questions in the affirmative, the court, based upon the findings of the jury, entered judgment for the defendant, and the plaintiff took nothing.

**FTC OKLAHOMA CITY**

Trentadue v. United States. Case is currently at trial.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

**FCI FORREST CITY**

Jeff King v. Morrison. In this § 3621(e)/922(g) RDAP case, the United States Court of Appeals for the Eighth Circuit remanded the case to the district court with directions for the Bureau of Prisons to reconsider the inmate's eligibility for early release consideration in light of the 8<sup>th</sup> Circuit opinion.

Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

USP BEAUMONT

Robert Sepeda v. United States, et al., No. 00-2685-RWR (D.D.C.). This case involves a Bivens complaint in which inmate at BMP satellite camp challenges denial of early release eligibility based on application of two-point firearms enhancement under U.S.S.G. § 2D1.1(b)(1). Plaintiff seeks unspecified damages.

FCI BIG SPRING

Skinner. A habeas has been filed in this FCI Big Spring case. The petitioner alleges that the BOP failed to follow the WD/TX court order that BOP assign him to the ICC program, despite BOP's determination that he was ineligible. He seeks a time served order.

See Reese above, and Trentadue above.

SIGNIFICANT TORT CLAIMS

USP BEAUMONT

Tubbs (Civilian). The claimant alleges that on May 27, 2000, she was "illegally arrested" by USP Beaumont staff and improperly detained outdoors in full sunlight and 100 degree temperatures for approximately one hour after her visit with inmate [REDACTED] [REDACTED] was terminated based on the suspicion that the claimant had attempted to pass contraband to inmate [REDACTED] in the visiting room. The claimant alleges that she was on allergy medication that caused her to need to urinate frequently, and that she was denied the opportunity to use the restroom while she was detained. She seeks \$50,000.00 compensation for alleged personal injury. (TRT-SCR-2001-03302)

FCI BIG SPRING

Bertram. Inmate [REDACTED] states that on October 9, 2000, staff were negligent in denying him emergency medical treatment. He is requesting compensation in the amount of \$125,000.00. (TRT-SCR-2000-03090)

b7c

Prado-Yopez. Inmate [REDACTED] states that from October 3, 1999 to October 12, 2000, staff were negligent by denying medical treatment due to racial discrimination and status. He is requesting compensation in the amount of \$125,000.00. (TRT-SCR-2001-03177)

#### FTC OKLAHOMA CITY

Workman. Inmate [REDACTED] claims he fell from the upper bunk on December 22, 1998, and the government was negligent for failing to equip the bunk with a ladder or handrails. Inmate Workman's attorney claims he was found in a pool of blood from a large laceration on his head and he fractured his #6 and #7 cervical vertebrae. Claimant is seeking ten million dollars for his injury and pain and suffering. (TRT-SCR-2001-03049)

Workman. In a related matter to the above claim, [REDACTED] has filed a claim in the amount of five hundred thousand dollars for loss of consortium caused by the alleged serious and permanent injuries to her husband.

Our initial examination of this matter reveals inmate Workman was found lying in a puddle of blood with a large laceration on top of his head and was sent to the local hospital via ambulance. Records are being reviewed to determine if there was any history of seizures or any other reason why he should not have been on the upper bunk. (TRT-SCR-2001-03050)

#### FCI THREE RIVERS

Bruce. The claimant, [REDACTED] who has been released from custody, alleges, with the help of an attorney, that the BOP negligently failed to diagnose and properly treat advanced periodontal disease, with resultant loss of all teeth. Also, he alleges staff negligently failed to properly fit and provide dentures, resulting in intense pain and suffering, the inability to eat, and humiliation. (T-SCR-2001-03134)

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

None

#### UPCOMING TRIALS OR HEARINGS

#### FMC FORT WORTH

McGuire vs. U.S.. A court ordered settlement conference was conducted on December 1, 2000, in this previously reported case. No settlement was reached.

**FCI OAKDALE**

The Kennedy trial has been continued. A new trial date has not been set.

**FCI THREE RIVERS**

Wilcox v. Purdy, et al, C-98-501, USDC/SDTX. This suit involves the allegation that the defendant, [REDACTED] who at the time was SIS Lieutenant at Three Rivers, retaliated against the plaintiff because the plaintiff had filed written grievances against him. b7C

The plaintiff, who was in SHU during this time, alleges first that the defendant confined him in a cell with an inmate who wished to hurt him. Second, the plaintiff alleges that while the defendant investigated the plaintiff's complaint that his cellmate wished to hurt him, the defendant had him placed in a shower cell. Third, the plaintiff alleges that while he was in the regular SHU cell, he was denied an additional mattress which he requested as a place on which to store his legal materials. This mattress, he alleges, was necessary to keep his legal materials dry during the occasional flooding in SHU, occasioned by the stuffing of foreign objects into the drain by inmates.

Trial is scheduled before U.S. Magistrate Judge Ellington in Corpus Christi on December 14. Martin Sweaney will be attending the trial, [REDACTED] b5

**MEDICAL MALPRACTICE**

**LITIGATION**

Michael G. McClure v. U.S. Bureau of Prisons, Civil Action No. 3:00-CV-0795-G (ND/TX) Dallas Division. Petitioner alleges he sought medical care while at FCI Seagoville, for urinary incontinence, but he was refused treatment and "Depends," an adult undergarment. As a result, he alleges he was subjected to a series of humiliating circumstances causing significant emotional distress and depression.

**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

On November 2, 2000, Magistrate Judge Earl S. Hines issued two Report and Recommendations recommending dismissal of the United States and the sole BOP employee named as a Bivens defendant in Eric C. Sampson v. United States, et al., No. 1:99-CV-478 (ED/TX). In this case, former BMP inmate [REDACTED] filed a hybrid FTCA/Bivens complaint in which he claimed that a BMP officer and the United States failed to adequately protect him from an assault by another inmate on February 26, 1998 and negligently failed to provide him adequate medical care for his injuries. Plaintiff sustained second and third degree burns over 12% of his body when another BMP inmate assaulted him by throwing an extremely hot unknown liquid substance on him while he slept during the early morning hours.

When the case was originally filed, plaintiff was represented by retained counsel. However, in the wake of the Report and Recommendations, plaintiff's counsel filed a motion in which he agreed to voluntarily dismiss the United States and the sole BOP Bivens defendant, leaving only the University of Texas Medical Branch (the contractor which provides health care services at FCC Beaumont) and another inmate (plaintiff's alleged assailant) as defendants. Plaintiff now alleges that his counsel took this action without his knowledge or consent, and has advised the court that he wishes to fire his counsel. Additionally, plaintiff has filed a motion to withdraw his counsel's voluntary dismissal of the United States as a defendant. We are awaiting an order on the Report and Recommendations and plaintiff's motions.

CRIMINAL MATTERS AND PROSECUTIONS

## FCI FORREST CITY

United States v. Bunton. A jury trial was held November 20-22, 2000, in this inmate-on-inmate assault case. The inmate was found not guilty.

## FCI SEAGOVILLE

Inmate Frank Taylor and his girlfriend, Elvie Bell, pled guilty to drug introduction charges. Inmate Taylor is scheduled for sentencing in January 2001; Ms. Bell in May 2001. Elvie Bell was supplying Taylor's younger sister, Shilita Taylor, with cocaine. Shilita provided cocaine-filled balloons to Taylor in the Visiting Room. The SIS confiscated 29 balloons filled with cocaine.

## FDC HOUSTON

On October 10, 2000, designated short-term female inmate [REDACTED] [REDACTED] approached staff and requested to speak with a Lieutenant concerning information that a friend of hers had engaged in sexual contact with a staff member. Inmate [REDACTED] subsequently informed the Operations Lieutenant that she herself had engaged in sexual contact with a Correctional Officer. Inmate [REDACTED] reported that during the early morning hours of October 8, 2000, she had engaged in oral sex and sexual intercourse with the Officer in the staff restroom located in the female housing unit. Staff transported inmate [REDACTED] to an outside hospital for an examination. The matter is being investigated by OIG and the FBI. Inmate [REDACTED] projected release date was December 2, 2000. b7c

## FTC OKLAHOMA CITY

At approximately noon on October 26, 2000, inmate [REDACTED] demanded the PA to refill his medication. The inmate became verbally assaultive when he was advised he had to go through appropriate channels, and he shoved the PA in the chest area. Once outside the unit, the inmate shoved the officer in the chest area as well. The FBI has been notified and an investigation is pending.

At approximately 4:45 a.m. on November 20, 2000, staff were escorting inmate [REDACTED] from SHU to R&D for the outgoing airlift when he started spitting on the officer, striking him in the left eye. Inmate [REDACTED] was immediately placed on the floor. One staff sustained a contusion of the right hand and the other was examined for the spit in his left eye. Inmate [REDACTED] sustained minor abrasions to both wrists and ankles where he had struggled against restraints. The FBI has not determined whether this matter will be referred for prosecution.

**CORRECTION:** Last month it was reported that inmate [REDACTED] had grabbed a female staff's genitalia area as she waited for him to put away the cleaning supplies prior to the 4 p.m. count. It was reported the FBI has agreed to refer the matter to the U.S. Attorney's Office for prosecution; however, the FBI has subsequently indicated they declined referring the matter for prosecution, because the BOP had no witnesses. The Warden concurs with this decision.

**FCI TEXARKANA**

On November 19, 2000, inmate Jose Castillo walked away from the Satellite Camp. The U.S. Marshal Service has been notified.

**PERSONAL ISSUES**

b2

**Scheduled Annual/Sick Leave:**

b6

- December 7- January 5 - LWOP
- December 13-20 - Sick Leave
- December 20-22 - Annual Leave
- December 26-29, January 2 - Annual Leave
- December 26-29 - Annual Leave
- January 2-5 - Annual Leave

**U.S. Department of Justice**

*Federal Bureau of Prisons*

South Central Regional Office

Dallas, Texas 75219

January 10, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - December 2000

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NO V	DEC
RECEIVED	227	220	304	219	255	329	257	296	244	257	23 7	153
ANSWERED	105	132	162	182	169	203	241	158	218	160	20 5	129

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	257	256	280	261	279	290	272	266	275	279	223	223
RECEIVED	61	76	53	46	70	72	68	78	59	49	50	61
ANSWERED	62	62	82	40	82	70	69	75	68	93	49	56
PENDING	256	270	251	267	267	292	271	269	266	235	224	228
OVER SIX MO	0	0	0	0	0	0	0	1	1	0	0	0

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	5	13	10	35	45	31	53	42	32	58	42	43
RECEIVED	48	58	98	81	74	84	58	66	89	61	61	61
ANSWERED	40	61	73	71	88	62	69	77	63	77	60	54
PENDING	13	10	35	45	31	53	42	31	58	42	43	50
OVER 20 DAYS	0	0	0	0	0	0	0	2	0	2	2	5

LITIGATION												
	JA	FE	MA	AP	MA	JU	JU	AU	SE	OC	NO	DE
	N	B	R	R	Y	N	L	G	P	T	V	C
CASES RECD	12	11	7	9	24	10	20	20	9	17	15	20
CASES CLOSED	12	5	11	13	15	7	35	5	0	7	6	3
HABEAS CORPUS	7	7	2	6	16	6	13	15	5	7	10	15
BIVENS	3	2	2	2	6	2	7	1	3	9	3	4
FTCA	2	2	0	0	1	2	0	4	0	1	2	0
OTHER	0	0	3	1	1	0	0	0	1	0	0	1
LIT REPORTS	12	11	7	10	12	7	9	12	9	19	9	4
HEARINGS/ TRIALS	1	4	2	2	1	0	1	0	5	2	3	2
SETTLEMENTS/ AWARDS	0	0	1	0	0	1	1	0	0	1	0	0

### CASES WITH HEARINGS OR TRIALS

#### FCI FORREST CITY

Jeff King, Sr. v. Marvin D. Morrison. Hearing date was December 20, 2000. The Judge ordered that the BOP release inmate King on or before December 28, 2000, to begin his supervised release immediately. The decision was based on the district court's desire to allow the inmate to receive early release based on his favorable ruling in the 5<sup>th</sup> Circuit. The BOP decided not to appeal this decision.

#### FMC FORT WORTH

McGuire v. United States, et al., 4:91-CV-831-Y. The McGuire case is a previously reported wrongful death case. Plaintiff, Rochelle McGuire, filed a Bivens and FTCA case on behalf of the two minor children of her daughter, Sheila A. Moore, a former inmate at the Federal Correctional Institution, Fort Worth, Texas. Ms. Moore died on January 3, 1988, as a result of ingesting cocaine while confined as a federal inmate at FPC, Fort Worth. A court ordered settlement conference was held; however, no settlement was reached. The trial was held on January 9, 2001. The plaintiff moved for a voluntary court dismissal, which was granted.

### CASES WITH SETTLEMENTS OR AWARDS

#### a. Adverse judgments

See King above.

#### Tort Claim settlements

GEICO General Insurance. A settlement offer was accepted in the amount of \$4,569.20 as a result of an automobile accident that occurred on April 20, 2000. This accident occurred when an

inmate from the Federal Prison Camp in El Paso, operating a UNICOR transport bus, rear-ended a 1994 Nissan Altima, owned by Mr. Joe Ogle. (TRT-SCR-2000-01659)

**c. Other settlements**

None

**SIGNIFICANT CASES**

**FTC OKLAHOMA CITY**

On December 15, 2000, the day after closing arguments were heard in Trentadue v. U.S.A, et al., the jury returned a verdict for the Plaintiff in the amount of \$20,000.00, finding former BOP Lieutenant Stuart Lee had been deliberately indifferent to the inmate's medical need. This was a jury verdict against Mr. Lee in his individual capacity. The Judge has not yet ruled on the FTCA claim against the government.

**SIGNIFICANT TORT CLAIMS**

None

**SIGNIFICANT ADMINISTRATIVE REMEDIES**

None

**UPCOMING TRIALS OR HEARINGS**

None

**MEDICAL MALPRACTICE**

**LITIGATION**

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

FMC FORT WORTH

Judge Melinda Harmon and five officers from the U. S. District Court, Houston, Texas, conducted a hearing regarding inmate Jorge Collazo. The hearing was conducted at FMC Fort Worth because the inmate is paralyzed from the waist down and the court does not have related accommodations. On January 4, 2001, the inmate was arraigned on the charges and the case is set for trial.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BEAUMONT (LOW)

The trial of inmate *b7C* is currently scheduled to begin on January 22, 2001. As previously reported, inmate *b7C* has been charged with Possession With Intent to Distribute Marijuana in violation of 21 U.S.C. § 841(a), and Possession of a Prohibited Object in Prison in violation of 18 U.S.C. § 1719(a), in connection with his attempt to smuggle marijuana into the institution through the Visiting Room in June 2000.

USP BEAUMONT

The trial of a former correctional officer is currently scheduled to begin on January 16, 2001. As previously reported, on April 3, 2000, the officer was arrested in Houston after accepting a delivery of crack cocaine intended for introduction

into the institution and distribution to inmates. Also arrested in connection with this incident were two civilians who delivered the cocaine to the officer. On April 20, 2000, the officer and his co-defendants were indicted on charges of Conspiracy to Possess With Intent to Distribute Crack Cocaine in violation of 21 U.S.C. § 846, and Possession With Intent to Distribute Crack Cocaine in violation of 21 U.S.C. § 841. Both of the officer's co-defendants have entered into plea agreements and plead guilty to Conspiracy to Possess With Intent to Distribute Cocaine. The officer has refused to enter into a similar plea agreement and has elected to go to trial.

#### **FCI EL RENO**

On December 23, 2000, a Hispanic inmate was seriously assaulted by a rival Hispanic gang member in one of the housing units. The inmate-victim remains hospitalized. During the incident, Correctional Officer Doyle was assaulted by the attacking inmate but sustained minor injuries. Both assaults have been referred to the FBI for criminal prosecution.

#### **FTC OKLAHOMA CITY**

On November 30, 2000, at approximately 11:06 a.m., inmate Lujan-Elizondo became agitated and loud in front of other inmates after the Captain conducted town hall regarding sanitation issues. The inmate was brought out of the housing unit to talk with the Captain when the inmate turned and struck the Captain in the face. The Unit Officer, Acting Associate Warden (P), and Counselor were present, and brought the inmate to the floor. The Captain sustained a laceration above his right eye, and the inmate had minor bruising. On December 1, 2000, the U.S. Attorney's Office agreed to accept this matter for prosecution and it is currently scheduled for the January 2001 grand jury docket.

#### **PERSONAL ISSUES**

b2

Scheduled Annual/Sick Leave:

b6

- January 19

- Annual Leave