

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

March 9, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - February 2001

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NO V	DEC
RECEIVED	198	175										
ANSWERED	122	121										

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	225	227										
RECEIVED	72	49										
ANSWERED	80	48										
PENDING	217	228										
OVER SIX MO	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	43	57										
RECEIVED	10	56										
	2											
ANSWERED	95	68										
PENDING	57	45										
OVER 20 DAYS	3	3										

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	17	11										
CASES CLOSED	5	5										
HABEAS CORPUS	11	4										
BIVENS	4	5										
FTCA	1	1										
OTHER	1	1										
LIT REPORTS	12	15										
HEARINGS/ TRIALS	1	0										
SETTLEMENTS/ AWARDS	0	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

FCI FORREST CITY

Philip Fairchild v. Marvin D. Morrison. In this FCI Forrest City case, the District Judge denied the government's Motion for Summary Judgment. In this discipline related habeas case, the court felt that the parties were at odds over the basic facts concerning what notice was given to inmate Fairchild and what rights were afforded him in the disciplinary process. The factual dispute precluded the entry of summary judgment on the issue of whether due process was afforded him in the disciplinary process. Due to the nature of the ruling being fact sensitive, as opposed to a rule of law, we will not seek an appeal.

FCI THREE RIVERS

Chambers v. Purdy, et al., CA-C-00-337 (WDTX). In this hybrid FTCA and Bivens-style FCI Three Rivers suit, the plaintiff seeks to sue the United States and six individually-named defendants, alleging that he was continuously subjected to second-hand smoke, and was harassed in retaliation for complaining about it. The plaintiff, who has exhausted his administrative remedies, does not specify the amount of damages which he seeks, but his administrative tort claim was for \$1,587,750.00.

FCI EL RENO

Fortunatus Wilcox v. Aleman, No. 00-6221 (10th Cir. Feb. 12, 2001). This case, won at the district court level, is a § 2241 case involving a DHO hearing. The 10th Circuit affirmed in part and reversed in part. The 10th Circuit has remanded the case for an evidentiary hearing to determine whether or not pe

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

FCI FORREST CITY

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,			,	,	<	2	,	4	*	.		2
)	*		3	,	.		4	33

MEDICAL MALPRACTICE

LITIGATION

None

TORT CLAIMS

None

None

SITUATIONS OF INTEREST

None

CRIMINAL MATTERS AND PROSECUTIONS

FCI BEAUMONT (ADMIN)

On February 1, 2001, the United States Attorneys Office filed charges against a former FCC Beaumont contract art teacher for Sexual Abuse of a Ward in violation of 18 U.S.C. 2243(b). As previously reported, on October 3, 2000, the contract teacher was terminated after she admitted to investigating SIA staff that she had engaged in sexual or otherwise inappropriately personal relations with inmates. She entered a plea of not guilty at her arraignment on February 20, 2001. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b5

The sentencing hearing of former FCC Beaumont Inmate Services employee [REDACTED] is scheduled for March 23, 2001. [REDACTED]

b7

[REDACTED] had previously pleaded guilty to Sexual Abuse of a Ward in

On February 4, 2001, inmate [REDACTED] threw food items from his SHU cell food slot striking the officer in the stomach area. The officer sustained no injuries. [REDACTED]

[REDACTED]
[REDACTED] b5

On February 12, 2001, the Duty Officer was conducting unit sanitation rounds when inmate [REDACTED] sprayed an unknown substance at the Duty Officer striking the back of his head and shoulder area. The staff member sustained no injuries. The FBI has declined referring this matter for prosecution due to the lack of injuries. The Warden concurs. b5

PERSONAL ISSUES

[REDACTED]

b6

Scheduled Annual/Sick Leave:

[REDACTED]

- March 12-16

[REDACTED]

- March 12-16

U.S. Department of Justice

Federal Bureau of Prisons

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April 10, 2001

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

FROM: Michael D. Hood, Regional Counsel

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PENDING	225	227	231									
RECEIVED	72	49	86									
ANSWERED	80	48	69									
PENDING	217	228	248									
OVER SIX MO	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	43	57	45									
RECEIVED	10	56	89									
ANSWERED	2											
PENDING	95	68	77									
OVER 20 DAYS	57	45	57									
	3	3	5									

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	11	21									
CASES CLOSED	5	5	12									
HABEAS CORPUS	11	4	13									
BIVENS	4	5	4									
FTCA	1	1	3									
OTHER	1	1	1									
LIT REPORTS	12	15	16									
HEARINGS/ TRIALS	1	0	1									
SETTLEMENTS/ AWARDS	0	0	0									

CASES WITH HEARINGS OR TRIALS

FDC OAKDALE

FDC Oakdale reports a one-day trial occurred in Kennedy v. United States (WD/LA), on March 5, 2001. The former inmate plaintiff, acting pro se, sought relief pursuant to the FCTA under a failure to protect theory. Specifically, he claimed FDC Oakdale staff did not respond to his request for a new cellmate in a timely manner. Prior to implementation of an approved change in cell assignment, an altercation occurred between plaintiff and his cellmate during which plaintiff sustained a broken hip. The Court entered a judgment in the government's favor on March 20, 2001. The former inmate has another FTCA action pending in the District of Maryland, the location of his current residence, in which he challenges the decision of FDC Oakdale staff to deem his refusal to wear a black box as a refusal to attend a follow-up visit for an examination of his surgically repaired hip.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FCI BIG SPRING

William P. Skinner v Ralph J. Payne, Warden; A-00-CA-685-JRN. In this case, an FCI Big Spring inmate alleged that the BOP failed to follow his sentencing court's order on April 7, 2000, that BOP assign him to the ICC program, despite BOP's determination that he was ineligible. On October 26, 2000, Skinner filed a habeas petition asking his sentencing court to amend his sentence to impose the functional equivalent of a completed assignment to ICC. On November 13, 2000, Skinner was transferred to the ICC program at FCI Lompoc. After his arrival, he declined to participate in the program and was transferred back to FCI Big Spring on November 27, 2000. On February 23, 2001, Judge James R. Nowlin, Chief United States District Judge for the Western District of Texas, ordered Skinner released based on time served due to his significant contributions to the prosecution. On February 26, 2001, Judge Nowlin dismissed the habeas petition as moot because Skinner had been previously released.

FCI LA TUNA

As previously reported, _____ (formerly an FCI La Tuna inmate) was released as a result of an adverse U. S. District Court ruling relating to the 18 U.S.C. 3621(e) early release provisions. The BOP was successful on appeal to the 5th Circuit, and the U. S. District Court reversed the order which released _____ failed to appear on his March 15, 1999, surrender date. The Criminal AUSA filed a motion for an order directing the defendant to surrender to the U. S. Marshals Service for execution of the balance of his federal sentence. _____ filed 2 successive habeas petitions to have a hearing on the merits already decided in the 5th Circuit. On March 9, 2001, Judge Stephen M. Reasoner, in the Eastern District of Arkansas District Court, ordered dismissal with prejudice of _____ Habeas Petition reasoning the 8th Circuit was bound by the 5th Circuit's decision on the merits. _____ then filed a request for an evidentiary hearing on his motion for reconsideration. On March 14, 2001, Judge Reasoner denied _____ request on his motion for reconsideration and ordered _____ to report to the BOP on March 23, 2001. _____ then moved the court for an order allowing him to serve his undischarged sentence in a halfway house. On March 23, 2001, Judge Reasoner held the court lacked jurisdiction to determine _____ place of confinement and ordered _____ to report to FCI Forrest City on April 2, 2001.

FTC OKLAHOMA CITY

Lisa Booth v. Bureau of Prisons et al. Former inmate Lisa Booth, and three other female inmates, filed this FTCA/Bivens action against the Bureau and former Correctional Counselor Breavess McBride for the sexual assault committed by Breavess McBride in 1996 and 1997. Breavess McBride is currently incarcerated at FMC Fort Devens. Although three of the four plaintiffs filed a tort claim administratively, the claims were filed after the two-year statute of limitations and, thus, were denied as time barred. The U.S. Attorney's Office in the Eastern District of Pennsylvania is contemplating filing a dispositive motion for summary judgment, or alternatively a motion for change of venue to the Western District of Oklahoma.

SIGNIFICANT TORT CLAIMS

None

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

FCI FORREST CITY

Allen Bernard Ware v. Marvin Morrison. This is a case in which the district court denied qualified immunity on the legal issue of inmate visitation. A trial date has been set for April 23, 2001, in the Eastern District of Arkansas. DOJ has approved an interlocutory appeal.

MEDICAL MALPRACTICE

LITIGATION

None

TORT CLAIMS

None

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

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May 10, 2001

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - April 2001

ADMINISTRATIVE REMEDIES												
	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
RECEIVED	198	175	218	208								
ANSWERED	122	121	135	150								

TORT CLAIMS												
	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
PENDING	225	227	231	239								
RECEIVED	72	49	86	72								
ANSWERED	80	48	69	61								
PENDING	217	228	248	250								
OVER SIX MO	0	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	43	57	45	57								
RECEIVED	102	56	89	71								
ANSWERED	95	68	77	95								
PENDING	57	45	57	33								
OVER 20 DAYS	3	3	5	1								

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	11	21	19								
CASES CLOSED	5	5	12	17								
HABEAS CORPUS	11	4	13	8								
BIVENS	4	5	4	9								
FTCA	1	1	3	1								
OTHER	1	1	1	1								
LIT REPORTS	12	15	16	19								
HEARINGS/ TRIALS	1	0	1	2								
SETTLEMENTS/ AWARDS	0	0	0	0								

CASES WITH HEARINGS OR TRIALS

FCI EL RENO

A status conference was held on April 19, 2001, in front of Magistrate Judge Argo in Wilcox v. Aleman, et al., No. 00-6221 (10th Circuit). The conference pertained to a remand order by the 10th Circuit on the issue of inmate Wilcox being coerced into waiving his right to call witnesses at his DHO hearing in July, 1998, at FCI Three Rivers. Since Wilcox has discharged his federal sentence, a Motion to Dismiss was filed arguing the case is moot. A tentative evidentiary hearing date has been scheduled for June 25, 2001, at 9:00 a.m..

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

Alcala. On April 12, 2001, the 5th Circuit, in a very short opinion, upheld Bureau policy regarding the non-selection of inmates with deportation orders for work in UNICOR. We prevailed in the District Court and the inmate, who was at FCI Three Rivers, appealed to the 5th Circuit.

Richard Paul Henrikson v. Bob Guzik; Case No. 4:99 - CV-0579J, N.D. TX. On July 19, 1999, inmate Henrikson filed a Writ of Habeas Corpus pursuant 28 U.S.C. § 2241 and 18 U.S.C. § 4042(b) challenging the Bureau of Prisons' determination that he was subject to the notification requirement under 18 U.S.C. § 4042(b). This determination was based on his prior 1977 state conviction for Arson of a Dwelling even though his current offense, Possession of Unregistered Firearms, did not meet the criteria for notification purposes. The U. S. District Court for the Northern District of Texas dismissed the case, upholding the Bureau or Prisons' interpretation of statute (see Program Statement 5110.12, Notifications of Release to State and Local Law Enforcement Officials) requiring notification to law enforcement officials for inmates releasing with prior convictions determined to be crimes of violence and drug

trafficking crimes. Inmate Henrikson appealed the U.S. District Court's decision. Subsequently, on April 24, 2001, the United States Court of Appeals, Fifth Circuit, reversed the District Court's decision and "held that statute required Bureau of Prisons to notify only if prisoner's current conviction was for a crime of violence or a drug trafficking crime."

The U.S. Court of Appeals found the District Court erred in affording deference to Chevron. Additionally, the U. S. Court of Appeals "did not find the Bureau's construction of section 4042(b) in this respect as set forth in Program Statement 5110.12 to be a permissible, much less a persuasive, one." We have requested guidance by Central Office on future notification procedures.

See Trentadue under Significant Cases Section.

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FMC FORT WORTH

Haliq v. United States of America, Civil Action 4:97-CV-1030-Y, Northern District of Texas-Ft. Worth Division. This case is a slip and fall case. 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. A trial

was held on November 8, 2000. In March 2001, the Judge found the government was not liable and dismissed the case with prejudice.

FTC OKLAHOMA CITY

Trentadue. On December 15, 2000, the day after closing arguments were heard, 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 needs. This was a jury verdict against Mr. Lee in his individual capacity. On May 1, 2001, Judge Tim Leonard ordered the United States to pay the Trentadue family 1.1 million dollars for the intentional infliction of emotional distress under the Federal Tort Claims Act. The Court stated that the BOP failed to inform the family in advance as to the existence of the extensive injuries to Trentadue and that an autopsy had been performed.

SIGNIFICANT TORT CLAIMS

None

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

Paula Strothers' trial is scheduled for June 25-26, 2001. This FMC Carswell conditions of confinement Bivens case will be before Judge McBryde. The defendants are Joseph Bogan, former Warden, O. Ivan White, former Regional Director, Lisa Austin, Ad/Max Unit Manager, Wendy Roal, former National Appeals Administrator, and Elizabeth Sanford, SCR DHO.

MEDICAL MALPRACTICE

LITIGATION

None

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

FCI BASTROP

U.S. District Judge Hinojosa's visit on March 30, 2001, with 20 students from the University of Texas School of Law went well. The law students are in a class on federal sentencing which Judge Hinojosa teaches. They found the experience very educational.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BEAUMONT (ADMIN)

On April 18, 2001, the Grand Jury indicted Carliette Martin, a Food Service employee at FCC Beaumont, with willfully and knowingly making false, fictitious, and fraudulent material statements in connection with the use of her government credit card in violation of 18 U.S.C. § 1001 on August 19, 2000.

FCC Beaumont (Low)

Inmate Clarence Lee pled guilty to Possession of Marijuana on April 17, 2000. He received an 8-month sentence and a \$100 fine.

PERSONAL ISSUES

Scheduled Annual/Sick Leave:

- May 11 - Annual Leave
- May 25-29 - Annual Leave
- May 25 - Annual Leave
- May 29-June 1 - Annual Leave
- May 30-June 4 - Annual Leave
- June 5-6 - Sick Leave

blo

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CASES WITH HEARINGS OR TRIALS

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SIGNIFICANT ADMINISTRATIVE REMEDIES

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