

**LITIGATION NARRATIVES**  
**JANUARY 1, 1997 - MARCH 31, 1997**

**SIGNIFICANT CASES**

**L. J. and Maylene Carter, LR-C-95-407 (ED/AR)**

In this FTCA action, the plaintiffs sought reimbursement for subsistence fees charged while they were housed in a halfway house. Their theory was based on the fact that the Judgment and Commitment Order, which did impose fines and restitution, contained the form language that "The fine includes any costs of incarceration and/or supervision." On January 21, 1997, the court ruled that we acted within our authority in collecting the subsistence fees, and that our actions were not in violation of the J & C. The court also noted that plaintiffs did have a choice in the matter - if they did not want to pay subsistence, they could have been housed in a correctional institution, where no subsistence or costs of incarceration would have been assessed.

**Rolf W. Starke v. John M. Tombone, et al., 396-CV3454-G (ND/TX)**

This is a Section 1983 case. Plaintiff alleges that the defendants have conspired under the color of state law to violate his First, Fifth, Sixth, Eighth, and Fourteenth amendment rights. Specifically, plaintiff states that his health has suffered as a result of inhaling secondary smoke from cigarettes, cigars, and pipe tobacco products. He only asks for judgment against the defendants. He does not request any monetary damages.

**Kenneth Lee Stewart v. John Tombone, Warden, 397-CV0129-R and Talford H. Royal v. John Tombone, Warden, 397-CV0182-H (ND/TX)**

Basically, this is a 3621(e) appeal. There's a little bit of a different twist in these cases versus the normal 3621(e) cases. Petitioners are not challenging the fact that the Bureau of Prisons has classified their crime as a "crime of violence". Rather, they contend that the Bureau of Prisons entered into a "contractual" agreement with them which stated that if they completed the 500 hour DAP Program, they would receive a year off their sentence. They state that they were granted the one year off, but when the new program statement concerning crimes of violence was issued, staff at FCI Seagoville found them ineligible for early release. They contend that the Bureau's denial of the year off creates a state created liberty interest.

**Wilson Harrell v. Kathleen Hawks, 97-0048-A (WD/OK)**

The Bivens case recently filed by inmate Harrell is based on the Ensign Amendment. Harrell is alleging his counselors, the unit

manager, the ISM, Warden, Mr. Cooksey, and the Director of the BOP, conspired to deprive him of his 1st, 4th, 5th, 9th, and 14th amendment rights. Harrell is seeking \$1,000,500.00 in damages, an injunction, and attorney fees. Harrell has not exhausted his administrative remedies.

**Donald Holmes v. S. W. Phelps, et al.**, 5:96CV225 (ED/TX)

The plaintiff alleges harassment, discrimination, and verbal and physical abuse by FCI Texarkana staff.

**CASES WITH HEARING OR TRIAL**

**Hoot v. Gibson**, A-96-CA-390 (WD/TX)

On January 28, 1997, Judge Sparks held a hearing to consider the petitioner's request for DAP credit for seven weeks spent in non-DAP bed as the result of mutual error of staff and petitioner. The Central Office's position that the petitioner had not met the statutory requirement of 180 days in a DAP bed was articulated by Dr. J. Jones, DAP Administrator, SCRO. The Court ruled that the equities of the case were in the petitioner's favor, and entered judgment orally in favor of the Petitioner.

**Gerald Esposito v. George E. Killinger, et al.**, 4:96-CV-927-Y  
ND/TX

A hearing was held on January 31, 1997, on a pending TRO on ESPOSITO, Gerald, who claims we have denied him adequate medical care. At the hearing, the Court denied the TRO due to the requested medical procedure being scheduled. The Judge suggested that Inmate Esposito drop the case to avoid it being dismissed as frivolous.

**Noel Edward Plunkett v. Joe Gunja, et al.**, C-96-548 (SD/TX)

**Bivens case.** Reported in February. Evidentiary hearing held on March 7, 1990. No ruling as of this time.

**Dennis O'Neal McAnnich v. Frank Woods, et al.**

**Bivens case.** **Spears** hearing held on March 25, 1997.

**United States v. Rasha Mansour**, 4:97-CV-079-Y (ND/TX)

A commitment hearing for hospitalization was held at FMC Carswell on March 12, 1997, pursuant to 18 USC 4245. Ms. Mansour was committed to our inpatient unit.

**Spanjol v. USA**

A trial was held in Sherman, Texas on March 12-13, 1997. The judge ordered both parties to submit their closing briefs within 10 days. Ruth Yeager, Deputy Civil Chiefs, feels very optimistic of our chances of prevailing.

**CASE WITH SETTLEMENT OR AWARD**

**Maria Ramos v. U.S.A.**, Civil Action No. EP-94-CA-342-MC (ND/TX) Adverse judgment rendered by magistrate. Action brought by the mother and daughter of a former inmate at FPC La Tuna. The daughter has cerebral palsy and cannot walk, talk, or breathe without assistance. In October 1993, when the family went to visit inmate Juan Ramos, there was no handicapped ramp to access the visiting area. The Warden allowed Mrs. Ramos, because she was a frequent visitor, to use the loading ramp around the side of the building. Because a government vehicle was blocking the ramp, Mrs. Ramos wheeled her daughter along the roadway. The roadway contained concrete splatters and was bumpy. Ramos' chair hit one of the concrete bumps, and Ramos became dislodged from her wheelchair. She sustained almost no physical injuries. The Court awarded \$30.00 in actual damages, and \$5,970.00 in pain and suffering (Total judgment \$6,000.00). BOP and U.S. Attorney's Office have agreed to not appeal this case.

**SIGNIFICANT TORT CLAIMS**

Inmate Marsha BUCHANON, Register Number 19548-001 - Former inmate at FMC Carswell has submitted an administrative claim (T-SCR-97-20), alleging that while she was being x-rayed on January 17, 1995, the x-ray machine malfunctioned and she sustained burns to both of her eyes. She claims that the examination revealed she had sustained flash burns and had photophobia/photo sensitivity. She is seeking three hundred thousand dollars (\$300,000.00) in damages. A review of the medical documents she attached to her claim indicates that on January 17, 1995, a physician at FMC Carswell noted in her medical chart that she had photophobia secondary to flash in her eyes.

AGERTON, Dr. William D. (Civilian) - (T-SCR-96-472) Dr. Agerton alleges that he was employed by EMCare to provide medical services to health care providers, such as the Federal Medical Center in Fort Worth, Texas, and on May 16, 1996, Dr. John Barry (Clinical Director) refused to allow him to provide medical care at FMC Fort Worth. Dr. Agerton alleges that he has sustained loss of pay and restriction of hospital privileges.

The South Central Regional Health Services Administrator has indicated that the contract was with EMCare and not with any individual. It is not clear at this time why Dr. Agerton was denied access to FMC Fort Worth; however, the claim is currently being investigated by staff at Fort Worth. Dr. Agerton is seeking \$100,000.00 in damages.

BOSTIC, Billye E., Register Number 62285-080 has filed an administrative claim (T-SCR-97-53) because the Bureau of Prisons imposed a cost of incarceration fee. He alleges that after he refused to pay \$21,352.00 per year, he was placed on refusal status until he paroled on June 3, 1996. He contends that he lost early parole consideration, halfway house placement, pay for six months, social security pay for three months, three months of earnings, work privileges, dormitory privileges, and purchase privileges.

Mr. Bostic has attached a Memorandum and Opinion (Billye E. Bostic v. Joe Aguirre, Warden, EP-96-CA-139-DB) by United States District Judge David Briones, in which Mr. Bostic's Habeas was granted. Judge Briones stated that the "Bureau of Prisons shall not collect cost of incarceration fees" because Mr. Bostic's sentence did not meet all three prongs of 28 C.F.R. § 505.1. In addition, there is documentation attached to Mr. Bostic's claim that indicates that the Bureau of Prisons continued to hold him accountable for the cost after Judge Briones issued the order on April 30, 1996.

ROBERTSON, Vernon Ray, Register Number 17017-057 has filed an administrative tort claim alleging that on December 16, 1996, he was violently assaulted by a State of Oklahoma inmate while they were housed at FTC Oklahoma City. Mr. Robertson contends that he was beaten and stabbed with a broom handle. He also states that the inmate had a history of violence and that BOP staff failed to provide adequate protection. He seeks \$300,000.00 in damages. (T-BOP-97-015)

GADSON, Floyd, Register Number 09390-058 - Mr. Gadson contends on June 13, 1996, he requested medication for his diabetes. He states that he was refused treatment and was issued an incident report. He contends that as a result of the denied medical care, he developed a diabetic ulcer on his foot, which burst open and has caused him a significant amount of pain. Mr. Gadson requests \$4,500,000.00 for emotional distress and permanent physical injury. (T-SCR-97-44)

CARTER, Norma J., Register Number 21603-034 - Harry T. Winmann, 3850 N. Causeway Boulevard, Number 590, Metairie, Louisiana, has filed a claim (T-SCR-97-28) on behalf of Norma J. Carter. Ms. Carter alleges that medical staff at FPC Bryan denied timely surgical care for a pilonidal abscess and that she ultimately had

**SIGNIFICANT ADMINISTRATIVE REMEDIES**

Fort Worth received and responded to Administrative Remedy #128997-F1, in which Wali Muhammed, Reg. No. 19148-009, alleged Nation of Islam were denied access to an additional meeting time and their yearly ceremonial meal. There was no validity to the allegations.

Administrative Remedy 130071-F1, Inmate Freeman, requests to display a "dream catcher". He alleges this is an American Indian religious belief. Information received indicates the BOP does not recognize this as a religious item although some institutions allow it. Texarkana denied the inmate's request. Our office has not received a regional appeal regarding this issue. The inmate has until April 17, 1997 to file an appeal.

Inmate Wayne Matra, at FCI Texarkana, filed a Request for Administrative Remedy, Case Number 124992-F1, the inmate alleges discrimination in religious practices. He alleges the institution is not utilizing the proper "prayer oil". The institution's response was that the oil was not a religious item in itself; however, it was used to facilitate a religious practice. We agreed to return to using the requested oil.

Inmate Baxendale filed Administrative Remedy 125535-F1, alleging that the BOP misinterpreted the Ensign Amendment. He specifically requested to continue receipt of "Playboy".

**ENSIGN AMENDMENT:****LITIGATION**

See Harrell v. Hawkins under significant cases.

**TORTS**

Adam Winchester has submitted a tort claim seeking \$128.80 because he is not receiving his monthly subscription of Penthouse magazine.

to undergo a colostomy. Ms. Carter is a diabetic and contends that she is susceptible to wound infection. She is seeking \$500,000.00 in damages.

COLLINS, Clyde, Register Number 16940-009 - (T-SCR-97-64) The family of deceased inmate has filed a claim for the death of Mr. Collins. Al Weisenberger, an attorney in El Paso, has submitted the claim, but there is no authorization from Mrs. Collins or any of Mr. Collins' six children authorizing Mr. Weisenberger to represent them in a wrongful death claim against the government.

Mr. Collins died from a heart attack while playing softball at FPC El Paso on July 17, 1996. The Collins family contends that the Bureau of Prisons did not provide adequate treatment for Mr. Collins abnormal EKG in March 1995, nor was the annual physical conduct in March 1996. The family also states that staff failed to perform CPR within a reasonable time, prohibited another inmate "who was trained in CPR" to perform CPR, and did not timely summons an ambulance. The claimants seek \$15,000,000.00 in damages (\$5,000,000 for personal injury and \$10,000,000.00 for wrongful death).

PETERSEN, Justin, Register Number 98535-012 - Mr. Petersen contends that during transfer between MDC Los Angeles and FCI Bastrop his prosthetic socks were lost, that because staff did not replace the socks he has suffered a breakdown of the skin on his amputated stump, that FCI Bastrop is not adequately equipped to house disabled inmates, that while he was housed there he slipped and hit his head on his locker, and that the shower bar broke and he fell causing a bruise to his hand. Mr. Petersen complains that he was transferred to USFMCP Springfield for treatment, but because he only had 5 months remaining to be served, staff would not consider making any significant repairs to his prosthetic device. He seeks \$900 for temporary repair of his prosthesis, \$18,000 for replacement of his prosthesis and \$15,000 for personal injury. (T-NCR-97-150). Investigation pending.

FANTROY, Richard, Register Number 27764-077, alleges during June 1996 at FMC Fort Worth, he was given incorrect medication for his medical condition. The claim is in the amount of \$500,000. (T-SCR-97-47). Investigation pending.

TELFAIR, Milton, Register Number 59903-080, has filed a claim concerning his medical treatment at FCI Oakdale. He is confined to a wheelchair and suffers from recurrent anal fissures. He underwent a hemorrhoidectomy and anal fissurectomy, but feels additional treatment should have been provided. He is currently incarcerated at FMC Fort Worth. (T-SCR-97-25). Investigation pending.

**LITIGATION**

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR											
NER											
SER											
NCR											
SCR	99	73	5	18	3	75	211	22	6	1	0
WXR											
CO											
TOT											

**NARRATIVE ANALYSIS**      NARRATIVE ATTACHED ON SEPARATE PAPER

**DEFINITIONS**

**LOC - LOCATION**  
**NUM - NUMBER OF TOTAL LAWSUITS FILED IN QUARTER**  
**HC - NUMBER OF HABEAS CORPUS ACTIONS FILED**  
**FTC - NUMBER OF FTCA ACTIONS FILED**  
**BIV - NUMBER OF BIVENS ACTIONS FILED**  
**OTH - OTHER ACTIONS FILED**  
**ANS - NUMBER OF LITIGATION REPORTS COMPLETED**  
**PEN - PENDING**  
**CLD - NUMBER OF ACTIONS CLOSED**  
**H/T - NUMBER OF HEARINGS OR TRIALS (INCLUDE INFO IN NARRATIVE)**  
**SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)**  
**AWD - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)**  
**GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE IN NARRATIVE)**

Tort Claims Second Quarter - FY97 (January 01, 1997 - March 31, 1997)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amnt	Pen	Den	OD	A/O	A/P
JCR	112	68	25	4	2	13	11	698	158	64	0	0	120

Variable Definition

Time Period

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Num - Number of claims filed ..... 01/01/97 =< D_Accept <= 03/31/97
PP  - Personal Property claims ..... 01/01/97 =< D_Accept <= 03/31/97
PI  - Personal Injury claims ..... 01/01/97 =< D_Accept <= 03/31/97
PPPI - Both PP & PI claims ..... 01/01/97 =< D_Accept <= 03/31/97
WD  - Wrongful Death claims ..... 01/01/97 =< D_Accept <= 03/31/97
Med - Medical claims ..... 01/01/97 =< D_Accept <= 03/31/97
Set - Settled/approved claims ..... 01/01/97 =< D_Closed <= 03/31/97
Amnt - Amount paid ..... 01/01/97 =< D_Closed <= 03/31/97
Pen - Pending/open claims .....           >> Entire Database <<
Den - Number of claims Denied ..... 01/01/97 =< D_Closed <= 03/31/97
OD  - Number of claims OverDue .....           >> Entire Database <<
A/O - Avg number of days Overdue ..... 01/01/97 =< D_Closed <= 03/31/97
A/P - Avg number of days to Process .. 01/01/97 =< D_Closed <= 03/31/97
▶ Med = PIM+ WDM+ PPPIM+ PPWDM           ▶ WD = WD+ PPWD
    
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▶ Press any key to continue ◀



SCRO SECOND QUARTERLY REPORT FY'97  
(RECEIVED VIA GROUPWISE ON 4/21/97)

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Daniel Schmaus v. N. L. Conner, 6:96CV1023 (ED/TX)

In this Habeas action, the inmate alleges his third revoked term of Special Parole had expired and the U.S. Parole Commission had determined his "sentence had expired". He alleges the Bureau of Prisons refuses to release him.

Eddie Wayne Roberson v. Warden, 5:96CV216 (ED/TX)

In this Habeas action, the inmate alleges the Warden refuses to give jail time credit for time he spent in state custody under federal detainer.

Rolf W. Starke v. John M. Tombone, et al., 396-CV3454-G (ND/TX)

This is a Section 1983 case. Plaintiff alleges that the defendants have conspired under the color of state law to violate his First, Fifth, Sixth, Eighth, and Fourteenth amendment rights. Specifically, plaintiff states that his health has suffered as a result of inhaling secondary smoke from cigarettes, cigars, and pipe tobacco products. He only asks for judgment against the defendants. He does not request any monetary damages.

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Donald Holmes v. S. W. Phelps, et al., 5:96CV225 (ED/TX)

The plaintiff alleges harassment, discrimination, and verbal and physical abuse by FCI Texarkana staff.

Wells v. Garbow, EP-97-CA-029-DB (WD/TX)

An inmate at FCI La Tuna was removed from the ICC program at Lewisburg for having a two point enhancement for firearms. However, after his removal, the inmate had his sentence clarified to state he did not use firearms. Moreover, a Post-Sentence Investigation was prepared that did not give him a two point enhancement for firearms. However, the inmate was never returned to the ICC. The inmate agreed to dismiss the action in return for accelerated CCC placement within policy and home confinement when eligible.

**CASES WITH HEARING OR TRIAL****Hoot v. Gibson**, A-96-CA-390 (WD/TX)

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(T-BOP-97-015)

#### MEDICAL

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#### MEDICAL/ADA CLAIM

PETERSEN, Justin, Register Number 98535-012 - Mr. Petersen contends that during transfer between MDC Los Angeles and FCI Bastrop his prosthetic socks were lost, that because staff did not replace the socks he has suffered a breakdown of the skin on his amputated stump, that FCI Bastrop is not adequately equipped to house disabled inmates, that while he was housed there he slipped and hit his head on his locker, and that the shower bar broke and he fell causing a bruise to his hand.

Mr. Petersen complains that he was transferred to USFMCP Springfield for treatment, but because he only had 5 months remaining to be served, staff would not consider making any significant repairs to his prosthetic device. He seeks \$900 for temporary repair of his prosthesis, \$18,000 for replacement of his prosthesis and \$15,000 for personal injury. (T-NCR-97-150). Investigation pending.

REYNOSO-OLASCAGO, Jose, Register Number 64714-079 - Mr. Reynoso-Olascago alleges that while he was walking on the track at FCI Big Spring, he was hit in the face by a bat that had

slipped out of a softball player's hands. He was transported to a local community hospital for treatment, he later underwent surgery to repair his fractured jaw. He claims that BOP staff negligently allowed him to walk around the track while a game was in progress. He seeks \$10,000,000.00 in damages. (T-SCR-96-430). No liability concerns.

FANTROY, Richard, Register Number 27764-077, alleges during June 1996 at FMC Fort Worth, he was given incorrect medication for his medical condition. The claim is in the amount of \$500,000. (T-SCR-97-47). Investigation pending.

TELFAIR, Milton, Register Number 59903-080, has filed a claim concerning his medical treatment at FCI Oakdale. He is confined to a wheelchair and suffers from recurrent anal fissures. He underwent a hemorrhoidectomy and anal fissurectomy, but feels additional treatment should have been provided. He is currently incarcerated at FMC Fort Worth. (T-SCR-97-25). Investigation pending.

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Inmate Baxendale filed Administrative Remedy 125535-F1, alleging that the BOP misinterpreted the Ensign Amendment. He specifically requested to continue receipt of "Playboy".

**MEDICAL MALPRACTICE:****LITIGATION**

Caesar Morales-Morales v. Norris Knight, et al., 597CV0023  
(ND/TX)

In this action, the plaintiff names a contract physician, contract clinic, contract hospital, retired BOP physician and current physician. The plaintiff asserts he fell on his arm, surgery was performed, and that despite the surgery he still has problems. He asserts improper and inadequate treatment due to deliberate indifference. There is no show cause order in this matter; thus, research for a litigation report has not yet occurred.

James Watson Ramsey v. USA, et al., 3:96-CV-3358-G (ND/TX)

This FMC Fort Worth case involves 12 named defendants. The inmate claims he was subjected to cruel and unusual punishment through denial and delay of medical care of his burns. Based on a preliminary assessment, there does not appear to be any liability on the part of staff. Mr. Ramsey's complaint appears to be frivolous pursuant to the PLRA.

Carter v. FMC Medical Review Board, et al., 4:96-CV-690-A (ND/TX)

The inmate had a previous case filed which raised identical issues regarding the lack of medical care she received at FMC Carswell. The case was dismissed as frivolous pursuant to the Prison Litigation Reform Act of 1995 on December 1, 1996.

**TORTS (FTCA)**

Inmate Norma CARTER, asserts government negligence regarding timely provision of surgical care for a pilonidal abscess at outside hospital by staff at FPC Bryan, resulting in extensive parasacral infection. Preliminary investigation reveals no evidence of delay or inappropriate treatment by FPC Bryan staff.

CANIPE, Terry, Register Number 60647-080 (T-BOP-96-159)- Inmate alleges that during the morning hours of July 30, 1994, while he was incarcerated at FCI Bastrop, he was attacked by other inmates during an institution lockdown. He claims that he sustained a broken finger and "other injuries." Mr. Canipe contends that he did not seek immediate medical attention because he had been



warned by other inmates not to give any information about how he sustained the injuries.

At approximately 6:00 p.m., Mr. Canipe reported to institution staff that he had slipped on some stairs and had fallen down. Medical staff examined Mr. Canipe and requested x-rays of his hand and face. On August 2, 1994, the x-ray revealed that he had suffered a broken finger, and approximately ten days later, he was examined by a contract orthopedic physician who noted a partial ligament rupture on the splinted finger. The inmate was instructed to initiate range of motion exercises. On August 11, 1994, an x-ray revealed a dislocation involving the joint of the right ring finger. Surgery was later performed by a contract surgeon, and Mr. Canipe was referred to Springfield. Mr. Canipe is seeking one million dollars in damages.

#### **ENSIGN AMENDMENT:**

##### **LITIGATION**

FCI El Reno. Harrell v. Hawkins. Inmate asserts that return of publication pursuant to Ensign Amendment violates his constitutional rights.

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Adam Winchester has submitted a tort claim seeking \$128.80 because he is not receiving his monthly subscription of Penthouse magazine.

SCRO SECOND QUARTERLY REPORT FY'97  
(RECEIVED VIA GROUPWISE ON 4/21/97)

LITIGATION NARRATIVES  
JANUARY 1, 1997 - MARCH 31, 1997

SIGNIFICANT CASES

L. J. and Maylene Carter, LR-C-95-407 (ED/AR)

In this FTCA action, the plaintiffs sought reimbursement for subsistence fees charged while they were housed in a halfway house. Their theory was based on the fact that the Judgment and Commitment Order, which did impose fines and restitution, contained the form language that "The fine includes any costs of incarceration and/or supervision." On January 21, 1997, the court ruled that we acted within our authority in collecting the subsistence fees, and that our actions were not in violation of the J & C. The court also noted that plaintiffs did have a choice in the matter - if they did not want to pay subsistence, they could have been housed in a correctional institution, where no subsistence or costs of incarceration would have been assessed.

Daniel Schmaus v. N. L. Conner, 6:96CV1023 (ED/TX)

In this Habeas action, the inmate alleges his third revoked term of Special Parole had expired and the U.S. Parole Commission had determined his "sentence had expired". He alleges the Bureau of Prisons refuses to release him.

Eddie Wayne Roberson v. Warden, 5:96CV216 (ED/TX)

In this Habeas action, the inmate alleges the Warden refuses to give jail time credit for time he spent in state custody under federal detainer.

Rolf W. Starke v. John M. Tombone, et al., 396-CV3454-G (ND/TX)

This is a Section 1983 case. Plaintiff alleges that the defendants have conspired under the color of state law to violate his First, Fifth, Sixth, Eighth, and Fourteenth amendment rights. Specifically, plaintiff states that his health has suffered as a

result of inhaling secondary smoke from cigarettes, cigars, and pipe tobacco products. He only asks for judgment against the defendants. He does not request any monetary damages.

Kenneth Lee Stewart v. John Tombone, Warden, 397-CV0129-R and  
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Basically, this is a 3621(e) appeal. There's a little bit of a different twist in these cases versus the normal 3621(e) cases. Petitioners are not challenging the fact that the Bureau of Prisons has classified their crime as a "crime of violence". Rather, they contend that the Bureau of Prisons entered into a "contractual" agreement with them which stated that if they completed the 500 hour DAPS Program, they would receive a year off their sentence. They state that they were granted the one year off, but when the new program statement concerning crimes of violence was issued, staff at FCI Seagoville found them ineligible for early release. They contend that the Bureau's denial of the year off creates a state created liberty interest.

Wilson Harrell v. Kathleen Hawks, 97-0048-A (WD/OK)

The Bivens case recently filed by inmate Harrell is based on the Ensign Amendment. Harrell is alleging his counselors, the unit manager, the ISM, Warden, Mr. Cooksey, and the Director of the BOP, conspired to deprive him of his 1st, 4th, 5th, 9th, and 14th amendment rights. Harrell is seeking \$1,000,500.00 in damages, an injunction, and attorney fees. A Martinez report is due in March. Harrell has not exhausted his administrative remedies.

Donald Holmes v. S. W. Phelps, et al., 5:96CV225 (ED/TX)

The plaintiff alleges harassment, discrimination, and verbal and physical abuse by FCI Texarkana staff.

Wells v. Garbow, EP-97-CA-029-DB (WD/TX)

An inmate at FCI La Tuna was removed from the ICC program at Lewisburg for having a two point enhancement for firearms. However, after his removal, the inmate had his sentence clarified to state he did not use firearms. Moreover, a Post-Sentence Investigation was prepared that did not give him a two point enhancement for firearms. However, the inmate was never returned to the ICC. The inmate agreed to dismiss the action in return

for accelerated CCC placement within policy and home confinement when eligible.

#### CASES WITH HEARING OR TRIAL

Hoot v. Gibson, A-96-CA-390 (WD/TX)

On January 28, 1997, Judge Sparks held a hearing to consider the petitioner's request for DAP credit for seven weeks spent in non-DAP bed as the result of mutual error of staff and petitioner. The Central Office's position that the petitioner had not met the statutory requirement of 180 days in a DAP bed was articulated by Dr. J. Jones, DAP Administrator, SCRO. The Court ruled that the equities of the case were in the petitioner's favor, and entered judgment orally in favor of the Petitioner.

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A hearing was held on January 31, 1997, on a pending TRO on ESPOSITO, Gerald, who claims we have denied him adequate medical care. At the hearing, the Court denied the TRO due to the requested medical procedure being scheduled. The Judge suggested that Inmate Esposito drop the case to avoid it being dismissed as frivolous.

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Bivens case. Reported in February. Evidentiary hearing held on March 7, 1990. No ruling as of this time.

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A commitment hearing for hospitalization was held at FMC Carswell on March 12, 1997, pursuant to 18 USC 4245.

Ms. Mansour was committed to our inpatient unit.

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A trial was held in Sherman, Texas on March 12-13, 1997. The judge ordered both parties to submit their closing briefs within 10 days. Ruth Yeager, Deputy Civil Chiefs, feels very optimistic of our chances of prevailing.

### CASE WITH SETTLEMENT OR AWARD

Maria Ramos v. U.S.A., Civil Action No. EP-94-CA-342-MC (ND/TX) Adverse judgment rendered by magistrate. Action brought by the mother and daughter of a former inmate at FPC La Tuna. The daughter has cerebral palsy and cannot walk, talk, or breathe without assistance. In October 1993, when the family went to visit inmate Juan Ramos, there was no handicapped ramp to access the visiting area. The Warden allowed Mrs. Ramos, because she was a frequent visitor, to use the loading ramp around the side of the building. Because a government vehicle was blocking the ramp, Mrs. Ramos wheeled her daughter along the roadway. The roadway contained concrete splatter and was bumpy. Ramos' chair hit one of the concrete bumps, and Ramos became dislodged from her wheelchair. She sustained almost no physical injuries. The Court awarded \$30.00 in actual damages, and \$5,970.00 in pain and suffering (Total judgment \$6,000.00). BOP and U.S. Attorney's Office have agreed to not appeal this case.

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A review of the medical documents she attached to her claim indicates that on January 17, 1995, a physician at FMC Carswell noted in her medical chart that she had photophobia secondary to

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AGERTON, Dr. William D. (Civilian) - (T-SCR-96-472) Dr. Agerton alleges that he was employed by EMCare to provide medical services to health care providers, such as the Federal Medical Center in Fort Worth, Texas, and on May 16, 1996, Dr. John Barry (Clinical Director) refused to allow him to provide medical care at FMC Fort Worth. Dr. Agerton alleges that he has sustained loss of pay and restriction of hospital privileges.

The South Central Regional Health Services Administrator has indicated that the contract was with EMCare and not with any individual. It is not clear at this time why Dr. Agerton was denied access to FMC Fort Worth; however, the claim is currently being investigated by staff at Fort Worth. Dr. Agerton is seeking \$100,000.00 in damages.

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#### MEDICAL

GADSON, Floyd, Register Number 09390-058 - Mr. Gadson contends on June 13, 1996, he requested medication for his diabetes. He states that he was refused treatment and was issued an incident report. He contends that as a result of the denied medical care, he developed a diabetic ulcer on his foot, which burst open and has caused him a significant amount of pain. Mr. Gadson requests \$4,500,000.00 for emotional distress and permanent physical injury. (T-SCR-97-44)

CARTER, Norma J., Register Number 21603-034 - Harry T. Winmann, 3850 N. Causeway Boulevard, Number 590, Metairie, Louisiana, has filed a claim (T-SCR-97-28) on behalf of Norma J. Carter. Ms. Carter alleges that medical staff at FPC Bryan denied timely surgical care for a pilonidal abscess and that she ultimately had to undergo a colostomy. Ms. Carter is a diabetic and contends that she is susceptible to wound infection. She is seeking \$500,000.00 in damages.

COLLINS, Clyde, Register Number 16940-009 - (T-SCR-97-64) The family of deceased inmate has filed a claim for the death of Mr. Collins. Al Weisenberger, an attorney in El Paso, has submitted the claim, but there is no authorization from Mrs. Collins or any of Mr. Collins' six children authorizing Mr. Weisenberger to represent them in a wrongful death claim against the government.

Mr. Collins died from a heart attack while playing softball at FPC El Paso on July 17, 1996. The Collins family contends that the Bureau of Prisons did not provide adequate treatment for Mr. Collins abnormal EKG in March 1995, nor was the annual physical conduct in March 1996. The family also states that staff failed to perform CPR within a reasonable time, prohibited another inmate "who was trained in CPR" to perform CPR, and did not timely summons an ambulance. The claimants seek \$15,000,000.00 in damages (\$5,000,000 for personal injury and \$10,000,000.00 for wrongful death).

### MEDICAL/ADA CLAIM

PETERSEN, Justin, Register Number 98535-012 - Mr. Petersen contends that during transfer between MDC Los Angeles and FCI Bastrop his prosthetic socks were lost, that because staff did not replace the socks he has suffered a breakdown of the skin on his amputated stump, that FCI Bastrop is not adequately equipped to house disabled inmates, that while he was housed there he slipped and hit his head on his locker, and that the shower bar broke and he fell causing a bruise to his hand.

Mr. Petersen complains that he was transferred to USFMCP Springfield for treatment, but because he only had 5 months remaining to be served, staff would not consider making any significant repairs to his prosthetic device. He seeks \$900 for temporary repair of his prosthesis, \$18,000 for replacement of his prosthesis and \$15,000 for personal injury. (T-NCR-97-150). Investigation pending.

REYNOSO-OLASCAGO, Jose, Register Number 64714-079 -

Mr. Reynoso-Olascago alleges that while he was walking on the track at FCI Big Spring, he was hit in the face by a bat that had slipped out of a softball player's hands. He was transported to a local community hospital for treatment, he later underwent surgery to repair his fractured jaw. He claims that BOP staff negligently allowed him to walk around the track while a game was in progress. He seeks \$10,000,000.00 in damages. (T-SCR-96-430). No liability concerns.

FANTROY, Richard, Register Number 27764-077, alleges during June 1996 at FMC Fort Worth, he was given incorrect medication for his medical condition. The claim is in the amount of \$500,000. (T-SCR-97-47). Investigation pending.

TELFAIR, Milton, Register Number 59903-080, has filed a claim concerning his medical treatment at FCI Oakdale. He is confined to a wheelchair and suffers from recurrent anal fissures. He underwent a hemorrhoidectomy and anal fissurectomy, but feels additional treatment should have been provided. He is currently incarcerated at FMC Fort Worth. (T-SCR-97-25). Investigation pending.

### **SIGNIFICANT ADMINISTRATIVE REMEDIES**



Fort Worth received and responded to Administrative Remedy #128997-F1, in which Wali Muhammed, Reg. No. 19148-009, alleged Nation of Islam were denied access to an additional meeting time and their yearly ceremonial meal. There was no validity to the allegations.

Administrative Remedy 130071-F1, Inmate Freeman, requests to display a "dream catcher". He alleges this is an American Indian religious belief. Information received indicates the BOP does not recognize this as a religious item although some institutions allow it. Texarkana denied the inmate's request. Our office has not received a regional appeal regarding this issue, the inmate has until April 17, 1997 to file an appeal.

Inmate Wayne Matra, at FCI Texarkana, filed a Request for Administrative Remedy, Case Number 124992-F1, the inmate alleges discrimination in religious practices. He alleges the institution is not utilizing the proper "prayer oil". The institution's response was that the oil was not a religious item in itself; however, it was used to facilitate a religious practice. We agreed to return to using the requested oil.

Inmate Baxendale filed Administrative Remedy 125535-F1, alleging that the BOP misinterpreted the Ensign Amendment. He specifically requested to continue receipt of "Playboy".

#### **MEDICAL MALPRACTICE:**

#### **LITIGATION**

Caesar Morales-Morales v. Norris Knight, et al., 597CV0023  
(ND/TX)

In this action, the plaintiff names a contract physician, contract clinic, contract hospital, retired BOP physician and current physician. The plaintiff asserts he fell on his arm, surgery was performed, and that despite the surgery he still has problems. He asserts improper and inadequate treatment due to deliberate indifference. There is no show cause order in this matter; thus, research for a litigation report has not yet occurred.

James Watson Ramsey v. USA, et al., 3:96-CV-3358-G (ND/TX)

This FMC Fort Worth case involves 12 named defendants. The

inmate claims he was subjected to cruel and unusual punishment through denial and delay of medical care of his burns. Based on a preliminary assessment, there does not appear to be any liability on the part of staff. Mr. Ramsey's complaint appears to be frivolous pursuant to the PLRA.

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**SIGNIFICANT ADMINISTRATIVE REMEDIES**

Fort Worth received and responded to Administrative Remedy #128997-F1, in which Wali Muhammed, Reg. No. 19148-009, alleged Nation of Islam were denied access to an additional meeting time and their yearly ceremonial meal. There was no validity to the allegations.

Administrative Remedy 130071-F1, Inmate Freeman, requests to display a "dream catcher". He alleges this is an American Indian religious belief. Information received indicates the BOP does not recognize this as a religious item although some institutions allow it. Texarkana denied the inmate's request. Our office has not received a regional appeal regarding this issue. The inmate has until April 17, 1997 to file an appeal.

Inmate Wayne Matra, at FCI Texarkana, filed a Request for Administrative Remedy, Case Number 124992-F1, the inmate alleges discrimination in religious practices. He alleges the institution is not utilizing the proper "prayer oil". The institution's response was that the oil was not a religious item in itself; however, it was used to facilitate a religious practice. We agreed to return to using the requested oil.

Inmate Baxendale filed Administrative Remedy 125535-F1, alleging that the BOP misinterpreted the Ensign Amendment. He specifically requested to continue receipt of "Playboy".

**ENSIGN AMENDMENT:****LITIGATION**

See Harrell v. Hawkins under significant cases.

**TORTS**

Adam Winchester has submitted a tort claim seeking \$128.80 because he is not receiving his monthly subscription of Penthouse magazine.

**LITIGATION**

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NKR											
NER											
SER											
NCR											
SCR	99	73	5	18	3	75	211	22	6	1	0
WXR											
CO											
TOT											

**NARRATIVE ANALYSIS**      NARRATIVE ATTACHED ON SEPARATE PAPER

**DEFINITIONS**

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- OTH - OTHER ACTIONS FILED
- ANS - NUMBER OF LITIGATION REPORTS COMPLETED
- PEN - PENDING
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\* **SOUTH CENTRAL REGIONAL OFFICE**  
**NARRATIVES**  
\* **APRIL 1, 1997 - JUNE 30, 1997**

**SIGNIFICANT CASES**

Guadalupe Martinez v. Janet Reno, et al., 3:97-CV-0813  
(ND/TX)

An employee from FCI Seagoville has brought an EEO action against the Bureau of Prisons and the Department of Justice and alleges that the BOP has discriminated against him based on his ethnic origin. He claims that his performance appraisals were unjust and inaccurate and that he was subjected to conditions (such as a photo lineup) that other employees were not subjected to solely because of his race.

Ronald Faldyn v. Lester Fleming, A-96-CA-0526-SS (WD/TX)

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Terise Ahr v. Reno

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An FTC Oklahoma City inmate claims staff entered his cell and struck inmate's head, arms, and hands with Folger-Adams keys and knocked inmate into the shower. Inmate seeks \$750,000.00 in compensatory damages and \$750,000.00 in punitive damages

ESTATE OF KENNETH MICHAEL TRENTADUE, ET AL.  
V. UNITED STATES, ET AL.  
CIV-97-849L (WD/OK)

Action involves death of an inmate at FTC Oklahoma City in August 1995. Inmate's family believes staff murdered the inmate and that Bureau of Prisons' officials are now covering up the incident. Plaintiff asserts both Bivens and FTCA theories.

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**CASES WITH HEARING OR TRIAL**

Dennis O'Neal McAnnich v. Frank Woods, et al., C-96-132 (SD/TX)

A hearing was held on April 15, 1997, regarding defendant's motion to dismiss. Defendants argued service by mail did not give court jurisdiction over defendants in their individual capacities. Defendants requested personal service pursuant to Rule 4(e). Defendants claimed person who signed the return receipt cards was unauthorized to receive their mail. Court disagreed and cited Texas law which provides for service by mail. Court found service to be proper and denied motion to dismiss. The court ordered U.S. Attorney's Office and Attorney General of the U.S. to receive service.

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State of Missouri v. Dennis W. Clark, CR-49586F. SCRO Attorney attended a hearing where the Missouri Public Defender sought to compel the testimony of an employee at FCI Seagoville in a state court trial. The state court's subpoena was filed with a Dallas County Court. We contested the motion under 28 C.F.R. § 16.22 et seq. The Public Defender's motion was denied. However, a deposition was allowed.

On June 27, 1997 FCC Beaumont legal staff attended a Treaty Transfer Consent Hearing before Magistrate Judge Radford, E.D.Tex., for inmate GUTIERREZ-LARA, Jorge. The U.S. Attorney's Office requested the Legal Department's assistance insofar as the inmate will be produced for the hearing and the format is unknown to the AUSA.

## **MEDICAL MALPRACTICE**

### **LITIGATION**

Jose Ramirez v. Joe Aguirre, et al., EP-97-CA-002H (WD/TX)

In this Bivens action, an inmate with a coronary condition from FPC El Paso alleges that staff displayed deliberate indifference to his serious medical needs.

### **TORTS**

John Henry Topsy filed tort claim T-SCR-96-445 seeking \$750,000.00. Topsy claimed that the Bureau was negligent in treating his dizziness after falls he said occurred in 1995 while at FCI Bastrop and an unnamed transfer facility. The claim was denied.

Eric Michael Lawrence filed tort claim T-SCR-470 seeking \$60,000. Lawrence claimed that the Bureau was negligent in treating his diabetes because he received his insulin as long as two hours later in the day on weekends than on weekdays, and because blood sugar levels were not consistently tested on weekends at FMC Fort Worth. The claim was denied.

FCI Texarkana inmate Juan Carlos Rodriguez-Gonzalez requests \$150,000.00 for personal injury. He alleges that medical staff at FCI Texarkana misdiagnosed and mistreated his eyes. He asserts further malpractice by their referral to doctors in the community. Specifically, he states laser photocoagulation of his eyes was not performed properly resulting in eye injury. (T-SCR-97-155)

Inmate Charles McMeans contends that the medical staff at FMC Fort Worth have denied him hip replacement surgery. Mr. McMeans states that he needs hip replacement surgery due to a fall he suffered at FCI Bastrop on the basketball court, and most recently in the dining hall at FMC Fort Worth. Both Mr. McMeans and his wife, Veronica McMeans, previously filed separate administrative tort claims for damages they alleged were caused when Mr. McMeans fell on the basketball court at FCI Bastrop. Both claims were denied. He currently seeks \$1,500,000.00 in damages. (T-SCR-97-217)

RODRIGUEZ-GONZALEZ Juan - Mr. Rodriguez-Gonzalez alleges that during February 1996, medical staff at FCI Texarkana misdiagnosed and performed negligent treatment to his eyes. He contends that laser photocoagulation on his eyes was not performed properly and as a result he has sustained permanent damage to his eyes. He seeks \$150,000.00 in damages. Mr. Rodriguez-Gonzales was released on May 6, 1997, to INS custody in Dallas, Texas. (T-SCR-97-155)

ESTUPINAN-VASQUEZ, Emery - Inmate at FCI La Tuna contends that in 1994 he injured his ankle while playing soccer and was advised by staff that it was okay. However, in 1995, he states he began to experience more pain and noticed muscle loss. Alleges negligence for not providing medical treatment for his Achilles tendon. Seeks \$500,000.00.

Investigation revealed inmate was evaluated for a fracture with negative results shortly after the injury. A consultation was requested on June 17, 1994, but the inmate was not evaluated by a specialist until November, 1994, at which time it was determined that the inmate had suffered a ruptured Achilles tendon. Mr. Estupinan-Vasquez was evaluated on multiple occasions. On September 1, 1994, he was instructed to not run or jump until evaluated by specialist, at which time Mr. Estupinan-Vasquez declined to use a cane, and stated that he did not need it. There is a history of ankle pain dating back to 1992, and the medical record indicates that Mr. Estupinan-Vasquez reinjured the same ankle while playing soccer in May 1995. In May 1995, he was treated for an injury to the left leg, which he reported to have injured playing soccer a couple of days before.

Institution and Regional medical staff acknowledge that there was a delay in diagnosing the rupture; however, there is no indication that the delay caused any damage.

WOODS, CAROLYN - Ms. Woods is presenting a claim on behalf of Audrey M. Woods, Nathaniel Woods, and herself. Ms. Woods, an inmate at FMC Carswell, alleges that staff at FMC Carswell failed to provide her mother, inmate Elizabeth Scallion, emergency medical care when she suffered a cardiac arrest on November 8, 1996. Ms. Woods further claims that staff prevented a "licensed inmate paramedic" from providing life saving techniques. The claim is being rejected because Ms. Woods did not meet the requirements of Title 28 CFR 14.3 for a wrongful death claim. (T-SCR-97-178)

JAMIESON, Alisa - alleges she has a history of bladder and kidney troubles and is allergic to sulfa/sulfer. However, the staff at FTC Oklahoma City prescribed Bactrium, which is a sulfa-based medication. Inmate claims her condition has worsened and she is in pain and discomfort. Inmate seeks \$50,000 in compensation. (T-SCR-97-189)

FTC Oklahoma City inmate. John Rohrbach, claims that while he was cleaning the stainless steel in Food Service, chemicals got in his eye and that medical care was delayed. Inmate seeks \$15,000 in compensation. (T-SCR-97-176)

FANTROY, Richard - alleges at FMC Fort Worth he was given the wrong medication, which has resulted in emotional distress and inability to digest food properly. He claims personal injury in the amount of \$500,000. Investigation pending. (T-SCR-97-74)

### **SIGNIFICANT TORT CLAIMS**

A claim has been filed on behalf of a minor named Riberto Ebelio Lopez, who is the son of Richardo Lopez. Riberto Lopez was killed by a BOP escapee Albert Young, who was incarcerated at a facility under the Community Corrections Office in New Orleans, Louisiana. The minor's mother filed a tort claim seeking damages for the wrongful death of his father and the loss of support and companionship. The claim mirrors an earlier filed claim by the daughter of deceased Lopez. She is seeking \$500,000.00. (T-NER-97-82)

Update from our February report pertaining to a claim filed by Norma Carter (T-SCR-97-28). The Clinical Director reveals some concern regarding the number of days which elapsed between the time when Claimant presented to the medical staff with symptoms



indicative of a perirectal abscess and the time when appropriate treatment was provided. The Clinical Director at FPC Bryan feels that we may have been inordinately slow in responding to and recognizing what the record seems to clearly indicate to have been a serious medical condition complicated by diabetes. We may ask that a higher level inquiry be conducted in this case (perhaps by an MD from the Central Office or a BOP Medical Center other than Carswell since they provided treatment to this inmate as well). The matter has been referred to OQM.

An administrative claim has been submitted by a company named Leaseall, Inc. The claim is signed by Sandy Carr, Manager for Leaseall, Inc. and she states that their truck was damaged when a vendor was driving the truck out of Gate 1 at FCC Beaumont and the gate was closed on the truck. There is nothing with the claim to indicate that the incident occurred, or Ms. Carr's authority to make the claim (T-SCR-97-134)

On May 6, 1997, staff vehicles parked in the parking lot at FTC Oklahoma City were damaged when Facilities staff and inmates were spraying paint on the baseball backstop fence. To date, we have received 62 claims ranging from \$100.00 to \$2,000.00. As reported by Warden Guzik, there is some indication that approximately 180 vehicles sustained some type of damage.

Inmate Vernon Ray Robertson at FTC Oklahoma City alleges staff were negligent in failing to protect him from a state prisoner whom the BOP knew was violent. Inmate claimed he was assaulted and sustained numerous injuries, including a broken hand and a crooked finger because it was not set properly. Inmate Robertson seeks \$300,000.00 in compensation.

The SCRO offered settlement to David Nolte, a Texarkana employee, in the amount of \$1,938.19 for damage sustained to Mr. Nolte's pickup, which was struck by an unsecured barrier gate. The sum certain is in the amount of \$1,942.49 (T-SCR-97-172)

Abdul Mohammed Halig of FMC Fort Worth, alleges he slipped and fell on a wet floor. Allegedly there were no signs posted warning of the wet floor. As a result of his fall, he alleges he broke his back. Claims personal injury in the amount of \$1,500,000. Investigation pending (T-SCR-97-112)

Inmate John Rohrbaugh claims he was cleaning stainless steel when the chemicals got in his eyes and that he couldn't wash his eyes because the only eye wash station had "boiling" hot water. This is a work-related injury and falls under Demko, except the inmate also alleges delay in receiving medical treatment. Inmate seeks \$15,000.00 in compensation (T-SCR-97-176)

Inmate Vernon Ray Robertson alleges staff were negligent in failing to protect him from a state prisoner whom the BOP allegedly knew was violent. Inmate claimed he was assaulted and sustained numerous injuries, including a broken hand and a crooked finger because it was not set properly. Inmate Robertson seeks \$300,000.00 in compensation. (T-BOP-97-15)

Wali Muhammed, an inmate housed at FMC Fort Worth, alleges that he is being deprived of functional electrical stimulation therapy and other medical treatments for his paralysis. He contends that he has completed the Bureau of Prisons 500 hour drug program, but has been denied the one year release because of a firearms conviction. Thus, he claims the denial of medical care. Mr. Muhammed contends that the stimulation therapy will allow him to regain his ability to walk. Mr. Muhammed seeks \$5,000,000.00 for neglect, mental anguish, and emotional distress. (T-SCR-97-216)

### **SIGNIFICANT ADMINISTRATIVE REMEDIES**

An FCI Big Spring inmate, Edgar Fuller, filed an administrative remedy citing violations of the RFRA. He alleges the Chaplain denied him access to the chapel; did not allow him to pray, teach or testify; and denied him the right to offer communion. The Chaplain documented each meeting with inmate Fuller with copious notes. Representatives from the Pentecostal church visit the institution monthly and offer communion. Communion is also offered ten times each month, and the Chaplains offered to give him communion in their offices whenever he felt communion was necessary. The Chaplains also offered to attempt to have representatives from the Pentecostal church come more often. Inmate Fuller insisted this was not sufficient to meet his needs.

Fuller believes his needs will only be met once he is permitted to conduct his own services and he is allowed to offer communion to his inmate group. Inmate Fuller has advised the Chaplain that he was a member of the clergy or or to coming to prison. The administrative remedy was denied at the institutional level. Inmate Fuller has promised lively litigation on this issue. On April 12, 1997, Chaplain Wright wrote an incident report against Fuller for Refusing to Obey an Order by conducting church services without permission. This incident report was informally resolved by the Chaplain.

## **RELIGIOUS FREEDOM RESTORATION ACT**

### **LITIGATION**

James v. Brush, 96-2707 (WD/LA)

The inmate, a Native American, alleges the Warden took a blue colored headband and a red colored headband from him. The inmate alleges the colored headbands were sacred, and he needed them for religious purposes. No defendants have been served in this case.

### **ADMINISTRATIVE REMEDY**

#### **OTHER**

A home-confinement inmate, David Bishop, alleged constitutional violations when the BOP would not allow him to leave home frequently to conduct field witnessing. The inmate claimed that field witnessing was an essential tenet of his belief as a Jehovah's Witness. SCPO did not have to respond to this issue because the inmate subsequently made threats of assault on a staff member and was returned to full custody.

Inmate William Mills received an incident report for refusing to obey an order as he refused to be housed with an African American inmate. During the investigation and UDC, the inmate failed to raise any religious issues. The inmate has filed a BP-9 citing his religious beliefs are of a white separatist nature and he can not go against his beliefs. He requests the incident report be expunged. Sentry indicates religious preference as Native American. Inmate claims his religious preference as Brotherhood of the Will which is not a BOP recognized religion.

## **ENSIGN AMENDMENT**

### **LITIGATION**

Milford Topsy v. Michael Purdy, et al., CA-C-97-229, SD/TX

Inmate at FC Three Rivers alleges his various rights have been violated/denied due to BOP's implementation of the Ensign Amendment because staff rejected three magazines. Plaintiff challenges the Ensign Amendment as overly broad in defining terms, unconstitutionally vague, and against his First and Fourteenth Amendment rights.

Harrell v. Hawkins (Hawk), CIV-97-48-A (WD/OK)

(Update - the case was originally reported last quarter) We have received a favorable Report and Recommendation from the magistrate judge. A similarly favorable ruling is expected.

## **TORTS**

Inmate Kenneth Linn, FCI Seagoville, contends that as a result of the Ensign Amendment he was no longer allowed to have sexually explicit materials; therefore, his publications were not forwarded to his requested location during the authorized time frame. He claims damages of \$13.90 due to BOP negligence.

## LITIGATION

<i>LOC</i>	<i>NUM</i>	<i>HC</i>	<i>FTC</i>	<i>BIV</i>	<i>OTH</i>	<i>ANS</i>	<i>PEN</i>	<i>CLD</i>	<i>H/T</i>	<i>SET</i>	<i>AWD</i>
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Tort Claims Third Quarter - FY 97 (April 01, 1997 - June 30, 1997)													
loc	num	pp	pi	pppi	wd	med	set	amt	pen	den	od	a/o	a/p
scr	182	147	18	6	1	9	20	3084	221	60	0	0	124

Num - Number of claims filed  
 PP - Personal Property claims  
 PI - Personal Injury claims  
 PPPI - Both PP & PI claims  
 WD - Wrongful death claims  
 Med - Medical claims  
 Set - Settled/Approved claims  
 Amt - Amount paid  
 Pen - Pending/open claims  
 Den - Number of claims Denied  
 OD - Number of claims Overdue  
 A/O - Avg number of days Overdue  
 A/P - Avg number of days to Process

(Med = PIM + WDM + PPPIM + PPWDM)  
 (WD = WD + PPWD)

**SCRO Quarterly Report (7/15/97)**  
**SOUTH CENTRAL REGIONAL OFFICE**  
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complaint, and there has been some confusion regarding what forms are necessary to initiate an EEO complaint. We were also ordered to provide Petitioner with a "table of organization" of the EEO office in the Bureau of Prisons, as Petitioner asserts a "bureaucratic runaround" in her efforts to seek compliance with the August 1994 settlement agreement. Both the court and the AUSA do not seem pleased with the way Petitioner's EEO issues were passed from person to person between 1994 and 1996.

On June 19, 1997, a TRO hearing was held by Judge McBryde on the matter of Jimmy Lee Rebman v. USA, et al. Mr. Rebman is an inmate at FMC Fort Worth seeking mandamus/injunctive relief relevant to an cornea transplant. Judge McBryde ordered the government to meet with plaintiff's attorney the following day with a plan of action or schedule for the cornea transplant. A cornea transplant was scheduled to take place within two weeks, with a follow-up cataract surgery once the transplant surgery site heals.

State of Missouri v. Dennis W. Clark, CR-49586F. SCRO Attorney attended a hearing where the Missouri Public Defender sought to compel the testimony of an employee at FCI Seagoville in a state court trial. The state court's subpoena was filed with a Dallas County Court. We contested the motion under 28 C.F.R. § 16.22 et seq. The Public Defender's motion was denied. However, a deposition was allowed.

On June 27, 1997, FCC Beaumont legal staff attended a Treaty Transfer Consent Hearing before Magistrate Judge Radford, E.D.Tex., for inmate GUTIERREZ-LARA, Jorge. The U.S. Attorney's Office requested the Legal Department's assistance insofar as the inmate will be produced for the hearing and the format is unknown to the AUSA.

### **MEDICAL MALPRACTICE**

#### **LITIGATION**

Jose Ramirez v. Joe Aguirre, et al., EP-97-CA-002H (WD/TX)

In this Bivens action, an inmate with a coronary condition from FPC El Paso alleges that staff displayed deliberate indifference to his serious medical needs.

#### **TORTS**

John Henry Topsy filed tort claim T-SCR-96-445 seeking \$750,000.00. Topsy claimed that the Bureau was negligent in

treating his dizziness after falls he said occurred in 1995 while at FCI Bastrop and an unnamed transfer facility. The claim was denied.

Eric Michael Lawrence filed tort claim T-SCR-470 seeking \$60,000. Lawrence claimed that the Bureau was negligent in treating his diabetes because he received his insulin as long as two hours later in the day on weekends than on weekdays, and because blood sugar levels were not consistently tested on weekends at FMC Fort Worth. The claim was denied.

FCI Texarkana inmate Juan Carlos Rodriguez-Gonzalez requests \$150,000.00 for personal injury. He alleges that medical staff at FCI Texarkana misdiagnosed and mistreated his eyes. He asserts further malpractice by their referral to doctors in the community. Specifically, he states laser photocoagulation of his eyes was not performed properly resulting in eye injury. (T-SCR-97-155)

Inmate Charles McMeans contends that the medical staff at FMC Fort Worth have denied him hip replacement surgery. Mr. McMeans states that he needs hip replacement surgery due to a fall he suffered at FCI Bastrop on the basketball court, and most recently in the dining hall at FMC Fort Worth. Both Mr. McMeans and his wife, Veronica McMeans, previously filed separate administrative tort claims for damages they alleged were caused when Mr. McMeans fell on the basketball court at FCI Bastrop. Both claims were denied. He currently seeks \$1,500,000.00 in damages. (T-SCR-97-217)

RODRIGUEZ-GONZALEZ, Juan - Mr. Rodriguez-Gonzalez alleges that during February 1996, medical staff at FCI Texarkana misdiagnosed and performed negligent treatment to his eyes. He contends that laser photocoagulation on his eyes was not performed properly and as a result he has sustained permanent damage to his eyes. He seeks \$150,000.00 in damages. Mr. Rodriguez-Gonzales was released on May 6, 1997, to INS custody in Dallas, Texas. (T-SCR-97-155)

ESTUPINAN-VASQUEZ, Emery - Inmate at FCI La Tuna contends that in 1994 he injured his ankle while playing soccer and was advised by staff that it was okay. However, in 1995, he states he began to experience more pain and noticed muscle loss. Alleges negligence for not providing medical treatment for his Achilles tendon. Seeks \$500,000.00.

Investigation revealed inmate was evaluated for a fracture with negative results shortly after the injury. A consultation was

requested on June 17, 1994, but the inmate was not evaluated by a specialist until November 1994, at which time it was determined that the inmate had suffered a ruptured Achilles tendon. Mr. Estupinan-Vasquez was evaluated on multiple occasions. On September 1, 1994, he was instructed to not run or jump until evaluated by specialist, at which time Mr. Estupinan-Vasquez declined to use a cane, and stated that he did not need it. There is a history of ankle pain dating back to 1992, and the medical record indicates that Mr. Estupinan-Vasquez reinjured the same ankle while playing soccer in May 1995. In May 1995, he was treated for an injury to the left leg, which he reported to have injured playing soccer a couple of days before.

Institution and Regional medical staff acknowledge that there was a delay in diagnosing the rupture; however, there is no indication that the delay caused any damage.

WOODS, CAROLYN - Ms. Woods is presenting a claim on behalf of Audrey M. Woods, Nathaniel Woods, and herself. Ms. Woods, an inmate at FMC Carswell, alleges that staff at FMC Carswell failed to provide her mother, inmate Elizabeth Scallion, emergency medical care when she suffered a cardiac arrest on November 8, 1996. Ms. Woods further claims that staff prevented a "licensed inmate paramedic" from providing life saving techniques. The claim is being rejected because Ms. Woods did not meet the requirements of Title 28 CFR 14.3 for a wrongful death claim. (T-SCR-97-178)

JAMIESON, Alisa - alleges she has a history of bladder and kidney troubles and is allergic to sulfa/sulfer. However, the staff at FTC Oklahoma City prescribed Bactrium, which is a sulfa-based medication. Inmate claims her condition has worsened and she is in pain and discomfort. Inmate seeks \$50,000 in compensation. (T-SCR-97-189)

FTC Oklahoma City inmate, John Rohrbach, claims that while he was cleaning the stainless steel in Food Service, chemicals got in his eye and that medical care was delayed. Inmate seeks \$15,000 in compensation. (T-SCR-97-176)

FANTROY, Richard - alleges at FMC Fort Worth he was given the wrong medication, which has resulted in emotional distress and inability to digest food properly. He claims personal injury in the amount of \$500,000. Investigation pending. (T-SCR-97-74)

## SIGNIFICANT TORT CLAIMS

A claim has been filed on behalf of a minor named Riberto Ebelio Lopez, who is the son of Richardo Lopez. Riberto Lopez was killed by a BOP escapee, Albert Young, who was incarcerated at a facility under the Community Corrections Office in New Orleans, Louisiana. The minor's mother filed a tort claim seeking damages for the wrongful death of his father and the loss of support and companionship. The claim mirrors an earlier filed claim by the daughter of deceased Lopez. She is seeking \$500,000.00.  
(T-NER-97-82)

Update from our February report pertaining to a claim filed by Norma Carter (T-SCR-97-28). The Clinical Director reveals some concern regarding the number of days which elapsed between the time when Claimant presented to the medical staff with symptoms indicative of a perirectal abscess and the time when appropriate treatment was provided. The Clinical Director at FPC Bryan feels that we may have been inordinately slow in responding to and recognizing what the record seems to clearly indicate to have been a serious medical condition complicated by diabetes. We may ask that a higher level inquiry be conducted in this case (perhaps by an MD from the Central Office or a BOP Medical Center other than Carswell since they provided treatment to this inmate as well). The matter has been referred to OQM.

An administrative claim has been submitted by a company named Leaseall, Inc. The claim is signed by Sandy Carr, Manager for Leaseall, Inc., and she states that their truck was damaged when a vendor was driving the truck out of Gate 1 at FCC Beaumont and the gate was closed on the truck. There is nothing with the claim to indicate that the incident occurred, or Ms. Carr's authority to make the claim. (T-SCR-97-134)

On May 6, 1997, staff vehicles parked in the parking lot at FTC Oklahoma City were damaged when Facilities staff and inmates were spraying paint on the baseball backstop fence. To date, we have received 62 claims ranging from \$100.00 to \$2,000.00. As reported by Warden Guzik, there is some indication that approximately 180 vehicles sustained some type of damage.

Inmate Vernon Ray Robertson at FTC Oklahoma City alleges staff were negligent in failing to protect him from a state prisoner whom the BOP knew was violent. Inmate claimed he was assaulted and sustained numerous injuries, including a broken hand and a crooked finger because it was not set properly. Inmate Robertson seeks \$300,000.00 in comparison.

The SCRO offered settlement to David Nolte, a Texarkana employee, in the amount of \$1,938.19 for damage sustained to Mr. Nolte's pickup, which was struck by an unsecured barrier gate. The sum certain is in the amount of \$1,942.49.

(T-SCR-97-172)

Abdul Mohammed Haliq of FMC Fort Worth, alleges he slipped and fell on a wet floor. Allegedly there were no signs posted warning of the wet floor. As a result of his fall, he alleges he broke his back. Claims personal injury in the amount of \$1,500,000. Investigation pending. (T-SCR-97-112)

Inmate John Rohrbach claims he was cleaning stainless steel when the chemicals got in his eyes and that he couldn't wash his eyes because the only eyewash station had "boiling" hot water. This is a work-related injury and falls under Demko, except the inmate also alleges delay in receiving medical treatment. Inmate seeks \$15,000.00 in compensation

(T-SCR-97-176)

Inmate Vernon Ray Robertson alleges staff were negligent in failing to protect him from a state prisoner whom the BOP allegedly knew was violent. Inmate claimed he was assaulted and sustained numerous injuries, including a broken hand and a crooked finger because it was not set properly. Inmate Robertson seeks \$300,000.00 in compensation. (T-BOP-97-15)

Wali Muhammed, an inmate housed at FMC Fort Worth, alleges that he is being deprived of functional electrical stimulation therapy and other medical treatments for his paralysis. He contends that he has completed the Bureau of Prisons 500 hour drug program, but has been denied the one year release because of a firearms conviction. Thus, he claims the denial of medical care.

Mr. Muhammed contends that the stimulation therapy will allow him to regain his ability to walk. Mr. Muhammed seeks \$5,000,000.00 for neglect, mental anguish, and emotional distress.

(T-SCR-97-216)

### **SIGNIFICANT ADMINISTRATIVE REMEDIES**

An FCI Big Spring inmate, Edgar Fuller, filed an administrative remedy citing violations of the RFRA. He alleges the Chaplain denied him access to the chapel; did not allow him to pray, teach or testify; and denied him the right to offer communion. The Chaplain documented each meeting with inmate Fuller with copious notes. Representatives from the Pentecostal church visit the institution monthly and offer communion. Communion is also

offered ten times each month, and the Chaplains offered to give him communion in their offices whenever he felt communion was necessary. The Chaplains also offered to attempt to have representatives from the Pentecostal church come more often. Inmate Fuller insisted this was not sufficient to meet his needs.

Fuller believes his needs will only be met once he is permitted to conduct his own services and he is allowed to offer communion to his inmate group. Inmate Fuller has advised the Chaplain that he was a member of the clergy prior to coming to prison. The administrative remedy was denied at the institutional level. Inmate Fuller has promised lively litigation on this issue. On April 12, 1997, Chaplain Wright wrote an incident report against Fuller for Refusing to Obey an Order, by conducting church services without permission. This incident report was informally resolved by the Chaplain.

### **RELIGIOUS FREEDOM RESTORATION ACT**

#### **LITIGATION**

James v. Brush, 96-2707 (WD/LA)

The inmate, a Native American, alleges the Warden took a blue colored headband and a red colored headband from him. The inmate alleges the colored headbands were sacred, and he needed them for religious purposes. No defendants have been served in this case.

#### **ADMINISTRATIVE REMEDY**

#### **OTHER**

A home-confinement inmate, David Bishop, alleged constitutional violations when the BOP would not allow him to leave home frequently to conduct field witnessing. The inmate claimed that field witnessing was an essential tenet of his belief as a Jehovah's Witness. SCRO did not have to respond to this issue because the inmate subsequently made threats of assault on a staff member and was returned to full custody.

Inmate William Mills received an incident report for refusing to obey an order as he refused to be housed with an African American inmate. During the investigation and UDC, the inmate failed to raise any religious issues. The inmate has filed a BP-9 citing his religious beliefs are of a white separatist

nature and he can not go against his beliefs. He requests the incident report be expunged. Sentry indicates religious preference as Native American. Inmate claims his religious preference as Brotherhood of the Will, which is not a BOP recognized religion.

**ENSIGN AMENDMENT:**

**LITIGATION**

Milford Topsy v. Michael Purdy, et. al., CA-C-97-229, SD/TX

Inmate at FCI Three Rivers alleges his various rights have been violated/denied due to BOP's implementation of the Ensign Amendment because staff rejected three magazines. Plaintiff challenges the Ensign Amendment as overly broad in defining terms, unconstitutionally vague, and against his First and Fourteenth Amendment rights.

Harrell v. Hawkins (Hawk), CIV-97-48-A (WD/OK)

(Update - the case was originally reported last quarter) We have received a favorable Report and Recommendation from the magistrate judge. A similarly favorable ruling is expected.

**TORTS**

Inmate Kenneth Linn, FCI Seagoville, contends that as a result of the Ensign Amendment he was no longer allowed to have sexually explicit materials; therefore, his publications were not forwarded to his requested location during the authorized time frame. He claims damages of \$13.90 due to BOP negligence.



## LITIGATION

<i>LOC</i>	<i>NUM</i>	<i>HC</i>	<i>FTC</i>	<i>BIV</i>	<i>OTH</i>	<i>ANS</i>	<i>PEN</i>	<i>CLD</i>	<i>H/T</i>	<i>SET</i>	<i>AWD</i>
<i>MXR</i>											
<i>NER</i>											
<i>SER</i>											
<i>NCR</i>											
<i>SCR</i>	66	40	6	17	3	60	171	40	10	0	0
<i>WXR</i>											
<i>CO</i>											
<i>TOT</i>											

NARRATIVE ANALYSIS (NARRATIVE ATTACHED ON SEPARATE PAPER)

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 AND - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)  
 GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE INFO IN NARRATIVE)

Tort Claims Third Quarter - FY 97 (April 01, 1997 - June 30, 1997)													
loc	num	pp	pi	pppi	wd	med	set	amt	pen	den	od	a/o	a/p
scr	182	147	18	6	1	9	20	3084	221	60	0	0	124

Num - Number of claims filed  
 PP - Personal Property claims  
 PI - Personal Injury claims  
 PPPI - Both PP & PI claims  
 WD - Wrongful death claims  
 Med - Medical claims  
 Set - Settled/Approved claims  
 Amt - Amount paid  
 Pen - Pending/open claims  
 Den - Number of claims Denied  
 OD - Number of claims Overdue  
 A/O - Avg number of days Overdue  
 A/P - Avg number of days to Process

(Med = PIM + WDM + PPPIM + PPWDM)

(WD = WD + PPWD)

**October 15, 1997      Quarterly Report - SCRO  
7/1/97 - 9/30/97**

**SOUTH CENTRAL REGIONAL OFFICE  
NARRATIVES  
JULY 1, 1997 - SEPTEMBER 30, 1997**

**SIGNIFICANT CASES**

Fowler v. USA, 97-2006 (ED/LA). Coleatha Fowler and Adrian Perry brought a Federal Tort Claims action in the Eastern District of Louisiana. Fowler and Perry are the administrators of the estates of Ricardo E. Lopez' two minor children. Lopez was murdered by Albert Young while Young was participating in the home confinement program. Plaintiffs allege that the Bureau failed to properly monitor Young's home confinement. The assigned AUSA filed an answer and is currently drafting a Motion to Dismiss.

McAlpine v. Thompson, 94-1406-L (WD/OK). This case has reached the 10th Circuit Court of Appeals. The case involved our denying the inmate his use of peyote during religious ceremonies. However, because the inmate was released from BOP custody in November 1996, the AUSA will argue that the petitioner's request for relief is moot.

Anez S. Robinson v. United States of America, C.A. No. 97-051, (SD/TX). Plaintiff alleges that he broke two metal rods in his back when he fell from an exercise bicycle. A broken seat on the bicycle caused the fall. Plaintiff alleged BOP employees were the proximate cause of his injury by not insuring the seat on the exercise bicycle was tight before allowing inmates to use it. Plaintiff alleges nothing has been done to repair the broken rods and he is totally disabled and unable to work. Plaintiff claims undue physical/emotional pain and suffering and is seeking \$3,000,000.00, and any other relief deemed appropriate by the court.

Rocha v. Reno, A-97-CA-549-SS (WD/TX). This case was filed pursuant to Title VII of the Civil Rights Act of 1964. Plaintiff alleges discrimination based upon national origin and age when another person was offered the position the plaintiff sought at FCI Bastrop.

Spanjol v. USA, 4:94-CV-237 (ED/TX). Wrongful death case involving treatment at several institutions. The Court ruled in our favor, stating that although there may have been some negligence, it was not the proximate cause of his injury.

FCI La Tuna reports receipt of Jacquez v. United States, et al., EP-97-CA-311-H. This is one of three cases involving the same issue - that inmates were allowed to take and successfully complete certain college classes, but were never issued transcripts for the completion of those classes. SCRO will handle these cases.

### **CASES WITH SETTLEMENT OR AWARD**

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

In Martinez v. Fleming, A-97-CA-010-SS (WD/TX), an FCI Bastrop habeas petition, Judge Sparks ruled that an inmate convicted of 21 U.S.C. Section 841(a)(1) with a two-point enhancement for possession of a weapon in connection with a drug offense is not a violent offender for the purposes of early release under 18 U.S.C. Section 3621(e). Notice to Appeal has been withdrawn.

In Donald Pettigrew v. Fleming, A-97-CA-088-SS (WD/TX), another FCI Bastrop habeas petition, Judge Sparks ruled that an inmate convicted of 21 U.S.C. Section 846 with a two-point enhancement for possession of a firearm during the course of the conspiracy is not a violent offender for the purposes of early release under 18 U.S.C. Section 3621(e).

The Daas v. Henman case from FDC Oakdale was settled for \$2,500 and converted from a Bivens to an FTCA case. The case involved allegations of improper placement of the inmate in Administrative Detention when inmate threatened to file lawsuits and sent threatening correspondence to the Warden.

Caldwell v. United States (WD/OK). This 1989 FTCA case from FCI El Reno was settled for \$1,000.00.

Sinks v. Slade, EP-97-CA-116-F. The FCI La Tuna petitioner challenged the BOP's determination that he was ineligible for early release because his crime was considered a crime of violence. The District Court ruled that the inmate's two point enhancement cannot make him ineligible for early release because it is not a conviction.

Bobby James Cammock v. Bureau of Prisons et al., C.A.C-96-196, SD/TX. Court dismissed habeas petition. Court concluded that possession of a firearm by an illegal alien (922g) is not a "crime of violence" pursuant to 18 U.S.C. § 3621(e)(B). The Court further stated "this legal conclusion does not mean that petitioner is entitled to a one-year reduction in his sentence. Section 3621 makes clear that the one-year reduction is discretionary with the BOP." A reconsideration motion has been filed.

b. **Tort Claim settlements**

Vernon Robertson had filed a tort claim alleging FTC Oklahoma City staff failed to protect him from a violent state inmate who assaulted inmate Robertson causing him limited permanent injury of his hand. Inmate Robertson was offered a settlement of \$1500, which he accepted. Attempts are being made to contact the prosecuting AUSA to have the money applied toward restitution instead of to claimant's inmate account.

c. **Other settlements**

Wright v. Miller. The final settlement of \$2,500.00 was accepted by the plaintiff, with no admission of liability. The case involved alleged excessive use of restraints during a bus trip. The plaintiff agreed to convert this Bivens action into an FTCA action.

**CASES WITH HEARING OR TRIAL**

Robert Horey v. Warden Woods, et al., C.A. No. C-97-292 (SD/TX). The inmate's cell became flooded with sewage. He seeks damages for prolong exposure to harmful waste and improper sanitization. A Spears hearing was conducted on July 14, 1997. The Magistrate Judge is to submit her recommendation. Three defendants have been dismissed.

Banks v. USA, A-95-CA-292 (WD/TX), was tried in Austin on August 11. Phase I only addressed the issue of whether the United States was liable for the plaintiff's alleged slip and fall in an FCI Bastrop housing unit in 1994. The Magistrate Judge, citing a need to research the issue of the admissibility of some of the evidence, has not yet ruled on the question of liability.

Four Mental Health Commitment Hearings, under provisions of 18 U.S.C. 4245 were held at FMC Carwell.

## MEDICAL MALPRACTICE

### LITIGATION

Cancio v. John Stone, A-97-CA-544-SS (WD/TX). Bivens action against HSA at FCI Bastrop alleging deliberate indifference in treatment provided for an injured finger.

Martinez v. U.S.A.. Significant medical malpractice case, alleging negligence by Bureau staff at FCI Bastrop, first by the medical staff in failing to treat his ankylosing spondylosis appropriately, and second by unit officers in failing to secure medical attention while he suffered paralysis and excruciating pain for several days.

Tommy Tompkins v. John Doe, et al., H-97-1894 (SD/TX). This Bivens-type lawsuit involves the medical care he received at several SCRO and NCRO institutions relating to cancer in his mouth. Much of the treatment was provided by consultants. He seeks a minimum of \$75,000 for physical pain and mental anguish from delays in providing care and surgery. This case will be reported in our October monthly report.

### TORTS

Brian Fuller has filed a tort claim requesting damages in the amount of \$3,241,000.00. This claim replaces a lawsuit the inmate voluntarily dismissed. Inmate filed his lawsuit pro se, but has now hired an attorney for his tort claim. Allegations in the tort claim originated at FCI Seagoville, but also involve FCI Three Rivers and FCI Bastrop. Inmate is requesting compensation for delay in surgeries (two) retaliation; allergic reaction to medication; loss of future earning capacity; disfigurement; future medical expenses; and future pain and suffering. Throughout the proceedings for the lawsuit, the AUSA and Clinical Director were confident there was no BOP negligence.  
(T-SCR-97-240)

Horace Jackson, T-SCR-97-381, \$1,500,000. FMC Fort Worth alleging negligent infliction of mental anguish and emotional distress for failure of BOP to surgically remove a G.K. nail from his hip, causing pain and difficulty in walking.

GUERRIERI, Mario - Mr. Guerrieri, an inmate housed at FMC Fort Worth, alleges that he contracted a staph infection after he underwent surgery at the contract hospital (Texas Osteopathic Hospital) in Fort Worth, Texas. He contends that after the surgery he was returned to the institution and on the third day he was told that he had a staph infection from either the "doctor's tools or from the operating room." Mr. Guerrieri also

contends that medical staff at FMC Fort Worth have failed to treat him for a nerve condition which resulted after he had two strokes in a county jail. Mr. Guerrieri seeks \$750,000.00 for past and future pain and suffering. (T-SCR-97-276)

JAMIESON, Alisa - Ms. Jamieson alleges that while she was housed at FTC Oklahoma City, BOP medical staff administered a sulfa drug. Further, she states that the PA acknowledged that the drug she had been prescribed was sulfa, immediately confiscated the medication, and ordered new medication. Ms. Jamieson states that she did not receive any of the medications and as a result of her high fever she became dehydrated and was taken to a local hospital for treatment. She seeks \$50,000.00 in damages (T-SCR-97-189)

RODRIGUEZ, Jesus - Mr. Rodriguez, an inmate housed at FMC Fort Worth, alleges that he fell while he was housed at the El Paso County Jail, prior to being sentenced, and sustained a hernia. The sentencing judge recommended that he be housed at a medical facility in order to have the hernia surgically repaired. Mr. Rodriguez contends that medical staff at FMC Fort Worth have refused to provide the surgical repair because his sentence is too short. Mr. Rodriguez seeks \$1,500,000.00 for past and future pain and suffering. (T-SCR-97-298)

PETERSEN, Justin - Claimant asserts FCI Bastrop staff failed to provide a proper prosthesis and prosthetic socks for the amputated stump of his left leg. He also states that due to the negligence in the maintenance of a hazardous situation in the shower and in his cell, claimant suffered a fall in each of those places. (T-NCR-97-150).

CARTER, Norma - A memorandum of law was sent to DOJ via the Central Office. It is anticipated that a settlement offer of \$150,000 will be made. A denial letter was sent to Claimant's counsel, but was primarily intended to motivate him to provide additional documents as to her current medical status and seek reconsideration in order that settlement negotiations could begin. (T-SCR-97-28).

MAY, Charles - Mr. May is currently housed at FCI Oakdale; however, he alleges that he fell from a top bunk at FCI Bastrop on August 5, 1996. Mr. May contends that he has not received proper medical attention for the injuries to his back since the fall. Mr. May further states that the Bureau of Prisons medical staff failed to provide proper medical treatment for a knee problem, which resulted in his falling from the top bunk at FCI Bastrop. Mr. May seeks \$500,000.00 for past and future pain and suffering. (T-SCR-97-239).

JOHNSON, Timothy - Timothy Johnson filed a claim seeking \$50,000.00 for a knee injury he sustained at FCI Oakdale. Mr. Johnson alleges that he fell while playing basketball on December 29, 1996, and that he received physical therapy, which was indicated as necessary by an Orthopedic Surgeon. He contends the therapy was stopped on May 9, 1997, by the therapist because he was not responding. He further states that the physical therapist indicated that further medical evaluation was needed. Mr. Johnson states that he suffers from numbness, swelling, popping, and burning sensations due to the instability of his left knee. He also states he was slapped by a staff member. The matter has been brought to the attention of Internal Affairs. (T-SCR-97-238).

### **SIGNIFICANT TORT CLAIMS**

Wholesale Petroleum, a convenience store, has filed a claim for damages received when a BOP semi truck, driven by FCI El Reno staff, struck a canopy covering the fuel pumps. Claimants are seeking approximately \$20,000.00 in damages. (T-SCR-97-281). The region forwarded its recommendation to Central Office, with the determination to be made by DOJ.

Christopher Martinez, (T-SCR-97-338) and Bruno Diaz, (T-SCR-97-357) were victims of an assault which occurred at FCI Three Rivers during June 1997. Martinez is requesting compensation of \$60,000.00 for his injuries. Diaz is requesting compensation of \$30,000.00 for his injuries. An initial review of the SIS reports does not indicate the institution was aware these inmates were in any type of danger.

FPC Bryan reports that a tort claim has been filed for wrongful death regarding inmate Hortencia Flores-Cabrera. The inmate suffered liver failure and died as the result of INH-induced Hepatitis. Health Services staff were disciplined regarding the medical treatment afforded this inmate. There are concerns regarding government liability. FPC Bryan is preparing a memorandum of law to aid DOJ staff when considering whether to offer a settlement in this case and how much the offer will be.

### **RELIGIOUS FREEDOM RESTORATION ACT**

#### **LITIGATION**

#### **ADMINISTRATIVE REMEDY**

Inmate Sheri Cohen at FMC Carswell alleges religious discrimination by staff. Response is pending. The case number is 139831-R3.



FCI Texarkana reports that in Administrative Remedy 140091-F1, the inmate is requesting to have his religion recognized as satanism. FCI Texarkana is initially denying the request.

**ENSIGN AMENDMENT:**

**LITIGATION**

Received favorable Report and Recommendation from the Magistrate Judge in the Harrell case. We expect that a favorable final order is forthcoming.

Milford Topsy v. Michael Purdy, et al.. CA-C-97-229 (SD/TX). Dismissed under PLRA requirements because inmate failed to satisfy filing fees.

**TORTS**

Kenneth Herbert Linn - T-SCR-97-109 and T-SCR-97-111. Inmate complained that the Bureau of Prisons did not give inmates sufficient notice of the new provisions of the Ensign Amendment in time for inmates to contact and notify publishers to have subscriptions routed to different mailing addresses.

## LITIGATION

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
<i>MXR</i>											
<i>NER</i>											
<i>SER</i>											
<i>NCR</i>											
<i>SCR</i>	67	45	6	12	4	39	135	36	6	5	0
<i>WXR</i>											
<i>CO</i>											
<i>TOT</i>											

NARRATIVE ANALYSIS (NARRATIVE ATTACHED ON SEPARATE PAPER)

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FTC - NUMBER OF FTCA ACTIONS FILED

BIV - NUMBER OF BIVENS ACTIONS FILED

OTH - OTHER ACTIONS FILED

ANS - NUMBER OF LITIGATION REPORTS COMPLETED

PEN - PENDING

CLD - NUMBER OF ACTIONS CLOSED

H/T - NUMBER OF HEARINGS OR TRIALS (INCLUDE INFO IN NARRATIVE)

SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)

AND - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)

GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE INFO IN NARRATIVE)

**October 15, 1997      Quarterly Report - SCRO  
7/1/97 - 9/30/97**

**SOUTH CENTRAL REGIONAL OFFICE  
NARRATIVES  
JULY 1, 1997 - SEPTEMBER 30, 1997**

**SIGNIFICANT CASES**

Fowler v. USA, 97-2006 (ED/LA). Coleatha Fowler and Adrian Perry brought a Federal Tort Claims action in the Eastern District of Louisiana. Fowler and Perry are the administrators of the estates of Ricardo E. Lopez' two minor children. Lopez was murdered by Albert Young while Young was participating in the home confinement program. Plaintiffs allege that the Bureau failed to properly monitor Young's home confinement. The assigned AUSA filed an answer and is currently drafting a Motion to Dismiss.

McAlpine v. Thompson, 94-1406-L (WD/OK). This case has reached the 10th Circuit Court of Appeals. The case involved our denying the inmate his use of peyote during religious ceremonies. However, because the inmate was released from BOP custody in November 1996, the AUSA will argue that the petitioner's request for relief is moot.

Anez S. Robinson v. United States of America, C.A. No. 97-051, (SD/TX). Plaintiff alleges that he broke two metal rods in his back when he fell from an exercise bicycle. A broken seat on the bicycle caused the fall. Plaintiff alleged BOP employees were the proximate cause of his injury by not insuring the seat on the exercise bicycle was tight before allowing inmates to use it. Plaintiff alleges nothing has been done to repair the broken rods and he is totally disabled and unable to work. Plaintiff claims undue physical/emotional pain and suffering and is seeking \$3,000,000.00, and any other relief deemed appropriate by the court.

Rocha v. Reno, A-97-CA-549-SS (WD/TX). This case was filed pursuant to Title VII of the Civil Rights Act of 1964. Plaintiff alleges discrimination based upon national origin and age when another person was offered the position the plaintiff sought at FCI Bastrop.

Spanjol v. USA, 4:94-CV-237 (ED/TX). Wrongful death case involving treatment at several institutions. The Court ruled in our favor, stating that although there may have been some negligence, it was not the proximate cause of his injury.

FCI La Tuna reports receipt of Jacquez v. United States, et al., EP-97-CA-311-H. This is one of three cases involving the same issue - that inmates were allowed to take and successfully complete certain college classes, but were never issued transcripts for the completion of those classes. SCRO will handle these cases.

### CASES WITH SETTLEMENT OR AWARD

#### a. Adverse judgments

In Martinez v. Fleming, A-97-CA-010-SS (WD/TX), an FCI Bastrop habeas petition, Judge Sparks ruled that an inmate convicted of 21 U.S.C. Section 841(a)(1) with a two-point enhancement for possession of a weapon in connection with a drug offense is not a violent offender for the purposes of early release under 18 U.S.C. Section 3621(e). Notice to Appeal has been withdrawn.

In Donald Pettigrew v. Fleming, A-97-CA-088-SS (WD/TX), another FCI Bastrop habeas petition, Judge Sparks ruled that an inmate convicted of 21 U.S.C. Section 846 with a two-point enhancement for possession of a firearm during the course of the conspiracy is not a violent offender for the purposes of early release under 18 U.S.C. Section 3621(e).

The Daas v. Henman case from FDC Oakdale was settled for \$2,500 and converted from a Bivens to an FTCA case. The case involved allegations of improper placement of the inmate in Administrative Detention when inmate threatened to file lawsuits and sent threatening correspondence to the Warden.

Caldwell v. United States (WD/OK). This 1989 FTCA case from FCI El Reno was settled for \$1,000.00.

Sinks v. Slade, EP-97-CA-116-F. The FCI La Tuna petitioner challenged the BOP's determination that he was ineligible for early release because his crime was considered a crime of violence. The District Court ruled that the inmate's two point enhancement cannot make him ineligible for early release because it is not a conviction.

Bobby James Cammock v. Bureau of Prisons et al., C.A.C-96-196, SD/TX. Court dismissed habeas petition.

Court concluded that possession of a firearm by an illegal alien (922g) is not a "crime of violence" pursuant to 18 U.S.C. § 3621(e)(B). The Court further stated "this legal conclusion does not mean that petitioner is entitled to a one-year reduction in his sentence. Section 3621 makes clear that the one-year reduction is discretionary with the BOP." A reconsideration motion has been filed.

b. Tort Claim settlements

Vernon Robertson had filed a tort claim alleging FTC Oklahoma City staff failed to protect him from a violent state inmate who assaulted inmate Robertson causing him limited permanent injury of his hand. Inmate Robertson was offered a settlement of \$1500, which he accepted. Attempts are being made to contact the prosecuting AUSA to have the money applied toward restitution instead of to claimant's inmate account.

c. Other settlements

Wright v. Miller. The final settlement of \$2,500.00 was accepted by the plaintiff, with no admission of liability. The case involved alleged excessive use of restraints during a bus trip. The plaintiff agreed to convert this Bivens action into an FTCA action.

**CASES WITH HEARING OR TRIAL**

Robert Horey v. Warden Woods, et al., C.A. No. C-97-292 (SD/TX). The inmate's cell became flooded with sewage. He seeks damages for prolong exposure to harmful waste and improper sanitization. A Spears hearing was conducted on July 14, 1997. The Magistrate Judge is to submit her recommendation. Three defendants have been dismissed.

Banks v. USA, A-95-CA-292 (WD/TX), was tried in Austin on August 11. Phase I only addressed the issue of whether the United States was liable for the plaintiff's alleged slip and fall in an FCI Bastrop housing unit in 1994. The Magistrate Judge, citing a need to research the issue of the admissibility of some of the evidence, has not yet ruled on the question of liability.

Four Mental Health Commitment Hearings, under provisions of 18 U.S.C. 4245 were held at FMC Carwell.

**MEDICAL MALPRACTICE**

**LITIGATION**

Cancio v. John Stone, A-97-CA-544-SS (WD/TX). Bivens action against HSA at FCI Bastrop alleging deliberate indifference in treatment provided for an injured finger.

Martinez v. U.S.A.. Significant medical malpractice case, alleging negligence by Bureau staff at FCI Bastrop, first by the medical staff in failing to treat his ankylosing spondylosis appropriately, and second by unit officers in failing to secure medical attention while he suffered paralysis and excruciating pain for several days.

Tommy Tompkins v. John Doe, et al., H-97-1894 (SD/TX). This Bivens-type lawsuit involves the medical care he received at several SCRO and NCRO institutions relating to cancer in his mouth. Much of the treatment was provided by consultants. He seeks a minimum of \$75,000 for physical pain and mental anguish from delays in providing care and surgery. This case will be reported in our October monthly report.

#### TORTS

Brian Fuller has filed a tort claim requesting damages in the amount of \$3,241,000.00. This claim replaces a lawsuit the inmate voluntarily dismissed. Inmate filed his lawsuit pro se, but has now hired an attorney for his tort claim. Allegations in the tort claim originated at FCI Seagoville, but also involve FCI Three Rivers and FCI Bastrop. Inmate is requesting compensation for delay in surgeries (two) retaliation; allergic reaction to medication; loss of future earning capacity; disfigurement; future medical expenses; and future pain and suffering. Throughout the proceedings for the lawsuit, the AUSA and Clinical Director were confident there was no BOP negligence. (T-SCR-97-240)

Horace Jackson, T-SCR-97-381, \$1,500,000. FMC Fort Worth alleging negligent infliction of mental anguish and emotional distress for failure of BOP to surgically remove a G.K. nail from his hip, causing pain and difficulty in walking.

GUERRIERI, Mario - Mr. Guerrieri, an inmate housed at FMC Fort Worth, alleges that he contracted a staph infection after he underwent surgery at the contract hospital (Texas Osteopathic Hospital) in Fort Worth, Texas. He contends that after the surgery he was returned to the institution and on the third day he was told that he had a staph infection from either the "doctor's tools or from the operating room." Mr. Guerrieri also contends that medical staff at FMC Fort Worth have failed to treat him for a nerve condition which resulted after he had two strokes in a county jail. Mr. Guerrieri seeks \$750,000.00 for past and future pain and suffering. (T-SCR-97-276)

JAMIESON, Alisa - Ms. Jamieson alleges that while she was housed

at FTC Oklahoma City, BOP medical staff administered a sulfa drug. Further, she states that the PA acknowledged that the drug she had been prescribed was sulfa, immediately confiscated the medication, and ordered new medication. Ms. Jamieson states that she did not receive any of the medications and as a result of her high fever she became dehydrated and was taken to a local hospital for treatment. She seeks \$50,000.00 in damages (T-SCR-97-189)

RODRIQUEZ, Jesus - Mr. Rodriguez, an inmate housed at FMC Fort Worth, alleges that he fell while he was housed at the El Paso County Jail, prior to being sentenced, and sustained a hernia. The sentencing judge recommended that he be housed at a medical facility in order to have the hernia surgically repaired. Mr. Rodriguez contends that medical staff at FMC Fort Worth have refused to provide the surgical repair because his sentence is too short. Mr. Rodriguez seeks \$1,500,000.00 for past and future pain and suffering. (T-SCR-97-298)

PETERSEN, Justin - Claimant asserts FCI Bastrop staff failed to provide a proper prosthesis and prosthetic socks for the amputated stump of his left leg. He also states that due to the negligence in the maintenance of a hazardous situation in the shower and in his cell, claimant suffered a fall in each of those places. (T-NCR-97-150).

CARTER, Norma - A memorandum of law was sent to DOJ via the Central Office. It is anticipated that a settlement offer of \$150,000 will be made. A denial letter was sent to Claimant's counsel, but was primarily intended to motivate him to provide additional documents as to her current medical status and seek reconsideration in order that settlement negotiations could begin. (T-SCR-97-28).

MAY, Charles - Mr. May is currently housed at FCI Oakdale; however, he alleges that he fell from a top bunk at FCI Bastrop on August 5, 1996. Mr. May contends that he has not received proper medical attention for the injuries to his back since the fall. Mr. May further states that the Bureau of Prisons medical staff failed to provide proper medical treatment for a knee problem, which resulted in his falling from the top bunk at FCI Bastrop. Mr. May seeks \$500,000.00 for past and future pain and suffering. (T-SCR-97-239).

JOHNSON, Timothy - Timothy Johnson filed a claim seeking \$50,000.00 for a knee injury he sustained at FCI Oakdale. Mr. Johnson alleges that he fell while playing basketball on December 29, 1996, and that he received physical therapy, which was indicated as necessary by an Orthopedic Surgeon. He contends the therapy was stopped on May 9, 1997, by the therapist because he was not responding. He further states that the physical therapist indicated that further medical evaluation was needed.

Mr. Johnson states that he suffers from numbness, swelling, popping, and burning sensations due to the instability of his left knee. He also states he was slapped by a staff member. The matter has been brought to the attention of Internal Affairs. (T-SCR-97-238).

### **SIGNIFICANT TORT CLAIMS**

Wholesale Petroleum, a convenience store, has filed a claim for damages received when a BOP semi truck, driven by FCI El Reno staff, struck a canopy covering the fuel pumps. Claimants are seeking approximately \$20,000.00 in damages. (T-SCR-97-281). The region forwarded its recommendation to Central Office, with the determination to be made by DOJ.

Christopher Martinez, (T-SCR-97-338) and Bruno Diaz, (T-SCR-97-357) were victims of an assault which occurred at FCI Three Rivers during June 1997. Martinez is requesting compensation of \$60,000.00 for his injuries. Diaz is requesting compensation of \$30,000.00 for his injuries. An initial review of the SIS reports does not indicate the institution was aware these inmates were in any type of danger.

FPC Bryan reports that a tort claim has been filed for wrongful death regarding inmate Hortencia Flores-Cabrera. The inmate suffered liver failure and died as the result of INH-induced Hepatitis. Health Services staff were disciplined regarding the medical treatment afforded this inmate. There are concerns regarding government liability. FPC Bryan is preparing a memorandum of law to aid DOJ staff when considering whether to offer a settlement in this case and how much the offer will be.

### **RELIGIOUS FREEDOM RESTORATION ACT**

#### **LITIGATION**

#### **ADMINISTRATIVE REMEDY**

Inmate Sheri Cohen at FMC Carswell alleges religious discrimination by staff. Response is pending. The case number is 139831-R3.

FCI Texarkana reports that in Administrative Remedy 140091-F1, the inmate is requesting to have his religion recognized as satanism. FCI Texarkana is initially denying the request.

### **ENSIGN AMENDMENT:**

#### **LITIGATION**

Received favorable Report and Recommendation from the





**NARRATIVE ANALYSIS (NARRATIVE ATTACHED ON SEPARATE PAPER)**

**DEFINITIONS**

- LOC - LOCATION**
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- FTC - NUMBER OF FTCA ACTIONS FILED**
- BIV - NUMBER OF BIVENS ACTIONS FILED**
- OTH - OTHER ACTIONS FILED**
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- PEN - PENDING**
- CLD - NUMBER OF ACTIONS CLOSED**
- H/T - NUMBER OF HEARINGS OR TRIALS (INCLUDE INFO IN NARRATIVE)**
- SET - NUMBER OF SETTLEMENTS (INCLUDE INFO IN NARRATIVE)**
- AND - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)**
- GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE INFO IN NARRATIVE)**

**FOIA/PA REQUESTS**

<i>LOC</i>	<i>NUM</i>	<i>PROC</i>	<i>PEND</i>	<i>OD</i>	<i>A/OD</i>	<i>A/P</i>	<i>CA</i>
<i>MXR</i>							
<i>NER</i>							
<i>SER</i>							
<i>NCR</i>							
<i>SCR</i>	<i>129</i>	<i>130</i>	<i>48</i>	<i>7</i>	<i>26 DAYS</i>	<i>25 DAYS</i>	<i>3</i>
<i>WXR</i>							
<i>CO</i>							
<i>TOT</i>							

**NARRATIVE ANALYSIS**

**DEFINITIONS**

**LOC - LOCATION**  
**NUM - NUMBER FILED IN QUARTER**  
**PROC - PROCESSED**  
**PEND - PENDING**  
**OD - OVERDUE**  
**A/OD - AVERAGE NUMBER OF DAYS OVERDUE**  
**A/P - AVERAGE LENGTH OF TIME TO PROCESS**  
**CA - CIVIL ACTIONS FILED UNDER FOI/PA ACTS**

Tort Claims Third Quarter - FY 97 (April 01, 1997 - June 30, 1997)										loc	num	pp	pi
pppi	wd	med	set	amt	pen	den	od	a/o	a/p				
scr	141	111	18	1	0	11	53	10616	187	68	0	1	
116													

Num - Number of claims filed  
 PP - Personal Property claims  
 PI - Personal Injury claims  
 PPPI - Both PP & PI claims  
 WD - Wrongful death claims  
 Med - Medical claims  
 Set - Settled/Approved claims  
 Amt - Amount paid  
 Pen - Pending/open claims  
 Den - Number of claims Denied  
 OD - Number of claims Overdue  
 A/O - Avg number of days Overdue  
 A/P - Avg number of days to Process

(Med = PIM + WDM + PPPIM + PPWDM)  
 (WD = WD + PPWD)

**SCRO Quarterly Report  
FY'98 First Quarter  
1/15/98**

**SOUTH CENTRAL REGIONAL OFFICE  
NARRATIVES  
OCTOBER 1, 1997 - DECEMBER 31, 1997**

**SIGNIFICANT CASES**

Hagenson v. Fleming, A-97-CA-0601, (WD/TX), Garcia v. Fleming, A-97-CA-0646, (WD/TX), Sepeda v. Fleming, A-97-CA-0602, (WD/TX), and Cesar v. Fleming, A-97-CA-0635, are all 3621(e)(2)(b) early release habeas corpus petitions from FCI Bastrop. The Magistrate had recommended dismissal based on mootness. In Sepeda and Garcia, the court dismissed the cases without consideration of Venegas. A Motion to Modify the Report and Recommendation was filed and is pending in Hagenson and Cesar.

Noel Edward Plunkett v. Joe Gunja, et. a., C.A. No. C-96-548, SD/TX. Bivens. Plaintiff alleges named staff members from FCI Bastrop conspired with staff members at FCI Beckley, West Virginia, to effect his transfer. He further asserts racial discrimination and retaliation as additional reasons for his transfer. Plaintiff alleges while he was illegally confined in Special Housing, he was deprived of his right to participate in religious services; deprived of the benefit of an adequate law library; deprived of exercise; and deprived of inmate wages. Plaintiff states he was subjected to mental suffering and anguish as a result of the defendants deliberate indifference to his safety. He requests punitive and compensatory damages no less than \$250,000.00; that defendants be restrained from harassment and retaliation; costs of litigation; and any other relief deemed appropriate.

David Robert Reyes v. M. A. Purdy, C.A. No. C-97-488, SD/TX. Plaintiff asserts he relied upon the Government's representation that if he participated in the comprehensive drug program at FCI Three Rivers, he would receive credit toward the reduction of his sentence. He further asserts he was not aware that a prior aggravated offense conviction would have an impact on his qualifying for such credit.

Randall Lovelace v. Warden Conner, Civil Action NO. 5:97CV266, ED/TX. This inmate alleges his early release eligibility was improperly denied because of an improper "crime of violence" classification. He asserts the crime of Felon in Possession of Firearm is not violent.

Steven Sherrod v. Bob Guzik, CIV-97-1530-L, WD/OK. Plaintiff disputes his ineligibility for early release due to a two-point enhancement for possession of a firearm.

FPC Bryan reports receipt of Debra Smith v. John Pendleton, a Section 3621(e) habeas action in which the inmate challenges her ineligibility for early release based upon classification of her offense as a crime of violence. This two-point enhancement case is pending in the Southern District of Texas.

Ahr v. Reno - This FPC Bryan EEO related civil case continues to be active. Plaintiff's counsel was granted permission to file an EEO Complaint in late April regarding only her assertions of retaliation. She was provided the forms by Central Office in late June, yet did not file her complaint until November 18th, 38 days after the end of the 6-month continuance Judge Atlas provided her. Judge Atlas also stated her court would lack subject matter jurisdiction if the claim (essentially a contract dispute) exceeded \$10,000 (inclusive of both damages and attorney's fees). However, a demand letter was recently sent to the AUSA seeking \$25,000 and plaintiff's response to interrogatories included claims for legal expenses, which alone totaled more than \$10,000. The AUSA and paralegal will discuss advising the Court that the EEO Complaint has just been filed, and that plaintiff continues to seek monies well above the Court's authority to adjudicate. We expect the case will be dismissed, and Ms. Ahr and her counsel will be referred to the U.S. Court of Claims. Depositions of Ms. Ahr and Dr. Hill took place on December 8, 1997. Currently before the Court is a motion by Ms. Ahr's attorney to withdraw from this case.

Lee and Martinez. A decision was made that in light of the final court order, these inmates will be left in their CCC placements, thereby giving them early release of only four and six weeks respectively.

Pettigrew v. Fleming, A-97-CA-088-SS (WD/TX). This Bastrop inmate, who was an early release based on an adverse court ruling, violated his supervised release and has returned to Bastrop. He is no longer eligible for early release.

Sinks v. Slade, E-97-CA-116F (WD/TX). A Notice of Appeal was filed on this FCI La Tuna case. We recommended that the inmate be brought back to the institution in light of the Venegas decision and in consideration that the inmate was just recently placed in the halfway house. The Department of Justice is concerned about this approach because of the existing adverse court order. Based upon these concerns and the briefing schedule, it was decided that we would file our brief with the 5th Circuit and pursue any possibility for expedited review. The Office of General Counsel concurred with this course of action, and the U.S. Attorney's office filed our brief on December 26, 1997.

Martinez v. U.S., EP-97-CA-224-F (WD/TX). An offer of settlement in the amount of \$25,000 in this FCI La Tuna medical malpractice case has been approved.

### **CASES WITH SETTLEMENT OR AWARD**

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

FCI La Tuna reports adverse decisions in Embrey v. Slade, EP-97-CA-040-H, and Lewis v. Slade, EP-97-CA-52-H. Inmates filed petitions for writ of habeas corpus wherein they challenged the BOP's decision not to grant their request to have one year off their sentences pursuant to 18 U.S.C. Section 3621(e). The District Court for the Western District of Texas ruled that the BOP misinterpreted the statute and the BOP's own policy, as it pertains to crimes of violence, when the BOP disallowed both requests due to the inmates' two point enhancements at sentencing. These decisions were handed down on November 21, 1997, and November 25, 1997, respectively, after the Fifth Circuit upheld the BOP policy on this issue. Reconsideration was requested for both cases. The district court applied Venegas and found in the BOP's favor in regard to Lewis. The BOP's request for reconsideration in Embrey is pending.

Loren Green v. USA, 4:96-CV-412-E (ND/TX). Court used theories under 18 U.S.C. 4042 to establish a duty and res ipsa loquitur to find the U.S. 50% responsible for inmate's burn. Judgment against U.S. for \$7,500. We are recommending an appeal. DOJ is awaiting the BOP's formal recommendation.

Clark v. U.S., 3:95-CV-702-T. The District Court granted sentencing credit to defendant for the time period when the state transferred him to federal custody for commencement of sentence until the staff later learned the state improperly released him to federal custody. The Regional Office is recommending appeal. The U.S. Attorney's Office has not yet agreed to support our position.

#### **b. Tort claim settlements**

On November 7, 1997, the Department of Justice has requested Treasury to issue a check for \$16,800 for tort claim T-SCR-97-281, filed by Wholesale Petroleum. The claim concerned damage to an overhead fuel station canopy which was struck by a semi-truck driven by an FCI El Reno SORT member. The institution and region recommended to offer settlement in the amount of \$14,845.

c. **Other settlements**

Smith v. Fleming, A-97-CV-698, (WD/TX). Petitioner sought removal of public safety factor as sex offender based upon conduct prior to offenses for which he is currently incarcerated. The charge of sexual assault was dismissed because the victim was too traumatized to testify. Thus, policy did not support application of that PSF. Additionally, the petitioner had several other PSF's, so he will never be approved for a halfway house. The petitioner agreed to dismiss the case voluntarily in return for removal of the sex offender PSF.

**CASES WITH HEARING OR TRIAL**

Robinson v. U.S.A., C-97-051 (SD/TX). A Spears hearing was conducted on October 1, 1997.

Two telephonic hearings with Judge, AUSA, etc., in McAnnich case, Case No. C-96-132, Bivens case filed in Southern District of Texas, Corpus Christi Division. The first call involved Interrogatories, and the second was related to the Motion for Enlargement of Time for the Expert Report. The trial is set for January 26, 1998.

The Loren Green trial was held November 3 in Judge Mahon's court. See Adverse Judgment heading.

**MEDICAL MALPRACTICE**

**LITIGATION**

Tommy Tompkins v. John Doe. This Bivens lawsuit involves the medical care the inmate received at several SCR and NCR institutions relating to cancer in his mouth. Much of the treatment was provided by consultants. He seeks a minimum of \$75,000 for physical pain and mental anguish from delays in providing care and surgery. Responses have been and will be filed for each defendant. The OQM has reviewed the medical file and believes the BOP followed the appropriate standard of care.

Domingo Abrego v. Bill Gurth, et. al., C.A. No. 97-452, SD/TX. Plaintiff alleges deliberate indifference to his medical needs at FCI Three Rivers. Plaintiff asserts he has a pinched nerve or dislocated disc in his back because he was forced to work in various jobs which aggravated a previous back injury. He further asserts defendants refused to follow recommendations of several specialists and as a result, he is confined to a wheel chair. He

is requesting a jury trial; compensatory and punitive damages of \$2,000,000.00 from each defendant; proper medical treatment; and attorney fees.

Keith Blayne v. Bob Guzik, et al., CIV-97-0968-M (WD/OK).  
Alleges FTC Oklahoma City staff delayed treating a keloid on his ear, which constantly itches and hurts. He requests \$10,000 in silver for each day of "the conspiracy" and staff to be incarcerated. Staff claim they have taken care of his ear.

Berney Bryant v. GEK, et al. Mr. Bryant suffered an assault in El Reno, resulting in brain damage. He alleges he has received inadequate care while at FMC Fort Worth. He names three defendants, two of whom are in Rehabilitation Services.

#### **TORTS**

None

#### **SIGNIFICANT TORT CLAIMS**

Norma Carter is an inmate at FPC Bryan - T-SCR-97-28, \$500,000. Claimant's counsel has submitted voluminous medical documentation in support of a request for reconsideration of the claim. If claimant's medical condition proves to be as expected, a settlement offer of between \$150,000 and \$228,000 is anticipated. FPC Bryan medical staff are reviewing the records to provide SCRO guidance on the issue of damages.

Flores-Cabrera, T-SCR-97-376. This FPC Bryan wrongful death tort has been referred to the Office of General Counsel for their approval of a settlement offer in the amount of \$35,000-\$50,000.

Omar Tusshani, T-BOP-97-151, \$15,000,000. Alleges he slipped and fell while in custody of the USMS, resulting in paraplegia and that when he transferred to FMC Fort Worth, he received inadequate medical care, further exacerbating his condition.

Raymond Chavez, T-SCR-97-468, \$1,500,000. Alleges he injured himself entering the dining facility at FMC Fort Worth, resulting in a broken wrist. He further alleges BOP failed to timely diagnose his injury and provide appropriate medical care.

Julio Villanueva, an inmate at FCI Three Rivers, is seeking \$200,000.00 as compensation for suffering great physical pain, mental stress, feet and back problems, and kidney problems due to lack of medical treatment. Despite his continued allegation of great physical pain, claimant continues to play handball on a regular basis. (T-SCR-97-426)



Joseph Weaver, T-SCR-97-488, \$750,000.000. Alleges negligence on the part of BOP in treatment of osteomyelitis in 1994 at Tallahassee and subsequent treatment at FMC Fort Worth. He states he has never received treatment for his chronic osteomyelitis infection and has not received a total knee replacement. As a result, he suffered a heart indifference to his serious medical needs.

**SIGNIFICANT ADMINISTRATIVE REMEDIES**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**ADMINISTRATIVE REMEDY**

**OTHER**

None

**ENSIGN AMENDMENT:**

**LITIGATION**

None

**TORTS**

None

**LITIGATION (OCTOBER 1-DECEMBER 31, 1997)**

<b>LOC</b>	<b>NUM</b>	<b>HC</b>	<b>FTC</b>	<b>BIV</b>	<b>OTH</b>	<b>ANS</b>	<b>PEN</b>	<b>CLD</b>	<b>H/T</b>	<b>SET</b>	<b>AWD</b>
<b>MXR</b>											
<b>NER</b>											
<b>SER</b>											
<b>NCR</b>											
<b>SCR</b>	<b>59</b>	<b>43</b>	<b>2</b>	<b>13</b>	<b>1</b>	<b>64</b>	<b>98</b>	<b>37</b>	<b>5</b>	<b>3</b>	<b>0</b>
<b>WXR</b>											
<b>CO</b>											
<b>TOT</b>											

**NARRATIVE ANALYSIS (NARRATIVE ATTACHED ON SEPARATE PAPER)**

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- HC - NUMBER OF HABEAS CORPUS ACTIONS FILED**
- FTC - NUMBER OF FTCA ACTIONS FILED**
- BIV - NUMBER OF BIVENS ACTIONS FILED**
- OTH - OTHER ACTIONS FILED**
- ANS - NUMBER OF LITIGATION REPORTS COMPLETED**
- PEN - PENDING**
- CLD - NUMBER OF ACTIONS CLOSED**
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- AND - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)**
- GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE INFO IN NARRATIVE)**

Tort Claims First Quarter - FY 98 (October 01, 1997 - December 31, 1997)													
loc	num	pp	pi	pppi	wd	med	set	amt	pen	den	od	a/o	a/p
scr	129	91	28	1	0	8	13	19854	132	68	0	2	124

- Num - Number of claims filed
- PP - Personal Property claims
- PI - Personal Injury claims
- PPPI - Both PP & PI claims
- WD - Wrongful death claims
- Med - Medical claims
- Set - Settled/Approved claims
- Amt - Amount paid
- Pen - Pending/open claims
- Den - Number of claims Denied
- OD - Number of claims Overdue
- A/O - Avg number of days Overdue
- A/P - Avg number of days to Process

(Med = PIM + WDM + PPPIM + PPWDM)

(WD = WD + PPWD)