

**SOUTH CENTRAL REGIONAL OFFICE
NARRATIVES
JANUARY 1, 1998 - MARCH 31, 1998
Second Quarter FY'98**

SIGNIFICANT CASES

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

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

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

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

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

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

Clyde Chase v. USBOP. This is an FMC Fort Worth FTCA case, originally filed in December 1994, which has bounced from Connecticut, to WD/LA, to ND/TX. Mr. Chase alleges deliberate indifference and negligence to his serious medical needs, arising from an accident which occurred at FCI Oakdale in 1989. He seeks \$30,000,000.

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

Scott v. Pendleton - C.A. #H-97-1928 (S.D. TX, Houston Division). This FPC Bryan inmate seeks early release pursuant to §3621(e). Petitioner has exhausted Administrative Remedies. Recommended Motion for Summary Judgment based on Venegas decision.

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

Pinkston v. Pendleton - C.A. #H-97-2166 (S.D. TX, Houston Division). This FPC Bryan inmate seeks early release pursuant to §3621(e). Recommended Motion for Summary Judgment based on Venegas decision.

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

CASES WITH SETTLEMENT OR AWARD

a. Adverse judgments

Whitley v. Flowers - In this El Reno 3621(e) case, the inmate was denied early release eligibility due to his two point enhancement under Section 9. Chief Judge Russell found Martin v. Gerlinski persuasive. This ruling comes after two other judges ruled in favor of the BOP (Eristoe v. Thompson and Owens v. Flowers). The inmate was placed in a CCC, and we have recommended he only serve 4 months in transitional services due to the particular facts and rulings in this case.

b. Tort claim settlements

The Isaac Martinez medical malpractice tort from FCI Bastrop has been approved for settlement by DOJ in the amount of \$275,000,

which has previously been accepted. Final paperwork is being prepared.

c. Other settlements

None

CASES WITH HEARING OR TRIAL

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

Mediation conducted on February 18, 1998, before Magistrate Judge in Dennis McAnich v. Warden Frank Woods, et al., C-96-132, SD/TX, Bivens. Inmate alleges inadequate/improper medical care and denial of medical care. Inmate was unwilling to accept BOP offer of consultation with a specialist. Mediator referred case back to presiding Magistrate Judge. Pending court order for determination of further activity in this case.

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

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

**MEDICAL MALPRACTICE
LITIGATION**

See also significant cases heading.

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

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

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

TORT CLAIMS

Jorge Martinez, an inmate housed at FMC Fort Worth, alleges that on April 9, 1997, his right hip joint was replaced by a physician at a local community hospital. He contends that the prosthesis has become dislocated five times since the surgery because the wrong size prosthesis was implanted.

It is clear that the surgery was performed by a contract physician, but Mr. Martinez implies that staff at Fort Worth delayed the surgery from October 1996 until April 1997. He further states that in November 1997, while he was being transported back from a local hospital, the transporting BOP staff member failed to secure his wheelchair and the chair overturned causing further pain. Mr. Martinez seeks ten million dollars in damages. (T-SCR-97-538)

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

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

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

See also significant tort claims heading.

SIGNIFICANT TORT CLAIMS

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

Dimas Soto Valencia, an inmate at FCI Big Spring filed a medical malpractice claim for failing to provide adequate treatment prior to a heart attack. Inmate alleges nerve damage to his left arm due to medical malpractice. He also seeks damages due to exposure to second hand smoke. The inmate has filed a Bivens action on this matter, and the U.S. Attorney's Office was served on April 1, 1998. (T-SCR-98-045)

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

Ann Marie Jenkins contends that she sustained a blister on her right foot as a result of improperly fitted steel toed shoes. Ms. Jenkins states that the blister got infected and did not heal, and that she was transferred to FMC Carswell on July 12, 1996, for an "arteriogram and surgery on the toe." Ms. Jenkins continues her claim by indicating that medical staff at FMC Carswell did not respond promptly, and her toe was amputated on November 26, 1996. She claims amputation of her leg was later discussed because the "arteriogram" was not performed until February 10, 1997. Ms. Jenkins seeks \$10,000.00 in damages. (T-SCR-98-050)

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

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

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

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

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

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

Susan Arocha has appointed an attorney to represent her in the Flores-Cabrera wrongful death claim from FPC Bryan. The attorney seeks settlement now not based solely on daughter's claim, but also on behalf of the estate. (T-SCR-97-376)

Larry Moore, an inmate at USP Beaumont, alleges medical negligence in treating a nail fungus and buttocks rash and seeks \$500,000.00. Claim is significant because it is the first medical negligence claim which involves actions of the independent contractor, University of Texas Medical Branch. The investigation of this claim will be limited to determining whether government staff overstepped the bounds of the contractual relationship in providing health care to the inmate. Presumably, the claim will be denied based on the independent contractor exception to the FTCA. (T-SCR-98-111)

Inmate Dimas Soto Valencia claims medical malpractice for care received at FCI Big Spring, which led to a heart attack. Inmate is seeking \$30,000,000. The case is being reviewed by the

Regional Health Services Administrator. We anticipate some problems with this case. (T-SCR-98-045)

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

See medical malpractice tort claim heading.

SIGNIFICANT ADMINISTRATIVE REMEDIES

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

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIM

None

ENSIGN AMENDMENT:

LITIGATION

None

TORTS

None

LITIGATION (JANUARY 1 - MARCH 31, 1998)

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR											
SCR	52	33	3	13	3	44	54	47	4	0	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)
- AND** - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)
- GOVERNMENT ACTION AND DATE OF ACTION** - (INCLUDE INFO IN NARRATIVE)

Tort Claims First Quarter - FY 98 (JANUARY 1 - MARCH 31, 1998)													
Loc	num	pp	pi	pppi	wd	med	set	amt	pen	den	od	a/o	a/p
scr	160	109	37	4	0	10	8	1038	200	53	2	0	114

- 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)

**SOUTH CENTRAL REGIONAL OFFICE
NARRATIVES**

APRIL 1, 1998 - JUNE 30, 1998

Third Quarter - FY '98

July 15, 1998

SIGNIFICANT CASES

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

Yuk Rung Tsang v. Bureau of Prisons Office of General Counsel, 1:98-CV-114-C, (ND/TX). FCI Big Spring reports that Tsang has filed this civil action claiming he completed the 500-hour drug treatment program in 1994. The Bureau was aware Tsang had a detainer lodged against him for deportation before he began the program. The record reflects Tsang entered the program immediately after the designated Residential Treatment Unit was burned during an institution riot. Tsang and other inmates were placed in other units at FCI Phoenix and allowed to complete the program as if they had been assigned to a dedicated drug treatment unit. Approximately two years after completing the 500-hour program, Tsang was notified his early release to his detaining authority had been revoked. The record reflects this early release was revoked due to Tsang's failure to reside in a dedicated drug treatment unit. Tsang argues this was not his fault. He states he completed the program in good faith.

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

Jeff H. King Sr. v. Janet Reno, LR-C-98-258/Civil No. 3-94-33. In this FCI Forrest City case, inmate King was convicted of Felon in Possession of a Firearm, Title 18 U.S.C. section 922 (g). The inmate was denied the year off because the offense was determined to be a crime of violence. The inmate challenges this determination.

Dr. Omar Tusshani v. USA, 98-CV-122-B (D/WY). This suit is filed by plaintiff against the U.S. Marshals Service and FMC Fort Worth. Plaintiff received significant injuries while housed in a contract detention facility in Wyoming under a USMS contract. He was transferred to FMC Fort Worth to receive physical therapy. This suit alleges plaintiff received inadequate medical care and treatment and, as a result, sustained permanent damage and significantly reduced life expectancy. The administrative claim was in the amount of \$15,000,000 and was denied.

Brian Maurice Fuller v. USA, 4:98-CV-484-Y (ND/TX). This civil action out of FCI La Tuna alleges plaintiff suffered severe physical injury at FCI Three Rivers to his knee, hip, and back, due to the negligent and wrongful acts of BOP employees. Plaintiff further alleges he was subjected to a delay in surgery and that the rehabilitation following surgery was below the standard of care, causing further damage and resulting in a second surgery. Further, plaintiff alleges he was prescribed a harmful medication. The claim is unclear as to where these allegations took place, but it appears he questions the care he received at FCI Three Rivers, FCI Bastrop, and FMC Fort Worth. He is seeking \$3,241,000 in damages.

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

FTC Oklahoma reports that a Judgment was entered on May 28, 1998 in the case Steven Sherrod v. Bob Guzik, CIV-97-1530-L. The petition for Habeas Corpus was granted, and the matter was remanded to the Bureau of Prisons for further proceedings consistent with the Report and Recommendation and Fristoe v. Thompson F.3d (10th Circuit, April 28, 1998.) Inmate Sherrod is scheduled for halfway house placement in mid-August.

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

Caliste v. Flowers- 3621(e) Habeas. An inmate at FCI El Reno was denied early release eligibility due to his two point enhancement under Section 9. The Court ruled in our favor.

CASES WITH SETTLEMENT OR AWARD

a. Adverse judgments

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

FCI El Reno reports an adverse ruling by the 10th Circuit Court of Appeals in Fristoe v. Thompson. The Court concluded that the BOP had abused its statutory authority by relying upon sentencing enhancements in determining whether an inmate was "convicted of a nonviolent offense." In doing so, the Court joined the majority of other Circuit Courts that have considered the issue.

b. Tort claim settlements

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

c. Other settlements

FPC Bryan reports that a settlement agreement has been signed in Ahr v. Reno, H-96-3641 (SD/TX). In exchange for \$11,250.00, Ms. Ahr will withdraw above captioned matter and a pending EEO complaint raising retaliation issues.

CASES WITH HEARING OR TRIAL

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

Telephone Spears hearing conducted on May 13, 1998, in the case of Green v. USA, C-98-103(SD/TX). It appears that the majority of claims in this complaint are time barred and will be dismissed. The only complaint still alive concerns the issue whether inmate should receive reconstructive knee surgery. Judge feels this issue could be addressed at FCI Three Rivers.

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

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

MEDICAL MALPRACTICE

LITIGATION

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

See Significant Cases heading.

TORT CLAIMS

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

See Tort Claim Settlements - Norma Carter's malpractice claim.

SIGNIFICANT TORT CLAIMS

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

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

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

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

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

SIGNIFICANT ADMINISTRATIVE REMEDIES

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

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

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

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

LITIGATION (APRIL 1, 1998 - JUNE 30, 1998)

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR											
SCR	35	18	4	9	4	37	17	92	5	0	1
WXR											
CO											
TOT											

NARRATIVE ANALYSIS (NARRATIVE ATTACHED ON SEPARATE PAPER)

DEFINITIONS

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

Tort Claims First Quarter - FY 98 (April 01, 1998 - June 30, 1998)													
loc	num	pp	pi	pppi	wd	med	set	amt	pen	den	od	a/o	a/p
scr	134	100	26	2	0	6	19	3513	175	84	1	8	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)

SOUTH CENTRAL REGIONAL OFFICE
NARRATIVES
JULY 1, 1998 - SEPTEMBER 30, 1998
FY'98 FOURTH QUARTER REPORT
October 14, 1998

SIGNIFICANT CASES

A. 3621(e)/DAP Cases

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

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

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

Joseph Gagliano v. N. L. Conner 5:98CV209 - An FCI Texarkana inmate alleges he was improperly removed from DAP. The plaintiff agrees that the BOP failed to recognize his alleged addiction to prescription drugs. Therefore, he complains that he is being denied early release eligibility. A litigation report has been prepared and mailed to the AUSA.

FTC Oklahoma City reports Steven Griggs v. Kathleen Hawk, CIV-98-690M. Inmate Griggs had filed a Bivens action against Attorney General Janet Reno, Director Hawk, Warden Guzik, and the United States for denying plaintiff a 12-month sentence reduction because of his two-point gun enhancement. The Magistrate Judge in his R&R granted defendant's motion to dismiss plaintiff's Bivens claims for monetary damages based on sovereign immunity and due process violations. However, he recommended that plaintiff's action for injunctive relief be construed as a §2241 habeas petition and that the petition be granted to the extent that the BOP is directed to consider within 30 days from any Order adopting the R&R whether plaintiff should receive a sentence reduction without reliance upon sentencing factors.

B. Medical Malpractice/Wrongful Death Cases

James Lee Dillon v. Michael Purdy, et al., C-97-587, SD/TX, Bivens. Petitioner at FCI Three Rivers asserts the Hospital Administrator was deliberately indifferent to his medical needs because the Administrator failed to diagnosis the plaintiff's condition and failed to provide adequate medical care to prevent the pain. Petitioner is requesting an unspecified monetary settlement for the pain and suffering he claims he was forced to endure. The court has granted a motion to dismiss the case against the Hospital Administrator, but has granted the plaintiff leave to amend.

Woods v. U.S., 4:98-CV-0441-A. FMC Carswell inmate Carolyn Woods acting on behalf of her sister and the estate of their deceased mother, inmate Elizabeth Scallion, filed a wrongful death suit in the amount of \$5 million dollars. The plaintiff claims that FMC Carswell's staff failed to assist the deceased when she collapsed at an institution dance.

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

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

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

C. Other Cases

Johnnie Fay Ray v United States. In this FCI Big Spring case, a contract teacher fell off a golf cart driven by an inmate. A settlement conference was held on July 17, 1998, and the government proposed settlement in the amount of \$60,000.00. This offer countered the plaintiff's offer of an \$80,000.00 settlement. Offer was accepted by plaintiff and both sides now await court's final order to dismiss.

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

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

CASES WITH SETTLEMENT OR AWARD

A. Adverse Judgments

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

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

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

B. Tort Claim Settlements

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

In the Zambrano medical malpractice claim from FCI Oakdale, we offered \$550 to settle the claim. The attorney alleged that had staff timely x-rayed the claimant's ankle, such would have prevented his ankle from becoming displaced. (T-SCR-98-148)

CASES WITH HEARING OR TRIAL

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

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

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

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

FMC Fort Worth Attorney, Al Munguia, traveled to Lubbock, Texas, on September 29, 1998, for a Spears hearing in Emery Estupinan-Vasquez v. United States, et al., a case that arose at FCI La Tuna. The Spears hearing was previously docketed for August 20, 1998, and it was postponed without anyone notifying the BOP. The Magistrate Judge ruled in BOP's favor based on the case being time barred.

SIGNIFICANT TORT CLAIMS

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

Eric Sampson, an inmate at USP Beaumont, alleges he was assaulted by another inmate in the housing unit by having heated liquid thrown on him. Claimant alleges BOP failed to protect him and seeks \$500,000. Claim was submitted by attorney on behalf of inmate. (T-SCR-98-344)

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

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

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

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

Mr. Kenaston, who is currently housed in the Admax Unit at Florence, contends that on January 14, 1998, when he was being transferred from FTC Oklahoma City, he was assaulted by another inmate and staff. Mr. Kenaston states that he was handcuffed and "shackled" before he was placed in the cell with the unrestrained

inmate who assaulted him. He adds that staff also assaulted him, and that his neck, back, and head were injured. He seeks \$200,000 for pain and suffering. Case has been referred to OIA. (T-SCR-98-250)

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

SIGNIFICANT ADMINISTRATIVE REMEDIES

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

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

Two administrative remedies were filed at FTC Oklahoma City alleging staff misconduct. Cadre inmate William Harding claims a staff member tampered with his mail because the recipient received the mail ripped and missing pages. Inmate Anthony Spencer filed a remedy alleging a staff member had made inappropriate statements and then lied to his supervisors regarding his action. Both matters are currently under SIS investigation.

LITIGATION (July 1, 1998 - September 30, 1998)

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR											
SCR	39	21	6	11	1	35	32	60	7	1	1
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)**
- AND - NUMBER OF AWARDS (INCLUDE INFO IN NARRATIVE)**
- GOVERNMENT ACTION AND DATE OF ACTION - (INCLUDE INFO IN NARRATIVE)**

Tort Claims First Quarter - FY 98 (July 01, 1998 - September 30, 1998)													
loc	num	pp	pi	pppi	wd	med	set	amt	pen	den	od	a/o	a/p
scr	152	107	27	1	0	16	11	1628	150	99	1	0	110

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)