



File  
Joyce

**UNITED STATES GOVERNMENT  
MEMORANDUM**

**FEDERAL BUREAU OF PRISONS  
WESTERN REGIONAL OFFICE  
DUBLIN, CALIFORNIA 94568**

DATE: February 14, 1995

REPLY TO  
ATTN OF:

*Harlan Penn*  
HARLAN W. PENN  
Regional Counsel

SUBJECT: Monthly Report for January 1995

TO: WALLACE H. CHENEY, Assistant Director/General Counsel  
O. IVAN WHITE, JR., Regional Director

▶▶ **CASES OF INTEREST** ◀◀

**DISTRICT COURT MATTERS:**

*U.S. v. Brown, et al* District of Oregon (Criminal prosecution)  
*Defendants Amos Brown, Henderson and Goff are proceeding to trial on April 11th -criminal prosecution of inmates for actions during the 9/2/93 disturbance at FCI SHE. Other defendants have appealed district court denial of motion to dismiss on double jeopardy grounds to the 9th Circuit and their trials are stayed pending appeal.*

*Ladigo v. Dollarhide, et al* District of Oregon (Bivens)  
*Denial of Motion for Summary Judgment/Dismiss on qualified immunity grounds. This case will proceed to trial according to AUSA Jim Sutherland. Inmate alleges staff defendants violated his 5th & 8th Amendment rights by forcing him to resign from the Drug Abuse Program by unlawfully placing him in admin. detention and that the forced resignation caused his parole date to be delayed.*

*Patini v. Crabtree* District of Oregon (Habeas)  
*Judge has ordered a state parole hearing for a WITSEC inmate whose federal sentence has expired. AUSA Ken Bauman and BOP Attorney Mary Sullivan handling.*

*Nelson v. Henry, et al* CV 94-5559 (C. D. California)  
*Wheelchair-bound inmate complaining that he needs new custom-fit wheelchair. Also complains that he is being denied access to programs at Terminal Island because the program areas, such as the chapel and education areas, are not wheelchair accessible. New wheelchair has been ordered for the inmate.*

*Wilson v. USA*, CV-93-1077-DT (C.D. California) (FTCA)

►► STATISTICS ◀◀

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	49											
Closed	89											
Reconsidered	20											
Pending	159											
Over 6 Mo.	4											

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	0	0	0	0	13	0	0	3	4	0	20

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	28											
Closed	36											
Pending	83											
Over 30 days	46											

FOI/PA Pending more than 30 days 01/31/95:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	3	6	3	0	0	18	2	4	3	4	3	46

Admin. Rem:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70											

<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	359											
New Cases:	15											
HC	11											
FTCA	0											
Bivens	3											
Other	1											
Closed	9											

*Inmate injured his Achilles tendon while playing basketball at MDC Los Angeles. Claims did not receive appropriate and timely medical care. Motions denied. Case went to trial on February 7, 1995. Currently under submission.*

**MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE:**

**FOI/PA LITIGATION:**

**SETTLEMENTS:**

**MISCELLANEOUS MATTERS:**

**Environmental:**

**Boron** - On January 30, 1995, 3800 gallons of diesel fuel spilled out of the holding tanks. The valves were broken off over the weekend, causing the spill. Vandalism is suspected. The contaminated soil has been removed from the ground and is currently properly stored awaiting instructions on the cleanup.

**PHX** -Safe Drinking Water violations were noticed in December at PHX. Staff met with Arizona ADEP officials, but were unsuccessful in challenging the violations. A Notice of Violation will be posted at the institution from February 8-13. These two violations took place in 1993 and 1994, the institution has no current violations.

**SAF** -Safe Drinking Water violations were noticed during an inspection on Jan 11. The delivery system is being renovated and a meeting is scheduled with ADEP.



*Jayce*

**UNITED STATES GOVERNMENT  
MEMORANDUM**

**FEDERAL BUREAU OF PRISONS  
WESTERN REGIONAL OFFICE  
DUBLIN, CALIFORNIA 94568**

DATE: March 6, 1995

REPLY TO  
ATTN OF:

*Harlan W. Penn*  
HARLAN W. PENN  
Regional Counsel

SUBJECT: Monthly Report for February 1995

OPTIONAL FORM 89 (7-90)

**FAX TRANSMITTAL**

# of pages ▶ *3*

To <i>Wallace H. Cheney</i>	From <i>Harlan Penn</i>
Dept./Agency <i>General Counsel</i>	Phone # <i>Regional Counsel</i>
Fax # <i>610</i>	Fax # <i>WRO</i>
NSN #640-01-317-7368	5089-101
GENERAL SERVICES ADMINISTRATION	

TO: WALLACE H. CHENEY, Assistant Director/General Counsel  
O. IVAN WHITE, JR., Regional Director

▶▶ **CASES OF INTEREST** ◀◀

**DISTRICT COURT MATTERS:**

*Wilson v. USA, CV-93-1077-DT (C.D. California) (FTCA)*

*Inmate injured his Achilles tendon while playing basketball at MDC Los Angeles. Claims did not receive appropriate and timely medical care. Motions denied. Case went to trial on February 7, 1995. Currently under submission.*

*FRA* *Rabbi Abraham Low v. Warden Larry F. Taylor (C.D. Calif.)*

*Suit under the Religious Freedom Restoration Act seeking injunctive relief regarding diet, mikvah, minyan and Torah. Hearing set for March 13, 1995.*

*USA v. Joseph Jurczeski (C.D. Calif.)*

*Criminal trial scheduled for 3/21/95. Mailroom staff found drugs in incoming mail at USP, Lompoc.*

*USA v. David Gates (C.D. Calif.)*

*Criminal trial scheduled for 3/28/95. Inmate possession of a weapon at USP, Lompoc.*

**MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE: None**

**SETTLEMENTS: None**

**MISCELLANEOUS MATTERS:**

**Environmental:**

**Boron** - On January 30, 1995, 3800 gallons of diesel fuel spilled out of the holding tanks. The valves were broken off over the weekend, causing the spill. Vandalism is suspected. The contaminated soil has been removed from the ground and is currently properly stored awaiting instructions on the cleanup. Institution ordered by EPA to cease cleaning up spill site. The Navy remediation team will continue the cleanup.

**PHX** -Safe Drinking Water violations were noticed in December at PHX. Staff met with Arizona ADEP officials, but were unsuccessful in challenging the violations. A Notice of Violation will be posted at the institution from February 8-13. These two violations took place in 1993 and 1994, the institution has no current violations.

**SAF** -Safe Drinking Water violations were noticed during an inspection on Jan 11. The delivery system is being renovated and a meeting is scheduled with ADEP.

The Pentagon has announced that it is giving the property comprising the Lompoc institutions to the Federal Bureau of Prisons.

►► STATISTICS ◀◀

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	49	48										
Closed	89	59										
Reconsidered	20	2										
Pending	159	150										
Over 6 Mo.	4	8										

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	0	0	0	0	19	0	0	5	2	4	30

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	28	33										
Closed	36	48										
Pending	83	68										
Over 30 days	46	35										

FOI/PA Pending more than 30 days 02/28/95:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	4	4	1	0	0	8	0	2	1	2	3	25*

\*Does not include inmate's transf'd out of Region or CCM's.

Admin. Rem:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	96										

<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	359	370										
New Cases:	15	20										
HC	11	9										
FTCA	0	3										
Bivens	3	7										
Other	1	1										
Closed	9	9										

Personnel

*FCI, Terminal Island: Deleso Alford returns to work on 3/6/95 after taking the bar exam.*

*FPC, Boron: Pam Lorincz on annual leave from 3/2/95, to 3/18/95.*

*FCI, Sheridan: Helen Ramsdale selected as new paralegal specialist. Her reporting date is 4/16/95.*

Joyce



**UNITED STATES GOVERNMENT  
MEMORANDUM**

**FEDERAL BUREAU OF PRISONS**

**WESTERN REGIONAL OFFICE**

**DUBLIN, CALIFORNIA 94568**

DATE: April 5, 1995

REPLY TO

ATTN: HARLAN W. PENN  
Regional Counsel

SUBJECT: Monthly Report for March 1995

TO: WALLACE H. CHENEY, Assistant Director/General Counsel

▶▶ **CASES OF INTEREST** ◀◀

***NINTH CIRCUIT MATTERS:***

**Rabbi Abraham Low v. Warden Larry F. Taylor (C.D. California)**

Suit under the Religious Freedom Restoration Act seeking injunctive relief regarding diet, mikvah, minyan and Torah. Both the District Court and the Ninth Circuit refused emergency injunctive relief. The District Court based denial on fact that inmate has not exhausted his administrative remedies and is requiring exhaustion. The Court of Appeals agreed with this rationale in denying emergency relief, but has set an expedited appeal schedule with Appellant's Brief due April 24th, Appellees' Brief due May 24th and oral argument in July.

***DISTRICT COURT MATTERS:***

**Jack Matthews v. Janet Reno, et al CIV 93-744 TUC-JMR (D. Arizona)**

Judgment for BOP in Rehabilitation Act action by terminated employee at FCI Tucson alleging discrimination. Court found that the plaintiff's long history of knee injury and the resulting handicap left him unable to physically meet the requirements of being able to react to emergency situations in the prison setting. Judge Roll found that the plaintiff's inability to physically meet the job requirements was a relevant consideration, and the Rehabilitation Act did not prohibit an employer from making an employment decision adverse to a handicapped employee based upon the employee's demonstrated unfitness. AUSA Ted Borek and Paralegal Tom Byron represented the BOP.

**Bill Scott v. J.L. Sivlev, et al CIV 92-849 TUC-JMR (D. Arizona)**

Court granted Summary Judgment for BOP Bivens defendants and dismissed this 8th Amendment action in which the inmate plaintiff claimed that the dormitories at FCI Safford constituted a fire hazard in their construction and operation. Court specifically found that the circumstances complained of did not constitute a substantial risk, nor was there any genuine issue as to the reasonableness of the fire safety measures in place at FCI Safford.

Ben Kalka v. Pontesso, et al CIV 93-732 TUC WDB (D. Arizona)

Order denying plaintiff's Motion for a TRO. Judge Browning found that inmate Kalka was an able litigator given the available resources of the FCI and that the postage and copying policies instituted for him provided adequate access to the courts. Paralegal Tom Byron assisting AUSA.

Coupar v. UNICOR, et al., 92 TSC-12 (Secretary of Labor ruling)

Inmate Coupar had filed numerous claims under federal "whistleblower" statutes against UNICOR alleging various violations. The Secretary of Labor issued this ruling holding that "whistleblower" statutes were not applicable for prisoners as they are not "employees" covered by employee protection laws.

Isham v. MCC San Diego, et al., 94-0024 (S. D. California)

Plaintiffs alleged BOP's negligence allowed inmate to escape who later killed a civilian. Plaintiffs are victim's parents, wife, and person who was with him during the incident. Order dismissing case received in December 1994, however, first Judgment (dismissing victim's parents) received this month.

Fottler, et al v. Morton, et al CV-S-94-0964 (D. Nevada)

Seven current and former inmates at FPC Nellis sue under Bivens for intentional exposure to airborne asbestos, claiming that all the construction materials at FPC Nellis contain friable asbestos, so that they were continually exposed in their work assignments and housing areas. The complaint states that they are seeking to establish a "class" of plaintiffs, but no certification has been filed to date. All seven plaintiffs filed administrative FTCA claims which were denied by the Regional Counsel. DRC Valerie Stewart meeting with AUSA and all current staff defendants at FPC Nellis on Monday April 3rd. Answer is due on May 8th.

Parr and Janoe v. BOP, et al., CV 94-8218 (C. D. California)

Two inmates sue BOP and staff under Bivens for asbestos contamination at USP Lompoc. They claim various areas have friable asbestos, that exposure constitutes a health hazard and violates the 8th Amendment, and that the remediation is being incorrectly performed. They seek \$300 million in compensatory and punitive damages.

Leggett v. Churchill, et al., CV 91-2489 (N. D. California)

Inmate sues three officers in Bivens-styled lawsuit for allegedly handcuffing him, escorting him across rec yard, and allowing an inmate to assault him. Inmate also alleges inadequate medical examination of his subsequent injuries. Case was originally filed in 1991, however, the court did not order service until 1995.

***MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE:***

None

***SETTLEMENTS:***Voto-Bernales v. USA, et al., CV 94-2168 (N. D. California)

Case previously reported where inmate suffered testicular torsion resulting in the removal of the left testicle. This parties have agreed to a conditional settlement of \$42,500.00, provided that tests show the plaintiff is sterile. Test to be conducted this week.

Paramo v. Dicus, et al., CV-91-4317 & CV 92-5321 (C.D. California)

Previously reported matter where inmate claims he was sexually assaulted by known predator at USP Lompoc in 1988. Claims staff knew of danger to him and failed to protect. Adverse summary judgement decision received in 1994. AUSA negotiated settlement whereby individual defendants were dismissed and the government paid \$9900 to the inmate under the FTCA. AUSA also agreed to send letter to the Parole Commission on inmate's behalf.

**MISCELLANEOUS MATTERS:**

U.S. v. Boyd, et al District of Oregon

Criminal prosecution of inmates for destruction of government property in the 9/93 disturbance at FCI Sheridan begins on April 11th in Portland, OR. Attorney Mary Sullivan will be assisting U.S. Attorney at trial.

USP Lompoc Legal Department will host the pilot review team for a test review under the proposed Legal Program Review guidelines. The visit will occur in late April.

**ENVIRONMENTAL MATTERS:**

On March 15, 1995, approximately 10 gallons of hydraulic fluid spilled into a water-filled ditch near the sewage ponds at USP Lompoc. The appropriate offices were notified and cleanup initiated. Local environmental offices have inspected the site twice and approved the cleanup efforts. On March 22, 1995, local environmental officials closed the file on the matter.

Two civil actions reported above center on allegations of asbestos exposure.

## STATISTICS

<u>Port Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	49	48	48									
Closed	89	59	66									
Reconsidered	20	2	4									
Pending	159	150	128									
Over 6 Mo.	4	8	2									

### Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	0	0	1	0	7	0	0	7	2	4	21

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	28	33	54									
Closed	36	48	32									
Pending	83	68	90									
Over 30 days	46	35	28									

### FOI/PA Pending More than 30 Days 03/31/95:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	5	0	0	0	0	4	0	0	2	2	1	14*

\*Does not include inmates transferred out of Region or CCM's.

### Administrative Remedies:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	96	87									

<u>Investigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	359	370	385									
New Cases:	15	20	20									
HC	11	9	7									
FTCA	0	3	3									
Bivens	3	7	9									
Other	1	1	1									
Closed	9	9	5									



Joyce

UNITED STATES GOVERNMENT  
MEMORANDUM  
FEDERAL BUREAU OF PRISONS  
WESTERN REGIONAL OFFICE  
DUBLIN, CALIFORNIA 94568

DATE: May 5, 1995

REPLY TO  
ATTN OF:

*Harlan W. Penn*  
HARLAN W. PENN  
Regional Counsel

SUBJECT: Monthly Report for April 1995

OPTIONAL FORM 98 (7-90)

FAX TRANSMITTAL

# of pages *4*

To	<i>Wally Cheney</i>	From	<i>Harlan Penn</i>
Dept./Agency		Phone #	
Fax #		Fax #	
NGN 7540-01-317-7368		5096-101	GENERAL SERVICES ADMINISTRATION

TO: WALLACE H. CHENEY, Assistant Director/General Counsel

►► CASES OF INTEREST ◀◀

**NINTH CIRCUIT MATTERS:**

**DISTRICT COURT MATTERS:**

United States v. Darnell Garcia, Criminal matter (C.D. California)

Motion for reduction of sentence is set for hearing before Judge Terry Hatter on June 19. Garcia was a DEA Agent who stole DEA drugs for resale and also DEA money. He was sentenced to 80 years by Judge Hatter in 1991 and since that time has been designated to maximum security institutions, usually contracted to state facilities. The Motion is based on alleged disparate treatment and harshness of conditions of confinement. Valerie Stewart is preparing a declaration on behalf of the BOP.

Robert E. Walsh v. Federal Bureau of Prisons, et al., CV 94-5559 (C.D. California)

Former inmate alleges lack of adequate medical care, claiming defendants delayed necessary heart surgery. Inmate's attorney is also his son. Defendants' motion to dismiss granted with leave to amend. AUSA reports that opposing counsel has indicated that plaintiff does not intend to amend the complaint.

Robert Charles Davis v. Regional Director White, et al., CV 95-1656 (C.D. California)

Plaintiff alleges that staff retaliated in various ways against him because he sought medical care and appealed disciplinary hearings, that staff released false information about him to inmates thus endangering his life, and that he was given an inappropriate safety factor. To date, plaintiff has named fifteen staff members as defendants, encompassing three institutions.

Sylvia Sylvester v. Hayes, et al., CV 94-3719 (N.D. California)

In a Bivens-styled complaint, plaintiff claims she was held 31 days past her release date. She claims that she had informed the Warden and the ISM, yet they failed to act. To date, staff

investigation has not revealed any evidence indicating that the inmate had informed either defendant of the inmate's amended sentence which shortened her sentence from 28 months to 18 months.

Fotler v. Morton, CV-S-94-0964 (D. Nevada)

\$8.5 million FTCA/Bivens suit by inmates for exposure to asbestos. Plaintiffs have filed motion to substitute US for deceased defendant and US Attorney will ask Court to require defendants to choose either Bivens or FTCA remedy.

## RELIGION

The following are the new religious cases for this month along with a brief summary of existing religion cases. Rabbi Abraham Low v. Warden Taylor is not included in this list but was previously reported in both the District Court and the Ninth Circuit Court of Appeals.

Allen Parr v. Patrick Keohane, et al., CV 95-1383 (C.D. California)

Plaintiff alleges that staff wrongfully denied his request to practice religion based on white supremacy. Plaintiff requested that the BOP recognize the Church of the Creator as a religion and sought permission to have weekly services. Staff denied plaintiff's request as the beliefs were racially inflammatory, particularly given the inter-racial, inter-faith chapel. The institution did offer to provide special clergy visits in the Visiting Room and religious materials for plaintiff's personal use.

Collins v. Crabtree, CV 93-1154 (D. Or.) The inmate alleges that he was selectively disciplined for supposed involvement in the riot at FCI Sheridan in September of 1993 due to his race and religion (Muslim). He also states that he was denied access to personal property and the courts as a result of being placed in the special housing unit.

Muhannad (Austin) v. C.E. Floyd, CV 94-1077 (D. Ariz.) The inmate alleges that Bureau of Prisons staff refused to recognize his religious name, opened his legal mail outside of his presence, and denied him due process during his placement in administrative detention.

Gainey v. Reno, CV 93-809 (D. Ariz.) The plaintiff is a BOP employee claiming that he was discriminated against for his Native American religious practices. The plaintiff, a correctional officer, requested that he be allowed to participate in a sweat lodge ceremony with Native American inmates while still employed with the BOP. His request was denied. The Government's Motion for Partial Summary Judgment on the Sweat Lodge issue was denied as to disparate treatment vis-a-vis other religions.

Edward J.X. (Ford) v. Bureau of Prisons, CV 95-1811 (C.D. Cal.) The inmate alleges that members of the Nation of Islam are not allowed to practice their religion freely. The case arose out of an incident on July 23 1994, in which Ford was placed in special housing for encouraging a group demonstration during a meeting of the Nation of Islam at USP Lompoc.

### **MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE:**

None

**SETTLEMENTS:**

*None*

**MISCELLANEOUS MATTERS:****U.S. v. Boyd, et al** District of Oregon

Criminal prosecution of inmates for destruction of government property in the 9/93 disturbance at FCI Sheridan began April 11th in Portland, OR. Attorney Mary Sullivan assisted U.S. Attorney at trial. One conviction resulted with two inmates acquitted. Witness ability to identify the defendants was in issue.

**U.S. v. Filkins** (C.D. California)

Defendant found guilty for murder of inmate Alva Ray at USP Lompoc, sentenced on 5/1/95 to life without parole.

USP Lompoc Legal Department hosted the pilot review team for a test review under the proposed Legal Program Review guidelines.

**ENVIRONMENTAL MATTERS:**

FCI Phoenix is negotiating, with Regional and Central Office assistance, an alternate form of agreement in place of the proposed consent order from the Arizona Department of Environmental Quality concerning the backflow of the water system.

## ▶ STATISTICS ◀

<u>Pr Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	49	48	48	53								
Closed	89	59	70	57								
Reconsidered	20	3	0	2								
Pending	159	151	129	132*								
Over 6 Mo.	4	8	2	6								

\* Physical counts confirmed with data base.

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	3	0	1	0	11	0	0	11	5	0	31

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	28	33	54	26								
Closed	36	48	32	28								
Pending	83	68	90	88								
Over 30 days	46	35	28	32								

FOI/PA Pending More than 30 Days 03/31/95:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	2	4	0	0	0	1	0	0	2	4	1	14*

\*Does not include inmates transferred out of Region or CCM's.

Administrative Remedies:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	96	87	74								

<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	359	370	385	385								
New Cases:	15	20	20	17								
HC	11	9	7	9								
FTCA	0	3	3	2								
Bivens	3	7	9	6								
Other	1	1	1	0								
Closed	9	9	5	17								

Carolyn



**UNITED STATES GOVERNMENT  
MEMORANDUM**

**FEDERAL BUREAU OF PRISONS  
WESTERN REGIONAL OFFICE  
DUBLIN, CALIFORNIA 94568**

DATE: June 6, 1995

REPLY TO: [Signature]  
ATTN OF: HARLAN W. PENN  
Regional Counsel

SUBJECT: Monthly Report for May 1995

TO: WALLACE H. CHENEY, Assistant Director/General Counsel

►► **CASES OF INTEREST** ◄◄

**SUPREME COURT MATTERS:**

Lewis v. Casey (9th Cir. 1995) - Court granted certiorari to determine whether the Ninth Circuit order concerning inmate access to legal materials and legal assistance in the Arizona Department of Corrections exceeded the constitutional requirements set out in Bounds v. Smith.

**NINTH CIRCUIT MATTERS:**

Rabbi Abraham Low v. Larry Taylor The Government filed its brief on the only issue before the Ninth Circuit in this expedited matter, that is, whether the District Court properly denied injunctive relief due to plaintiff's failure to exhaust. Petitioner claims that RFRA does not require exhaustion of remedies.

**DISTRICT COURT MATTERS:**

United States v. Darnell Garcia, Criminal matter (C.D. California)

Case previously reported, declaration on behalf of BOP concerning treatment provided. Hearing to be calendared for next month.

Edward Jones v. Seifert, CV-95-0949-WMB (C.D. California)

Inmate claims staff at MDC Los Angeles have assaulted him, subjected him to cruel and unusual punishment with respect to the conditions of confinement, and have interfered with his access to the courts. Inmate claims this is in retaliation for unflattering picture of BOP painted in his book "Hacksaw", which was published and is currently in development for a film. Plaintiff is represented by counsel and seeks monetary damages in unspecified amounts from the various individual defendants.

Jerry Hildum v. USA, CV 95-0233-PA (D. Oregon)

FTCA action alleging negligence by BOP in failing to protect inmate from sexual abuse by PA who allegedly provided hormones to inmates in exchange for sexual favors. Criminal investigation in Phoenix is ongoing.

Kalka & Mitchell v. Megathlin (D. Arizona)

Evidentiary hearing held on Kalka's claim that the BOP was transferring him for retaliatory purposes. Chief Judge Browning noted Kalka's propensity towards "recreational litigation" and acknowledged the BOP's authority to transfer inmates. Kalka was transferred to Sheridan that day.

U.S. v. John Kennedy, (C.D. California)

Criminal prosecution for attempted escape is scheduled for June 6, 1995.

**RELIGION:**

There are no new cases on religious issues this month.

**MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE:**

None

**SETTLEMENTS:**

Ruster v. Hayes (N.D. California)

*Case previously reported. Inmate claims he was denied opportunity to make a telephone call to his mother or her physician when he was placed in SHU. Mother was critically ill at the time. Former AUSA offered plaintiff \$10,000.00 without the agency's knowledge. Now during mandatory settlement conference, plaintiff sought placement in a halfway house in addition to the \$10,000.00. We declined and the case will settle for the \$10,000.00 payment. AUSA Mark St. Angelo.*

**MISCELLANEOUS MATTERS:**

FCI Phoenix was involved in the arraignment, preliminary hearing and identity hearing for Steve Colbern, accused of involvement in the Oklahoma City bombing.

USP Lompoc received court orders for involuntary testing and treatment of two inmates for Tuberculosis and Hepatitis.

**ENVIRONMENTAL MATTERS:**

FCI Phoenix is drafting a carpool plan in compliance with County regulations.

▶▶ STATISTICS ◀◀

<u>Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
ed	49	48	48	53	64							
Closed	89	59	70	57	62							
Reconsidered	20	3	0	2	2							
Pending	159	151	129	132*	136							
Over 6 Mo.	4	8	2	6	2							

\* Physical count confirmed with database

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	1	20	0	0	0	10	1	2	1	8	0	43

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	28	33	54	26	35							
Closed	36	48	32	28	32							
Pending	83	68	90	88	91							
Over 30 days	46	35	28	32	35							

FOI/PA Pending More than 30 Days 05/31/95:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
1	1	6	0	0	0	3	1	0	8	10	1	31*

\*Does not include inmates transferred out of Region or CCM's.

Administrative Remedies:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	96	87	74	77							

<u>tion:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	359	370	385	385	405							
New Cases:	15	20	20	17	31							
HC	11	9	7	9	14							
FTCA	0	3	3	2	3							
Bivens	3	7	9	6	13							
Other	1	1	1	0	1							
Closed	9	9	5	17	11							

*Goyce*



**UNITED STATES GOVERNMENT  
MEMORANDUM  
FEDERAL BUREAU OF PRISONS  
WESTERN REGIONAL OFFICE  
DUBLIN, CALIFORNIA 94568**

DATE: July 7, 1995

REPLY TO: *Harlan W. Penn*  
ATTN OF: HARLAN W. PENN  
Regional Counsel

SUBJECT: Monthly Report for June 1995

TO: WALLACE H. CHENEY, Assistant Director/General Counsel

▶▶ **CASES OF INTEREST** ◀◀

**NINTH CIRCUIT MATTERS:**

USA v. Reggie Neon Brown (1995 WL 364533)(D.Oregon)  
Court held that the double jeopardy bar does not preclude criminal prosecution for an incident where prison authorities have also taken administrative disciplinary action. The Ninth Circuit distinguishes the Supreme Court decision in US v. Halper, where the court stated that a civil forfeiture of proceeds from a criminal activity was barred by double jeopardy where the individual has also suffered criminal prosecution for the underlying activity.

**DISTRICT COURT MATTERS:**

United States v. Darnell Garcia, Criminal matter (C.D. California)  
Case previously reported, declaration on behalf of BOP concerning treatment provided. Judge is not convinced that the Bureau of Prisons has produced all the relevant materials and is threatening to reduce inmate's term from 65 years to 18 years if the Bureau does not produce the remaining records. Court is requiring the defendant to specify exactly what records they claim are missing. A further hearing is set for September.

U.S. v. Corey Treadwell, (C.D. California)  
Criminal prosecution for possession of a sharpened instrument at USP Lompoc is scheduled for July 28, 1995.

U.S. v. Long, CR 95-0314 (C.D. California)

Criminal prosecution for conveyance of a weapon at USP Lompoc. Jury deliberated for 15 minutes before returning guilty verdict. Sentencing scheduled for September 9, 1995.

U.S. v. Bernard, CR 95-0090 (C.D. California)

Criminal prosecution for assault on inmate at USP Lompoc. Delayed due to illness of judge. Scheduled for July 5, 1995.

Kevin Hill v. BOP, (D. Arizona)

FTCA case filed against PHX due to injuries Hill suffered in assault on him by other inmates during an inmate softball game. Negligence based on failure to protect or to provide adequate staff supervision. Jane Haschemeyer is working on case with AUSA Roger Dokken. On June 14 AUSA Dokken met with staff and toured relevant areas of the institution. DOJ has granted AUSA authority to plead discretionary function defense with regard to the issue of minimized staffing on the day of the assault.

Salles v. Pendleton, CIV 95-0304-TUC (D. Arizona)

Court held evidentiary hearing June 23 on this habeas matter where inmate was challenging placement in SHU at Tucson. Placement based on security needs due to inmate's plot to effect escape from LA County Jail and his vast financial resources. Court understood the BOP reasoning behind the placement. Inmate designated to Sheridan, however, cannot be transferred due to subpoena for testimony in another matter. Court approved BOP holding inmate in SHU until transfer. Tom Byron handling.

Jackson v. Crabtree, CV 95-0387 (D. Oregon)

FTCA action where inmate claims two gold rings were lost by BOP staff. Inmate seeking \$150 or return of the rings. Telephonic trial scheduled for August 15, 1995.

**RELIGION:**

There are no new cases on religious issues this month.

**MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE:**

None to report.

**SETTLEMENTS:**

*None to report.*

**MISCELLANEOUS MATTERS:**

Matt Carney travelled to Washington D. C. to prepare and assist Dr. Moritsugu at the deposition in Ramirez-Pacheco v. Reno scheduled for July 6, 1995. This is an EEO case filed by a former physician over his treatment at USP Lompoc, transfer to USP Leavenworth, and subsequent treatment at that facility.

The City of Phoenix is interested in annexing the FCI.

**ENVIRONMENTAL MATTERS:**

The above-ground fuel tanks at USP Lompoc have been inspected and approved by the California Regional Water Control Board. The underground fuel tanks were emptied and sealed in place. The underground tanks were inspected and approved after sealing by the Santa Barbara County Environmental Health Service.

▶▶ STATISTICS ◀◀

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	49	48	48	53	64	82						
Closed	89	59	70	57	62	59						
Not considered	20	3	0	2	2	2						
Pending	159	151	129	132*	136	161						
Over 6 Mo.	4	8	2	6	2	2+						

\*Physical count confirmed with database

+Awaiting investigation from OIA for one & other forwarded from another region after 6 mo. had expired

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	1	20	1	0	0	3	0	1	0	2	0	28

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	28	33	54	26	35	37						
Closed	36	48	32	28	32	34						
Pending	83	68	90	88	91	94						
Over 30 days	46	35	28	32	35	39						

FOI/PA Pending More than 30 Days 05/31/95:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
1	2	6	2	0	0	3	1	1	7	7	0	30*

\*Does not include inmates transferred out of Region or CCM's.

Administrative Remedies:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	96	87	74	77	94						

<u>Open Cases:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	359	370	385	385	405	415						
New Cases:	15	20	20	17	31	15						
HC	11	9	7	9	14	5						
FTCA	0	3	3	2	3	2						
Bivens	3	7	9	6	13	7						
Other	1	1	1	0	1	1						
Closed	9	9	5	17	11	5						