



UNITED STATES GOVERNMENT  
**memorandum**

Date: April 16, 1997

Reply to David R. Essig, Regional Counsel, Northeast Region  
Attn of: Federal Bureau of Prisons, Philadelphia, Pa. 19106

subject: Quarterly Report - January 1, 1997 through March 31, 1997

To: **Wallace H. Cheney**, General Counsel and  
Assistant Director, Federal Bureau of Prisons  
Washington, D.C. 20534

Attached are the statistics requested for the quarterly report for the second quarter of FY 1997.

The following is a synopsis of the significant cases in litigation during the quarter:

**SIGNIFICANT DECISIONS, HEARINGS OR TRIALS**

1. **Benjamin Mackey v. Bureau of Prisons**, Civil No. 96-5286 (E.D. Pa )

This is an update of this case discussed in last quarter's report. Inmate Benjamin Mackey, 09717-054, at FCI Schuylkill, filed a habeas corpus action challenging a DHO finding that he possessed marijuana and the calculation of prior custody credit. Judge Shapiro held a hearing on the petition for Thursday, October 17, 1996. The court focused on two issues: whether the Bureau properly calculated the inmate's parole violation term and whether the DHO forfeited more statutory good time than was available at the time of the infraction. The court requested an additional declaration detailing these issues. Hank Sadowski assisted the AUSA at the hearing. On February 13, 1997, the court

ruled for the Bureau on all issues except one. The court ordered that the inmate receive 6 days of statutory good time. The court noted that the Bureau had forfeited 166 days of statutory good time whereas the DHO summary stated the inmate is to forfeit 160 days of SGT. We complied with the order.

2. United States v. Gonzales, 117 S.Ct. 1032 (1997)

This case was also discussed in last quarter's report. On March 3, 1997, the Supreme Court held that a federal sentence imposed under 18 U.S.C. § 924(c), which prohibits concurrent service "with any other term of imprisonment," may not be ordered to run concurrently with an existing state sentence. Hank Sadowski assisted the Solicitor General's office at the December 11, 1996 argument. The decision noted, in dicta, that the Bureau of Prisons is responsible for aggregation of sentence under 18 U.S.C. § 3584.

3. Fisher v. Goord, et al., 96-CV-0486 (W.D.N.Y.)

This case was also discussed in last quarter's report. New York State inmate Amy Fisher alleged that a number of New York state institution staff have had sex with her, some with her consent, some without. She filed a civil rights action against numerous state officials. As part of her relief, she has moved the court to order her transferred to the Federal BOP. The United States is not a party to the action. We filed an Amicus brief asserting that the court had no jurisdiction to order the United States to take a state prisoner. We focused the court on 18 U.S.C. § 3626 as the proper standard for assessing the injunctive request. The court requested the parties to respond to our brief. Plaintiff submitted a response asserting that § 3626 is unconstitutional. The court has certified the issue to the Attorney General under 28 U.S.C. § 2403(a). Federal Programs was advised and they requested the AUSA to file a brief upholding the constitutionality. We expect to file a brief by May 1, 1997.

4. United States v. Price, Crim. No. 96-145-01 (E.D.Pa.)

Pretrial releasee Kenneth Price had a sentencing hearing before Judge Rendell on February 7, 1997. The defendant argued that his advanced liver condition was an extraordinary circumstance justifying downward departure from the sentencing guidelines of 21-27 months. Defendant's medical expert testified that defendant has cirrhosis of the

liver and had a 50% chance of catastrophic internal bleeding within the next two years. The AUSA's medical expert testified that the medical condition was not as severe as presented by defendant. The AUSA requested the Bureau's assistance to address the ability of the Bureau to care for the defendant. Medical records were reviewed by Health Services Division. Hank Sadowski testified at the hearing concerning the probable designation to a medical facility and the medical services available for federal prisoners. The court found defendant's medical condition to be "an extraordinary physical impairment" under Sentencing Guideline § 5H1.4 and sentenced him to probation with 12 months home detention.

5. Palmer v. United States, CV-95-383 (M.D.Pa.)

This Federal Tort Claims Act case was filed by Inmate Lovell Palmer, 23307-083, who alleged that he slipped and fell in January 1994 at USP Lewisburg. His administrative tort claim was for \$1000. In his complaint, he requested damages in excess of \$25,000. We moved to limit the inmate to the \$1000. On pressure from the court (and to save expense of trial), we offered settlement to the inmate in the amount of \$1000 which the inmate refused. We moved for partial summary judgment against the United States in the amount of \$1000. Judge Kosik granted our request for a bifurcated trial limited to the issue of whether the inmate can claim damages above that requested in his administrative claim. This part of the trial was held on January 15, 1997. The court heard testimony from Dr. Keiper (retired) formerly at USP Lewisburg and Dr. Klinkerfuss (now at FMC Springfield). The Springfield doctor testified via video teleconference. Before ruling on our motion, Judge Kosik requested an exam of the inmate by a non-BOP doctor. Attorney Mike Sullivan assisted at the trial. No decision has yet been rendered.

6. United States v. Medina, 97- CR- (S.D.N.Y.)

Pretrial detainee Jose Medina, 43311-054, has been charged with the attempted extortion of Bill Cosby. On January 24, 1997, the legal office at MCC NY was advised by the AUSA that, at a bail hearing earlier that day, inmate Medina

alleged that he had not been allowed to see a Rabbi and that he had not eaten since he arrived at MCC on January 18, 1997. The inmate requested an order directing the Warden to provide him Kosher food and to permit him to meet with a Rabbi. A hearing on these issues was scheduled for 2:30 p.m. that day.

The Warden immediately decided to place the inmate on common fare. The Chaplain later concurred with this decision. Arrangements were made for the inmate to see the Rabbi. Attorney Alma G. Lopez attended the hearing.

Prior to the hearing, Ms. Lopez explained the MCC's position to the AUSA and defense counsel. MCC records showed that inmate Medina had received all his meals, except for one refusal, since his arrival at the MCC. Defense counsel understood the MCC's position and only requested documentation showing that the common fare meals are kosher so that his client could be appeased.

During the hearing, defense counsel indicated that although his client had received all his meals, he was flushing down the foods that he was prohibited from eating by his religion. Magistrate Judge Peck agreed with the MCC's solution.

7. Li v. Canarozzi, et al., 95 Civ. 0706 (S.D.N.Y.)

Jury trial commenced on February 3, 1997 in this Bivens complaint brought by former pretrial detainee Jian An Li, 44661-053, who alleged that six officers at MCC NY assaulted him on an elevator on November 10, 1994. Staff were responding to a disturbance involving a fight among many inmates. Plaintiff sustained injuries that day, the most serious was a broken arm. Plaintiff alleged that staff caused the injuries. Our version was that the injuries were sustained during the fight among the inmates. Dominique Raia and Alma Lopez assisted the AUSAs.

Trial was completed on February 14, 1997. The jury returned a verdict late that day in favor of all defendants. The jury found that the injuries sustained by the Plaintiff occurred during the disturbance on the unit, not in the

elevator.

8. **United States v. Coleman**, Criminal No. ---- (E.D.N.Y.)

Pretrial detainee Leonard Coleman, 47321-019, requested an emergency hearing before the criminal trial judge to address alleged lack of medical care at MDC Brooklyn. In addition the attorney complained that her client was being held in administrative detention (pending investigation of a threat against the detainee). A hearing was held on March 5, 1997. Azzmeiah Vazquez attended the hearing. On the administrative detention issue, Judge Platt found that he did not have jurisdiction since the detainee did not pursue administrative remedies. On the medical issue, the defense attorney advised the court she was not ready to proceed. The MDC Clinical Director was prepared to testify. This was unnecessary since the AUSA was not opposed to release under strict conditions. The court ordered the AUSA to draft a proposed order of release.

9. **Leonard Falzone v. Federal Bureau of Prisons, et al.**,  
Civil Action No. 97-574 (E.D.Pa.) (formerly Case No. 96-215 (E.D.Ky.)

Inmate Leonard Falzone, 83361-020, filed a petition for habeas corpus in E.D. Ky. challenging the disallowance of 14 days good conduct time for an infraction committed at Lewisburg Camp. The DHO hearing summary erroneously did not specify the loss of GCT. An amended DHO summary was later prepared. The inmate challenged the authority of the DHO to amend the summary. The MARO and Ashland had responsibility for this litigation and a response was duly filed in E.D. Ky. After the inmate was transferred to FCI Schuylkill, the case was transferred to E.D.Pa. On February 26, 1997, a hearing was held before U.S. Magistrate Judge Rueter on the petition. Our offer of assistance was accepted by MARO. Joyce Horikawa assisted at the hearing. DHO Zimany testified that his notes and contemporaneous records showed that he had disallowed the good conduct time for the inmate. The only document which did not reflect the disallowance was the DHO summary. The error was cured when the DHO issued an amended DHO summary and the inmate was afforded the right to appeal. On February 27, 1997, the Magistrate Judge recommended that the petition be denied. On March 17, 1997, Judge Katz adopted the Report and Recommendation, dismissing the petition.

10. **Linn v. Wigen**, Civ 96-3147 (E.D.Pa.)

Former inmate Michael Linn, 81843-054, brought a Bivens action against staff at FCI Schuylkill, Regional Counsel, and Central Office Appeals Administrator Ed Crosley alleging primarily that (1) he was denied CCC placement because he was Jewish; and (2) he was denied surgery for a shoulder injury and was given work assignment contrary to his medical problem. He asserted that one similarly situated non-Jewish prisoner was given a CCC placement. He also

alleged that the shoulder surgery was recommended by a contract specialist and the defendant denied it anyway. A non-jury trial was held before Judge Dalzell on March 13, 1997. Joyce Horikawa assisted the AUSA at the trial. At the close of evidence, the Judge ruled from the bench and entered a judgement for all defendants. The Judge held that the plaintiff failed to present evidence that the CCC decision was based on his religion and had failed to show that medical staff was deliberately indifferent to his medical needs.

**11. United States v. Hammer, 4:CR-96-239 (M.D.Pa.)**

Inmate David Hammer, 24507-077, has been charged with the April 1996 murder of an inmate at USP Allenwood. On March 7, 1997, the United States Attorney, seeking the death penalty, had a hearing before the DOJ panel. No decision has been made.

In this same case, Judge Muir held a hearing on March 10, 1997 on defense attorneys's motions pertaining to telephone access and special mail. Inmate Hammer is under phone and correspondence restrictions for disciplinary reasons. Defense attorneys asked the court to order USP Allenwood to permit Hammer to make unmonitored calls to defense experts. They also requested the court to order USP Allenwood to permit Hammer to make monitored calls to any defense witness (including another inmate now in a state system). Defense attorneys are also asserting the Clerk of Court mail should be automatically included in Special Mail. Hope Moro attended the hearing and testified concerning some of these issues. On March 31, 1997, the court denied all the motions except the court held that clerk of court mail should be treated as Special Mail. We are preparing a motion for reconsideration.

**12. Curran v. United States, 3:93CV1749 (D.Conn.)**

Former inmate Kimberly Curran, 07921-026, filed this Federal Tort Claims Action complaint alleging that a staff member at FCI Danbury had sexually harassed and assaulted her. On March 18, 1997, Judge Thompson granted our motion to dismiss. The court held: (1) any alleged actions by the staff member were outside the scope of his employment; and (2) decisions concerning staff discipline and inmate transfers and furloughs fall within the discretionary function exception to the FTCA.

**13. Dobson v. Bureau of Prisons, CV-96-01767 (D.D.C.)**

Inmate Sherman Dobson, 00003-099, filed an action under the

Freedom of Information Act challenging the denial of memoranda and staff statements which were generated after the disturbance

at USP Lewisburg in October 1995. With one exception, Judge Sporkin upheld that denial and excisions in the FOIA processing. The court found that the inmate was also requesting statements of witnesses relating to an inmate discipline hearing. The court found no exemption applied to these statements since they had been provided to the inmate at the DHO hearing. The original FOIA request we processed did not request these statements. We complied with the court order and sent the inmate the additional statements.

**14. United States v. Marino, Crim. No. ---- (S.D.N.Y.)**

Inmate Daniel Marino, 99111-012, arrived at MCC NY on February 12, 1997 to face prosecution of criminal charges. He was moved from FCI Ashland pursuant to a writ ad prosequendum. On March 27, 1997, the AUSA contacted the MCC NY and advised that Judge Sterling Johnson scheduled a hearing for March 28, 1997 to address allegations by the defendant concerning medical care at MCC NY. The Judge required the Warden to appear at the hearing. Attorney Alma Lopez accompanied the Warden. The defendant alleged that he had blood in his stool and he had not been examined since he was at MCC. BOP records show that he was examined by the Staff Physician on March 17, 1997 and was scheduled for a colonoscopy. The Judge stated he did not want to get involved in the details of the defendant's medical care. He suggested a meeting to resolve the dispute. A meeting was held following the hearing and defense counsel requested that a private doctor examine the inmate. The defense counsel were requested to send their request with supporting documents in writing. The inmate received his scheduled colonoscopy on April 2, 1997. The Warden will decide whether to grant the request after the results of the tests are received.

**SETTLEMENTS AND AWARDS**

**1. Matos v. United States, CV-94-8977 (S.D.N.Y.)**

Civilian filed a Federal Tort Claims Act complaint alleging negligence of MCC NY caused her to slip and fall on stairs in the institution. She had sought \$1 million. There was an injury from the fall; but there was little evidence of negligence. The AUSA settled this case for \$6000.

**2. Rivera-Torres v. United States, CV-95-233 (M.D.Pa.)**

Inmate Carlos Rivera-Torres, 33217-054, brought a Federal Tort Claims Act complaint alleging that he slipped and fell on ice at LSCI Allenwood in March 1994. The case was scheduled for trial on March 27, 1997. The inmate sustained a fracture to his right ankle, which required a cast for several months. His recovery was hampered by his diabetes. No specific records could be located for snow and ice removal for the day in question. Case settled for \$12,500.

3. Allen v. United States, CV-96-615 (M.D.Pa.)

Inmate Royal Allen, 36863-019, filed a Federal Tort Claims Act complaint alleging that his property was lost when he was taken to the Special Housing Unit at LSCI Allenwood. Our investigation revealed probable liability for the loss of the property. Attempts to settle with the inmate proved fruitless. We filed a motion for summary judgment against the United States for the amount demanded in the administrative tort claim, which we felt was appropriate for the loss. On January 31, 1997, the court granted our motion and entered summary judgment against the United States for \$174.65 and for costs of \$83.22 (the filing fee paid by the inmate).

Attachments



**NORTHEAST REGIONAL OFFICE**  
**LITIGATION QUARTERLY REPORT**

**FROM 01/01/1997 TO 03/31/1997**

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER	53	21	12	14	5	22	573	50	9	2	1
SER											
NCR											
SCR											
WXR											
CO											
TOT											

**NARRATIVE ANALYSIS**

**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 1, 1997 - MARCH 31, 1997)

Loc	Num	PP	PI	PPPI	WD	Med	Set	Amt	Pen	Den	OD	A/O	A/P
Mxr	0	0	0	0	0	0	0	0	0	0	0	0	0
NER	181	137	24	1	2	17	24	7947	211	114	0	0	105
SER	1	1	0	0	0	0	0	0	0	0	0	0	0
Ncr	1	1	0	0	0	0	0	0	1	0	0	0	0
Scr	0	0	0	0	0	0	0	0	0	0	0	0	0
Wxr	0	0	0	0	0	0	0	0	0	0	0	0	0
C.O.	0	0	0	0	0	0	0	0	0	0	0	0	0
Sum	183	139	24	1	2	17	24	7947	212	114	0	****	105

**NORTHEAST REGIONAL OFFICE**  
**ADMINISTRATIVE REMEDIES QUARTERLY REPORT**

**FROM 01-01-97 TO 03-31-97**

LOC	NUM	DHO	SPH	MED	MH	LEG	FD	GRT	DEN	PEN	OD
MXR											
NER	373	142	13	24	0	7	3	25	257	87	0
SER											
NCR											
SCR											
WXR											
TOT											

**NARRATIVE ANALYSIS**

**DEFINITIONS**

**LOC - LOCATION**

**NUM - NUMBER OF TOTAL AD REMEDIES FILED**

**DHO - NUMBER OF DHO REMEDIES FILED**

**SPH - NUMBER OF SPECIAL HOUSING UNIT REMEDIES FILED**

**MED - NUMBER OF MEDICAL REMEDIES FILED**

**MH - NUMBER OF MENTAL HEALTH REMEDIES FILED**

**LEG - NUMBER OF LEGAL REMEDIES FILED**

**FD - NUMBER OF FOOD REMEDIES FILED**

**GRT - TOTAL OF NUMBER OF REMEDIES GRANTED**

**DEN - TOTAL NUMBER OF REMEDIES DENIED**

**PEN - TOTAL NUMBER OF REMEDIES PENDING**

**OD - TOTAL NUMBER OF REMEDIES OVERDUE**

**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

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.



**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
MXR											
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)

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  
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 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.

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 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.

### 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)

#### 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.

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.

### TORTS

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

**LITIGATION - 1997      3RD QUARTER REPORT**

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	AWD	SET	AWD/SET
MXR	45	22	4	16	3	47	339	63	5	0	2	\$180,000
NCR	77	51	5	19	8	0	333	7	1	0	1	\$750,000
NER	63	22	11	19	10	27	600	36	15	0	4	0
SCR	66	40	6	17	3	60	171	40	10	0	0	0
SER	43	23	4	10	6	30	726	39	0	0	0	0
WXR	57	44	2	8	3	26	352	40	1	1	2	\$296,863
CO	26	1	4	6	0	18	192	8	7	0	0	0
<b>TOT</b>	<b>377</b>	<b>203</b>	<b>36</b>	<b>95</b>	<b>33</b>	<b>208</b>	<b>2,713</b>	<b>233</b>	<b>39</b>	<b>1</b>	<b>9</b>	<b>\$1,226,863</b>

**DEFINITIONS**

LOC - Location  
 NUM - Total Number of Lawsuits Filed in Quarter  
 HC - Number of Habeas Corpus Actions Filed in Quarter  
 FTC - Number of FTCA Actions Filed in Quarter  
 BIV - Number of Bivens Actions Filed in Quarter  
 OTH - Other Actions Filed in Quarter  
 ANS - Number of Litigation Reports Completed  
 PEN - Number of Actions Pending  
 CLD - Number of Actions Closed  
 H/T - Number of Hearings or Trials (Narrative Analysis Follows)  
 AWD - Number of Awards (Narrative Analysis Follows)  
 SET - Number of Settlements (Narrative Analysis Follows)  
 AWD/SET - Amount of Settlements and Awards

**LITIGATION ANALYSIS**

The total number of lawsuits filed decreased by 46 from last quarter, the total dollar amount for cases settled increased due to one case in the NCRO.

1997 QUARTERLY LITIGATION REPORT  
THIRD QUARTER

I. SIGNIFICANT HEARINGS AND TRIALS

**NORTHEAST REGION**

Colon v. Meniffee, Appeal No. 96-7588 (3d Cir.) - Oral argument was heard on May 9, 1997 in our appeal from the grant of a habeas corpus petition. Petitioner Jimmy Colon, 19968-038, challenged the Bureau's decision that his conviction for felon in possession of a firearm under 18 U.S.C. § 922(g) was a crime of violence precluding him from early reduction consideration under 18 U.S.C. § 3621(e). The district court held that the Bureau was not entitled to conclude that the possession of a firearm by a felon is a crime of violence for purposes of 18 U.S.C. § 3621(e) eligibility. The Third Circuit focused on the nature of deference the court should accord the interpretation of the Bureau. No decision has been issued.

Roussos v. Meniffee, No. 97-7011 (3d Cir.) - On July 8, 1997, oral argument was held in a 18 U.S.C. § 3621(e) case. Inmate Victor Roussos, Reg. No. 30950-054, filed a petition for writ of habeas corpus challenging his ineligibility for early release under 18 U.S.C. § 3621(e). Because of a two point enhancement for a firearm in connection with a drug offense. The district court denied the petition and upheld the BOP interpretation. No decision has been issued.

Pollard v. Secor, et. al, 95 Civ. 5599 (E.D.PA.), FCI Schuylkill. Jury trial was held on June 23 and 24, 1997 in this Bivens case. Inmate Rodney Pollard, Reg. No. 14640-050, alleged that he was improperly placed in administrative detention and then transferred as a result of the practice of his religion. At beginning of trial, Judge Ludwig granted a renewed motion to dismiss administrative detention claim on basis of Sandin and a recent Third Circuit case. After one hour deliberations, the jury returned a verdict in favor of all defendants.

Gibbons v. United States, CV-95-4654 (S.D.N.Y.), MCC N.Y. This FTCA case went to trial on April 8, 1997. Inmate Gary Gibbons, 34115-054, alleged that he injured his hand as a result of using defective and dangerous weight lifting equipment at MCC N.Y. and sought \$300,000 in damages. The court ruled in favor of the United States.

Palmer v. United States, CV-95-383 (M.D.PA.) - This Federal Tort Claims Act case was filed by Inmate Lovell Palmer, 23307-083, who alleged that he slipped and fell in January 1994 at USP Lewisburg. His administrative tort claim was for \$1000. In his complaint, he requested damages in excess of \$25,000. We moved

for partial summary judgment against the United States in the amount of \$1000. The judge granted our request for a bifurcated trial limited to the issue of whether the inmate can claim damages above that requested in his administrative claim. This part of the trial was held on January 15, 1997. No decision has yet been rendered.

## II. SETTLEMENTS AND AWARDS

### **MID ATLANTIC REGION**

Venus Michels v. USA, FMC Lexington - Plaintiff, who alleged she was coerced into sexual contact with ex-correctional officer Eddie Smith, accepted a final settlement of \$150,000. This is the final civil case arising out of the actions of Eddie Smith.

Lydia K. Porter v. USA, FMC Lexington - Plaintiff, who alleged negligent care by BOP staff after she had a tooth extraction and developed a serious infection, accepted a final settlement offer of \$30,000.

### **NORTH CENTRAL REGION**

Perse v. United States, FCI Englewood - Plaintiff is the wife of a deceased Colorado Department of Corrections (CDOC) staff member who died in a rappelling accident. BOP staff members were present to assist the CDOC in conducting its training program and the plaintiff has alleged that their negligence was the cause of her husband's death. Plaintiff's rappelling expert has provided a very strong opinion pointing toward BOP staff negligence in the accident. The BOP concurred in the settlement of this case for \$750,000.

Lang v. United States, FMC Rochester - Hybrid Bivens/FTCA case alleging a failure to protect. Lang was assaulted by his cellmate within two hours of arriving at FMC. The plaintiff suffered significant personal injury. The case settled as a FTCA claim for \$300,000.

### **NORTHEAST REGION**

Hammed v. United States, FCI Otisville - Federal Tort Claims Act property claim settled for \$120.00.

Dennie v. Teague, FCI Ray Brook - Inmate Akali Dennie, 11762-014, filed Bivens case alleging failure to protect him from assault by another inmate. Case converted into an FTCA and settled for \$5000.00.

Mulligan v. United States, FCI Schuylkill - Inmate Francis Mulligan, Reg. No. 31580-066, filed FTCA case alleging he slipped

and fell due to staff negligence in maintaining a clear sidewalk, and that the fall caused one of his pacemaker wire leads to tear from his heart, requiring surgical repair. Our medical expert confirmed that the fall may have caused the wire to separate. The case settled for \$4,000.00.

Curtis v. United States, FCI Fairton - FTCA case regarding delay in medical treatment which occurred as a result of the institution transfer of the inmate Plaintiff, Glenn Curtis, Reg. No. 44293-066. The case settled for \$45,000.00.

#### WESTERN REGION

Graham v. USA, FCI Dublin - FTCA action in which an inmate was hit by a roll of roofing material that fell through the roof of food service at FCI Dublin. The matter settled for \$3,500.00.

Asberry v. BOP, MDC Los Angeles - EEO action in which an employee was discharged from MDC Los Angeles after episodes indicating he was unable to perform his duties. He asserted that he was the victim of retaliation for assisting female employees in reporting sexual harassment. The jury awarded him \$500,000.00 and the United States settled for a total of \$280,000.00, inclusive of attorneys fees.

Moracco v. Reno, FCI Safford - FTCA action in which a former inmate at FCI Safford complained that he was injured when he fell from a van while in leg irons and other restraints. The United States Attorneys Office in Tucson agreed to settle for \$12,363.00.

### III. PENDING CASES OF INTEREST

#### CENTRAL OFFICE

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.

#### NORTH CENTRAL REGION

Garrett v. Hawk, Case No. 96-1429, 10th Cir. Court of Appeals, FCC Florence. The district court dismissed sua sponte a Bivens action for failure to exhaust administrative remedies. On appeal, the Court of Appeals requested a brief from the government as to whether the exhaustion requirement of the Prison Litigation Reform Act (PLRA) (42 USC § 1997e(a)) applies to Bivens actions.

**FCI Greenville Disturbance Cases.** Eleven similar Bivens cases containing allegations against staff at FCI Greenville alleging excessive use of force in the aftermath of the October, 1995 disturbance have been filed by inmates. The Department of Justice



has been closely examining these actions to determine whether representation should be granted to individual BOP employees.

3rd Pt.

UNITED STATE

DATE:

Mid-Atlantic Regional Office, Annapolis Ju

REPLY TO Bill Burlington, Regional Counsel  
ATTN OF: Mid-Atlantic Region

SUBJECT: QUARTERLY REPORT - April 1, 1997 thru June 30, 1997

TO: Nancy Redding, Executive Assistant  
Office of General Counsel

### **TORTS**

<b>NUM</b>	<b>PROP</b>	<b>PI</b>	<b>PPPI</b>	<b>WD</b>	<b>MED</b>	<b>SET</b>	<b>AMT</b>	<b>PEND</b>	<b>DEN</b>	<b>OD</b>	<b>A/O</b>	<b>A/P</b>
165	118	43	2	0	2	11	\$3608	205	97	4*	28	103

### **LITIGATION**

<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>
45	22	4	16	3	47	339	63	5	2	\$180,000

### **ADMINISTRATIVE REMEDIES**

<b>NUM</b>	<b>DHO</b>	<b>SPH</b>	<b>MED</b>	<b>MH</b>	<b>LEG</b>	<b>FD</b>	<b>GRT</b>	<b>DEN</b>	<b>PEN</b>	<b>OD</b>
453	172	22	29	2	11	14	62	497	60	0

### **FOI/PRIVACY**

<b>NUM</b>	<b>ANS</b>	<b>PEN</b>	<b>OD</b>
127	119	53	21

\*We are in the process of obtaining settlement approval from the Central Office for three of these claims or a check from Treasury; one claim was just recently transferred from another Region.

### **TRIALS AND HEARINGS:**

**FCI Beckley** - Keats v. Olson - oral arguments were held on April 10, 1997, regarding this habeas concerning jail credit. The Magistrate issued a R&R in this habeas case, to which the BOP filed objections. The Magistrate concluded that the inmate's sentence commenced when the BOP accepted him into custody to serve his federal sentence, even though the state had primary jurisdiction and the federal sentence was to run consecutive to the state sentence. The BOP's mistake (in accepting him in custody instead of sending him to the state) effectively turned the consecutive sentence into a concurrent sentence. The Magistrate also found that there had been a due process violation, which could possibly lead to Bivens liability for those who computed the sentence.

**USP Terre Haute** - Locascio v. Clark - A hearing was held on May 12, 1997, before Judge McKinney. Locascio filed a TRO, preliminary injunction, and permanent injunction based on the fact that he was placed in administrative detention after a Prime Time Live interview with Sammy "The Bull" Gravano indicated that Locascio had conspired to kill John Gotti. In his complaint, Locascio alleged that he was being denied access to the court and his counsel since he was in AD and wanted to be released to the general population. Locascio was released to general population on Monday morning. This action was dismissed.

**FCI Petersburg** - Platshorn v. Hahn - An evidentiary hearing was held on June 4, regarding the aggregation of a parolable sentence with a non-parolable sentence. Platshorn who was released on parole from the parolable portion of the sentence, seeks to have SGT earned on the parolable sentence applied to the consecutive non-parolable sentence. John White, RISA, testified at the hearing and presented an excellent explanation of the computation by BOP. The AUSA and Milt Williams, Paralegal, FCI Petersburg, got the impression that regardless of § 4161 maximum rate of SGT, Magistrate Judge Lowe intends to somehow hold that Platshorn is entitled to additional SGT. On June 30, 1997, Magistrate Judge Lowe ordered the BOP to provide the court by July 11 a copy of the P.S. in existence prior to 5880.30.

**FCI Milan** - Idema v. Pontesso - A hearing was held on June 9, 1997, regarding this habeas petition. The Judge acknowledged that referral and CCC placement decisions were at the BOP's discretion. BOP staff advised the Judge that CCC referral for Idema would be completed pending disposition of the incident reports the inmate had received.

**FPC Seymour Johnson** - Milton v. Flowers, et al. - This is a Bivens case that was originally filed in 1993. The Judge ordered a contempt hearing on plaintiff's request for sanctions. The hearing was held on Friday, June 20, 1997, at 10:00 a.m. in Raleigh with Warden Flowers, Randy Meeks, Charlie Hamilton (retired AUSA previously involved in the case), Kathy Harris and Bill Burlington in attendance. When the pro se plaintiff had not appeared by 10:30, the Judge stated that he would not rule on the motion. The Judge agreed to consider a motion for attorney's fees and costs (totaling \$6,500), and to order the plaintiff to show cause in ten days why the remaining issue should not be dismissed. The AUSA filed the motion on June 24, 1997. If the Judge awards attorney's fees and costs against the plaintiff, it is unlikely he will pursue the remaining issue.

## **SETTLEMENTS**

**FMC Lexington** - Venus Michels v. USA - Plaintiff, who alleged she was coerced into sexual contact with ex-correctional officer Eddie Smith, accepted a final settlement of \$150,000. This is the final civil case arising out of the actions of Eddie Smith.

**FMC Lexington** - Lydia K. Porter v. USA - Plaintiff, who alleged negligent care by BOP staff after she had a tooth extraction and developed a serious infection, accepted a final settlement offer of \$30,000.

3rd qtr.

UNITED STATES GOVERNMENT  
**memorandum**

DATE: October 3, 1997

REPLY TO

ATTN OF: Sherree L. Sturgis, Regional Counsel  
Bureau of Prisons, Southeast Region  
523 McDonough Blvd., S.E.  
Atlanta, GA 30315

SUBJECT: Third Quarter Report FY 97

TO: Wallace Cheney, General Counsel  
Bureau of Prisons, Central Office  
320 First Street, N.W.  
Washington, D.C. 20534

**ATTN: Nancy P. Redding, Executive Assistant**

The following information is provided for the third quarter (APR, MAY, JUN) 1997.

**Litigation**

NUMBER OF ACTIONS FILED	43
HABEAS CORPUS ACTIONS	23
FTCA ACTIONS	4
BIVENS ACTIONS	10
OTHER (Mandamus, etc)	6
NUMBER OF LITIGATION REPORTS	30
NUMBER PENDING	726
NUMBER CLOSED	39
NUMBER OF HEARINGS/TRIALS	?
NUMBER OF SETTLEMENTS	?
AMOUNT OF AWARD	\$ ?.00
NUMBER OF CRIMINAL REFERRALS	?

**Significant Case Activity**

## **Civil Matters**

**ROMERO, et al. v UNITED STATES; 95-10151MMP** - NORTHERN DISTRICT OF FLORIDA - this is a voluminous case involving approximately seventeen (17) inmates who allegedly sustained serious injuries due to a Bureau of Prisons bus accident in April, 1993. The case is moving forward with an anticipated trial date of sometime in October, 1997. We are working on strategies to minimize the damages the plaintiffs win at trial.

**DAVID GREENBERG v. DENNIS JOHNSON, et al**

Court: NORTHERN DISTRICT OF FLORIDA

Docket No.: 93-30639/RV; Type of Case: Personal Liability;

Damages Req: \$2,000,000

Subject: **MEDICAL TREATMENT, WORK**

Institution: **FPC, EGLIN**

Facts Alleged: Inmate in 1994 alleges he was ordered to discontinue his cardiovascular exercises and ordered to wear boots in violation of doctors orders. He was prohibited from work in Food Service. These restrictions prevented him from participation in his Jewish religion.

Significant Activity: 06-10-97 Order adopts magistrate's report, grants summary judgement, dismisses action. 05-08-1997 Magistrate's report finds the inmate failed to allege facts sufficient to constitution cruel and unusual punishment. The inmate also failed to show that the denial of kosher foods for two weeks substantially burdened the exercise of his religion. Nor did an order to remove trash from tables on the Sabbath on one occasion constitute a substantial burden.

**DONACIANO CANATE TEJEDOR, et al v. UNITED STATES OF AMERICA**

Court: DISTRICT OF PUERTO RICO

Docket No.: 96-2655(SEC); Type of Case: FTCA; Damages Req: \$18,000

Subject: **PROPERTY**

Institution: **MDC, GUAYNABO**

Facts Alleged: Plaintiffs contend that during in-processing, two gold Rolex Presidential wrist watches were taken from them, and that they were mailed to their family home in Columbia as they were told they would be.

Significant Activity: 06-24-97 Order dismisses

because it falls within FTCA exception for property detained by law enforcement officials.

### **Criminal Referrals**

**DEFENDANTS: Anthony Battle #11451-056**

Institution Tracking No. ATL-94-4170

Name of Case: U.S. v. Battle

Court: FGAN

Docket No.: 1:95-CR-528

Institution: **ATL**

Date of Offense: 12/21/94

Description: Inmate charged with homicide Officer D'Antonio Washington.

Special Monitoring: Assigned due to death of staff member.

Status of Referral: Accepted.

Update: Motion For New trial and Sentencing Hearing and Correction Or Reduction of Sentence filed on April 3, 1997

Assigned to: AUSA: Bill McKinnon, Jan Jenkins, FBI: Tyrone Smith, USP: Terry Collins, Angie Wiesman

**DEFENDANTS: Johnnie Carter, Thomas Stevens**

Institution Tracking No.: ATL-96-0273

Name of Case: U.S. v. Carter et al.,

Court: FGAN (Judge Tidwell)

Docket No.: 1:97-CR-257

Institution: **ATL**

Date of Offense: 11/96

Description: Staff involved in introducing bringing drugs into institution.

Special Monitoring: Yes, defendants are ATL staff.

Status of Referral: Accepted.

Update: Carter and Stevens were indicted on 6/18/97 on Traffic in Contraband Articles, and Conspiracy to Distribute a controlled substance. Arraignment held on 6/18/97.. Pleas of Not Guilty entered.

**DEFENDANTS: Desmond Lawrence #83529-022**

Institution Tracking No.: ATL-96-0243

Name of Case: U.S. v. Lawrence

Court: FGAN

Docket No. 1:96-CR-424

Institution: **ATL**

Date of Offense: 9/12/96

Description: Inmate assaulted Judi Parks, Robert Willis and Melvin Adams.

Special Monitoring: Not assigned.

Status of Referral: Accepted.

Update: Status hearing held on May 7, 1997. Pretrial status set for May 29, 1997. AUSA has requested that no further action be taken in disciplinary process.

Assigned to: AUSA: Katherine Monahan FBI: Tyrone Smith

USP: Terry Collins

**Federal Tort Claims Act/Employee Claims**

NUMBER FILED	127
PERSONAL PROPERTY	99
PERSONAL INJURY	26
MEDICAL	0
WRONGFUL DEATH	1
PERSONAL INJURY AND PERSONAL PROPERTY	1
NUMBER PAID	22
AMOUNT PAID	\$3081.00
NUMBER DENIED	82
NUMBER PENDING	87
NUMBER OVERDUE	0
AVERAGE PROCESSING TIME	20

**FOI/PA**

NUMBER RECEIVED	87
NUMBER CLOSED	71
NUMBER PENDING	17
TOTAL NUMBER OVERDUE	17
NUMBER OVERDUE 30 DAYS	2
NUMBER OF CIVIL ACTIONS	1

**Quarterly Comparison**

**TORT CLAIMS/EMPLOYEE CLAIMS**

SER	NUM	PROP	PI	APPR	AMT	DEN	PEND	OD	A/O	A/P
1ST QTR	159	32	22	44	3287	91	169	20	35	79
2ND QTR	115	97	15	28	3363	119	98	7	104	43
3RD QTR	127	99	26	22	3081	82	87	0	----	20
4TH QTR										

**LITIGATION**

SER	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
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1ST QTR	36	11	5	10	10	36	699	37			
2ND QTR	67	31	7	16	12	60	722	44			
3RD QTR	43	23	4	10	6	30	726	39			
4TH QTR											

#### **FOI/PA**

SER	NUM	PROC	PEND	OD	A/OD	A/P	CA
1ST QTR	86	123	01	01	02	30	?
2ND QTR	87	71	17	17	02	30	?
3RD QTR	61	69	02	02	02	30	1
4TH QTR	87	83	04	04	02	30	?

#### **Other Activities**

##### **Miscellaneous Activities**

##### **Travel:**

Sherree Sturgis - April 7 - 11; New York City, New York to participate in Legal Management review at MCC New York. Cost \$1,376.12

Sherree Sturgis - May 12 - 15; Staff Assistance at MDC, Guaynabo, Puerto, Rico.. Cost \$1,155.32.

Sherree Sturgis - May 1 - 2; Staff Assistance at MCC, Miami, Florida. Cost \$464.92.

Sherree Sturgis - June 29 - July 3; EEO Trial in Jesup, Georgia. Cost \$490.00.

Van Vandivier - May 19 - 23; Training, Washington, D.C., Tort Claim course for Counsel. Cost \$951.51.

Earl Cotton - April 27 - May 9; Glynco, Georgia to attend trial of Cohen v. United States. Cost \$488.97.

Mildred Perryman - April 27 - May 9; to Denver, Colorado to attend Paralegal training. Cost \$1,366.47.

Marty Parker - April 27 - May 9; to Denver, Colorado to attend Paralegal training. Cost \$1,313.95.

##### **Personnel Moves**

Ajay Cohil - selected as the summer intern for the Southeast Regional Counsel's Office. Starting date: June 23, 1997.

**- 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)

A final order was entered for the BOP defendants. Case is significant because the issue was crime of violence determination under 3621(e). The district affirmed the Bureau's discretion in defining crimes of violence.

Terise Ahr v. Reno

This FPC Bryan case revolves around an assertion that the Bureau did not meet the provisions of a settlement agreement in an EEO case. In fact, we did not provide back pay within the 30 days specified, but did within about 45 days in 1994. Plaintiff raises numerous other complaints, which the AUSA argues are independent issues which have not been exhausted administratively.

Kevin Thomas Ford v. Robert Guzik, et al., CIV-97-0233-R (WD/OK)

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.

Lemoine v. Falstead, 5:97-CV-109 (ED/TX)

In this Bivens action, the inmate alleges FCI Texarkana staff sexually harassed him to include touching. The allegations were previously investigated by the Office of Internal Affairs and our SIS. Both failed to substantiate the charges.

Henry v. Brady, et al., 97-334 (WD/LA)

The suit concerns an FCI Oakdale staff member's alleged use of force on an inmate during a routine pat search. The inmate attempted to hamper the pat search. The inmate was placed in restraints and escorted to the Special Housing Unit. The inmate alleges the staff member used excessive force placing him in restraints and during the escort to SHU.

Lee v. Fleming, A-96-CA-548-SS (WD/TX)

The Court ruled on May 30, 1997, that 18 U.S.C. Section 922(g), Possession of a Firearm by a Convicted Felon, is not in itself a crime of violence within the meaning of 18 U.S.C. Section 924(c)(3); therefore, the Bureau could not consider the petitioner a violent offender for the purposes of sentence reduction pursuant to 18 U.S.C. Section 3621(e)(2)(B). The AUSA filed a motion for reconsideration and the court has denied the sanction. The Bureau plans to seek permission to appeal.

**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.

Banks v. USA, A-95-CA-292-JN (WD/TX)

A hearing was held on April 13, 1997, in Austin regarding the plaintiff's motion for disbursement of funds from the court to pay for expert witnesses. The magistrate recommended that all parties agree to a bifurcated trial since both expert witnesses'

testimonies pertain to damages, not liability. The court will then hold in abeyance the motion until after the liability phase of the trial. If the U.S. is not liable, the proceedings will go no further, and the issue will be mooted. Both sides readily assented.

Demarey v. Franco, EP-96-CA-238H (WD/TX)

An evidentiary hearing was held to determine whether due process was given prior to the inmate's administrative detention.

On May 6, 1997, inmate Ronnie D. Boyd was given a detention hearing for the misdemeanor assault of Acting Captain Marcus Fernandez, which occurred during the December disturbance.

Mr. Fernandez was assaulted when inmate Boyd threw urine and feces on him. The detention hearing was necessary as Boyd was released on May 5, 1997, via GCT release. The Court ordered Boyd held without bond due to the danger he posed to the community.

Jean May Chessor had a commitment hearing at FMC Carswell under 18 U.S.C. 4246. The Judge committed the inmate for hospitalization

On May 29, 1997, a hearing was held in a Dallas circuit court regarding issues about a Seagoville staff member's appearance in a capital murder case in Kansas City, Missouri. The state Judge held that the appearance was not required because a video deposition could be taken in lieu of his appearance. We raised objections under the Touhy regulations. A video deposition was taken on the same date.

Ahr v. Reno, et al. - 43-932-272 (SD/TX)

FPC Bryan reports that a Scheduling Conference was held in this EEO civil action. The case was continued for 200 days in order to provide Petitioner an opportunity to exhaust administrative remedies regarding her assertion she was retaliated against by staff at FMC Fort Worth. She states she went for an interview for a teaching position and was allegedly queried about her experiences at FPC Bryan and whether she planned to have another baby (the subject of her initial EEO complaint). We were ordered to provide Petitioner "blank forms" to file her retaliation 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 Seago 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-Gonzalez 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 Bactrum, 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-97-73). 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-97-173)

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 Robroach 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 Chaplain 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 future 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 Furdge 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, unconstitutional, vague, and against his First and Fourteenth Amendment rights.

Harrell v. Hawkins (Hawki), C/V-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

LOC	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
MXR											
NER											
SER											
NCR											
SCR	66	40	6	17	3	60	171	40	10	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 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)