



**U.S. Department of Justice**

*Federal Bureau of Prisons*

*South Central Regional Office*

*Dallas, Texas 75219*

July 1, 1998

MEMORANDUM FOR WALLACE H. CHENEY  
 ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - June 1998

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	160	180	189	163	197	190						
ANSWERED	90	108	141	85	158	138						

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	133	156	195	201	193	193						
RECEIVED	56	67	52	48	45	47						
ANSWERED	33	36	46	45	53	61						
PENDING	156	187	201	205	185	179						
OVER SIX MO	0	1	1	1	1	1						

FOI/PRIVACY												
	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
PENDING	56	56	54	15	21	21						
RECEIVED	28	30	43	88	45	42						
ANSWERED	28	22	82	70	41	39						
PENDING	56	54	15	33	21	24						
OVER 20 DAYS	22	45	13	10	9	9						

LITIGATION

	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
CASES RECD	17	15	19	14	10	11						
CASES CLOSED	4	9	34	35	29	28						
HABEAS CORPUS	13	9	11	8	3	7						
BIVENS	4	3	6	3	4	2						
FTCA	0	2	1	1	1	2						
OTHER	0	1	2	2	2	0						
LIT REPORTS	12	17	15	14	15	8						
HEARINGS/ TRIALS	0	2	2	1	2	2						
SETTLEMENTS/ AWARDS	0	0	0	0	1	0						

#### CASES WITH HEARINGS OR TRIALS

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

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

#### CASES WITH SETTLEMENTS OR AWARDS

##### a. Adverse judgments

##### b. Tort Claim settlements

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

##### c. Other settlements

FPC Bryan reports that a settlement agreement has been signed in

Ahr v. Reno, H-96-3641 (SD/TX). In exchange for \$11,250.00, Ms. Ahr will withdraw above captioned matter and a pending EEO complaint raising retaliation issues.

#### SIGNIFICANT CASES

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

Yuk Rung Tsang v. Bureau of Prisons Office of General Counsel, 1:98-CV-114-C, (ND/TX). FCI Big Spring reports that Tsang has filed this civil action claiming he completed the 500-hour drug treatment program in 1994. The Bureau was aware Tsang had a detainer lodged against him for deportation before he began the program. The record reflects Tsang entered the program immediately after the designated Residential Treatment Unit was burned during an institution riot. Tsang and other inmates were placed in other units at FCI Phoenix and allowed to complete the program as if they had been assigned to a dedicated drug treatment unit. Approximately two years after completing the 500-hour program, Tsang was notified his early release to his detaining authority had been revoked. The record reflects this early release was revoked due to Tsang's failure to reside in a dedicated drug treatment unit. Tsang argues this was not his fault. He states he completed the program in good faith. We have found no record Tsang was ever offered the opportunity to return to a Residential Drug Treatment Unit to complete the mandatory stay of 180-days. We are waiting on a decision from the Central Office as to Tsang's eligibility to benefit for this early release.

Len Davis v. BOP, et al., PB-C-97-494 (ED/AR). The Community Corrections Center in New Orleans reports that a death row inmate housed in a state facility refiled a previously dismissed Personal liability claim against a BOP employee. A Motion to Dismiss the new suit on res judicata grounds has already been filed.

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

Defendant's Motion for Summary Judgment granted by court.

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

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

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

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

FTC Oklahoma reports that Steven Sherrod v. Bob Guzik, CIV-97-1530-L. By judgment entered May 28, 1998, the petition for Habeas Corpus was granted, and the matter was remanded to the Bureau of Prisons for further proceedings consistent with the Report and Recommendation and Fristoe v. Thompson \_\_F.3d\_\_ (10<sup>th</sup> Circuit, April 28, 1998.) Unit Management is currently processing the referral for CCC placement.

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

#### SIGNIFICANT TORT CLAIMS

Anthony Austin (aka Wa'il M. Muhannad) contends staff at

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

Ronald Fishman, an inmate incarcerated at FMC Fort Worth, claims liability in the amount of \$1,500,000 (T-SCR-98-240). Fishman alleges he was denied access to needed medical care (500-hour Drug Abuse Program), which has caused mental anguish and emotional distress, resulting in depression and inability to sleep.

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

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

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

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

Inmate Alfred Green seeks \$3,000,000.00 as compensation for deliberate indifference to his medical needs by the medical

department and UNICOR staff members at FCI Three Rivers. Inmate alleges he was ordered to push a fork lift up a ramp in UNICOR during 1994, which resulted in right knee, hip, and back injuries. Inmate further alleges there was a long delay in detecting the injuries; medical staff refused to follow recommended treatment; and medical staff refused to provide effective pain medication to relieve his pain. Inmate had two back surgeries and one knee surgery prior to his federal incarceration. He was seen at least 68 times by various medical personnel and evaluated by six specialists. Inmate was also evaluated by USMCFP Springfield. There is no evidence to support inmate's allegation of deliberate indifference.

Inmate David Gibson seeks \$10,000.00 as compensation for deliberate indifference to his medical needs by the medical department at FCI Three Rivers. Inmate alleges he was sprayed with pepper spray in 1994 while being transported to FCI Three Rivers, and that he did not receive any medical treatment for 72 days. He claims his sight has diminished, he has to wear glasses, and he suffers from dizziness, headaches, and nausea. Investigation revealed a canister of pepper spray accidentally ruptured on an inmate transportation bus while in route to FCI Three Rivers. Inmate was treated upon his arrival at this institution. He was evaluated at least 21 times by various medical department staff and six times by an Optometrist. There is no evidence to indicate medical staff were deliberately indifferent to inmate's medical needs. It is the belief of the medical department that inmate's eye difficulties are a result of his chronic conjunctivitis and not his exposure to pepper spray.

#### SIGNIFICANT ADMINISTRATIVE REMEDIES

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

Inmate John Binar from FCI Big Spring is challenging the Bureau of Prisons' system of determining the rated capacity of an inmate room, in respect to double bunking inmate beds.

#### UPCOMING TRIALS OR HEARINGS

None

#### MEDICAL MALPRACTICE

**LITIGATION**

None

See significant tort claims - Yarbrough administrative claim.

**TORT CLAIMS**

**FMC CARSWELL**

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

**ENSIGN AMENDMENT**

**LITIGATION**

None

**TORT CLAIM**

None

**RELIGIOUS FREEDOM RESTORATION ACT**

**LITIGATION**

None

**TORT CLAIM**

None

**PRISON LITIGATION REFORM ACT ORDERS**

None

**SITUATIONS OF INTEREST**

**FCC Beaumont**

LOW - On June 9, 1998, following an investigation by Legal Department staff, Attorney Helen Wang was restricted from Complex-wide visitation (legal and social), confidential written

correspondence with inmates (special mail), and unmonitored legal telephone calls with inmates. These restrictions were based on Attorney Wang's history of violating Bureau of Prisons rules, most recently of which included paying an inmate at the LOW to solicit inmate clients for her. A complete packet documenting the investigation was forwarded to the Regional Counsel and Central Office, Office of General Counsel.

June 23, 1998 - Paul Layer and Darrel Waugh attended the Beaumont City Council meeting to consider the proposed contract for fire protection at the Complex. The contract was approved by a vote of 5-1, and will provide first response fire protection to the Complex until June 30, 2000, at a price of \$3000.00 per year.

#### **FMC CARSWELL**

On June 24, 1998, Dr. Kenneth Moritsugu awarded Pins and Boards to PHS officers for their promotions.

Wallace Cheney, General Counsel, toured FMC Carswell and FMC Fort Worth on June 30, 1998.

#### **FTC OKLAHOMA CITY**

DOJ attorneys conducted Trentadue plaintiffs' depositions June 15-19.

#### **FCI OAKDALE**

Inmate Detusch has been deported and is now in the custody of Canadian authorities.

#### **CRIMINAL MATTERS AND PROSECUTIONS**

#### **FCI BASTROP**

In response to the Warden's concern that the FBI was not helping the BOP in the prosecution of three crimes, the staff attorney spoke to Richard Pittman, the Assistant Civil Chief of the U. S. Attorney's Office in Austin, who pledged to do something about it. The next day the local FBI agent called the SIS Lieutenant, and it now appears that these cases will go forward:

Gadusek: Inmate was observed swallowing balloons in the Visiting Room. He was placed in a dry cell, where he passed the balloons, whose content tested positive for heroin. He will probably plead guilty.

Ramirez: Inmate threw urine and feces on officer in SHU. Staff witnesses are available to testify, if needed. He will probably plead guilty.

Zuidema: An incoming piece of correspondence was found to contain



LSD. This is the weakest of the three, since it is difficult to prove that the inmate knew the LSD was coming in.

#### FCC BEAUMONT

Camp - On June 25, 1998, federal inmate Samuel Flores was sentenced following his plea of guilty to escape from the FCC Beaumont Camp on January 11, 1998. Inmate Flores received an 18 month consecutive federal term of imprisonment, three years supervised release, and a \$100.00 special assessment (no criminal fine). Inmate Flores was sentenced by Chief Judge Richard Schell, Eastern District of Texas, Beaumont. Inmate Ruiz, Jose is tentatively scheduled for sentencing on the same charge July 25, 1998.

Low - On June 1, 1998, Warden Tombone and Paul Layer met with Mike Bradford, U.S. Attorney, Eastern District of Texas, Michelle Englade, AUSA, and Bob Fortune, Special Agent, FBI, regarding criminal prosecution of Luis Carmona-De La Torre for assaulting a correctional officer at the LOW. The U. S. Attorney supports seeking criminal prosecution through criminal information, as opposed to a grand jury indictment.

USP - On June 15, 1998, former Correctional Officer Jessica Sills pleaded guilty to Providing or Possessing Contraband in Prison (18 U.S.C. § 1791), in connection with an incident where she was paid to supply inmates in the USP with marijuana.

#### FCI EL RENO

June 10, 1998, Assault on Inmate - Staff observed Filiberto Flores and Leonardo Hernandez-Garcia fighting in Unit 4. Prosecution declined due to no serious injury. Warden concurs.  
FCI FORREST CITY

On May 23, 1998, Amador-Rodriguez assaulted the Cook Supervisor by throwing an apple striking the staff member on the right biceps and right eye. While being escorted into the SHU, the inmate began pulling away from the escorting officer. The staff member then regained control and the inmate was placed into a holding cell. The inmate was examined by medical staff and placed into Administrative Detention without further incident. Both staff and the inmate received injury assessments by medical staff with no injuries noted. The FBI was notified and the investigation continues.

On May 24, 1998, a unit officer requested medical assistance when she observed inmate Rodriguez-Cortez sitting in the TV room wiping blood from his facial area. A visual search was conducted on all inmates in the unit at which time inmate Earl Marcenus was discovered by staff to have multiple abrasions to the neck and chest area. Both inmates were placed in Administrative Detention without further incident. Both inmates received medical

assessments by medical staff with injuries noted. The FBI was notified and an investigation continues.

On May 26, 1998, the Control Center Officer announced a call for assistance in a housing unit. Staff observed inmate Eddie Rhyan staggering toward the officer's station bleeding from his left eye. Inmate Stephen Mitchell was observed yelling to inmate Rhyan that he was going to hurt him (Rhyan). Staff restrained both inmates and escorted them to the institution hospital and then to the SHU. The FBI was notified and the investigation continues.

On June 9, 1998, the Community Confinement Center in Houston, TX. Notified FCI Forrest City that inmate Soto-Gonzalez failed to report to his scheduled CCC in Houston. The inmate was scheduled to arrive at 8:30 a.m. on June 9, 1998. The inmate was placed on escape status at 4:17 p.m. The U. S. Marshals Service and the FBI were notified.

On June 14, 1998, a Food Services staff member observed inmate Javier Ramos lying on the floor of Food Services. Staff further observed inmate Guillen standing over inmate Ramos with a broom handle placed against Ramos' neck applying pressure. Additionally, staff observed inmate Mungia with both his hands placed on inmate Guillen's left and right shoulder. Food Service staff ordered all three inmates to stop and they complied. The three were escorted to Health Services and examined by medical personnel. They sustained minor injuries. After the examination, the inmates were placed in SHU. The FBI was notified and an investigation continues.

On June 22, 1998, inmate Arvayo-Castillo entered the Lieutenant's Office and admitted he had been in a physical altercation with an unknown inmate. According to the inmate, he was sleeping and another inmate entered his cubicle and struck him in his head with a foreign object. The inmate was treated by medical staff. He sustained two lacerations to the back of his head and two small abrasions to his back area. The inmate was placed in SHU and the FBI was notified.

#### **FTC OKLAHOMA CITY**

An inmate on staff assault occurred on June 1, 1998, when inmate Bronco, Lucio, while being escorted from R&D to the Special Housing Unit, became verbally abusive and confrontational. Inmate Bronco attempted to pull away from escorting staff and then head butt an officer. Both the officer and inmate Bronco fell to the floor. Accompanying staff gained control of the inmate, and he was escorted to his cell without further incident. Neither staff nor inmate Bronco sustained any injury. The FBI was notified; however, they declined referral for prosecution.

The Warden concurs.

On June 23, 1998, while being escorted from a housing unit to R&D, inmate Joel Moreno-Olives attempted to strike an escorting officer in the facial area with his elbow. The inmate was taken to the floor, restrained, and then moved on to R&D without further incident. No injuries were sustained by either staff or the inmate. The FBI was notified, but declined referring for prosecution. The Warden concurs.

#### **FCI TEXARKANA**

Staff member pled guilty to the charge of having sex with an inmate and received one year probation.

#### **FCI THREE RIVERS**

The U. S. Attorney's Office will prosecute inmate James Esmedina for possession of marijuana. During a pat search leaving UNICOR, 26.7 grams of marijuana were located in the inmate's possession.

The U.S. Attorney's Office will prosecute inmate San Martin Zuniga for possession of narcotics. During a cell search, and subsequent pat search, inmate was found to be in possession of 10 cut up pieces of potato chip bags containing a brown substance. The substance tested positive for amphetamine.

Prosecution was declined for staff assault by inmate Gabriel Alarcon. Inmate grabbed staff member's genitalia through food slot in SHU while issuing toilet paper. No injury to staff. Warden concurs with decision.

Prosecution was declined for assault on staff with a weapon by inmate Jesus Fernandez-Delgado. While fighting with another inmate in UNICOR, inmate Fernandez picked up a long handle dust pan, swung it around, and hit another inmate and a staff member. No injuries were sustained. Warden concurs with decision.

The following inmates were referred to the U. S. Marshal's Office after they walked away from the satellite camp: Jose Reyes-missing during midnight count on May 23, 1998; Juan Garcia-missing during 4:00 p.m. count on May 30, 1998; Michael Martinez-missing during midnight count on June 6, 1998; and David Cervera-missing during 4:00 p.m. count on June 11, 1998.

#### **PERSONAL ISSUES**

##### **Scheduled Annual/Sick Leave:**

Mike Hood	-	July 23-24	-	Annual Leave
Lisa Sunderman	-	July 2, 6-10	-	Annual Leave

Marsha Foulks	-	July 6, 10, 13 & 20	-	Annual Leave
Linda Nutt	-	July 6-10	-	Annual Leave
Darrel Waugh	-	July 1-15	-	Annual Leave
Karen Summers	-	July 20-24	-	Annual Leave

**Other Scheduled Absences:**

Julie Gerardi, FCI Three Rivers, will be attending Diversity Management Training at FMC Carswell on July 14-17, 1998.

Jason Sickler, SCRO Attorney Advisor, will be located at FCC Beaumont beginning July 19, 1998. The institutions that Jason currently oversees will maintain their working relationship with Jason, to the extent possible. Jason will be greatly missed.

Mike Hood and Lisa Sunderman will be attending the Legal Conference the week of July 27, 1998. Marsha Foulks will be acting Regional Counsel during their absence.

UNITED STATES GOVERNMENT  
**memorandum**

Northeast Region, Philadelphia, PA  
FEDERAL BUREAU OF PRISONS

July 15, 1998

MEMORANDUM FOR WALLACE H. CHENEY, GENERAL COUNSEL

FROM: Henry J. Sadowski, Regional Counsel

SUBJECT: Monthly Report - June 1998

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Remedies - 1998**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	110	91	146	162	167	180						
Rec'd in month	113	155	187	188	187	172						
Ans'd in month	132	100	171	183	174	207						
Pending at End	91	146	162	167	180	145						
Over 30 days	0	0	0	0	0	0						

**B. Administrative Tort Claims - 1998**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	236	262	261	283	320	348						
Rec'd in month	77	73	92	73	60	64						
Recons. rec'd	3	2	3	4	1	0						
Ans'd in month	54	76	73	40	33	93						
Pending at End	262	261	283	320	348	319						
Over 180 days	0	0	0	0	0	0						

**C. Tort Claim Investigation Status: As of June 30, 1998**

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	2	1	10	0	6	7	6	15	12	0	7	7	5	16	7

## D. FOI/Privacy Act Requests - 1998

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	37	13	9	15	32	32						
Rec'd in month	34	28	32	38	41	31						
Ans'd in month	58	35	29	21	41	59						
Pending at End	13	9	15	32	32	4						
Over 30 days	1	1	0	1	1	0						

## E. FOIA Requests for records: As of June 30, 1998

	ALF	ALM	ALP	ALW	BRO	DAN	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
Pending	1	0	1	3	0	4	0	2	1	0	0	2	0	0	0
Over 20 days	0	0	0	0	1	2	0	0	1*	0	0	0	0	0	0

\*This file has not been received from archives.

## II. LITIGATION ACTIVITY - 1998 NORTHEAST REGION

### A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	670	604	597	606	625	639						
New Cases	13	15	21	24	19	13						
Habeas Corpus	5	7	13	13	15	6						
FTCA	1	4	2	4	3	1						
Bivens	1	2	3	4	1	3						
Other	4	2	1	1	0	3						
Bivens/FTCA	2	0	2	2	0	0						
Lit Reports	8	10	10	9	9	10						
Cases Closed	66	7	12	5	5	26						

### B. SETTLEMENTS AND AWARDS: -

1) Administrator of the Estate of Robert Bates v. United States, Civil No. 97-0048, E.D.Pa.

OK  
Inmate died of a coronary at FCI Fairton. During discovery, new facts were revealed indicating that settlement was in the best interest of the Bureau of Prisons. This FTCA wrongful death originally sought \$250,000.00 in damages. The case settled for \$150,000.00.

2) Rogers v. MCC, et al., 96 Civ. 6811 (S.D.N.Y.)

~~Pro se former inmate filed suit against three physician assistants and one cook supervisor.~~ *former inmate,* Plaintiff, claims he injured his eyes with a degreaser solution while cleaning the stove in food services, as part of his job. The parties agreed to settled this <sup>FTCA</sup> claim for \$2,500.00, which sum shall be in full settlement of any and all claims against the individual defendants, the United States, MCC, or any department, agency, present or former agents, officer or employee of the United States.

**C. SIGNIFICANT CASES, TRIALS or HEARINGS:**

1) Nicholas LaSorsa v. Fredrick Menifee, 97 CV 4827 (S.D.N.Y.).

In an exercise of its discretion, the Bureau of Prisons denied Inmate LaSorsa early release because he received a two-level enhancement for possession of a firearm. Although Inmate LaSorsa successfully completed a drug treatment program, the Court ruled that 18 U.S.C. § 3621(e)(2)(B) and 28 C.F.R. § 550.58 do not in any way limit the BOP's discretion to deny early release to prisoners otherwise eligible for release. The Court stated the BOP's decision to deny early release was a rational exercise of that discretion.

2) U.S. v. Gregory Scarpa, Jr., S8 97 Cr. 786 (E.D.N.Y.)

On May 28, 1998, MCC NY received a "so ordered" subpoena from the attorney for inmate Gregory Scarpa, Jr., Register Number 10099-050. The subpoena sought relevant documentation and information which would identify the cell location of Gregory Scarpa, Jr. and those inmates housed on the same tier as inmate Scarpa. The subpoena sought information implicating the WITSEC program. A status conference was held on June 9, 1998, before Judge Raggi, to discuss MCC New York's compliance with and objections to the subpoena. Clinton Stroble represented the MCC at this hearing. At the end of the hearing, Judge Raggi requested that MCC clarify several discrepancies in the responsive document sent to Scarpa's attorney and to provide additional information responsive to the subpoena.

4) U.S. v. Anthony Martinez, CR-97-725 (E.D.N.Y.)

On June 5, 1998, former Unit Manager, Anthony Martinez, was convicted of three counts of Bribery, in violation 18 U.S.C. §201, and one count of Attempting to Provide Heroin to an Inmate, in violation of 18 U.S.C. §1791. Sentencing is pending.

5) Brown v. Morton, CV-95-2881 (D.N.J.)

On June 5, 1998, a teleconference took place between inmate Orson Brown, AUSA Kevin Mulry and Staff Attorney Azzmeiah Vazquez. Inmate Brown filed a Bivens action in 1995 alleging failure to protect issues when he was assaulted by inmate Anthony Glass on the unit. Magistrate Judge Gold ordered MDC to provide inmate Brown with information regarding instances where various named defendants were the subject of a grievance, complaint or disciplinary action with respect to assault, failing to intercede to stop an assault; failing to properly supervise with respect to such actions; interrogatory answers from various staff with respect to what they knew about the Glass' medical care and whether or not he posed a threat to other inmates or staff; and any administrative, medical and screening information regarding inmate Glass.

6) United States v. Pellulo: Crim. No. ----- (E.D.Pa.)

X On June 17, 1998, Bobbie Truman, Attorney and Joe Guidoness, Case Manager (FCI Fairton) and Gene Dixon, Paralegal (FCI Schuylkill) attended a hearing on a motion filed by inmate Leonard Pellulo, 44140-066 challenging the use, in a criminal prosecution, calls recorded on inmate phones. Inmate Pellulo challenged whether he knew the phones were monitored and also claimed that an inmate in the Bureau of Prisons can not make unmonitored telephone calls to his attorneys. He further asserted that he would announce over the monitored lines that the call was to his attorney and that announcement should evoke the attorney client privilege. Judge Robreno has taken this matter under advisement.

7) United States v. Hammer, Crim. ----- (M.D.Pa.)

X The trial of David Paul Hammer, Reg. No. 24507-077 concluded abruptly when he plead guilty to the indictment. The death penalty phase of the prosecution began on June 30, 1998. Attorneys Tim Roberts and Nellie Torres have been assisting and attending the proceedings, when possible.

**UPCOMING HEARINGS** - None Scheduled

**D. RELIGIOUS CASES:** - No new activity

**E. ENSIGN AMENDMENT CASES:** No new activity

**F. PLRA 1915 DISMISSALS:** None

**III. TRAVEL AND LEAVE SCHEDULE FOR JULY 1998:**

Hank Sadowski -Travel - July 27-31 National Legal Training  
Annual Leave - None Scheduled

Mike Tafelski -Travel - July 27-31 National Legal Training  
Annual Leave - July 13-17

Toni Brown - Travel - None Scheduled  
Annual Leave - None Scheduled

Les Owen - Travel - None Scheduled  
Annual Leave - None Scheduled

Ron Hill - Travel - None Scheduled  
Annual Leave - None Scheduled

James Vogel - Travel - None Scheduled  
Annual Leave - July 30, 31, 1998



UNITED STATES GOVERNMENT

memorandum

Date: August 5, 1998

Reply to: Sherree L. Sturgis, Regional Counsel, Southeast Region  
 Attn of: Federal Bureau of Prisons, Atlanta, GA 30331

Subject: Monthly Report - July 1998

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

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Tort Claims - 1998**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		113	69	69	89	104	101	88				
Rec's in month	39	55	88	38	63	36	74					
Recons. rec'd	0	3	4	2	1	0	3					
Ans'd in month	22	49	69	52	46	58	54					
Pending at end	117	118	107	103	111	101	88					
Over 180 days	6	3	1	3	2	3	0					

**B. Tort Claim Investigation Status: As of July 31, 1998**

	ATL	C O L	E D G	E D L	E S T	G H A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TIA	TAC
PENDING	36	5	1	0	1	4	4	5	5	9	1	0	4		0
>60 DAYS	10	0	0	0	0	0	1	3	0	0	0	0	2		0

**C. FOI/Privacy Act Requests - As of July 31, 1998**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		12	18	19	21	15	31	27				
Rec'd in month	21	9	18	19	15	24	24					
Ans'd in month	10	18	22	26	41	14	33					
Pending at end	24	21	19	25	15	7	27					
Over 30 days	4	4	3	6	2	2	9					

**D. FOIA Requests for records: As of July 31, 1998**

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	AT L	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YA Z
PENDING	4	3	0	0	0	2	2	0	0	0	0	2	1	0
>30 DAYS	0	0	0	0	0	1	0	0	0	0	0	1	0	0

**II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION**

**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515	525	535	537	542	539	531				
New Cases	16	2	18	15	15	10	11					
Habeas Corpus	10	1	9	6	8	8	6					
FTCA	0	0	2	2	2	0	1					
Bivens	5	1	6	5	5	2	4					
Other	1	0	1	2	0	0	0					
Bivens/FTCA	0	0	0	0	0	0	0					
Lit Reports	11	1	2	5	5	0						
Cases Closed	77	9	8	5	13	5	14					

**B. SETTLEMENTS AND AWARDS:**

Pamela Ruth Chilton, et al. v. United States, 4:96-CV-2533 CDP  
(E.D. Missouri)

Trial was held in this case where the inmate committed suicide at FCI Jesup shortly after arrival and his prescription for was changed from Xanax to Lorazepam. The court found that the Government was negligent and awarded damages to the plaintiffs in the amount of \$781,000. This consisted of \$725,000 lost income, \$50,000 intangible value and \$6,000 funeral expenses.

Sulayman v. U.S., FGAS, 297-118 - Settled for \$55,000 at settlement conference on 7-15.

**C. SIGNIFICANT CASES, TRIALS or HEARINGS:**

Salvador Magluta v. F. P. Sam Samples, et al., App No. 97-8417  
(11<sup>th</sup> Cir.)

The defendants reply brief was submitted to the court, arguing that the district court's dismissal of the plaintiff's Bivens action on the basis of the fugitive from justice doctrine was permissible and should be upheld. Maria Simon, DOJ Appellate Attorney, prepared and filed the brief for the defendants. We await the court's decision.

**D. RELIGIOUS CASES:**

**E. ENSIGN AMENDMENT CASES:**

**F. PLRA 1915 DISMISSALS:** NONE

**G. CRIMINAL CASES:**

No significant cases to report.

**III. TRAVEL AND LEAVE SCHEDULE FOR August 1998:**

Sherree L. Sturgis

Travel - None

Annual Leave - None

Van Vandivier

Travel - None

Annual Leave - August 17, 25-31

Earl Cotton

Travel - August 30-September 2, CSRE training Denver

Annual Leave - None

Jeffrey Sugg - Honors Attorney

Travel - None

Annual Leave - None

Gere Gooden

Travel - None

Annual Leave - August 10

Loretta Rich-New Paralegal Trainee

Travel - None

Annual Leave - None

Beverly Snell - Legal Intern

Travel - 8-20-21 Assist AUSA Porto v. US, FFLS

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Annual Leave -August 14

IV. Other Matters

Orientation for new wardens, 7-13 by Sturgis & Vandivier

cc: Regional Director and Deputy Regional Director, SER  
All Regional Counsel and Associate General Counsel

U.S. DEPARTMENT OF JUSTICE  
 Federal Bureau of Prisons  
 North Central Region  
 Office of Regional Counsel

Kansas City, KS 66101

August 7, 1998

MEMORANDUM FOR WALLACE H. CHENEY, ASSISTANT DIRECTOR  
 GENERAL COUNSEL & REVIEW

FROM: JOHN R. SHAW, Regional Counsel

SUBJECT: MONTHLY REPORT (July, 1998)

**LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS**

**LITIGATION:**

inst	num	hc	ftc	biv	oth	ans	pen	cld	h/t	set	awd
NCR	47	31	4	9	3	28	429	29	22	1	0

NUM - Number of total lawsuits filed in the month (1)  
 HC - Number of habeas corpus actions filed in the reporting period  
 FTC - Number of FTCA actions filed  
 BIV - Number of Bivens actions filed  
 OTH - Number of other actions filed, e.g., mental health, mandamus  
 ANS - Number of litigation reports completed  
 PEN - Number of cases pending  
 CLD - Number of cases closed  
 H/T - Number of hearings or trials (include in narrative)  
 SET - Number of settlements (include in narrative)  
 AWD - Number of Awards (include in narrative)

\*Number of open cases on LMS.

**ADMINISTRATIVE CLAIMS:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61	50	66	81	56	74	98					

**Total for Calendar Year 486  
 Pending 273**

## ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
184	170	210	198	249	202	241					

**Total for Calendar Year 1454**

## FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

	FOIA	PRIVACY ACT
ACTUAL ON-HAND	31	8
ACTUAL RECEIVED	62	11
ACTUAL PROCESSED	66	10
ACTUAL BACKLOG	4	4

Backlog represents those requests which have not been responded to within the twenty work days target set by DOJ.

## ADVERSE DECISIONS

None.

## SETTLEMENTS OR JUDGMENTS

### Sartin v. United States, Case No. 97-2780, (W.D.Tenn.) USP Marion

This case was recently settled for \$12,000. The case involved a visitor who sustained injuries when a chair collapsed in the FPC Marion visiting room. The AUSA did not obtain the concurrence of the BOP prior to settling this case.

### Lumpkin v. Knowles, Case No. 97-X-0033 (D. Col.), USP Florence

District Court directed BOP to make a copy of telephone conversation on cassette tape and provide declaration as to its authenticity. Lumpkin is to provide address where tape will be sent and will pay costs of copying/ mailing. BOP also directed to preserve master reel if Lumpkin pays cost of replacement (approx. \$120). If Lumpkin has not paid to replace master reel by August 6, order to preserve master reel will be vacated.

### McCarthy v. U.S., et al., Case No. 95-Z-320 (D.Col.), ADX Florence

On July 14, 1998, a settlement was reached when the plaintiff agreed to dismiss his complaint without prejudice due to the fact that he is currently receiving assistance from KU Defender Project. In exchange, BOP will provide a declaration to plaintiff's counsel as to unavailability of Florida materials in BOP facilities.

### **DECISIONS OF INTEREST**

**Parsons v. Pitzer, 1998 WL 416888 (7th Cir. (Wis.)), FCI Oxford**

Seventh Circuit found that Felon in Possession of a Firearm was a crime of violence for purposes of 18 U.S.C. 3621(e)(2)(B).

**Copley v. Keohane, 1998 WL 410067 (8th Cir. (Mo.)), USMCFP Springfield**

Court held that since inmate was no longer in the custody of the BOP and instead under the supervision of U.S. Probation, the petitioner's habeas action was moot.

### **PENDING CASES OF INTEREST**

**Johnson v. United States, Case No. 96-C-5708, N.D. Ill., MCC Chicago**

After inmate committed suicide, his estate sued claiming BOP's negligence led to death. During recent settlement conference, administrator of estate asked for \$800,000. AUSA responded with an offer of \$10,000 in nuisance value.

**Massey and Otten v. David Helman, et al., Case No. 97-1401, C.D. IL, FCI Pekin**

Pursuant to Rule 23, Fed. R. Civ. P., Plaintiffs brought a Motion for Class Certification. Plaintiff Massey alleged that because it is institutional policy to deny necessary medical care to inmates, he was denied the prescribed medical treatment for an existing hernia, a violation of his Eighth Amendment right to be free from cruel and unusual punishment. In addition to his individual claim, Plaintiff Massey sought class certification on behalf of other inmates who were denied medical treatment. Plaintiff Otten was a former staff physician at FCI Pekin prior to his termination during March 1998. Plaintiff Otten alleged that he was terminated for insisting that his patients receive necessary medical care as required by the Eighth Amendment and because he spoke freely with the inmates about the necessary medical care being denied to them. In addition to Plaintiff Otten's individual claim, he brought action on behalf of his former FCI Pekin inmate patients. In an Order dated July 7, 1998, the Court denied the Motion because Plaintiffs failed to meet the first of four pre-requisites to certify the class; numerosity.

**Gonzalez v. Cambiazo, Derr and Kuzinki, Case No. 97-S-2639, D.Col., FCI Florence**

Inmate alleges he was assaulted by these three defendants on 12/1/97. The inmate specifically alleges that staff removed his wheelchair and walker from his cell, resulting in inability to ambulate around the cell. The inmate alleges that the officers then kicked plaintiff, injuring his legs and shoulder. He is seeking \$1 million in damages and a transfer to a "hospital."

**Boyce v. Hershberger, Case No. 983238-GTRV, D.Kan., NCRO**

Convicted spy Christopher Boyce has filed suit in the District of Kansas alleging that his constitutional rights were violated when he was transferred from a state facility in Minnesota to ADX Florence. Boyce is represented by counsel in this matter and claims that he was transferred solely because of articles he wrote that were critical of the BOP and members of the Aryan Brotherhood. A current BOP staff member testified on behalf of Boyce during his last parole hearing and assessed that Boyce was best suited for confinement in an FCI, not a maximum security prison. NCRO legal staff will be providing the U.S. Attorney's Office with assistance.

### **RELIGIOUS FREEDOM RESTORATION ACT CASES**

**Houston v. Brooks, Civil No. 97-2081, D. Minn., FCI Sandstone**

Private counsel is in the process of interviewing various staff members regarding their actions in this case. The defendant claims his rights under RFRA were violated when he was placed in administrative detention for making inflammatory remarks about Caucasians. The U.S. Attorney's Office filed a motion to dismiss on behalf of the defendants in their official capacities.

### **HEARINGS AND TRIALS**

None.

### **UPCOMING HEARINGS OR TRIALS**

**Bernal v. Black & Lewis, Case No. 96-1209, CD Ill., FCI Pekin**

Plaintiff alleges two staff initiated disciplinary action him in retaliation for complaining about conditions at the commissary. Trial scheduled to begin Monday, August 31, 1998 in Peoria.

**Locascio v. Keohane, WD MO, MCFP Springfield**

Plaintiff, an organized crime figure, filed for a temporary restraining order requesting release from Administrative Detention. The inmate was placed in SHU after information was received that a contract had been placed on his life. Judge Clark has scheduled a hearing regarding this matter for August 19, 1998.

### **CRIMINAL MATTERS**

**USA v. JOHNSON, Case No. 96-CR-379, N.D.Ill., MCC Chicago**

On July 27, 1998 Johnson was formally sentenced to two concurrent death sentences. The judge requested that Johnson be allowed to stay at the MCC for 14 days so he could have the opportunity to visit with family members.

**USA v. Leo ALVAREZ D.Col., USP Florence**

Inmate pleaded guilty to introduction of contraband (heroin) and was sentenced to 27 months consecutive to his current term of imprisonment.

**USA v. Jack COOK, D.Col., FCI Florence**

Inmate charged with one count of assault on staff (Correctional Counselor) and pleaded guilty. The inmate was immediately sentenced to one year, consecutive, during proceedings before Magistrate Borchers in ADX Courtroom on July 14, 1998.

**USA v. Jimmy COUCH, D. Col., USP Florence**

Inmate charged with possession of contraband (drugs). The inmate pled guilty at proceedings on July 24 before Magistrate Borchers in ADX Courtroom and was immediately sentenced to six months each on two counts, consecutive to each other and to all other sentences.



**USA v. RIDDLE and BLACK, D. Col., USP Florence**

Giglio information turned over to USAO. It appears inmate will plea to second degree murder in order to avoid being tried for capital murder.

**PERSONNEL ISSUES**

Vince Shaw will be starting at the Attorney-Advisor at FCI Oxford this month. Tracy Knutson, Honors Attorney, assumes duties at the NCRO August 17, 1998. Legal Intern Lisa McKnight returns to UMKC School of Law and will begin working part-time.

**STAFF TRAVEL AND LEAVE**

John	August 21-28	A/L
Daryl	August 24-25	FPC Yankton
Dan	August 26-27 August 28	CMC Training A/L
Gwen	August 7 August 30 - September 2	A/L Denver - Sentencing Tng
Vince	August 28	Last Day at NCRO
Tracy	None Scheduled	
LeeAnn	None Scheduled	
Janet	None Scheduled	
Lisa	None Scheduled	
Beth	None Scheduled	

Tort dBASE Files sent via e-mail to Delores Johnson, OGC, on 07/31/98.